

Rebecca Noblin  
Jeremy C. Lieb  
EARTHJUSTICE  
441 W 5th Avenue, Suite 301  
Anchorage, AK 99501  
T: 907.277.2500

Eric P. Jorgensen  
EARTHJUSTICE  
325 Fourth Street  
Juneau, AK 99801  
T: 907.586.2751

*Attorneys for Petitioners Center for Biological Diversity, Defenders of Wildlife, Friends of the Earth, Greenpeace USA, and Pacific Environment*

Kristen Monsell  
Emily Jeffers  
CENTER FOR BIOLOGICAL DIVERSITY  
1212 Broadway Street #800  
Oakland, CA 94612  
T: 510.844.7100

*Attorneys for Petitioner Center for Biological Diversity*

**IN THE UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

CENTER FOR BIOLOGICAL DIVERSITY <i>et al.</i> ,	)	No. 18-73400
	)	
<i>Petitioners,</i>	)	
	)	
v.	)	
	)	
DAVID BERNHARDT, Acting Secretary of the Interior <i>et al.</i>	)	
	)	
<i>Respondents,</i>	)	
	)	
HILCORP ALASKA LLC.,	)	
	)	
<i>Intervenor Respondent.</i>	)	
	)	
	)	

**OPPOSITION TO RESPONDENTS' SECOND MOTION FOR AN EXTENSION  
OF THE BRIEFING SCHEDULE**

Respondents have moved for a second time to extend the briefing schedule in this matter, in this case by 36 days. Dkt. 34. Respondents previously requested to extend the deadline for filing the administrative record and the briefing schedule by approximately 45 days as a result of the lapse in appropriations to the Department of Justice and respondent agencies. Dkt. 17. Petitioners did not oppose that motion, which the Court granted. Dkt. 19. In compliance with the Court's order, Petitioners filed their opening brief on April 15, 2019. Dkt. 21. While Petitioners understand the need for review and approval of Respondents' brief and are sympathetic to counsel's other work and personal obligations, additional delay in this matter could limit the effectiveness of the relief requested and undermine the public's interest in enforcement of the National Environmental Policy Act (NEPA) and Endangered Species Act (ESA). Petitioners therefore oppose Respondents' motion and propose an alternate, shorter extension of the schedule.

To effectuate the purposes of NEPA and the ESA, and the public's interest in enforcing those statutes, this matter should be heard and decided before Intervenor Hilcorp Alaska, LLC (Hilcorp) begins construction on the proposed Liberty oil and gas drilling island. NEPA's two primary purposes are (1) to "ensure that the agency will have available, and will carefully consider, detailed information concerning significant environmental impacts"; and (2) to "guarantee

that the relevant information will be made available to the larger public audience.” *Ctr. for Biological Diversity v. Nat’l Highway Traffic Safety Admin.*, 538 F.3d 1172, 1185 (9th Cir. 2008) (internal quotation marks and alterations omitted). The purpose of the ESA is to conserve endangered and threatened species and their habitat, 16 U.S.C. § 1531(b), in part by ensuring that actions authorized by federal agencies are “not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of [critical] habitat of such species,” *id.* § 1536(a)(2). Neither of these purposes is served if judicial review of an agency’s approval of a project occurs after construction of the project begins.

Respondents’ proposed schedule substantially reduces the likelihood that the Court will hear and have an opportunity to resolve this matter before Hilcorp begins construction. The record indicates that construction is scheduled begin as early as December 2019.<sup>1</sup> II-ER-126. Under the current schedule, briefing of this matter will be complete by late June 2019. Dkt. 19. As Petitioners understand the Court’s usual process for calendaring cases, Petitioners believe even with the initial extension sought by the government and granted by the Court, this case could be heard on the Court’s next Alaska calendar, which usually is set once

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<sup>1</sup> Undersigned counsel has inquired with counsel for Respondents and Hilcorp, but neither was able to confirm whether Hilcorp plans to proceed with construction as scheduled.

annually in late summer. *See* Ninth Circuit General Order 3.1(a); Ninth Circuit Court Structure and Procedures E. Under Respondents' proposed schedule, briefing would likely not be complete early enough for hearing on this year's Alaska calendar. That means that in order for a panel to reach a decision before construction may begin, the Court would likely have to calendar the argument on an expedited basis, and the panel would have to expedite its consideration.

Because it is important to the Petitioners and the public interest that this matter be resolved before construction commences, Petitioners ask that the Court deny the requested extension and enter the briefing schedule set forth in the following table that would provide a two-week extension for Respondents' answering brief, but would allow for briefing to be complete by the end of June. Plaintiffs have proposed this alternate schedule to opposing counsel, but counsel for Respondents indicated it would not provide them sufficient time.

	Current deadline	Proposed deadline
Petitioners' opening brief	April 15, 2019	April 15, 2019
Respondents' answering brief	May 16, 2019	May 30, 2019
Intervenor's brief	May 30, 2019	June 6, 2019
Petitioners' reply brief	21 days after Intervenor's brief (June 28, 2019)	June 27, 2019.

In the event that the Court grants Respondents' motion to extend by 36 days the time for responsive briefs, Petitioners must request that the Court set the deadline for Petitioners' reply brief at August 9, 2019, rather than the proposed date of July 29, 2019. The current briefing schedule and Petitioners' proposed schedule thread the needle between multiple deadlines and obligations for Petitioners' counsel, but the July 29 deadline for the reply brief proposed by the government would unfortunately conflict with several of these commitments. Three of Petitioners' counsel will be out of the office in the period leading up to and including July 29, and the remaining counsel will be occupied by a brief in other litigation due on July 26. Also, in the event the Court were to grant Respondents' motion, Petitioners expect that to protect their interests, they would be compelled to submit a motion seeking expedited consideration of this matter, including expedited calendaring of an oral argument.

Respectfully submitted this 9th day of May, 2019.

*s/ Rebecca Noblin*

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