

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF LOUISIANA

HORNBECK OFFSHORE SERVICES,  
L.L.C.,

Plaintiff

VERSUS

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,

Defendants

\* \* \* \* \*

\* CIVIL ACTION NO. 10-1663(F)(2)  
\*  
\* SECTION F  
\*  
\* JUDGE FELDMAN  
\*  
\* MAGISTRATE 2  
\* MAGISTRATE WILKINSON

PLAINTIFF'S MEMORANDUM IN SUPPORT OF  
MOTION FOR EXPEDITED HEARING

Plaintiff, Hornbeck Offshore Services, L.L.C. ("Hornbeck"), files this memorandum of law in support of its Motion for Expedited Hearing on its Motion for Preliminary Injunction. Hornbeck urges the Court to hear its motion for a preliminary injunction at the earliest available date to prevent, in the words of The Wall Street Journal, "a second oil disaster."<sup>1</sup> While Hornbeck appreciates the Court's willingness to consider its motion for preliminary injunction,

<sup>1</sup> Editorial, *A Second Oil Disaster*, The Wall Street Journal, Jun. 9, 2010, at A16 (emphasis added).

under the circumstances, not holding an expedited hearing will be too late. Just over a week into the six-month deepwater drilling Moratorium, its effects on Hornbeck in particular and the Gulf of Mexico Outer Continental Shelf (“OCS”) deepwater industry in general are real – there have been notices of contract termination and deepwater rigs are pulling out of the Gulf to drill in international deepwater – and the industry is at, or at the very least, coming to a standstill.<sup>2</sup> In short, the Moratorium is causing and will continue to cause immediate irreparable harm to Hornbeck and also to thousands of Louisiana workers that support the Gulf of Mexico’s deepwater exploration and production operations.<sup>3</sup> Accordingly, a hearing to determine Plaintiff’s entitlement to preliminary injunctive relief held many more weeks into the six-month Moratorium – when its adverse consequences are incrementally worsening by the day – simply will not serve to address the urgency of the relief requested under these extraordinary circumstances.

Hornbeck did not ask this Court for a temporary restraining order because that emergency remedy is rightly reserved for instances where harm to the plaintiff will occur before a hearing can be held. Rather, Hornbeck elected to move for a preliminary injunction with the expectation that the Court could hold a hearing to determine its entitlement to the relief sought before Hornbeck and the Gulf of Mexico’s deepwater drilling industry in general had experienced a

---

<sup>2</sup> On June 7, 2010, Hornbeck filed a Complaint for Declaratory and Injunctive Relief (Doc. 1) against Defendants, Kenneth Lee “Ken” Salazar (“Secretary Salazar”), Secretary of United States Department of the Interior (“DOI”), the DOI, Robert “Bob” Abbey, Acting Director of the Minerals Management Service (“MMS”), and the MMS (collectively, “Defendants”). One day later, on June 8, this Court denied Hornbeck’s *Ex Parte* Motion for Leave to File Memorandum of Law in Support Its Motion for Preliminary Injunction in Excess of Page Limitation (Doc. 4). Today, June 9, Hornbeck, with co-plaintiffs, the Chouest entities and the Bollinger entities, filed a Supplemental and Amended Complaint for Declaratory and Injunctive Relief. Today, Hornbeck, joined by its co-plaintiffs, further moved this Court for a preliminary injunction enjoining the Moratorium currently prohibiting any drilling activity in the Outer Continental Shelf (“OCS”) in water depths greater than 500 feet.

<sup>3</sup> The rigs shut down by the suspension of deepwater exploring drilling “employ between 24,000 and 42,000 workers” and “[t]housands of other Louisianians work for boat operators, contractors, caterers, and other firms that service those platforms.” Editorial, *Louisiana’s Economic Hurt From Drilling Moratorium Warrants Action: An Editorial*, The Times-Picayune, Jun. 9, 2010, at B6.

substantial part of the irreparable injury that is being and will continue to be inflicted by the Moratorium. Under the circumstances, Hornbeck's request for preliminary injunctive relief merits a hearing at the earliest available date.

## I. INTRODUCTION

It is Plaintiff's understanding that, as opposed to addressing Plaintiff's request for a preliminary injunction first, this Court intends to set Plaintiff's<sup>4</sup> requests for both preliminary and permanent injunctive relief for consolidated hearing. Although it would be Hornbeck's preference to have its motion for preliminary injunctive relief heard first and without delay, followed shortly after by a trial on the merits with respect to its request for a permanent injunction, Hornbeck recognizes that this Court may be inclined to hear both at the same time. Because this case concerns a challenge to government agency action under the Administrative Procedure Act ("APA"), 5 U.S.C. §§ 701-706, it will be resolved on the Administrative Record, which, for purposes of this matter, consists only of: (a) a Report, which is less than 50 pages long; (b) the Moratorium itself, which is a one-page memorandum; and (c) a 3-page Notice to Lessees. Given the brevity of the Administrative Record, the urgency of the relief requested and that every day lost into the six-month Moratorium is compounding the irreparable effects of the Moratorium, Hornbeck can and will be prepared to present its case on both its request for preliminary and permanent injunctive relief at the earliest available date. And, considering in particular the brevity of the Administrative Record, Defendants should need only a short time to prepare their case in opposition to Hornbeck's action and therefore would not be prejudiced by an early hearing date.<sup>5</sup>

---

<sup>4</sup> Other parties are being added as plaintiffs and will be joining in Hornbeck's request for preliminary and permanent injunctive relief.

<sup>5</sup> Indeed, counsel for Defendants from the Department of Justice have already been selected and have been in contact with Hornbeck's counsel.

## II. BACKGROUND

On May 28, 2010, the Secretary of the United States Department of Interior, Kenneth Lee “Ken” Salazar (“Secretary Salazar”) issued a memorandum entitled “Suspension of Outer Continental Shelf (“OCS”) Drilling of New Deepwater Wells” to the MMS (the “Moratorium”). It imposed a “six month suspension of all pending, current, or approved offshore drilling operations of new deepwater wells in the Gulf of Mexico and the Pacific Regions.” On May 30, 2010, MMS issued a Notice to Lessees (the “NTL”), implementing Secretary Salazar’s Moratorium, prohibiting any new drilling in depths of water greater than 500 feet and requiring the 33 currently permitted wells drilling at depths greater than 500 feet to cease drilling. The Moratorium and the NTL effectively impose an industry-wide shut down on Gulf of Mexico deepwater drilling. Hornbeck’s APA challenge to the Moratorium and the NTL questions agencies’ decision to impose the Moratorium without the support of empirical facts, data, analysis or risk assessment that are necessary to satisfy the governing legal standard under the Outer Continental Shelf Lands Act (“OCSLA”), 43 U.S.C. § 1331, *et seq.*, and its implementing regulations.

While the consequences of the Moratorium and the NTL will be overwhelming for individuals and communities, the issuance of a preliminary injunction would cure the legal errors that have occurred without material adverse effect on the government’s ability to react to any environmental or safety problems that the actual facts show to exist. During the brief period necessary to resolve the case on the merits, the Department of the Interior will retain the authority to order the shutdown of any particular well that satisfies the statutory standard for a suspension. Therefore, the public interest, worker safety, and environmental protection will be

fully protected even if the government's unprecedented and unlawful shutdown of the entire drilling industry is preliminarily enjoined.

### **III. LAW AND ARGUMENT**

As discussed above, the Moratorium will effectively result in an industry-wide shut down as to deepwater drilling, which affects not only the oil and gas companies involved in the drilling but the host of companies that support exploration and production in the Gulf of Mexico's deepwater and ultra deepwater. If this Court waits to hear Hornbeck's request for preliminary injunction, it will in practical effect deny the preliminary relief sought. The Court, therefore, will have effectively denied Plaintiff's motion without holding the requisite hearing. And the consequences here are too dire to deny a hearing on the preliminary injunction.

#### **A. A Hearing is Properly Held Less Than 14 Days After Notice is Given to all Parties.**

Rule 65(a) of the Federal Rules of Civil Procedure provides in relevant part: "The court may issue a preliminary injunction only on notice to the adverse party." Fed. R. Civ. P. 65(a)(1). "The notice required by Rule 65(a) before a preliminary injunction can issue implies a hearing in which the defendant is given a fair opportunity to oppose the application and to prepare for such opposition." *Granny Goose Foods, Inc. v. Brotherhood of Teamsters & Auto Truck Drivers Local No. 70 of Alameda County*, 415 U.S. 423, 434 n.7 (1974). Although Rule 65(a)(1) does not define when notice must be given, Rule 6(c) provides that any motion must be served, along with the notice of the hearing thereof, at least 14 days before the time for the hearing with the three "following exceptions: (A) when the motion may be heard ex parte; (B) when these rules set a different time; or (C) when a court order – which a party may, for good cause, apply for ex

parte – sets a different time.” Fed. R. Civ. P. 6(c)(1). This is one of those exceptional circumstances.<sup>6</sup>

In this case, Hornbeck is filing<sup>7</sup> its Motion for Preliminary Injunction contemporaneously with the instant pleading, on June 9, 2010. Hornbeck represents that notice of its request for injunctive relief will be properly served on all parties. Thus, under Rule 65(a) and 6(c), this Court may properly set the motion for expedited hearing less than 14 days from the date of service of this pleading. Accordingly, given the immediate and irreparable injury that the Moratorium is causing and will continue to cause, Hornbeck respectfully submits that its motion for preliminary injunction should set for hearing on an expedited basis.

**B. A Delay in Holding a Hearing Will Significantly Compound the Adverse Consequences Resulting from the Moratorium.**

In connection with a request for preliminary injunctive relief, in *Mt. Graham Red Squirrel v. Madigan*, 954 F.2d 1441 (9th Cir. 1992), on August 22, 1989, a plaintiff moved for a preliminary injunction barring construction of a government complex in a national forest. 954 F.2d at 1448. The district court originally scheduled a hearing on the motion for September 8. *Id.* However, on August 30, the court announced its decision not to hold the preliminary injunction hearing until after an access road to the complex was substantially completed. *Id.* On appeal, the Ninth Circuit concluded that the district court “effectively denied” the motion for a preliminary injunction “to the extent that it related to construction of that road,” reasoning that “[c]onstruction of the road represented a major portion of the alleged harm.” *Id.* at 1450.

---

<sup>6</sup> Indeed, “. . . when the urgency that is characteristic of the preliminary injunction context warrants, the court has discretion under [old] Rule 6(d) to modify the period giving advance notice.” 11A Wright, Miller, & Kane, *Federal Practice and Procedure* § 2949, at 213-14 (2d ed. 1995); see, e.g., *Ciena Corp. v. Jarrard*, 203 F.3d 312, 320 (4th Cir. 2000) (two days’ written notice); *Anderson v. Davila*, 125 F.3d 148, 156 (3d Cir. 1997) (less than five business days’ notice); *Tanner Motor Livery, Ltd. v. Avis, Inc.*, 316 F.2d 804, 810 (9th Cir. 1963), (two days’ notice sufficient), *cert. denied*, 375 U.S. 821. The same situation is expressly provided for under Rule 6(c).

<sup>7</sup> And the additional plaintiffs will shortly join in on Hornbeck’s motions.

Here, if the Court delays the preliminary injunction hearing and does not consider it on an expedited basis, it will, by its inaction, effectively deny Hornbeck's motion. If the setting of the hearing is delayed for too long of a time and the Moratorium remains in place for a multi-week span, Hornbeck and the new Plaintiffs, as well as Louisiana workers and businesses that directly and indirectly support the deepwater OCS industry, will sustain immediate and irreparable harm. Because the Moratorium orders an industry-wide shut down of all deepwater drilling at the 33 currently permitted wells on the Gulf of Mexico's OCS, it will have an immediate effect on the shore-based complex supporting this effort and may well mark an end, or at the very least a severe curtailment, to the Gulf of Mexico deepwater drilling industry. Put simply, if the Moratorium and the NTL remain in place until a preliminary injunction hearing is considered on a non-expedited basis, Hornbeck's business will continue to be harmed in ways that are irreparable; indeed, the Moratorium and the NTL threaten the continued viability of the entire Gulf of Mexico deepwater industry.

Further, with respect to Louisiana workers and its economy, the potential immediate losses include, but are not limited to, the loss of 3,000 to 6,000 Louisiana jobs directly and indirectly related to the deepwater drilling operations at the 33 wells.<sup>8</sup> Lost wages for direct and indirect jobs lost could be over \$165 million to \$330 million per month for every month the 33 platforms are idle.<sup>9</sup>

As the foregoing makes clear, the immediate and irreparable harm that will result from the Moratorium and NTL between now and when a regular hearing could be scheduled, constitutes a substantial part of the immediate and irreparable harm that Hornbeck and the

---

<sup>8</sup> Rebecca Mowbray, *Offshore Drilling Ban Could be a Blow to Louisiana Economy*, The Times-Picayune, May 30, 2010.

<sup>9</sup> Louisiana Mid-Continent Oil and Gas Association, *Impacts of President Obama's Order Halting Work on 33 Exploratory Wells in Deepwater Gulf of Mexico*, May 28, 2010.

industry in general will suffer. Consequently, if this Court delays the preliminary injunction hearing for weeks from the date of this pleading, it will in practical effect deny the motion for preliminary relief.

**C. This Court Should Not Deny Plaintiffs' Motion for a Preliminary Injunction without Holding an Evidentiary Hearing.**

Under Rule 65(a)(1), where the party requesting a preliminary injunction can show that factual disputes exist regarding the required elements for a preliminary injunction and can introduce evidence sufficient to justify granting the motion, a hearing on the requested injunctive relief is necessary. *See* Wright, Miller, & Kane, *Federal Practice and Procedure* § 2949, at 228 (“[W]hen the written evidence reveals a factual dispute, an evidentiary hearing must be provided to any party who requests one.”); *see also, e.g., McWhinney v. Cain*, 289 F.2d 315, 316 (3d Cir. 1961) (vacating order of district court denying preliminary injunction entered without affording the required hearing); *cf. Anderson v. Jackson*, 556 F.3d 351, 360 (5th Cir. 2009). As set forth in the Memorandum of Law in Support of Motion for Preliminary Injunction, Hornbeck has easily satisfied both of the requisites for having a hearing. Thus, under Rule 65(a)(1), a hearing is necessary before this Court can rule on the motion for a preliminary injunction.

**IV. CONCLUSION**

For the foregoing reasons, and with the utmost respect, Hornbeck's Motion for Preliminary Injunction should be considered on an expedited basis.



Respectfully submitted,



Carl D. Rosenblum, [F.A. (2083)

Grady S. Hurley (13913)

Alida C. Hainkel (24114)

Marjorie A. McKeithen (21767)

Jones, Walker, Waechter,

Poitevent, Carrère & Denègre, L.L.P.

201 St. Charles Avenue, 49th Floor

New Orleans, Louisiana 70170-5100

Telephone: (504) 582-8000

crosenblum@joneswalker.com

AND

John F. Cooney

(Pro Hac Vice application being made)

Venable LLP

575 7th Street N.W.

Washington, D.C. 20004

Telephone: (202) 344-4812

**Attorneys for Plaintiff,**

**Hornbeck Offshore Services, L.L.C.**

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the above and foregoing pleading has been served upon all parties by hand, email, or overnight mail this 9<sup>th</sup> day of June 2010.

