

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA**

HORNBECK OFFSHORE SERVICES, L.L.C.,	*	CIVIL ACTION NO. 10-1663(F)(2)
Plaintiff	*	
VERSUS	*	SECTION F
	*	
KENNETH LEE “KEN” SALAZAR, IN HIS OFFICIAL CAPACITY AS SECRETARY, UNITED STATES DEPARTMENT OF THE INTERIOR; UNITED STATES DEPARTMENT OF THE INTERIOR; ROBERT “BOB” ABBEY, IN HIS OFFICIAL CAPACITY AS ACTING DIRECTOR, MINERALS MANAGEMENT SERVICE; AND MINERALS MANAGEMENT SERVICE,	*	JUDGE FELDMAN
	*	
	*	MAGISTRATE 2 MAGISTRATE WILKINSON
	*	
Defendants	*	
* * * * *	*	

**MEMORANDUM OF LAW IN SUPPORT OF
PLAINTIFFS’ MOTION TO FILE AFFIDAVITS AND DECLARATION**

Plaintiffs, Hornbeck Offshore Services, L.L.C. (“Hornbeck”), the Bollinger Entities and the Chouest Entities (collectively, “Plaintiffs”), respectfully submit this memorandum of law in support of their Motion to File Affidavits and Declaration (“Motion”). Pursuant to the Court’s orders dated June 11, 2010 (Rec. Doc. 10) and June 14 (Rec. Doc. 23), the record before the

Court should include the affidavits and declaration attached to Plaintiffs' Motion in advance of the hearing set for June 21.

Plaintiffs have filed a Verified First Supplemental and Amended Complaint for Declaratory and Injunctive Relief (Rec. Doc. 5) (the "Supplemental and Amended Complaint") challenging Defendants' six-month blanket Moratorium on deepwater drilling activities beyond 500 feet on the Outer Continental Shelf ("OCS"). Plaintiffs have also filed a Motion for Preliminary Injunction (Rec. Doc. 7) seeking a preliminary injunction against enforcement of the Moratorium.¹ Plaintiffs now seek to file the affidavits and declaration attached to their Motion to File Affidavits and Declaration, all in support of their Supplemental and Amended Complaint and Motion for Preliminary Injunction.

In granting Hornbeck's Motion for Expedited Hearing of its Motion for Preliminary Injunction by Order dated June 11, 2010, this Court requested that the parties submit all "briefs concerning all issues, including this Court's scope of review" no later than June 16 and further ordered that, at the June 21 hearing, "Each side will be limited to one hour for argument and the presentation of evidence." (Rec. Doc. 10). Moreover, in denying Defendants' Motion for Continuance of the June 21, 2010 Hearing on Plaintiffs' Motion for Preliminary Injunction by Order dated June 14, 2010, this Court reiterated its order that the parties must "submit all complete briefs and record supplements as originally scheduled by this Court." (Rec. Doc. 23). Accordingly, permitting Plaintiffs to file the affidavits and declaration attached to their Motion into the record will serve the Court's objective to have all relevant matters filed in advance of the

¹ While Plaintiff Hornbeck originally filed the motion for preliminary injunction, as the Court is aware, it granted the motion of Bollinger and Chouest Entities to adopt the grounds for preliminary injunction as set forth in Hornbeck's Motion for Preliminary Injunction. *See* Rec. Doc. 12.

June 21 hearing and further will serve its objective to streamline the presentation by counsel for the parties at the hearing.

The affidavits and declaration attached to Plaintiffs' Motion include: (1) affidavits and a declaration of experts that peer reviewed or consulted on a draft of the Report, entitled "Increased Safety Measures for Energy Development on the Outer Continental Shelf" (the "Report"),² issued by Defendant Secretary Salazar on May 27, 2010 (collectively, the "Expert Affidavits"); (2) affidavits of Hornbeck, the Bollinger Entities, and the Chouest Entities (collectively, the "Fact Affidavits"); and (3) the affidavit of Professor Eric N. Smith, Associate Director, Entergy-Tulane Energy Institute (the "Professor Smith Affidavit").³

The Expert Affidavits are relevant to the Court's consideration of the Administrative Record, which includes the Report and which is at the heart of this Administrative Procedure Act case. According to the Report's Executive Summary, the recommendations in it were "peer-reviewed by seven experts identified by the National Academy of Engineering." Report's Executive Summary at p. 3. Five of those experts, however, along with three of the Report's consulting experts, have issued a Statement (the "Experts' Statement") to Louisiana Governor Jindal and United States Senators Landrieu and Vitter in which they state that, while they "broadly agree with the detailed recommendations in the report," they "disagree with the six month blanket moratorium."⁴ The Experts' Statement also indicates that the experts did not

² The Report was attached as Exhibit 3 to the Verified First Supplemental and Amended Complaint for Declaratory and Injunctive Relief (Rec. Doc. 5) ("Supplemental and Amended Complaint"). It was also attached as Exhibit A to Hornbeck's Memorandum of Law in Support of Its Motion for Preliminary Injunction (Rec. Doc. 7-1). *See* Rec. Doc. 7-2.

³ For ease of reference, Plaintiffs have provided the Court with a complete list of the affidavits and declaration attached to their Motion, which precedes the attached affidavits and declaration.

⁴ The Statement was attached as Exhibit F to Hornbeck's Memorandum of Law in Support of Its Motion for Preliminary Injunction. *See* Rec. Doc. 7-2. The Statement was forwarded on behalf of Kenneth E. Arnold, PE,

“peer review” the Executive Summary’s recommended moratorium, which “was added after final review and was never agreed to” by them. The inconsistencies between the Report’s Executive Summary representations and the Experts’ Statement demonstrate that good cause exists for the Court to admit the Expert Affidavits into the record.

The Fact Affidavits should be likewise admitted into the record because they set forth facts concerning Plaintiffs that are relevant to the proceedings before the Court. In particular, the Fact Affidavits set forth specific and detailed attestations that demonstrate the irreparable harm to Plaintiffs that will result if the Moratorium remains in place, a factor that Plaintiffs must satisfy to obtain preliminary injunctive relief. The Professor Smith Affidavit is similarly relevant to the Court’s consideration of this case. Specifically, Professor Smith’s factual averments are central both to the irreparable harm and public interest factors of the Court’s preliminary injunction analysis. In this connection, Professor Smith attests to the Moratorium’s effect on the deepwater Gulf of Mexico industry as a whole, which is both adverse to the public interest (*e.g.*, loss of thousands of jobs, harm to the economy, decreased energy independence) and shows irreparable harm. *See, e.g., CSX Transp. Inc. v. Williams*, 406 F.3d 667, 673-674 (D.C. Cir. 2005) (finding that a rail carrier satisfied the irreparable harm requirement on the basis that “it would be exceedingly speculative, particularly in light of the nature of a complex, interdependent national rail system, to place a dollar figure on the difference in value between the rail network CSXT presently operates and the effectively smaller, more constrained network that compliance with the D.C. Act would entail.”) Thus, there is good cause for the Court to admit the Fact and Professor Smith Affidavits into the record.

NAE; Dr. Robert Bea; Dr. Benton Baugh; Ford Brett; Dr. Martin Chenevert; Dr. Hans Juvkam-Wold; Dr. E.G. (Skip) Ward; & Thomas E. Williams.

For the foregoing reasons, Plaintiffs respectfully ask this Court to permit them to file the affidavits and declaration listed above into the record so that it is complete and so that this Court will have before it for consideration all of the materials that are relevant to its determination of Plaintiffs' request for preliminary injunctive relief.

Respectfully submitted,

s/ Carl D. Rosenblum

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**Attorneys for Plaintiffs,
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The Bollinger Entities, and
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing pleading has been served upon all parties by email or by using the CM/ECF system which will send a Notice of Electronic filing to all counsel of record, this 16th day of June 2010.

s/ Carl D. Rosenblum
