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INTRODUCTION

Pursuant to Federal Rule of Civil Procedure 65(a), Plaintiffs move to enjoin implementation of Defendants' approval of ConocoPhillips Alaska Incorporated's (ConocoPhillips) Willow Master Development Plan ("Willow Project" or "Project") in the National Petroleum Reserve-Alaska (Reserve), including authorization of construction activities planned for this winter, pending adjudication of the merits of Plaintiffs' challenge to that approval. If possible, Plaintiffs request a decision on this motion by February 2, 2021, the date by which construction could move forward.

The massive Willow Project will have far-reaching impacts across the Reserve and beyond. The Project may include, among other things, five drill sites, 37 miles of gravel roads, a gravel mine, up to 700 miles of ice roads during construction, hundreds of miles of pipelines, air strips, and an operations center. Ex. 7 at 4, 24. It will produce 590 million barrels of oil, adding approximately 260 million metric tons of greenhouse gases to the atmosphere over its 30-year life. *Id.* at 3, 43. The Project will disturb wildlife, destroy wetlands, and permanently alter traditional cultural practices dependent on food resources like fish and caribou. Ex. 1 at 6-7; *infra* pp. 14-17. The Project will further imperil polar bears that are already threatened from climate change and the expansion of oil and gas development in the Arctic. And the Project's enormous greenhouse gas emissions are inconsistent with the urgent need to transition away from fossil fuels.

Defendants' approval of the Willow Project is unlawful. Among other

deficiencies, the Bureau of Land Management's (BLM) final Environmental Impact Statement (EIS) fails to account for foreign consumption of oil in its assessment of climate change impacts caused by the Project, an error the U.S. Court of Appeals for the Ninth Circuit recently addressed and held unlawful in *Center for Biological Diversity v. Bernhardt* (CBD), No. 18-73400, 2020 WL 7135484 (9th Cir. Dec. 7, 2020). The final EIS also fails to consider reasonable alternatives. A preliminary injunction is necessary to prevent irreparable harm from construction activities planned this winter that will damage tundra, disturb wildlife, and affect hunting and other uses of the Reserve in ways that cannot be undone.

FACTUAL BACKGROUND

This litigation is about protecting the unique resources of the Reserve and preventing Defendants from moving forward with the approval of an enormous, destructive project in this exceptional region without adequately considering its environmental consequences. The Reserve is an extraordinary and ecologically important landscape of lakes, ponds, rivers, floodplains, wetlands, upland areas, and sensitive coastal habitats. It is home to a diversity of species, including polar bears, brown bears, muskoxen, caribou, moose, and millions of migratory birds, among many other species. This landscape and wildlife are central to the livelihood and traditional

practices of Alaska Native people living in the region. Ex. 1 at 1.¹

Because of the world-class wildlife and subsistence values of the Reserve, the National Petroleum Reserves Production Act (Reserves Act) requires the Secretary to protect and conserve these other resources and uses in the Reserve any time the Secretary authorizes any oil and gas leasing, exploration, and development. 42 U.S.C. §§ 6504(a), 6506a(b). The Reserves Act requires the Secretary to impose “conditions, restrictions, and prohibitions” on any activities undertaken pursuant to the Act “as the Secretary deems necessary or appropriate to mitigate reasonably foreseeable and significantly adverse effects on the surface resources of the [Reserve].” *Id.* § 6506a(b).

Additionally, Congress designated certain areas, and authorized the Secretary to designate others, for “maximum protection” of “subsistence, recreational, fish and wildlife, or historical or scenic value[s].” *Id.* § 6504(a). Pursuant to this authority, in 1977, the Secretary designated areas around Teshekpuk Lake and the Colville River, among others, as Special Areas within the Reserve. 42 Fed. Reg. 28,723 (June 3, 1977). The Teshekpuk Lake Special Area protects essential caribou habitat, subsistence resources and uses, and water- and shorebird nesting, staging, and molting habitat. The Teshekpuk Lake Special Area provides calving, insect relief, and wintering areas for the 56,000 caribou of the Teshekpuk Caribou Herd. Ex. 1 at 4; Ex. 7 at 52-53. The Colville

¹ This and other exhibits cited in support of likelihood of success on the merits are all documents that should be in an administrative record that will ultimately be filed with the Court. *See* Declaration of Jeremy Lieb.

River Special Area protects the largest and most productive river delta in Arctic Alaska, which supports populations of pink and chum salmon, burbot, broad whitefish, arctic cisco, and other fish species, and provides habitat for peregrine falcons, gyrfalcons, golden eagles, and rough-legged hawks. Ex. 1 at 4-5.

Recent years have seen a significant increase in industrial activity in the Reserve. Although portions of the Reserve have been available for oil and gas leasing since 1980, BLM did not permit any development projects on federal lands within the Reserve until 2015, when it approved ConocoPhillips' Greater Mooses Tooth 1 (GMT-1) development, which extended oil and gas infrastructure west from the existing Alpine development. Ex. 1 at 6. In 2018, BLM approved ConocoPhillips' Greater Mooses Tooth 2 (GMT-2) development, extending the road and pipeline network further west into the Reserve. Ex. 5.

In May 2018, ConocoPhillips sent a letter to BLM requesting approval of its proposed Willow Project, and in August 2018, BLM published notice of its intent to prepare an EIS for the Project. 83 Fed. Reg. 38,725 (Aug. 7, 2018). The Willow Project represents a significant westward expansion of oil and gas development in the ecologically sensitive and culturally important northeastern portion of the Reserve, including parts of the Teshekpuk Lake and Colville River Special Areas and adjacent to areas within the Teshekpuk Lake Special Area that are currently closed to oil and gas leasing. Ex. 7 at 20-21, 25. On August 30, 2019, BLM gave notice of the availability of the draft EIS for the Willow Project. 84 Fed. Reg. 45,801 (Aug. 30, 2019). On March

26, 2020, BLM gave notice of the availability of the supplemental draft EIS. 85 Fed. Reg. 17,094 (Mar. 26, 2020). Public comments were submitted on BLM's draft and supplemental draft EISs detailing serious deficiencies in the analysis, which, among other things, failed to consider a reasonable range of alternatives and failed to fully examine the impacts of the project on climate change. *See, e.g.*, Ex. 1; Ex. 2; Ex. 20. On August 14, 2020, BLM released a final EIS that failed to correct these problems. 85 Fed. Reg. 49,677 (Aug. 14, 2020). On October 26, 2020, BLM signed a record of decision (ROD) approving ConocoPhillips' Willow Project. Ex. 8 at 11, 28.

ARGUMENT

Plaintiffs request that this Court enjoin Defendants' authorization of the Willow Project, including for construction activities scheduled to begin as soon as early February, pending adjudication of the merits. A party seeking a preliminary injunction must show (1) a likelihood of success on the merits, (2) irreparable harm in the absence of preliminary relief, (3) that the balance of equities favors relief, and (4) that an injunction is in the public interest. *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). Plaintiffs meet all these requirements.

I. Plaintiffs are likely to succeed on the merits.

A. Plaintiffs have standing to bring this case.

Protecting the Reserve's unique natural and wilderness values and uses of these values by its members is central to Plaintiffs' missions. Ex. 17 ¶¶9-13; Ex. 18 ¶¶5-7; Ex. 19 ¶¶8-11. Plaintiffs have members who rely on the Reserve for recreation, aesthetic

values, traditional cultural practices, and their professional livelihoods, and whose interests will be harmed by oil and gas development in the Reserve, including in the Willow Project area. Ex. 13 ¶¶10-12, 18, 27, 29, 31-33, 36-38, 50, 58, 60; Ex. 14 ¶¶7-10, 13, 17, 20, 22-24, 26-28; Ex. 15 ¶¶8-12, 15-20, 25, 27-28; Ex. 17 ¶¶13-14 Ex. 18 ¶¶10-12; Ex. 19 ¶¶15-17.

An order setting aside the ROD and final EIS and preventing implementation of the Willow Project would redress those imminent harms. Plaintiffs thus have associational standing on behalf their members. *See Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560-61 (1992).

B. Defendants violated the National Environmental Policy Act by failing to adequately disclose and analyze the effects of greenhouse gas emissions from the Project.

BLM violated the National Environmental Policy Act (NEPA) by failing to properly estimate the global greenhouse gas emissions potentially associated with the Willow Project. The Ninth Circuit recently struck down an Interior Department decision that made the same choice on the same core rationale and record. *CBD*, 2020 WL 7135484. The court's decision requires the same result for BLM's failure to adequately disclose and analyze emissions here.

In *CBD*, the court addressed a Bureau of Ocean Energy Management (BOEM) assessment of downstream greenhouse gas emissions from burning oil that would be produced at another proposed oil development project in Alaska's Arctic. To assess these

impacts, BOEM predicted how the absence of oil and gas from the project would affect demand for energy and resulting greenhouse gas emissions. *CBD*, 2020 WL 7135484, at *6. Rather than assessing global emissions, however, it limited its analysis only to U.S. emissions. *Id.* Rejecting this self-imposed constraint, the court concluded that the project's effects on foreign emissions are reasonably foreseeable indirect impacts. *Id.* at *8-9. It held that NEPA requires an agency to quantitatively evaluate these emissions unless it "thoroughly explain[s] why such an estimate is impossible." *Id.* at *9. Even then, it still has to "attempt to estimate the magnitude of such emissions." *Id.* BOEM's failure to comply with either requirement in the face of record evidence showing that an assessment was feasible was fatal to its EIS. *Id.* at *10.

BLM used the same analysis here that the court rejected in *CBD*. Using the same market-simulation approach, BLM undertook an analysis of how oil and gas that may be produced from the Willow Project would increase demand for energy and resulting greenhouse gas emissions. *Compare* Ex. 7 at 42-44, 102-03 (describing the use of BOEM's market simulation model to predict emissions consequences based on how oil produced from a project would affect energy markets), *with CBD*, 2020 WL 7135484, at *6. Despite acknowledging that "the lower prices for oil and other energy sources associated with increased U.S. production as a result of the Willow [Project] would affect both domestic and foreign energy consumption," Ex. 7 at 106, BLM excluded foreign oil and gas consumption from this model on the same basis that BOEM cited in *CBD*: that it lacked "the ability to estimate differences in GHG emissions caused by changes in

foreign consumption.” Ex. 7 at 106; *see CBD*, 2020 WL 7135484, at *6, 8. The court squarely rejected this assertion in *CBD*. *CBD*, 2020 WL 7135484, at *8 (“The record belies BOEM’s contention that it could not have summarized or estimated foreign emissions with accurate or credible scientific evidence.”). In doing so, the court relied on three reports, every one of which was before BLM here, that “confirm the effect of increasing domestic oil supply on foreign consumption and the feasibility of its estimation,” *CBD*, 2020 WL 7135484 at *8 (citing Ex. 10, P. Erickson, *U.S. again overlooks top CO2 impact of expanding oil supply . . . but that might change*, Stockholm Environment Institute (Apr. 30, 2016); Ex. 3, J. Bordoff & T. Houser, *Navigating the U.S. Oil Export Debate*, Columbia SIPA, Center on Global Energy Policy at 57 (Jan. 2015); Ex. 11, P. Erickson & M. Lazarus, *Impact of the Keystone XL Pipeline on Global Oil Markets and Greenhouse Gas Emissions*, NATURE CLIMATE CHANGE 778, 778-80 (2014)); *see* Ex. 1 at 24-29 (citing reports); Ex. 20 at 4 (same).

BLM’s failure to assess emissions globally is a consequential error going to the heart of the final EIS. Based upon this improper analysis, the final EIS concludes that the Willow Project will result in a net change from baseline greenhouse gas emissions of only 35 million metric tons carbon dioxide equivalent (CO_{2e}), less than 14% of the Project’s total direct and indirect emissions of more than 258 million metric tons CO_{2e}. Ex. 7 at 42-43. This is likely a substantial understatement of the Willow Project’s net greenhouse gas emissions. *See CBD*, 2020 WL 7135484 at *8 (citing studies, also in the record here, showing that models predict significantly higher emissions when foreign

consumption is included). Indeed, BOEM’s market model and studies cited by the *CBD* court, as well as other studies before the agency here, support a substitution effect of approximately 50%. Ex. 1 at 25-26; Ex. 12; Ex. 10. In other words, properly including foreign consumption in this model may have shown net emissions to be 50% of the total direct and indirect emissions, about 130 million metric tons CO_{2e}, rather than 35 million metric tons. These consequences could well persuade the agency to weigh differently its discretionary decision about whether and how to approve the Willow Project. *See CBD*, 2020 WL 7135484, at *10 (“If [the agency] concludes that such emissions will be significant, it may well approve another alternative included in the EIS or deny the [approval] altogether.”).

C. The final EIS failed to consider reasonable alternatives.

BLM violated NEPA by failing to consider any alternative meaningfully different from ConocoPhillips’ proposed project, including reasonable alternatives proposed by Plaintiffs that would prohibit permanent infrastructure in the Teshekpuk Lake and Colville River Special Areas or that would eliminate the construction of permanent roads and permit drilling only during the winter season. BLM’s primary reason for refusing to consider such alternatives—asserted limits on its authority to restrict ConocoPhillips’ activities—is not consistent with its broad authority to impose restrictions on activities to protect the values of the Reserve.

An agency must “[r]igorously explore and objectively evaluate all reasonable

alternatives” to a proposed action, 40 C.F.R. §1502.14(a),² including alternatives that would avoid or minimize harm to the environment. *Native Ecosystems Council v. U.S. Forest Serv.*, 418 F.3d 953, 965 (9th Cir. 2005). “The ‘touchstone’ of the inquiry is “whether an EIS’s selection and discussion of alternatives fosters informed decision-making and informed public participation.” *California v. Block*, 690 F.2d 753, 767 (9th Cir. 1982) (citation omitted). Courts have made clear that an EIS must consider alternatives that are meaningfully different from one another “to allow for a real, informed choice.” *Friends of Yosemite Valley v. Kempthorne*, 520 F.3d 1024, 1039 (9th Cir. 2008); *see also Block*, 690 F.2d at 767. “The existence of a viable but unexamined alternative renders an environmental impact statement inadequate.” *Mont. Wilderness Ass’n v. Connell*, 725 F.3d 988, 1004 (9th Cir. 2013) (quoting *Westlands Water Dist. v. U.S. Dep’t of Interior*, 376 F.3d 853, 868 (9th Cir. 2004)).

The alternatives BLM considered are similar and do not allow for a real, informed choice about options that would provide substantially greater protection to Reserve values. Each of the three action alternatives BLM considered in the final EIS would permit ConocoPhillips to construct the core infrastructure it proposed in the locations it proposed, including the same location for drill sites, road and pipeline alignments, the central processing facility, the operations center, the main air strip, and the gravel mine. Ex. 7 at 22, 30-32.

² The NEPA regulations in effect prior to September 14, 2020, are applicable to this action. *See* 40 C.F.R. § 1506.13 (Sept. 14, 2020).

BLM failed to consider reasonable alternatives proposed by Plaintiffs that would provide greater protection to Reserve values. One would prohibit permanent infrastructure in the Teshekpuk Lake and Colville River Special Areas. Ex. 1 at 15-16. This alternative would limit impacts to these particularly important areas that have been designated for “maximum protection” of their surface values. 42 U.S.C. § 6504(a). Plaintiffs also suggested an alternative that would permit drilling only during the winter season and eliminate construction of permanent roads. This alternative would mitigate disturbance to nesting birds, fall caribou migration, and summer and fall subsistence activities. It would also reduce well blowout risks, eliminate the footprint of, and year-round barrier created by, gravel roads, and would require significantly less gravel. Ex. 1 at 15.

BLM has not provided a reasonable explanation for failing to consider either of these alternatives. BLM’s rationale, to the extent it is explained, is found mostly in various isolated responses to comments. It primarily asserts that it may not consider any alternative that requires different configurations of drill sites or otherwise limits ConocoPhillips’ plans because ConocoPhillips has a right under its leases to “extract all of the oil and gas possible within the leased areas.” Ex. 7 at 90, 94, 96. To the contrary, BLM has broad authority, and indeed a clear obligation, to condition or restrict oil and gas activity on leases within the Reserve as it determines necessary to protect other resources and mitigate adverse environmental effects. *See* 42 U.S.C. § 6506a(b), (k)(3); 43 C.F.R. § 3152.2(b). Considering meaningfully different alternatives, as required by

NEPA, is consistent with, and in fact essential for, the proper exercise of the agency's management authority in the Reserve. *See* 42 U.S.C. § 6506a(b). There is no evidence that ConocoPhillips' leases grant it the right to drill and build infrastructure wherever, whenever, and however it wants. Nor could BLM apply general lease obligations in a way that would be inconsistent with its statutory authority and obligation to regulate oil and gas activities on leases to protect other resources in the Reserve.

None of the other reasons mentioned by BLM in response to comments justify its refusal even to consider these alternatives in its EIS. BLM asserts that an alternative without infrastructure in the Teshekpuk Lake Special Area would be inconsistent with the Project's purpose and need. Ex. 7 at 90. The purpose of the Project—"to construct the infrastructure necessary to allow the production and transportation to market of federal oil and gas resources under leaseholds in the northeast area of the [Reserve], consistent with the proponent's federal oil and gas lease and unit obligations," *id.* at 25—does not, on its face, preclude an alternative that prohibits infrastructure in special areas. BLM fails to explain how it does so. BLM also asserts that the "[Teshekpuk Lake Special Area] is only an administrative boundary, and Project impacts would not necessarily be greater within the [Teshekpuk Lake Special Area] than they would outside the [Teshekpuk Lake Special Area]." *Id.* at 89, 90. While this special area is an administrative boundary, it is an administrative boundary set because Congress and the Secretary of the Interior recognized explicitly the need to provide "maximum protection" to surface resources located within that boundary. 42 U.S.C. § 6504(a); 43 C.F.R. §

2361.0-5(f); 42 Fed. Reg. 28,723 (June 3, 1977). This designation provides ample basis for considering an alternative that would treat land open to oil and gas development within special areas differently than land outside of special areas. *Supra* p. 3. In response to comments proposing a seasonal only drilling alternative, BLM suggests that this alternative would not be economically feasible because of the short drilling season. Ex. 7 at 90, 92. But BLM has not done any analysis to support the assertion here; instead it points to analysis in which it determined that seasonal only drilling was not feasible for a different, previously approved project. Ex. 7 at 90. The nearby CD-3 development is, however, currently operated only seasonally, with ice road access, demonstrating that this alternative should at least have been considered and its costs compared to its benefits. Ex. 1 at 15.

II. Plaintiffs are likely to suffer irreparable harm without an injunction.

Plaintiffs are likely to suffer irreparable harm absent an injunction.

“Environmental injury, by its nature, can seldom be adequately remedied by money damages and is often permanent or at least of long duration, *i.e.*, irreparable.” *Amoco Prod. Co. v. Vill. of Gambell*, 480 U.S. 531, 545 (1987).

This winter, ConocoPhillips seeks to develop a new gravel mine and begin constructing the road from GMT-2 to the Willow Project. This would involve building an ice road from GMT-1 to the gravel mine site, the construction of eight ice pads, excavation at the new gravel mine, gravel hauling to GMT-2, and installation of the

gravel along the road alignment. Ex. 9 at 1-2. The new gravel source is in the Tiṇmiaqsiuḡvik area, approximately four to five miles southeast of GMT-1 and within the Ublutuooh (Tiṇmiaqsiuḡvik) River 0.5-mile setback. Ex. 7 at 97. The Tiṇmiaqsiuḡvik River was designated as a “biologically sensitive area.” Ex. 4 at 10.

ConocoPhillips is now on a path to begin construction occurring as early as February 2, 2021. *Sovereign Iñupiat for a Living Arctic v. Bureau of Land Mgmt.*, Case No. 3:20-cv-00290-SLG, Doc. 14 at 3 (Dec. 18, 2020). The construction of the facilities would be a multi-year project. *Id.* at 1; *see also* Ex. 7 at 98 (gravel mining operations would occur over six to seven winter construction seasons).

A. Gravel mining and road construction this winter will cause immediate and long-term irreparable harm to wildlife, tundra, and Plaintiffs’ members.

1. The immediate effects of construction this winter will cause irreparable harm.

Noise and activity associated with construction this year will have a direct effect on wildlife and Plaintiffs’ members’ uses of the Project area. Mining for gravel used in road construction requires blasting, which produces the loudest sound levels projected for the Willow Project. Ex. 7 at 57. Thus, “[n]oise would be greatest during winter construction . . . around the mine site.” *Id.* The sound from blasting would not dissipate to ambient levels for more than 100 miles. *Id.* at 47-48, Tbl. 3.6.3 (showing when sound would reach 35dBA). “This human activity and noise would disturb and displace caribou from around the mine site during all periods of human activity.” *Id.* at 57.

The construction of ice and gravel roads is also likely to affect caribou. *Id.* at 74 (“All Project roads would likely affect [caribou] crossing patterns to some extent.”). Roads and associated ground traffic and human activity deflect and delay caribou movement. *Id.* at 73. Caribou are least likely to cross a road when traffic exceeds 15 vehicles per hour and during construction, traffic rates will exceed this. *Id.* at 57 (15.5 to 81.7 vehicles per hour). The gravel mining, traffic, and road construction will all take place within high-density caribou winter habitat. Ex. 6 at 6, Map 3-22.

This disturbance and displacement of caribou and the presence of industrial activity will affect users, and hunters in particular, in the area. The planned activities for this winter are within a high use subsistence area, Ex. 7 at 83, Fig. 3.16.6, and this winter’s construction is likely to harm subsistence activities, *id.* at 72 (noting “Impacts to resource availability would occur year-round,” “would be higher during winter construction,” and that subsistence use of the area is “highest during winter”); *see also* Ex. 4 at 41 (“Even a temporary disruption of these communities’ harvest patterns would have negative effects for subsistence users.”); *id.* at 27 (“Subsistence hunters would likely avoid development areas, resulting in a shifting of subsistence use areas away from permanent facilities, including pipelines and roads.”). This winter’s activities that deter caribou hunting and other activities in the area will cause irreparable harm. Ex. 13 ¶36. The mining noise itself will be loud enough even to be intrusive to conversation in Nuiqsut and “very annoying” for anyone near the mine. Ex. 7 at 47; *see also* Ex. 13 ¶36. These activities could also substantially affect caribou survival and recruitment.

Negative effects on caribou energy budgets caused by disturbance during winter could result in increased winter mortality or a reduction in calf productivity. Ex. 4 at 21.

An injunction from this Court blocking construction is necessary to forestall the irreparable harm to caribou and Plaintiffs' members from the planned activities this winter.

2. The permanent habitat destruction and ongoing traffic disturbance will cause irreparable harm.

Once constructed, the road and destroyed tundra and wetland habitats will cause harm that lasts far into the future. A new road will result in continuous pollution, traffic, and human activity, causing impacts to people, wildlife, and the habitat of the region for the indefinite future. This harm is irreparable. For example, “[p]roject activity and infrastructure (e.g., gravel and ice roads, drill sites, mine site) would result in the removal or disturbance of habitat for various resources such as fish (e.g., broad whitefish, grayling), waterfowl, and caribou.” *Id.* at 72. The road would also cause “dust shadows” which “typically decrease nutrient levels in soils [], decrease soil moisture, increase thaw depth, alter the active layer (the upper layer of soil that is churned through the freeze-thaw cycle), and contribute to thermokarst development.” *Id.* at 49. The road would insulate soil, causing changes to the tundra, and “would increase mechanisms for invasive species.” *Id.* at 50. This damage and the road itself will cause changes to the undisturbed characteristic of the landscape. *Id.* at 10.

For caribou, roads limit caribou movement and key behavioral patterns not just

during construction but permanently, *see supra* pp. 15-16, and impacts to subsistence from operations “would occur year-round.” *Id.* at 72. In particular, any “[l]arge deflections of caribou away from the area west of Nuiqsut would have substantial impacts to subsistence users.” *Id.* at 74. It is unlikely that caribou would habituate to this disturbance. As BLM acknowledged, “except perhaps for a small proportion of the most tolerant females, maternal caribou do not habituate to road traffic.” *Id.* at 56; *see also id.* at 69 (noting that long-term changes in subsistence may extend beyond temporary activities). The habitat destruction and traffic disturbance from the permanent road will harm Plaintiffs’ members’ ability to practice a traditional way of life. Ex. 13, ¶¶11, 58.

Construction of a permanent road and associated industrial impacts will destroy the natural setting of the area and adversely affect opportunities for Plaintiffs’ members’ enjoyment of the region and nearby areas, as well as their interest in wildlife protection. Ex. 13 ¶¶11-12, 29, 31-32, 58, 60; Ex. 14 ¶¶10, 20, 22-24; Ex. 15 ¶¶15-16, 25, 27-28; Ex. 17 ¶14; Ex. 18 ¶10; Ex. 16 ¶¶18-20; Ex. 19 ¶¶15-16. These impacts will interfere with Plaintiffs’ members’ visits to and use of the area for research and recreation, among other uses. Ex. 14 ¶¶10, 22; Ex. 15 ¶27. Moreover, these harms will add to extensive harms already taking place from a rapidly changing climate and already existing industrial development. Ex. 13 ¶¶36, 44-45, 81; Ex. 14 ¶¶17, 26; Ex. 16 ¶¶21-22; Ex. 18 ¶12; Ex. 19 ¶17.

B. The permanent road will commit the agency to future development, making it more difficult for the agency to reach a different decision that reduces impacts to species and habitat.

Allowing construction of the road and associated mining will impair the agencies' ability or willingness to give serious consideration to alternatives inconsistent with a permanent road or to consider whether the Project should proceed at all in the event this Court remands the decision to the agency for reconsideration. This in itself is a serious harm in a NEPA case in particular. Preliminary relief is needed to prevent such harm and to arrest Defendants' effort to limit the potential for such reconsideration before this Court can reach the merits of the legal claims Plaintiffs raise.

One of the purposes of NEPA is to prevent agencies from moving forward with an action without adequate information about the environmental harms of the action. *Winter*, 555 U.S. at 35. The information an agency gathers about environmental consequences through the NEPA process can be the basis for a different decision, or even rejecting an action all together. *See CBD*, 2020 WL 7135484, at *10 (explaining that following proper analysis of greenhouse gas emissions under NEPA, agency "may well approve another alternative included in the EIS or deny the lease altogether.").

Irreparable environmental harm occurs when government decisionmakers commit themselves to a course of action without the full assessment of impacts and deliberation required by NEPA. *See Sierra Club v. Marsh*, 872 F.2d 497, 504 (1st Cir. 1989) ("the harm at stake in a NEPA violation is a harm to the environment, not merely to a legalistic 'procedure'"); *see also High Sierra Hikers Ass'n v. Blackwell*, 390 F.3d 630, 642

(9th Cir. 2004) (“[I]rreparable injury flows from the failure to evaluate the environmental impact of a major federal action.”). Initiating major federal action without a proper NEPA analysis causes this irreparable environmental harm by setting in motion a bureaucratic steamroller that is difficult to stop. *See Marsh*, 872 F.2d at 500-01; *Massachusetts v. Watt*, 716 F.2d 946, 952-53 (1st Cir. 1983), *abrogated on other grounds by Marsh v. Oregon Nat. Res. Council*, 490 U.S. 360, 377 n.23 (1989); *Sierra Club v. U.S. Army Corps of Eng’rs*, 645 F.3d 978, 995 (8th Cir. 2011); *W. Watersheds Project v. Zinke*, 336 F. Supp. 3d 1204, 1241, 1243 (D. Idaho Sept. 21, 2018); *S.E. Alaska Conservation Council v. U.S. Forest Serv.*, 413 F.Supp.3d 973, 981 (D. Alaska 2019). The several decisions granting injunctions based on this harm have generally arisen in connection with leasing or contract decisions, but the same principle applies to construction that will make reconsideration less likely.

This harm is all the more relevant given the nature of Plaintiffs’ claims. Plaintiffs argue that BLM should have considered alternatives that would result in less environmental damage, such as elimination of permanent roads, seasonal restrictions, or prohibitions on permanent infrastructure in special areas. The substantial permanent road construction planned for this winter would inhibit serious consideration of alternatives that would not include a permanent road; indeed, it would begin by cutting through a designated special area, Ex. 7 at 78, Fig. 2.4.1. Additionally, as the Ninth Circuit recently recognized, an inadequate analysis of greenhouse gas emissions is exactly the kind of NEPA failing that could cause an agency decisionmaker to reconsider: “If [the

agency] later concludes that such emissions will be significant, it may well approve another alternative included in the EIS or deny the lease altogether.” *CBD*, 2020 WL 7135484, at *10.

This is, moreover, not a case where the risks of the activity are plausibly understood from previous environmental analysis. *See Winter*, 555 U.S. at 32 (finding irreparable harm unlikely based, in part, on decades of prior activity without documented harm to marine mammals). Rather, the BLM’s authorization greenlights development never before authorized in the Teshekpuk Lake and Colville River Special Areas and would lead to unprecedented year-round activity in these areas.

III. The balance of harms tips sharply in favor of Plaintiffs.

“[W]hen environmental injury is ‘sufficiently likely, the balance of harms will usually favor the issuance of an injunction to protect the environment.’” *Idaho Sporting Cong., Inc. v. Alexander*, 222 F.3d 562, 569 (9th Cir. 2000) (quoting *Amoco Prod. Co.*, 480 U.S. at 545).

That is the case here. Irreparable environmental harm and harm to Plaintiffs is likely. Defendants will not be harmed at all by an injunction. And any countervailing harms to third parties from an injunction are limited; construction will take at least five years and production will likely not begin until the end of 2025. Ex. 7 at 34. A delay in initial construction activities pending adjudication on the merits would not cause irreparable harm, particularly in light of the project schedule.

IV. A preliminary injunction advances the public interest.

The public interest favors granting this injunction. The Ninth Circuit recognizes “the public interest in careful consideration of environmental impacts before major federal projects go forward, and . . . [has] held that suspending such projects until that consideration occurs ‘comports with the public interest.’” *All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1138 (9th Cir. 2011) (citation omitted). Congress declared the public interest in all United States policies and laws being administered in compliance with NEPA “to the fullest extent possible.” 42 U.S.C. § 4332. And the public also has an overarching interest in its government abiding by the laws and regulations governing it. *See, e.g., East Bay Sanctuary Covenant v. Trump*, 932 F.3d 742, 779 (9th Cir. 2018); *Enyart v. Nat’l Conf. of Bar Exam’rs, Inc.*, 630 F.3d 1153, 1167 (9th Cir. 2011). Allowing Defendants to permit construction despite the legal infirmities underlying the Willow Project and the irreparable harm it threatens to the Reserve and those who rely on it, would nullify the precise public interests Congress intended to further in the Reserves Act and NEPA.

CONCLUSION

For the foregoing reasons, Plaintiffs request that this Court enter a preliminary injunction effective until this Court has issued a final decision on Plaintiffs’ claims, enjoining implementation of Defendants’ approval of ConocoPhillips’ Willow Project in the Reserve, including authorization of construction activities planned for this winter.

Respectfully submitted this 24th day of December, 2020.

s/ Jeremy Lieb

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Eric P. Jorgensen (Alaska Bar No. 8904010)

EARTHJUSTICE

*Attorneys for Plaintiffs Center for Biological
Diversity, Friends of the Earth, and Greenpeace,
Inc.*

CERTIFICATE OF COMPLIANCE WITH WORD LIMITS

I certify that this document contains 5,439 words, excluding items exempted by Local Civil Rule 7.4(a)(4), and complies with the word limits of Local Civil Rule 7.4(a)(2).

Respectfully submitted this 24th day of December, 2020.

s/ Jeremy Lieb
Jeremy Lieb

CERTIFICATE OF SERVICE

I hereby certify that on December 24, 2020, a copy of foregoing PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION, with attachments, was served by consent by electronic mail on Caitlin Cipicchio, ccipicchio@enrd.usdoj.gov, and Rickey Turner, rturner2@enrd.usdoj.gov.

s/ *Jeremy Lieb*

Jeremy Lieb

TABLE OF EXHIBITS

Exhibit No.	Description
1	Alaska Wilderness League <i>et al.</i> , Comments on Willow Master Development Plan Draft Environmental Impact Statement (No. DOI-BLM-AK-0000-2018-0004-EIS) (Oct. 29, 2019) (excerpts)
2	Alaska Wilderness League <i>et al.</i> , Comments on Willow Master Development Plan Supplemental Draft Environmental Impact Statement (May 4, 2020) (excerpts)
3	J. Bordoff & T. Houser, <i>Navigating the U.S. Oil Export Debate</i> , Columbia SIPA, Center on Global Energy Policy (Jan. 2015)
4	Bureau of Land Management (BLM), National Petroleum Reserve-Alaska, Final Integrated Activity Plan/ Environmental Impact Statement (Nov. 2012) (excerpts)
5	BLM, Proposed Greater Mooses Tooth Two Development Project, Joint Record of Decision and Permit Evaluation with the U.S. Army Corps of Engineers (Oct. 2018) (excerpts)
6	BLM, National Petroleum Reserve in Alaska, Final Integrated Activity Plan and Environmental Impact Statement (June 2020) (excerpts)
7	BLM, Willow Master Development Plan, Final Environmental Impact Statement (Aug. 2020) (excerpts)
8	BLM, Willow Master Development Plan, Record of Decision (Oct. 26, 2020)
9	BLM, Willow DNA Proposed Action, https://eplanning.blm.gov/eplanning-ui/project/2003923/570 (Dec. 2, 2020)
10	P. Erickson, <i>U.S. again overlooks top CO2 impact of expanding oil supply . . . but that might change</i> , Stockholm Environment Institute (Apr. 30, 2016)

- 11 P. Erickson & M. Lazarus, *Impact of the Keystone XL Pipeline on Global Oil Markets and Greenhouse Gas Emissions*, 4 NATURE CLIMATE CHANGE 778 (2014)
- 12 E. Wolfovksy & W. Anderson, OCS Oil and Natural Gas: Potential Lifecycle Greenhouse Gas Emissions and Social Cost of Carbon, BOEM OCS Report 2016-065 (Nov. 2016)
- 13 Declaration Rosemary Ahtuanguaruak
- 14 Declaration of Daniel Ritzman
- 15 Declaration of Jeffrey Scott Fair
- 16 Declaration of Richard G. Steiner
- 17 Declaration of Brendan Cummings
- 18 Declaration of Marcie E. Keever
- 19 Declaration of Timothy Donaghy
- 20 Natural Resources Defense Council & Earthjustice, Comments on Willow Master Development Plan Supplement to the Draft Environmental Impact Statement (May 4, 2020)