

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

**HORNBECK OFFSHORE SERVICES,
LLC,**

Plaintiff,

v.

**KENNETH LEE “KEN” SALAZAR, in
his official capacity as Secretary, United
States Department of the Interior;
ROBERT “BOB” ABBEY, in his official
capacity as Acting Director, Mineral
Management Service; and MINERALS
MANAGEMENT SERVICE,**

Defendants.

CIVIL ACTION No. 10-1663(F)(2)

SECTION F

JUDGE FELDMAN

**MAGISTRATE 2
MAGISTRATE WILKINSON**

**DEFENDANTS’ MEMORANDUM IN SUPPORT OF MOTION FOR CONTINUANCE
OF JUNE 21, 2010 HEARING ON PLAINTIFFS’ MOTION FOR PRELIMINARY
INJUNCTION**

I. INTRODUCTION

Defendants, Kenneth Lee Salazar, Robert Abbey, and Mineral Management Service (“Defendants”), hereby file this Motion for Continuance of the June 21, 2010 Hearing on Plaintiffs’ Motion for Preliminary Injunction. At issue here is an order of the Secretary of the Interior designed to mitigate an “unacceptable threat of serious and irreparable harm to wildlife and the marine, coastal, and human environment” and to allow an opportunity to install “additional safety or environmental protection equipment [that] is necessary to prevent injury or loss of life and damage to property and the environment.” May 28, 2010 Mem. From Secretary to Director, MMS re: Suspension of Outer Continental Shelf (OCS) Drilling of New Deepwater Wells (the “Moratorium”), attached as Ex. G to Plaintiff’s Mot. for Prelim. Inj. [Docket No. 7]. Plaintiffs’ Motion for Preliminary Injunction seeks an order enjoining the Secretary’s Moratorium. *Id.* at 23. Plaintiffs’ Motion for Expedited Hearing provided nothing more than bare conclusory allegations that their

financial interests will somehow be irreparably harmed if this Court did not immediately set a hearing on its request for a preliminary injunction, in less than a week. Given the scope of the broad environmental, and safety policies, issues, and interests that the Moratorium addresses, a mere five days would not allow the Parties sufficient time to appropriately address them.

Plaintiffs have already issued a Notice of Hearing indicating a July 28, 2010 hearing on Plaintiffs' Motion for Preliminary Injunction. As described more fully below, Defendants respectfully urge the Court to reconsider its June 11, 2010 order scheduling Plaintiffs' Motion for Preliminary Injunction for June 21, 2010 and the associated briefing deadline of June 16. Defendants request that the Court maintain the July 28, 2010 hearing date contained in Plaintiffs' Notice of Hearing. As an accommodation to Plaintiffs' concerns for expediency, Defendants request, consistent with Plaintiffs' suggestion, that the Court address both the request for preliminary and permanent relief in a combined proceeding. *See* Pls.' Mot. for Expedite Hearing at 3. Defendants therefore propose that the July 28 hearing include a full hearing on the merits of Plaintiffs' claims in accordance with Fed. R. Civ. P. 65(a)(2). This would achieve Plaintiff's objective of expediting review, it would resolve the entire case quickly, and it would spare the Court from hastily reviewing important safety, economic, and environmental issues in the hurried context of a preliminary injunction motion in less than two weeks. The scope and complexity of the issues surrounding the Secretary's Order warrant expeditious review, but without sacrificing the appropriate deliberation that issues of this scale require. To enable a hearing on the merits on July 28, Defendants respectfully propose providing the complete administrative record to the Court and to the Parties on or before June 30, 2010 and propose a combined preliminary injunction and merits hearing on July 28, or such later date as the Court deems appropriate. In the alternative, Defendants respectfully request an extension of the June 16 briefing deadline for at least ten days.

II. BACKGROUND

After the explosion on the Deepwater Horizon drilling platform, the President ordered the Secretary of the Department of the Interior (the “Secretary” or “Secretary Salazar”) to undertake a 30-day intense examination of all Outer Continental Shelf exploration and production operations. The 30-day examination culminated in the Secretary’s report on May 27, 2010 entitled “Increased Safety Measures for Energy Development on the Outer Continental Shelf” (the “Safety Report”) ¹ which was prepared with the benefit of consultations with experts from state and Federal governments, academic institutions, and industry and advocacy organizations. As a result of that wide-ranging review and the five-week discharge of hundreds of thousands of barrels of oil into the Gulf of Mexico that preceded it, the Secretary concluded that “offshore drilling of new deepwater wells poses an unacceptable threat of serious and irreparable harm to wildlife and the marine, coastal, and human environment...[and] that the installation of additional safety or environmental protection equipment is necessary to prevent injury or loss of life and damage to property and the environment.” Moratorium. Consequently, Secretary Salazar ordered a brief six-month moratorium on one particular segment of oil drilling in the Outer Continental Shelf that uses similar technology to that used on the Deepwater Horizon in order to give industry and the agencies time to assess how best to address the findings and recommendations contained in the Safety Report. The Moratorium includes a six-month suspension of issuance of new permits to drill deepwater wells and a similar suspension of drilling operations on 33 permitted deepwater wells to allow the Secretary to implement specifically identified safety measures and to allow time for a Presidential Commission to investigate the explosion and blowout on the Deepwater Horizon.²

¹ A copy of the May 27 Report is attached as Exhibit A to Plaintiffs’ Motion for Preliminary Injunction [Docket No. 7].

² Exec. Order 13543, 75 Fed. Reg. 29397, May 21, 2010.

III. ARGUMENT

A. **Plaintiffs' Request for Extraordinarily Expedited Review Is Not Appropriate Given the Scope of the Issues Raised by Plaintiffs**

As Plaintiffs and the Court are aware, the Deepwater Horizon tragedy in the Gulf of Mexico has resulted in an unprecedented loss of life, both human and wildlife, and exposed the entire Gulf Region to an economic disaster of as-yet incalculable proportions. As a result of that incident, the Department of the Interior undertook the review described above in order to analyze what could be done to prevent such a tragedy from occurring again. The Safety Report came up with approximately ten pages of specific recommendations of measures necessary to ensure the safe and efficient operation of offshore deepwater drilling. *See* Safety Report, pp. 19-29. Given the breadth and depth of the issues addressed by the Safety Report and the Moratorium, and the potential wide-ranging impacts of the Court's ultimate decision on these issues, attempting to set a preliminary injunction hearing in two weeks would prevent the Parties from providing the Court with an adequate foundation on which to address Plaintiffs' claims. Moreover, regardless of what would be decided at the preliminary injunction stage, it is likely that one party or the other would then seek an expedited schedule for merits proceedings. The merits proceedings would involve much of the same information that will be at issue in any preliminary injunction proceedings except that at the merits stage, the Court would have the full administrative record before it. As a result, it would be to all Parties' benefit to combine the preliminary injunction hearing with the merits hearing as quickly as can reasonably be accommodated.

In addition, Plaintiffs' allegation that the administrative record in this matter will consist of only three documents is inaccurate. Pl.'s Mot. for Expedited Hearing at 3. In fact, Defendants have already begun the initial work in compiling the administrative record in this matter, and it is clear

that there will be other documents in addition to the three that Plaintiffs have identified. Since the administrative record will be essential to the Court's evaluation of the issues in Plaintiffs' Complaint and Motion for Preliminary Injunction, it will make for a much more efficient use of the Court's time for the Parties to have obtained the completed record before presenting arguments to the Court.

B. Plaintiffs Have Failed To Allege Any Irreparable Harm To Their Interests That Could Not Be Addressed In The Expedited Schedule Proposed By Defendants

In support of their request for an expedited hearing, Plaintiffs have provided no basis to support their suggestion that this Court should hold a hearing on the preliminary injunction in less than two weeks. Pl. Mot. for Exp. Hearing at 5-6. The conclusory allegations of potential economic harm to Hornbeck appear to be alarmist and speculative and do not provide any detail as to how Plaintiffs will be irreparably harmed in the absence of a preliminary injunction hearing in two weeks. Plaintiffs' notice of hearing set a hearing on Plaintiffs' Motion for Preliminary Injunction on July 28, just 47 days from today. At most, Plaintiffs allege that they may have lost some contracts as a result of the temporary drilling stoppage.³ For a case of this magnitude, and given that it does not appear that there is any direct threat of irreparable harm to Plaintiffs within the next six weeks, there is no basis for Plaintiffs' request for a hearing in 14 days. Six weeks is an unusually compressed schedule in which to prepare to present full merits briefing and oral argument to the Court on a case of this scope. Nevertheless, in an effort to address Plaintiffs' concerns, Defendants are willing to aggressively pursue this schedule to prepare this case for the Court's review at the earliest reasonable date.

³ Indeed, at least one Plaintiff has noted in its most recent SEC filing on June 4, 2010 that "[t]he Company believes that its current working capital, available capacity under its existing revolving credit facility, which is currently undrawn and is expected to remain undrawn, and *projected cash flows from operations for the remainder of 2010 will be sufficient to meet its anticipated operating needs*, its debt service and the total remaining cash requirements under its capital programs." June 4, 2010 8-K filing for Hornbeck Offshore Services, LLC with the Securities and Exchange Commission (emphasis added).

Plaintiffs cite to *Mt. Graham Red Squirrel v. Madigan*, to support their claim that not setting an immediate hearing will essentially moot Plaintiffs' claim. 954 F.2d 1441, 1450 (9th Cir. 1992). In that case, the project at issue involved the construction of a road through habitat of an endangered squirrel. *Id.* at 1447 n.12. The construction of the road itself resulted in the permanent destruction of the squirrel habitat at issue. *Id.* The only issue addressed in the Ninth Circuit's opinion with respect to the road was whether the District Court's refusal to hear the preliminary injunction until the road was substantially completed resulted in an appealable order even though there was no affirmative order from the Court denying Plaintiffs' motion for preliminary injunction. *Id.* at 1450. Although the Ninth Circuit held that the refusal to hear the preliminary injunction issues before the road was complete did amount to an order denying that particular part of the preliminary injunction, the Court of Appeals ultimately affirmed the District Court's decision on the merits, so the issue regarding the preliminary injunction was moot. *Id.* Here, there is no equivalent, permanent harm to Plaintiffs that would not be addressed by holding a hearing on the merits of Plaintiffs' claims on July 28. In short, Plaintiffs have alleged nothing that would justify the extraordinarily expedited schedule Plaintiffs are seeking for a case of this scope.

IV. CONCLUSION

Because there is no compelling circumstance to conduct a preliminary injunction hearing in less than two weeks as requested by Plaintiffs, and Plaintiffs are not facing any imminent threat of irreparable injury in the next six weeks, Defendant respectfully requests that the Court continue the June 21, 2010 hearing to July 28, 2010 and set a schedule for production of the administrative record on June 30, 2010. Alternatively, Defendants request an extension of the June 16, briefing deadline for at least an additional ten days.

Respectfully Submitted,

JIM LETTEN
UNITED STATES ATTORNEY

/s/ SHARON D. SMITH
SHARON SMITH (La. Bar No. 17146)
Assistant United States Attorney
Eastern District of Louisiana
Hale Boggs Federal Building
500 Poydras Street, Suite B-210
New Orleans, Louisiana 70130
Tel: (504)680-3004

IGNACIA S. MORENO
Assistant Attorney General
Environment and Natural Resources Division

/S/GUILLERMO MONTERO
GUILLERMO MONTERO (T.A.)
BRIAN COLLINS
U.S. Department of Justice
Environment and Natural Resources Division
Natural Resources Section
PO Box 663
Washington, DC 20016
Tel: (202)305-0443
Fax: (202)305-0267

ATTORNEYS FOR DEFENDANTS

CERTIFICATE OF SERVICE

I hereby certify that on June 11, 2010, I caused a copy of the foregoing “Defendants’ Motion for Continuance of June 21, 2010 Hearing on Plaintiffs’ Motion for Preliminary Injunction” to be served on all parties via the Court’s CM/ECF system.

/s/ **SHARON D. SMITH**

SHARON SMITH

Assistant United States Attorney