

TREG TAYLOR  
ATTORNEY GENERAL

Mary Hunter Gramling  
Alaska Bar No. 1011078  
State of Alaska  
Department of Law  
P.O. Box 110300  
Juneau, AK 99811-0300  
Telephone: (907) 465-3600  
Facsimile: (907) 465-2520  
Email: mary.gramling@alaska.gov

Attorney for the State of Alaska

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ALASKA

SOVEREIGN IÑUPIAT FOR A LIVING  
ARCTIC, et al.,

Plaintiffs,

v.

BUREAU OF LAND MANAGEMENT, et al.,

Defendants,

and

CONOCOPHILLIPS ALASKA, INC., et al.,

Intervenor-Defendants

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CENTER FOR BIOLOGICAL DIVERSITY,

et al.,

Plaintiffs,

v.

BUREAU OF LAND MANAGEMENT, et al.,

Defendants,

and

CONOCOPHILLIPS ALASKA, INC., et al.,

Intervenor-Defendants

)  
) **STATE OF ALASKA'S**  
) **COMBINED OPPOSITION TO**  
) **MOTIONS FOR**  
) **PRELIMINARY**  
) **INJUNCTIONS AND MOTION**  
) **FOR TEMPORARY**  
) **RESTRAINING ORDER**

) Case No.: 3:23-cv-0058-SLG

) Case No.: 3:23-cv-0061-SLG

## INTRODUCTION

It is glaringly contrary to the public interests of the State of Alaska ("State"), local governments, and indeed the nation overall to grant the extraordinary relief of a temporary restraining order or preliminary injunction to delay, or possibly prevent altogether, the long-awaited, robustly studied, immensely valuable development of ConocoPhillips Alaska, Inc.'s ("ConocoPhillips") Willow Project in the National Petroleum Reserve in Alaska ("NPR-A") as approved in the Bureau of Land Management's ("BLM") record of decision ("ROD") on the Willow Master Development Plan ("MDP") and related federal agency actions.<sup>1</sup> The Plaintiffs, Sovereign Inupiat for a Living Arctic, *et al.*, ("SILA")<sup>2</sup> and the Plaintiffs, Center for Biological Diversity, *et al.*, ("CBD")<sup>3</sup>(collectively "Plaintiffs") failed to meet their burdens for the grant of their respective motions. The State's combined opposition here is supported by the accompanying declarations of the State's Acting Commissioner of Labor and Workforce Development, the State's Director of the Division of Oil and Gas within the

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<sup>1</sup> [https://eplanning.blm.gov/public\\_projects/109410/200258032/20075029/250081211/2023%20Willow%20MDP%20Record%20of%20Decision.pdf](https://eplanning.blm.gov/public_projects/109410/200258032/20075029/250081211/2023%20Willow%20MDP%20Record%20of%20Decision.pdf)

<sup>2</sup> *Sovereign Inupiat for a Living Arctic v. BLM, et al.*, Case No. 3:23-cv-00058-SLG, ECF No. 23.

<sup>3</sup> *Center for Biological Diversity, et al., v. BLM, et al.*, Case No. 3:23-cv-00061-SLG, ECF No. 24.

*Sovereign Inupiat for a Living Arctic, et al. v. BLM, et al.* Case No. 3:23-cv-00058-SLG  
*Center for Biological Diversity, et al. v. BLM, et al.* Case No. 3:23-cv-00061-SLG

Department of Natural Resources, and the State Pipeline Coordinator within the Division of Oil and Gas, that detail the immediate harms to the public interest that the requested injunctions would bring. The motions should be denied.

## **ARGUMENT**

### **I. Plaintiffs' fail to carry the burden for the extraordinarily harmful remedies sought.**

The injunctive relief requested by the Plaintiffs is "an extraordinary remedy" that requires a "clear showing" of four elements before the Plaintiffs could be entitled to the injunctions sought. *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 22(2008). The Plaintiffs are required to establish that (1) they are likely to succeed on the merits; (2) they are likely to suffer irreparable harm without preliminary relief; (3) the balance of equities tips in their favor; and (4) an injunction is in the public interest. *Id* at 20. A showing by the Plaintiffs of "serious questions going to the merits", a lesser showing on the first element, is allowed if the Plaintiffs could make an enhanced showing on the fourth element that the "balance of hardships tips *sharply* in [their] favor." *Friends of the Wild Swan v. Weber*, 767 F.3d 936, 942 (9<sup>th</sup> Cir. 2014). Additionally, the third element and fourth element merge together in this case because the government is a party. *Nken v. Holder*, 556 U.S. 418, 435 (2009).

While the Plaintiffs have failed to meet the first two elements required for injunctive relief, the State will focus its arguments on the merged third and fourth elements to aid the convenience of the Court due to the number of opposition responses that will be filed in these cases. Additionally, the merged final element relates to the balance of equities and the public interest, an element that the State as a sovereign state, and in particular a state with a legal right to federal royalties from the Willow Project, has unique public interests and expertise in to aid the Court.

## **II. The balance of equities are against the Plaintiffs.**

Under Plaintiffs' skewed views of the balance of equities for injunctions, the prevention of the placement of a pea pebble of gravel for the Willow Project would be enough good to outweigh any harms public or private regardless of magnitude. The CBD Plaintiffs assert with a total absence of any factual citations or references to the scale of economic losses that "[a]ny claims of economic loss by Defendants and ConocoPhillips do not shift the balance." Case No. 3:23-cv-00061-SLG, EFC No. 24 at 25. Likewise without any factual support, Plaintiffs describe the economic harms as "temporary". *Id.* Unlike the speculative risk of loss of \$70,000 in federal revenues in the absence of future bidding in *Alliance for the Wild Rockies v. Cottrell* that was found to not tip the balance against the plaintiffs, here

a delay would result in hundreds of thousands of dollars leaving the State's economy due to a halt in construction, vital jobs and job training lost in local communities this year, and potentially risk billions in future federal, state, and local revenues. 632 F.2d 1127, 1136-37 (9th Cir. 2011).

The State's Acting Commissioner of Labor and Workforce Development Catherine Muñoz explained that "A delay to the Willow Project from a Temporary Restraining Order or Preliminary Injunction would have real impacts to employment outcomes for Alaskan, especially for Alaskans living near the Willow Project, including the residents of Nuiq[*su*].t." Muñoz Decl. ¶2. Commissioner Muñoz remarked as follows on the important job training opportunities that the Willow Project construction season can bring: "Willow's employment will also include significant training opportunities for North Slope Borough residents, and other Alaskans, further broadening their skills capacity for future employment opportunities after the Willow Project construction season has ended." Muñoz Decl. ¶2. Based on the most recent data available from the Alaska Department of Labor and Workforce Development's Research and Analysis Section from the fourth quarter 2021 to the third quarter of 2022, "the average oil and gas employment wages increasing to \$184,602, production/extraction wages growing

to \$273,599, drilling wages to \$129,859, and support wages growing to \$123,375."

Muñoz Decl. ¶4.

The Plaintiffs arguments do not appear to consider the loss of these well-paying positions to private citizens at all in their balance of equities. If they do, they seem to assume that economic and job training losses will be temporary. Nothing supports those assumptions. Derek W. Nottingham, Director of the Division of Oil and Gas for the State of Alaska explained based on his significant experience in industry and with the State the risks to the Willow Project that a temporary restraining order or a preliminary injunction could bring. Nottingham Decl.

"A delay to the Willow Project from a temporary restraining order or preliminary injunction could cause ConocoPhillips to defer hundreds of millions, and potentially billions, of dollars in capital investment away from Alaska to other areas of their existing portfolio – potentially permanently. Delays in projects by months or years – and in the case of Alaska's limited seasonal work seasons, even weeks – can have a significant impact on the company's financial returns and obligations to its stockholders, and thus to whether the project proceeds to development. ConocoPhillips, as a responsible steward for its owners, would likely divert capital dedicated to the Willow project and invest it in more profitable and secure options within its current portfolio if the project approval receives a temporary restraining order, a field season is missed, or the project must be delayed for yet another year. *Given the delays to date, the viability of the development as a whole is subject to the project schedule proceeding as designed.*" Nottingham Decl. ¶2. (emphasis added).

Director Nottingham expounded on the negative impacts that the high degree of uncertainty that a delay in a project as large as Willow creates. Nottingham Decl.

¶4. The balance of equities are against the Plaintiffs given the magnitude of public and private harms that an injunction would bring now.

### **III. Plaintiffs cannot show that an injunction is in the public interest.**

Courts will only grant a preliminary injunction if the public interest of not granting an injunction is outweighed by the public interest in granting on. 632 F.3d at 1138. The tenor of Plaintiffs' arguments on public interest element suggest that preservation of the environment is the only public interest for the Court to consider here or that because the Ninth Circuit previously granted an injunction that this Court should do so now. Case No. 3:23-cv-00058-SLG, ECF No. 23-1 at 25-26. Firstly, this case raises many public interest factors that weigh strongly against an injunction. Second, the decision and environmental studies have been drastically changed since the prior injunction. The request for an injunction now ignores the years of effort, analysis, insight, and compromise that BLM and the cooperating agencies put forward for the SFEIS and ROD. See, Case No. 3-23-cv-00058-SLG, ECF No. 41-3, Joint Resolution of the Alaska Legislature at 2-3.

*A. The Willow Project will generate important public benefits to the welfare of citizens of the State.*

The State has a duty to care for the welfare of its citizens. The Willow Project would spur the State economy, particularly for rural communities, while maintaining a balance of stewardship and promoting the continuation of subsistence lifestyles. *Id.* Commissioner Muñoz states "The Willow Project would help increase the number of Alaskans, including Alaskans living in the North Slope Borough with employment in the oil and gas industry. This increased employment activity adds critical funding for local families and supports the local economy." Muñoz Decl. ¶3. As explained in the State's filings in support of intervention here and the FSEIS, the State is estimated to receive upwards of \$2 billion in royalty payments from Willow Project leases from the federal government under the National Petroleum Reserves Production Act, 42 U.S.C. §§6501-6508, ("The Production Act"). Case No. 3:23-cv-00058-SLG, ECF 41-1 at 4. The State is to allocate the funds to subdivisions of the most directly impacted by oil and gas development under the Production Act. These funds have been used by local governments to fund waterfowl monitoring, fish habit monitoring, youth centers, and vital government services in these rural areas.<sup>4</sup>

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<sup>4</sup> <https://www.commerce.alaska.gov/web/Portals/4/pub/NPR-A%20Grant/2023%20NPR-A%20Report%20to%20the%20Legislature.pdf>, at 61. *Sovereign Iñupiat for a Living Arctic, et al. v. BLM, et al.* Case No. 3:23-cv-00058-SLG *Center for Biological Diversity, et al. v. BLM, et al.* Case No. 3:23-cv-00061-SLG  
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TEMP. RESTRAINING ORDER



In addition to royalty payments from the Production Act, the State as a sovereign landowner and taxing authority will receive billions in state royalties and state taxes that follow from the Willow Project. Case No. 3:23-cv-00058-SLG, ECF 41-1 at 7; Nottingham Decl. ¶5 (If the Willow project proceeds, the total number of barrels transported down the pipeline would significantly increase, directly increasing the value of the State's royalty oil. Alternatively, if the project is delayed, the benefit would correspondingly be delayed.). The State uses these revenues to fund state services and the delay by an injunction puts those revenues at risk. Nottingham Decl. ¶5. Thus, the injunction requested here puts these vital public welfare interests at substantial risk and is contrary to the public interest.

*B. The Willow Project will generate important public benefits for the nation and the State by increasing oil transported through the Trans-Alaska Pipeline System (TAPS).*

The Production Act purposes for "expedited leasing" were rooted in national security and national economic concerns that still ring true in the nation today. 42 U.S.C. § 6506a; Case No. 3-23-cv-00058-SLG, ECF No. 41-3, Joint Resolution of the Alaska Legislature at 3 (finding oil and gas development from the NPR-A decreasing dependence on foreign energy.). TAPS and oil produced domestically from the State are infrastructure and resources essential to national security. Strupulis Decl. ¶8. The Willow Project will increase the operational capacity of

TAPS. This brings important environmental and developmental benefits to the State. The State Pipeline Coordinator explains:

"Continued decline in North Slope production will certainly lead to the need for additional locations to add heat. Accumulation of wax and ice inside a pipeline system can have a negative impact on pipeline integrity. The addition of Willow's 180,000 barrels per day into the declining throughput of TAPS will have a great impact on the low-flow issues that TAPS is currently addressing. Given the long lead time associated with such projects, initiation of new developments now is critical to avoid what could become an increasing operational issue with wax and ice over the next decade." Strupulis Decl. ¶10.

The Willow Project also brings important information about State leases and exploration opportunities in nearby State land that might be lost or missed if the injunction is granted and the Willow Project delayed. Director Nottingham states that

"Other operators in Alaska pursuing Nanushuk opportunities on the North Slope, be it on State lands or Federal lands, will ultimately learn and benefit from ConocoPhillips' development of Willow and could implement those learnings in future developments. As a result, delays in these learnings ultimately create economic loss for the State of Alaska by limiting their application to state lands with potentially similar geologic characteristics." Nottingham Decl. ¶5.

Thus, the Willow Project is in the public interest of the nation's economy and security as well as the State's interest for the maximum development of its resources.

## CONCLUSION

The injunction requested imperils billions in federal, state, and local revenues as well as important socio-economic interests in the State. The Plaintiffs cannot outweigh these important public interests. The motions must be denied.

DATED: March 24, 2023.

TREG TAYLOR  
ATTORNEY GENERAL

By: /s/ Mary Hunter Gramling  
Mary Hunter Gramling  
Alaska Bar No. 1011078  
State of Alaska  
Department of Law  
P.O. Box 110300  
Juneau, AK 99811-0300  
Telephone: (907) 465-3600  
Facsimile: (907) 465-2520  
Email: mary.gramling@alaska.gov

### **CERTIFICATE OF SERVICE**

I hereby certify that on March 24, 2023, a copy of the foregoing, **STATE OF ALASKA'S COMBINED OPPOSITION TO MOTIONS FOR PRELIMINARY INJUNCTIONS AND MOTION FOR TEMPORARY RESTRAINING ORDER** was served on all registered parties via the CM/ECF electronic distribution system.

TREG TAYLOR  
ATTORNEY GENERAL

By: /s/ Mary Hunter Gramling  
Mary Hunter Gramling

### **CERTIFICATE OF COMPLIANCE**

This document contains 2,061 words, excluding the items exempted by Local Civil Rule 7.4(a)(4). Counsel relies on the word count of the computer program used to prepare this brief. This document complies with the word limit of Local Civil Rule 7.4(2).

DATED: March 24, 2023.

TREG TAYLOR  
ATTORNEY GENERAL

By: /s/ Mary Hunter Gramling  
Mary Hunter Gramling