

No. 18-73400

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

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

Petitioners,

v.

**David Bernhardt, Secretary of the Interior; Bureau of Ocean Energy
Management; and U.S. Fish and Wildlife Service;**

Respondents,

and

Hilcorp Alaska LLC,

Intervenor.

**Respondents' Reply in Support of Motion for Extension of the Briefing
Schedule**

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The United States has moved for a 36-day extension to the briefing schedule in this petition for review. We do not submit this request lightly, and, as we explained in our motion, it is necessary to allow us to brief the complex issues raised in this case—which, as a petition for review, this Court will hear for the first time—and to ensure that our brief is subject to careful review within the government.

The petitioners oppose. They argue that this matter must be heard and decided before intervenor Hilcorp Alaska LLC (“Hilcorp”) begins construction on the project at issue here. They claim that if this 36-day extension is granted, construction might begin before the case can be heard.

But there is no evidence that this modest extension—only slightly longer than the 30-day extension allowed under the Court’s “streamlined” extension—will have any effect on the course of this case. The fact that briefing will be complete on July 29 instead of June 28 is not likely to make any difference on when the case will ultimately be decided. And oral argument has not been scheduled yet and thus will not be delayed.

Moreover, the work authorized by the development and production plan (“DPP”) challenged here has not begun yet, and that work cannot begin until Hilcorp receives further authorization from the federal government because the plan approval has been conditioned on Hilcorp obtaining the necessary authorization under the Marine Mammal Protection Act (“MMPA”) first. That MMPA authorization is not imminent; indeed, the process has not even begun because Hilcorp has not yet applied for the required authorization. The

petitioners speculate that work could begin as soon as December 2019, but even if that is true—and the federal government cannot provide any schedule for the issuance of an MMPA permit since Hilcorp has not applied for one—then surely the case can still be heard and decided if briefing is complete by July 29. The petitioners do not explain why these 36 days are likely to make the difference. Moreover, they are free to seek expedited review or an injunction pending appeal if they believe that it is necessary to protect their interests.

The petitioners counter-propose a shorter, two-week extension, which we submit would still be inadequate to allow effective briefing of this case. Finally, the petitioners ask that, if the United States' motion for extension is granted, the deadline for their reply brief be set for August 9, 2019. The United States does not oppose that further extension.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

Pursuant to Fed. R. App. P. 32(g)(1), I hereby certify that:

(1) This motion complies with the type-volume limitation of Fed. R. App. P. 27(d)(2)(A) and 9th Cir. R. 27-1 because, according to Microsoft Word, this motion contains 422 words, excluding the parts of the motion exempted by Fed. R. App. P. 32(f).

(2) This motion complies with the typeface and type-style requirements of Fed. R. App. P. 27(d)(1)(E), 32(a)(5)-(6), and 9th Cir. R. 27-1, because this motion has been prepared in a proportionally spaced typeface using Microsoft Word in 14-point font size and Calisto MT type style.

/s/ James A. Maysonett

JAMES A. MAYSONETT