

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

SOVEREIGN IÑUPIAT FOR A LIVING  
ARCTIC, et al.,

Plaintiffs-Appellants,

v.

BUREAU OF LAND MANAGEMENT, et al.,

Defendants-Appellees,

and

CONOCOPHILLIPS ALASKA, INC., et al.,

Intervenor-Defendants-Appellees.

No. 23-35226

On Appeal from the United  
States District Court for the  
District of Alaska

No. 3:23-cv-00058-SLG

CENTER FOR BIOLOGICAL DIVERSITY,  
et al.,

Plaintiffs-Appellants,

v.

BUREAU OF LAND MANAGEMENT, et al.,

Defendants-Appellees,

and

CONOCOPHILLIPS ALASKA, INC., et al.,

Intervenor-Defendants-Appellees.

No. 23-35227

On Appeal from the United  
States District Court for the  
District of Alaska

No. 3:23-cv-00061-SLG

**NORTH SLOPE BOROUGH'S RESPONSE IN OPPOSITION  
TO MOTIONS FOR INJUNCTION PENDING APPEAL**

## **CORPORATE DISCLOSURE STATEMENT**

Pursuant to Federal Rule of Appellate Procedure 26.1, the undersigned counsel for Intervenor-Defendant-Appellee North Slope Borough states that the North Slope Borough is a governmental entity located in northern Alaska. The North Slope Borough is a municipal corporation that does not issue stock.

Dated: April 13, 2023

/s/ Tyson C. Kade

Tyson C. Kade

Van Ness Feldman, LLP

1050 Thomas Jefferson Street, NW

Washington, DC 20007

Phone: (202) 298-1948

Email: tck@vnf.com

*Counsel for Intervenor-Defendant-Appellee  
North Slope Borough*

## TABLE OF CONTENTS

CORPORATE DISCLOSURE STATEMENT .....	ii
TABLE OF AUTHORITIES.....	iv
GLOSSARY .....	vii
I. INTRODUCTION .....	1
II. BACKGROUND .....	2
III. STANDARD OF REVIEW .....	4
IV. ARGUMENT.....	6
A. The Balance of Equities and the Public Interest Tip Sharply Against Injunctive Relief.....	6
1. Immediate Harms to North Slope Residents from Enjoining Willow Outweigh Any Alleged Environmental Harms. ....	7
2. Any Delay of Willow Would Harm the Borough and Its Residents. ....	9
B. Plaintiffs-Appellants Fail to Show Irreparable Harm Absent Injunctive Relief.....	12
C. Plaintiffs-Appellants Have Neither Established A Likelihood of Success Nor Raised Serious Questions on the Merits.....	14
1. BLM Considered and Evaluated a Reasonable Range of Alternatives. ....	15
2. BLM Met Its Obligations under ANILCA Section 810.....	19
V. CONCLUSION.....	23
CERTIFICATE OF COMPLIANCE .....	25

## TABLE OF AUTHORITIES

	Page(s)
<b>Cases</b>	
<i>A&amp;M Recs., Inc. v. Napster, Inc.</i> , 239 F.3d 1004 (9th Cir. 2001), <i>as amended</i> (Apr. 3, 2001) .....	5
<i>All. for the Wild Rockies v. Cottrell</i> , 632 F.3d 1127 (9th Cir. 2011) .....	5
<i>Amoco Prod. Co. v. Vill. of Gambell</i> , 480 U.S. 531 (1987) .....	20
<i>Doty v. Cnty. of Lassen</i> , 37 F.3d 540 (9th Cir. 1994) .....	6
<i>Drakes Bay Oyster Co. v. Jewell</i> , 747 F.3d 1073 (9th Cir. 2014) .....	5
<i>Earth Island Inst. v. Carlton</i> , 626 F.3d 462 (9th Cir. 2010) .....	6, 14
<i>Feldman v. Ariz. Sec’y of State’s Office</i> , 843 F.3d 366 (9th Cir. 2016) .....	4
<i>Hoonah Indian Ass’n v. Morrison</i> , 170 F.3d 1223 (9th Cir. 1999) .....	21, 22
<i>Kunaknana v. Clark</i> , 742 F.2d 1145 (9th Cir. 1984) .....	22
<i>Lands Council v. McNair</i> , 537 F.3d 981 (9th Cir. 2008) .....	6
<i>League of Wilderness Defs.-Blue Mountains Biodiversity Project v.</i> <i>U.S. Forest Serv.</i> , 689 F.3d 1060 (9th Cir. 2012) .....	16
<i>League of Wilderness Defs./Blue Mountains Biodiversity Project v.</i> <i>Connaughton</i> , 752 F.3d 755 (9th Cir. 2014) .....	8, 9

<i>Mont. Wilderness Ass’n v. Connell</i> , 725 F.3d 988 (9th Cir. 2013) .....	16
<i>Nken v. Holder</i> , 556 U.S. 418 (2009).....	5
<i>Pac. Coast Fed’n of Fishermen’s Ass’ns v. Blank</i> , 693 F.3d 1084 (9th Cir. 2012) .....	16
<i>Protect Our Communities Found. v. Jewell</i> , 825 F.3d 571 (9th Cir. 2016) .....	16
<i>S. Bay United Pentecostal Church v. Newsom</i> , 959 F.3d 938 (9th Cir. 2020) .....	5
<i>Sovereign Iñupiat for a Living Arctic v. BLM</i> , 555 F. Supp. 3d 739 (D. Alaska 2021) .....	15, 19
<i>Sovereign Iñupiat for a Living Arctic v. BLM</i> , No. 21-35085, 2021 WL 4228689 (9th Cir. Feb. 13, 2021).....	12
<i>Stormans, Inc. v. Selecky</i> , 586 F.3d 1109 (9th Cir. 2009) .....	7
<i>Westlands Water Dist. v. U.S. Dep’t of the Interior</i> , 376 F.3d 853 (9th Cir. 2004) .....	16
<i>Winter v. Nat. Res. Def. Council, Inc.</i> , 555 U.S. 7 (2008).....	5, 6
<b>Statutes</b>	
16 U.S.C. § 3120(a) .....	20
16 U.S.C. § 3120(a)(3).....	20, 21, 23
42 U.S.C. § 6504(a) .....	18
42 U.S.C. § 6506a(a).....	18
42 U.S.C. § 6506a(b) .....	18

**Other Authorities**

H.R. Rep. No. 94-81(I) (1975).....	2
North Slope Borough Ordinance Serial No. 75-06-75 .....	10

## GLOSSARY

ANILCA	Alaska National Interest Lands Conservation Act
BLM	Defendant-Appellee Bureau of Land Management
Borough	Intervenor-Defendant-Appellee North Slope Borough
CBD	Plaintiffs-Appellants Center for Biological Diversity, Defenders of Wildlife, Friends of the Earth, Greenpeace, Inc., and Natural Resources Defense Council
ConocoPhillips	Intervenor-Defendant-Appellee ConocoPhillips Alaska, Inc.
FSEIS	BLM, Willow Master Development Plan, Final Supplemental Environmental Impact Statement (Jan. 2023)
NEPA	National Environmental Policy Act
NPR-A	National Petroleum Reserve-Alaska
NPRPA	Naval Petroleum Reserves Production Act
Order	Order re Motions for Temporary Restraining Order and Preliminary Injunction, <i>Sovereign Inupiat for a Living Arctic v. BLM</i> , Nos. 23-cv-00058 et al. (Apr. 5, 2023)
ROD	BLM, Willow Master Development Plan, Record of Decision (Mar. 13, 2023)

SILA	Plaintiffs-Appellants Sovereign Iñupiat for a Living Arctic, Alaska Wilderness League, Environment America, Northern Alaska Environmental Center, Sierra Club, and The Wilderness Society
<i>SILA</i>	<i>Sovereign Iñupiat for a Living Arctic v. BLM</i> , 555 F. Supp. 3d 739, 805 (D. Alaska 2021)
TLSA	Teshekpuk Lake Special Area
Willow	Willow Project



## **I. INTRODUCTION**

Plaintiffs-Appellants Sovereign Inupiat for a Living Arctic (“SILA”) and Center for Biological Diversity (“CBD”) seek emergency injunctive relief pending appeal to halt winter construction activities for the Willow Project (“Willow”) based on alleged “harms” that have largely occurred and despite equities and a public interest that “tip sharply against preliminary injunctive relief.” The district court has twice rejected Plaintiffs-Appellants’ arguments, and ConocoPhillips Alaska, Inc. (“ConocoPhillips”) has substantially progressed with the construction activities that Plaintiffs-Appellants aim to enjoin. Accordingly, the basis for Plaintiffs-Appellants’ claims are almost entirely moot.

Contrary to Plaintiffs-Appellants’ arguments, the district court correctly denied their requests for injunctive relief. Plaintiffs-Appellants challenge the court’s consideration of the relevant injunction factors, but weighing those factors is a matter squarely within the court’s discretion. The court made extensive factual findings, evaluated the evidence, and appropriately concluded that the balance of equities and the public interest tip sharply against granting preliminary injunctive relief, and that Plaintiffs-Appellants failed to show a likelihood of irreparable harm. The court did not err, make erroneous findings of fact, or abuse its discretion. Plaintiffs-Appellants are not entitled to any injunctive relief.

## **II. BACKGROUND**

The North Slope Borough (“Borough”) is the area-wide local government representing residents living in eight remote villages on the North Slope of Alaska. Its jurisdiction spans the entire northern portion of Alaska and includes the National Petroleum Reserve-Alaska (“NPR-A”), an area Congress set aside long ago to ensure the nation “would have adequate petroleum supplies,” H.R. Rep. No. 94-81(I) at 5 (1975), and where ConocoPhillips will construct Willow. Four Borough villages are located within the NPR-A’s boundaries: Nuiqsut, Atkasuk, Utqiagvik, and Wainwright.

The people of the North Slope—the majority of whom are Native Alaskan Iñupiat—have subsisted on the NPR-A’s resources for thousands of years and rely on responsible development of oil and gas reserves to support and sustain employment and essential government services. Revenue from taxes on oil and gas infrastructure funds 95% of the Borough’s services on the North Slope—including education, water and sewer, roads, health clinics, police and fire, search and rescue, and land and wildlife management—in support of eight villages in a region with extremely limited economic opportunity.

Willow will provide an estimated \$1.25 billion in Borough property tax revenues over its 30-year lifespan and is projected to generate billions of dollars for the NPR-A Impact Grant Program, which provides additional funds to local

communities. The construction of oil and gas infrastructure, such as gravel roads and boat ramps during the winter season, provides significant benefit to North Slope residents through short-term employment opportunities and to subsistence hunters by expanding access for better hunting and harvesting opportunities. Construction and development of Willow is critical to support and ensure the continued social, cultural, and economic well-being of North Slope Alaskans.

Most recently, following the Bureau of Land Management’s (“BLM”) preparation of the Final Supplemental Environmental Impact Statement (“FSEIS”) and Record of Decision (“ROD”) that authorized Willow, Plaintiffs-Appellants sought preliminary injunctive relief to enjoin ConocoPhillips’ planned winter 2023 construction activities. On April 3, 2023, in a 44-page written order, the district court correctly denied these requests, and held that: (1) the balance of equities and the public interest “tip sharply against” preliminary injunctive relief; and (2) Plaintiffs-Appellants failed to show that they would likely be irreparably harmed if the planned winter 2023 construction activities proceed. *SILA* Ex. 22 at 43, *SILA v. BLM*, No. 23-35226, ECF 5-23; *CBD* Ex. 31 at 43, *CBD v. BLM*, No. 23-35227, ECF 5-17 (collectively, “Order”).<sup>1</sup> For these same reasons, the court subsequently denied Plaintiffs-Appellants’ requests for an injunction pending appeal. Order Granting

---

<sup>1</sup> Pincites to exhibits refer to exhibit page numbers rather than document page numbers where appropriate.

Mot. to Expedite & Den. Pls.’ Mot. for Inj. Pending Appeal, *SILA v. BLM*, No. 23-cv-00058 (Apr. 4, 2023), ECF 78; CBD Ex. 32, ECF 5-18. Based on the same arguments the district court twice rejected, and notwithstanding that ConocoPhillips’s winter construction activities are well underway, Plaintiffs-Appellants seek injunctive relief from this Court.

Plaintiffs-Appellants’ claims are meritless. Willow’s continued development is in the public interest, and this winter’s construction activities will provide significant benefits to North Slope residents immediately and over the longer term. ConocoPhillips has already cleared the gravel mine site of vegetation and soil overburden, which requires drilling and blasting, and has prepared and leveled (including installing culverts and insulation) part of the gravel road extension, ConocoPhillips Ex. 1 ¶¶ 7, 10-12 (Second Brodie Decl.), thereby negating most of Plaintiffs-Appellants’ allegations of “irreparable harm.” Should this Court reach the merits, BLM has thoroughly documented compliance with the district court’s prior remand order, provided extensive additional analyses and environmental review, and satisfied all applicable statutory and regulatory obligations.

### **III. STANDARD OF REVIEW**

“The standard for evaluating an injunction pending appeal is similar to that employed by district courts in deciding whether to grant a preliminary injunction.” *Feldman v. Ariz. Sec’y of State’s Office*, 843 F.3d 366, 367 (9th Cir. 2016) (citations

omitted); *see also Nken v. Holder*, 556 U.S. 418, 428-29 (2009). When evaluating such a motion, the court considers “whether the moving party has demonstrated that they are likely to succeed on the merits, that they are likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in their favor, and that an injunction is in the public interest.” *S. Bay United Pentecostal Church v. Newsom*, 959 F.3d 938, 939 (9th Cir. 2020) (citations omitted). When the government is a party, the balance of equities and public interest factors merge. *Drakes Bay Oyster Co. v. Jewell*, 747 F.3d 1073, 1091 (9th Cir. 2014). Failure to satisfy any one of these factors bars relief. *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008).

Plaintiffs-Appellants also claim that the district court erred in denying their motions for preliminary injunction, which this Court reviews for abuse of discretion. *All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131 (9th Cir. 2011) (citations omitted). A finding of abuse of discretion requires that the court reached its conclusions based “on an erroneous legal standard or clearly erroneous finding of fact.” *Id.* (internal citations and quotations omitted). This Court “will not reverse the district court where it got the law right, even if [it] would have arrived at a different result, so long as the district court did not clearly err in its factual determinations.” *Id.* (internal citations and quotations omitted); *A&M Recs., Inc. v. Napster, Inc.*, 239 F.3d 1004, 1013 (9th Cir. 2001), *as amended* (Apr. 3, 2001). This

Court accepts as true any factual findings not challenged. *See Doty v. Cnty. of Lassen*, 37 F.3d 540, 543 (9th Cir. 1994).

#### **IV. ARGUMENT**

Plaintiffs-Appellants fail to demonstrate that an injunction pending appeal is warranted. Reviewing these same claims, the district court concluded that “the balance of the equities and the public interest *tip sharply against* preliminary injunctive relief,” and that Plaintiffs-Appellants failed to show a likelihood of irreparable harm from winter 2023 construction activities. Order at 43 (emphasis added). Because the court did not err, make erroneous findings of fact, or abuse its discretion when it denied injunctive relief, this Court should likewise deny Plaintiffs-Appellants’ requested relief.

##### **A. The Balance of Equities and the Public Interest Tip Sharply Against Injunctive Relief.**

Plaintiffs-Appellants fail to establish that the balance of equities and public interest warrant injunctive relief. While they contend the district court improperly balanced the equities and gave too much weight to the public interest in Willow, “[a]n injunction is a matter of equitable discretion.” *Winter*, 555 U.S. at 32.

As this Court has established, “[t]he assignment of weight to particular harms is a matter for the district courts to decide,” *Earth Island Inst. v. Carlton*, 626 F.3d 462, 475 (9th Cir. 2010), and courts may not “abandon a balance of harms analysis just because a potential environmental injury is at issue.” *Lands Council v. McNair*,

537 F.3d 981, 1005 (9th Cir. 2008) (citation omitted). It is also well-settled that courts “should pay particular regard for the public consequences in employing the extraordinary remedy of an injunction,” and “may in the public interest withhold relief until a final determination of the rights of the parties, though the postponement may be burdensome to the plaintiff.” *Stormans, Inc. v. Selecky*, 586 F.3d 1109, 1139 (9th Cir. 2009) (citation omitted).

**1. Immediate Harms to North Slope Residents from Any Injunction Outweigh Any Alleged Environmental Harms.**

Plaintiffs-Appellants incorrectly claim the intervenors and amici failed to show that harm would occur this winter if an injunction was granted. Plaintiffs-Appellants acknowledge that the public interest in seasonal employment and subsistence benefits from construction this winter is “real and significant,” but dismiss these interests as marginal and temporary, and thus irrelevant. CBD Mot. at 18-23, *CBD v. BLM*, No. 23-35227, ECF 5; SILA Mot. at 18-20, *SILA v. BLM*, No. 23-35226, ECF 5. Their arguments ignore the significant benefits these immediate, seasonal employment opportunities are currently providing to North Slope residents.

The district court properly balanced “the environmental harms that would be caused *if the Winter 2023 Construction Activities were allowed to proceed* against the economic and other harms that would occur if those activities were precluded while the merits in this case are determined.” Order at 32 (emphasis added). In determining that enjoining this winter’s construction activities would “have an

immediate economic impact” on Nuiqsut, the community closest to Willow, the court found that Nuiqsut’s unemployment rate is 13 percent, and its residents rely on seasonal work to support their families. *Id.* at 34. The court cited “numerous declarations” showing that Nuiqsut residents “are relying on the seasonal jobs and income associated with the Winter 2023 Construction Activities,” and provided specific examples, such as Thomas Bourdon, who hired 86 people to provide lodging, food, and other services for Willow this winter, and Jonas Sikvayugan, who expects to use his income from driving gravel trucks at the Willow mine site this winter to pay for his daughter’s braces and buy ammunition and fuel for subsistence hunting. *Id.* at 34-35. The court also cited evidence showing immediate benefits of this winter’s construction for subsistence hunters and search and rescue operations. *Id.* at 38-40.

Unlike *League of Wilderness Defenders/Blue Mountains Biodiversity Project v. Connaughton*, 752 F.3d 755 (9th Cir. 2014), on which Plaintiffs-Appellants rely, the district court in this case cited evidence of specific seasonal employment that would be lost if Willow’s winter 2023 construction activities were to be enjoined. These harms are not related to a potential delay or cancellation of the entire project; they are immediate harms that would result from the precise scope of Plaintiffs-Appellants’ requested injunctive relief.



Further, ConocoPhillips has already leveled and prepared the road bed for part of the gravel road extension, and the hauling and placing of gravel for the road and subsistence boat launch on the Tinimiasuq River has begun. ConocoPhillips Ex. 1 ¶¶ 11-12. These construction activities would not be completed if an injunction is granted, causing immediate harm to the Borough's subsistence hunters and their communities.

**2. Any Delay of Willow Would Harm the Borough and Its Residents.**

In addition to the immediate impacts to Nuiqsut and Borough residents from loss of seasonal employment and subsistence access, any action that enjoins, delays, or otherwise impacts oil and gas leasing activities within the Borough's jurisdiction, including enjoining the winter 2023 construction activities and thereby delaying Willow's completion, would have significant negative impacts on the Borough's economy and its ability to generate tax revenue to provide critical services to its residents. Ex. 1 ¶ 21. When considering whether to award injunctive relief, "[b]oth the economic and environmental interests are relevant factors, and both carry weight." *Connaughton*, 752 F.3d at 765.

Plaintiffs-Appellants claim the district court gave too much weight to statements of support from the Alaska legislature and congressional delegation because they either did not enact any implicated law or ordinance, or because they lack jurisdiction to approve Willow. CBD Mot. at 24; SILA Mot. at 23-25.

Plaintiffs-Appellants ignore, however, that the Borough is a governmental entity and specifically approved Willow's construction by rezoning the site from a Conservation District to a Resource Development District after concluding the project serves the public interest. North Slope Borough Ordinance Serial No. 75-06-75; Ex. 1 ¶ 20.

Willow offers significant tax benefits for the Borough, as its authority to tax oil and gas development infrastructure is "by far the most significant source of funding for community services and infrastructure" in the North Slope. Ex. 1 ¶ 8. Willow is expected to provide \$1.25 billion in Borough property taxes, which will support the Borough's ability to provide and invest in public infrastructure, essential services, and utilities (including reliable sewer, water, and heat) to its villages. *Id.* ¶¶ 9-10. This includes funding for critical Borough priorities related to health, education, wildlife management, and emergency services. *Id.*

Willow is also expected to generate between \$2.27 and \$3.56 billion in royalty revenue sharing for the NPR-A Impact Grant Program. *Id.* ¶ 10. These grants support workforce development, comprehensive community planning, infrastructure and utilities, and land management and permitting. Borough residents need these services, and any delay or loss of Willow's anticipated tax revenue and NPR-A Impact Grant funds would directly and significantly impair the Borough's ability to

provide essential government functions, support its economy, and provide for the health and well-being of its residents. *Id.* ¶ 21.

Further, on the North Slope, additional access to subsistence areas and connectivity provided by roads is viewed as a significant benefit. *Id.* ¶ 17. Over 74% of Borough residents are Iñupiat, who have depended on the subsistence resources of the North Slope's lands and waters for thousands of years. *Id.* ¶ 5. Over 98% of Iñupiat households utilize subsistence foods, and the social fabric of Borough communities revolves around subsistence traditions. *Id.* Roads associated with Willow will reduce air traffic and increase subsistence and recreational access, including through turnouts with subsistence access ramps and three new boat ramps for subsistence use. *Id.* ¶ 17.

Finally, ConocoPhillips has stated that the likely outcome of a preliminary injunction would be that Willow is not constructed. While the district court gave this statement little weight, Order at 36 n.144, the possibility remains and will ultimately depend on ConocoPhillips's internal business analysis. An injunction that causes Willow's termination would have significant negative repercussions for the Borough and its residents and would be contrary to the public interest.

After carefully weighing the evidence, the district court agreed that the public interest is considerable and weighs against injunctive relief when the few ground-disturbing activities that an injunction would halt would have minimal impact and

do not include the extraction of oil and gas. The court properly exercised its discretion in considering the equities and public interest at stake, and this Court should find that denial of any injunctive relief is warranted.

**B. Plaintiffs-Appellants Fail to Show Irreparable Harm Absent Injunctive Relief.**

Plaintiffs-Appellants' claims of irreparable harm are based primarily on ConocoPhillips' "using explosives to remove tundra and soil layers" at a gravel mine, in addition to using gravel from that area to start construction of a road.<sup>2</sup> *SILA* Mot. at 6; CBD Mot. at 11. The mine site has already been cleared of vegetation, and the mine's protective perimeter berm—created from drilled and blasted overburden from the mine site area—is expected to be complete on April 14. ConocoPhillips Ex. 1 ¶ 10. That is sufficient basis to deny the requested relief.

The only remaining alleged harm is the construction of a 3.1-mile gravel road and a subsistence boat ramp. Order at 18. A portion of the road bed has already been leveled, with culverts installed, and the hauling and placing of gravel for the road extension and boat ramp construction has begun. ConocoPhillips Ex. 1 ¶¶ 11-12. The minimal impacts that remain from completion of this season's construction

---

<sup>2</sup> Plaintiffs-Appellants cannot rely on this Court's prior order to establish that this season's winter construction activities constitute irreparable harm warranting injunction. *SILA v. BLM*, No. 21-35085, 2021 WL 4228689 (9th Cir. Feb. 13, 2021). As the district court noted, not only is that unpublished order not precedent, Ninth Cir. R. 36-3, but substantial new information from declarants has refuted many of Plaintiffs-Appellants' previous claims. Order at 16 n.68.

activities do not establish irreparable harm sufficient to outweigh the equities and public interest at stake.

When weighing claims of irreparable harm related to the road construction, the district court noted the parties had submitted conflicting declarations. While declarant Sam Kunaknana expressed concern over the road's possible interference with the ability to hunt caribou in the winter, other declarants stated that roads associated with Willow are "a blessing for access to subsistence resources" by providing year-round access to hunting grounds. *Id.* at 22-23. Properly weighing the evidence, the court concluded there is no likelihood of irreparable harm to subsistence caribou hunters if construction activities proceed.

Dr. Rosemary Ahtuangeruk raised concerns about the environmental impacts of gravel mining and the construction of gravel roads, but because she only averred "that mining and the associated construction would interfere with her enjoyment of the area 'near' the mine site," the court concluded she did not show that irreparable harm is likely. *Id.* at 27. That conclusion carries greater weight now that winter construction activities have commenced and have significantly progressed.

The district court also considered the declaration of Daniel Ritzman, who claimed the mine would harm his experience this summer floating on a nearby river. The court concluded that the mine would be located many miles from the river where summer float trips are planned and would operate only in winter. *Id.* at 28.

Separately, the court rejected other allegations of irreparable harm from winter construction activities and concluded that the noise and vibration from blasting is short-lived. *Id.* at 20. The court also found that the closest overwintering fish habitat was three miles from the mine, and any blasting or gravel excavation would not impact fish. *Id.* at 21.

Based on the evidence presented, the district court correctly determined that Plaintiffs-Appellants failed to establish a likelihood of irreparable harm from the winter 2023 construction activities. The weighing of alleged harms “is a matter for the district courts to decide.” *Carlton*, 626 F.3d at 475. Given that construction activities are well underway, Plaintiffs-Appellants have failed to establish any irreparable harm attributable to ConocoPhillips’ remaining construction activities this winter.

**C. Plaintiffs-Appellants Have Neither Established A Likelihood of Success Nor Raised Serious Questions on the Merits.**

Because Plaintiffs-Appellants failed to establish irreparable injury from the winter 2023 construction activities and the balance of equities and public interest tip sharply against injunctive relief, the district court found it unnecessary to address Plaintiffs-Appellants’ likelihood of success on the merits. Order at 44. Notwithstanding, Plaintiffs-Appellants assert that BLM failed to consider a reasonable range of alternatives under the National Environmental Policy Act (“NEPA”) and that BLM violated Section 810 of the Alaska National Interest Lands

Conservation Act (“ANILCA”) by failing to consider alternatives that would reduce impacts to subsistence users.<sup>3</sup> Such claims are unavailing, and Plaintiffs-Appellants have failed to establish a likelihood of success on the merits.

**1. BLM Considered and Evaluated a Reasonable Range of Alternatives.**

In suggesting that BLM failed to consider a reasonable range of alternatives, Plaintiffs-Appellants mischaracterize BLM’s efforts on remand, misconstrue BLM’s obligations under NEPA and the Naval Petroleum Reserves Production Act (“NPRPA”) and ignore BLM’s thorough approach to develop, consider, and evaluate alternatives in the FSEIS.

In 2021, the district court concluded that BLM’s analysis of alternatives was deficient to the extent that: (1) BLM developed alternatives based on the view that ConocoPhillips had the right “to extract all possible oil and gas from its leases”; and (2) BLM failed to consider the statutory directive that it give “maximum protection” to surface values in the Teshekpuk Lake Special Area (“TLSA”). *Sovereign Inūpiat for a Living Arctic v. BLM*, 555 F. Supp. 3d 739, 805 (D. Alaska 2021) (“*SILA*”). Following remand, as an initial step, BLM revised Willow’s statement of purpose:

The purpose of the Proposed Action is to construct the infrastructure necessary to allow the production and transportation to market of federal oil and gas resources in the Willow reservoir located in the Bear Tooth Unit (BTU), while providing maximum protection to significant

---

<sup>3</sup> Before the district court, CBD alleged BLM’s analysis of downstream greenhouse gas emissions violated NEPA. CBD does not advance that argument here.

surface resources within the NPR-A, consistent with BLM's statutory directives.

CBD Ex. 10 at 29-30, ECF 5-10. Plaintiffs-Appellants do not challenge this statement of purpose.

An agency need not consider alternatives that “extend beyond those reasonably related to the purposes of the project.” *League of Wilderness Defs.-Blue Mountains Biodiversity Project v. U.S. Forest Serv.*, 689 F.3d 1060, 1071 (9th Cir. 2012) (citation omitted); *Westlands Water Dist. v. U.S. Dep’t of the Interior*, 376 F.3d 853, 868 (9th Cir. 2004). Courts review an agency’s range of alternatives “under a ‘rule of reason’ standard that requires an agency to set forth only those alternatives necessary to permit a reasoned choice.” *Pac. Coast Fed’n of Fishermen’s Ass’ns v. Blank*, 693 F.3d 1084, 1099 (9th Cir. 2012) (citation omitted). An EIS “need not consider an infinite range of alternatives, only reasonable or feasible ones,” *Westlands Water*, 376 F.3d at 868 (citation omitted), and NEPA does not compel the agency to evaluate additional “mid-range” alternatives. *Mont. Wilderness Ass’n v. Connell*, 725 F.3d 988, 1004-05 (9th Cir. 2013). Finally, an EIS only needs to “briefly discuss” the reasons for eliminating an alternative not selected for detailed examination. *Protect Our Communities Found. v. Jewell*, 825 F.3d 571, 581 (9th Cir. 2016).

Contrary to Plaintiffs-Appellants’ assertions, following remand, BLM considered an extensive range of new potential alternative configurations, Fed. Defs.



Ex. at 1-GovEx-253, No. 23-35226, ECF 14-3, including expressly considering Plaintiffs-Appellants' identified alternative that would prohibit Willow infrastructure within the TLSA. *Id.* at 2-GovEx-297, No. 23-35226, ECF 14-4. BLM rejected this alternative because "it would not meet the Project's purpose and need and would strand an economically viable quantity of recoverable oil," explaining:

Approximately 67% CPAI's BTU leases by surface area are located in the TLSA. This concept would completely eliminate access to oil and gas resources in several BTU leases located in the TLSA, substantially reduce access to such resources in additional BTU leases located in the TLSA, and create significant overlap in drilling reach between drill sites BT1 and BT2, which would have the net effect of having all of the surface impacts of a road and two pads but with far less resource recovery.

*Id.*

Furthermore, BLM balanced its obligations to explore for oil and gas and mitigate impacts to surface resources. The FSEIS provides a detailed overview of the alternatives development process, Fed. Defs. Ex. at 1-GovEx-257-62, including BLM's consideration of special areas and protections for surface resources. *Id.* at 1-GovEx-279-81. Through this process, BLM identified a new alternative for detailed review that eliminated a proposed drill site in the TLSA, and identified and evaluated nine potential new locations for the other TLSA drill site to further minimize and mitigate potential impacts to surface resources. Ex. 2 at NSB\_19-21. This resulted in Alternative E, a mid-range alternative, reducing infrastructure in the TLSA by

40% relative to the other action alternatives, producing less oil overall, and lowering potential greenhouse gas emissions. *Id.* at NSB\_16-17. The ROD selected Alternative E, and disapproved a deferred fourth drill site, resulting in three drill sites, compared to the five originally proposed.<sup>4</sup>

Plaintiffs-Appellants’ attempt to buttress their deficient NEPA arguments by alleging violations of the NPRPA are equally unavailing. CBD Mot. at 9; SILA Mot. at 12. While Congress recognized that any exploration within designated special areas “shall be conducted in a manner which will assure the maximum protection of such surface values,” that “maximum protection” is only afforded “to the extent consistent with the requirements of this Act for the exploration of the reserve.” 42 U.S.C. § 6504(a). The NPRPA mandates that the “Secretary *shall conduct an expeditious program of competitive leasing of oil and gas* in the Reserve in accordance with this Act.” *Id.* § 6506a(a) (emphasis added). Plaintiffs-Appellants also ignore that NPRPA’s authorization to “include or provide for such conditions, restrictions, and prohibitions . . . to mitigate reasonably foreseeable and significantly adverse effects on the surface resources of the [NPR-A]” is explicitly reserved to the Secretary’s discretion depending on what she “deems necessary or appropriate.” *Id.* § 6506a(b) (emphasis added). While important, protection of designated special

---

<sup>4</sup> ConocoPhillips has since relinquished some of its leased lands within the NPR-A, including significant acreage within the TLSA.

areas does not supersede Congress's directive to expeditiously explore and develop oil and gas resources and is contingent on the Secretary's discretion. As the district court correctly recognized, "infrastructure is allowed, and indeed anticipated, within the TLSA." *SILA*, 555 F. Supp. 3d at 769.

Because the FSEIS includes a reasonable range of alternatives, complies with the district court's prior directive to reassess the alternatives analysis, and sufficiently explains why BLM eliminated certain alternatives from more detailed consideration, Plaintiffs-Appellants have failed to demonstrate likelihood of success on the merits of these claims.

## **2. BLM Met Its Obligations under ANILCA Section 810.**

Contrary to *SILA*'s assertions, *SILA* Mot. at 15-18, BLM properly: (i) evaluated alternatives (and adopted an alternative) that would reduce use of public lands for subsistence; (ii) determined that its selected alternative will involve the minimal amount of public lands necessary to accomplish the purposes of the use; and (iii) determined that reasonable steps will be taken to minimize adverse impacts on subsistence uses and resources, including various stipulations and other mitigation measures.

ANILCA section 810 requires that, in determining whether to permit the use of public lands, an agency must "evaluate the effect of such use, occupancy, or disposition on subsistence uses and needs, the availability of other lands for the

purposes sought to be achieved, and other alternatives which would reduce or eliminate the use, occupancy, or disposition of public lands needed for subsistence purposes.” 16 U.S.C. § 3120(a). In its “Tier-1” evaluation, the agency makes a threshold determination whether such action “would significantly restrict subsistence uses.” *Id.* Following a “positive” Tier-1 determination, the agency initiates the “Tier-2” process, which requires three specified determinations prior to effecting the permit. *Id.* § 3120(a)(3). ANILCA section 810 “does not prohibit all federal land use actions which would adversely affect subsistence resources, but sets forth a procedure through which such effects must be considered and provides that actions which would significantly restrict subsistence uses can only be undertaken if they are necessary and if the adverse effects are minimized.” *Amoco Prod. Co. v. Vill. of Gambell*, 480 U.S. 531, 544 (1987).

BLM met its Tier-1 obligations to evaluate “alternatives which would reduce or eliminate the use, occupancy, or disposition of public lands needed for subsistence purposes.” 16 U.S.C. § 3120(a). In preparing the FSEIS, BLM added Alternative E, “which reduces infrastructure within the TLSA relative to the previously analyzed action alternatives,” specifically in response to comments “that emphasized the importance of protecting caribou movement and migration and reducing the effects of industrial development on subsistence use and the traditional ways of life of the community of Nuiqsut” and “consistent with [the court’s] direction to consider

alternatives that provide ‘maximum protection’ for surface values in the [TLSA].” CBD Ex. 12 at 120, ECF 5-11; Fed. Defs. Ex. at 2-GovEx-316. Alternative E provided a smaller footprint, shorter gravel roads, 40% less infrastructure within the TLSA, and the relocation of certain infrastructure “farther from high-density calving areas and mosquito-relief habitat.” Fed. Defs. Ex. at 2-GovEx-349. While the section 810 analysis recognized Alternative E might not result in “a substantial reduction in direct impacts to Nuiqsut subsistence harvesters,” it found that reduction of infrastructure in the TLSA could reduce impacts on caribou habitat and help minimize the deflection of caribou away from Nuiqsut caribou hunting grounds. *Id.* at 2-GovEx-350.

BLM also met its Tier-2 obligations. BLM reasonably determined that “the proposed activity will involve the minimal amount of public lands necessary to accomplish the purposes of such use, occupancy, or other disposition.” 16 U.S.C. § 3120(a)(3); *see Hoonah Indian Ass’n v. Morrison*, 170 F.3d 1223, 1227 (9th Cir. 1999) (the “measure of what is ‘necessary’ and what must be ‘minimal’ in the statutory language is ‘the purposes of such . . . disposition,’ not minimization of impact on subsistence”). In *Hoonah*, the Court rejected the argument that section 810 requires an agency to “select the alternative which minimizes, not necessarily the total acres of public lands, but the amount of land needed for subsistence purposes,” and upheld the selection of an alternative that balanced “job and

economic opportunities, timber volume, and increased timber productivity with consideration for resource concerns.” 170 F.3d at 1229.

Here, the purpose of the disposition is to develop oil and gas resources from leases in the NPR-A Willow reservoir, consistent with applicable laws. Similar to *Hoonah*, BLM considered the wide-ranging effects of the development plan and made the necessary findings. BLM reduced the project footprint to approximately 499 acres (384 acres of gravel footprint and 115 acres of excavation), the least of any of the action alternatives. CBD Ex. 12 at 121. Furthermore, the ROD clearly explains that both BT4 and BT5 are disapproved, “significantly reduc[ing] the footprint of project infrastructure and the level of construction and operational activities, both within and outside of the sensitive TLSA, and thereby substantially reduc[ing] impacts to a broad range of surface resources,” including subsistence resources. *Id.* at 21. The FSEIS and ROD demonstrate BLM’s efforts to minimize impacts on subsistence in the context of the purposes of the disposition, meeting its legal obligations. *Kunaknana v. Clark*, 742 F.2d 1145, 1151-52 (9th Cir. 1984) (Section 810(a) “must be read in light of” the NPRPA provisions providing for “an expeditious program of competitive leasing of oil and gas in the [NPR-A]” in accordance with that Act).

BLM also correctly determined that “reasonable steps will be taken to minimize adverse impacts upon subsistence uses and resources resulting from such

actions.” 16 U.S.C. § 3120(a)(3). In addition to the reduction in lands and surface infrastructure, the ROD and FSEIS provide myriad other lease stipulations, CBD Ex. 10 at 35, required operating procedures, design features, and mitigation measures to protect subsistence uses and resources. CBD Ex. 12 at 47, 51-77, 120-22, 13, 22 (discussing “mitigation to help offset Project effects on the community of Nuiqsut”). Moreover, rejecting BT5 “reduces the overall period of construction activities, which tend to involve more intense impacts to subsistence activities and wildlife including caribou,” and “eliminates the most impactful scenario under Alternative E as analyzed in the [FSEIS] . . . .” *Id.* at 21. BLM clearly met its section 810 obligations.

## V. CONCLUSION

For the reasons above and in the district court’s denial of Plaintiffs-Appellants’ requests for preliminary injunction, this Court should deny Plaintiffs-Appellants’ requests for an injunction pending appeal. Because there is no likelihood of irreparable harm, the equities and public interest tip sharply against injunction, and Plaintiffs-Appellants have not demonstrated likelihood of success on the merits, they are not entitled to the relief they seek.

Respectfully submitted,

/s/ Tyson C. Kade

Tyson C. Kade

Jonathan D. Simon

Melinda L. Meade Meyers

VAN NESS FELDMAN, LLP

1050 Thomas Jefferson Street, NW

Washington, DC 20007

Phone: (202) 298-1800

Fax: (202) 338-2416

Email: tck@vnf.com

Charlene Koski

VAN NESS FELDMAN, LLP

1191 Second Avenue, Suite 1800

Seattle, WA 98101

Phone: (206) 623-9372

Email: cbk@vnf.com

*Counsel for North Slope Borough*

Dated: April 13, 2023



## **CERTIFICATE OF COMPLIANCE**

Pursuant to Federal Rules of Appellate Procedure 32(a) and 32(g), and Circuit Rule 32-1, I hereby certify that the foregoing Joint Brief of Respondent-Intervenors has been prepared in a proportionally spaced typeface (using Microsoft Word 365, in 14-point Times New Roman font), contains 5,199 words total, excluding items exempted by Federal Rule of Appellate Procedure 32(f).

Respectfully submitted,

/s/ Tyson C. Kade  
Tyson C. Kade

Dated: April 13, 2023

**TABLE OF EXHIBITS**

<b>Exhibit No.</b>	<b>Description</b>	<b>Page(s)</b>
1	Declaration of Harry K. Brower, Jr. (Mar. 17, 2023)	NSB_1 – NSB_14
2	BLM, Willow Master Development Plan, Final Supplemental Environmental Impact Statement (Jan. 2023) (excerpts)	NSB_15 – NSB_21

# EXHIBIT 1

Tyson C. Kade  
Jonathan D. Simon  
Melinda L. Meade Meyers  
VAN NESS FELDMAN, LLP  
1050 Thomas Jefferson Street, NW  
Washington, DC 20007  
Tel.: 202.298.1800  
Fax: 202.338.2416  
Email: tck@vnf.com  
jxs@vnf.com  
mmeademeyers@vnf.com

Charlene Koski  
VAN NESS FELDMAN, LLP  
1191 Second Avenue, Suite 1800  
Seattle, WA 98101  
Tel.: 206.623.9372  
Email: cbk@vnf.com

*Counsel for Movant Intervenor-Defendant  
North Slope Borough*

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ALASKA**

CENTER FOR BIOLOGICAL DIVERSITY, et al.,

Plaintiffs,

v.

BUREAU OF LAND MANAGEMENT, et al.,

Defendants.

Case No. 3:23-cv-00061-SLG

**DECLARATION OF HARRY K. BROWER, JR.  
IN SUPPORT OF INTERVENTION**

I, Harry K. Brower, Jr., hereby declare and affirm as follows:

1. I make this declaration in support of the North Slope Borough's ("Borough") motion to intervene in the above-captioned litigation. I have personal knowledge of the

DECL. OF HARRY K. BROWER, JR. IN SUPPORT OF INTERVENTION – 1

*Center for Biological Diversity, et al. v. Bureau of Land Mgmt., et al.*

Case No. 3:23-cv-00061-SLG

Case 3:23-cv-00061-SLG Document 25-1 Filed 03/17/23 Page 1 of 14

**NSB\_1**

matters addressed in this declaration, which I know to be true and accurate. I am competent and authorized to make this declaration.

2. I am the Mayor of the North Slope Borough. I was elected to this position in a special election in 2016, and reelected in 2017 and again in 2020. Prior to this position, I held the position of Deputy Director of the Borough's Department of Wildlife Management.

3. The Borough is the regional government for eight villages spread across northern Alaska. The Borough's jurisdiction stretches from the United States-Canada border across to the western border of Alaska, and its coastline extends across the Beaufort and Chukchi Seas. The Borough's jurisdiction includes the entire National Petroleum Reserve in Alaska ("NPR-A") and the villages within it—Nuiqsut, Atqasuk, Utqiagvik, and Wainwright. Included within the Borough's jurisdiction is ConocoPhillips Alaska, Inc.'s ("CPAI") planned Willow Project that was authorized, in part, by the Bureau of Land Management's ("BLM") 2023 Willow Master Development Plan ("Willow MDP") Record of Decision.

4. As a Home Rule Borough, the Borough's authority is analogous to, or greater than, that of county governments in other states. Pursuant to Alaska Statute § 29.04.010, Home Rule Boroughs are municipal corporations incorporated under the laws of the State of Alaska and political subdivisions with "all legislative powers not prohibited by law or charter." As such, the Borough has authority over the planning, platting, permitting, and

zoning of lands within its boundaries, and is responsible for or engaged in environmental protection and wildlife management.

5. Over 74% of Borough residents are Native Alaskan Iñupiat. The Iñupiat and other indigenous peoples of the region have depended on the subsistence resources of the North Slope of Alaska's lands and waters for their physical health, cultural well-being, and survival for thousands of years. Over 98% of Iñupiat households utilize subsistence foods, and the social fabric of our communities revolves around subsistence traditions.

6. As the Borough's Mayor, I am vested with executive and administrative responsibilities over the Borough. These responsibilities include supervising and executing enforcement of Borough laws and executing all other responsibilities or duties specified in the North Slope Borough Charter or lawfully prescribed by the Borough Assembly. In part, the Mayor's office is responsible for the management of all lands under the Borough's jurisdiction and for directing appropriate development in a manner that promotes the public health, safety, welfare, and economic stability of Borough residents and communities. This includes protecting access to subsistence resources, managing fish and wildlife species, and mitigating the impacts of development activity on wildlife and the natural environment. The Mayor's office also coordinates with local, state, and federal entities to inform their decision-making regarding activities that occur on and affect the North Slope and with the oil and gas industry to mitigate the impacts of resource development on the Borough's residents and resources and to identify ways development can enhance infrastructure and other benefits for our residents.

DECL. OF HARRY K. BROWER, JR. IN SUPPORT OF INTERVENTION – 3

*Center for Biological Diversity, et al. v. Bureau of Land Mgmt., et al.*

Case No. 3:23-cv-00061-SLG

Case 3:23-cv-00061-SLG Document 25-1 Filed 03/17/23 Page 3 of 14

**NSB\_3**

7. At the invitation of the BLM, the federal agency responsible for leasing portions of the NPR-A for oil and gas exploration and development, the Borough participated as a cooperating agency in the development of the Environmental Impact Statement (“EIS”) and Supplemental Environmental Impact Statement (“SEIS”) for the Willow MDP. Accordingly, the Borough participated in scoping and coordination meetings and submitted detailed written comments on the Draft Environmental Impact Statement (“DEIS”), on the Supplement to the DEIS, and on the 2022 Draft SEIS. The Borough’s participation was substantial and involved the dedicated efforts of various Borough departments and employees. During the development of these documents, the BLM conducted frequent outreach and numerous visits to our villages. Public scoping meetings for the preparation of the DEIS were held in four Borough communities—Anaktuvuk Pass, Atqasuk, Nuiqsut, and Utqiagvik—and, a community open house was held in Nuiqsut. Additional public meetings for the DEIS were also held in these communities. During preparation of the Draft SEIS, public meetings were held in Nuiqsut and Utqiagvik. The Borough, in collaboration with the Arctic Slope Regional Corporation and Iñupiat Community of the Arctic Slope, submitted a comment letter on August 29, 2022. In addition, on January 20, 2023, the Borough provided BLM with cooperating agency comments on the Preliminary Final SEIS.

8. In addition to our role as a cooperating agency, the Borough has an interest in the Willow MDP and this litigation because responsible oil and gas development is essential to the economic survival of the Borough and its residents. Resource development

is the primary economic generator for our region. The Borough has statutory authority to tax real or personal property within our jurisdiction, including infrastructure for oil and gas development. AS 43.56.010(b); AS 29.45.080(a); NSB Ordinance § 3.27.050(A). North Slope oil and gas development is by far the most significant source of funding for community services and infrastructure. The Borough's primary source of revenue is taxes levied on oil and gas infrastructure, such as processing equipment, pipelines, and other facilities. For example, in 2021, the Borough received approximately \$375.3 million in oil and gas property taxes, accounting for 95% of the total property taxes collected by the Borough that year. In 2022, the Borough received \$376.9 million in oil and gas property taxes, accounting for 95% of the Borough's total property tax receipts.

9. These tax revenues enable the Borough to invest in public infrastructure and utilities (including reliable sewer, water, and heat) and to provide essential services to our eight communities, including education, health (including clinics in each village, hospitals, and increased sanitation), wildlife management, and emergency services (including aircraft and crew that conduct regular medevac and search and rescue operations throughout the North Slope).

10. The Willow MDP would authorize the construction of new oil and gas infrastructure, which would support the continued generation of critical tax revenues for the Borough. The BLM estimates that, over the 30-year life of the development, the Willow MDP will provide \$1.25 billion in Borough property tax. Further, the Willow MDP should generate between \$2.27 and \$3.56 billion in royalty revenue sharing available



to fund the NPR-A Impact Grant Program, which administers grants from federal royalties, which are used to offset development impacts or improve communities impacted by development. Such grants are available to North Slope Borough municipalities, including both the Borough and incorporated cities. These grants are of significant benefit to the local communities. For example, since the program started, the Borough has received \$143 million in NPR-A Impact Grants, which it used for services including workforce development, comprehensive planning for communities, infrastructure and utilities, and land management and permitting. Nuiqsut has received nearly \$22 million in NPR-A Impact Grants since the inception of the program, which have been used to support general government operations, youth center operations and maintenance, a boat ramp, community center maintenance, a natural gas pipeline, building conversions, and the Colville River Access Road.

11. As existing oil and gas production declines in the legacy Prudhoe Bay fields, this new source of revenue generated by the Willow Project would allow the Borough to maintain essential municipal services, including health and educational services, for our residents and communities.

12. The Borough also has an interest in the Willow Project and this litigation as the affected local government with authority for regulating responsible development while ensuring the health and well-being of our citizens and our environment. The Borough's Department of Planning and Community Services ("Planning Department") is committed to fulfilling the Borough's function as the Home Rule Borough with statutory authority for

DECL. OF HARRY K. BROWER, JR. IN SUPPORT OF INTERVENTION – 6

*Center for Biological Diversity, et al. v. Bureau of Land Mgmt., et al.*

Case No. 3:23-cv-00061-SLG

Case 3:23-cv-00061-SLG Document 25-1 Filed 03/17/23 Page 6 of 14

**NSB\_6**

planning, zoning, and permitting on lands within its jurisdiction. The Planning Department has roughly 40 employees and has conducted permitting for oil and gas exploration, development, and production, among other activities, on the North Slope for over 40 years. Through these activities, the Planning Department has developed significant mitigation measures to protect the North Slope's residents and environment while facilitating, when appropriate, responsible oil and gas development.

13. As with all oil and gas projects on the North Slope, certain activities undertaken pursuant to the Willow Project will require the acquisition of a Borough permit and/or other Borough authorizations. Through its regulatory authority, the Borough will ensure that the benefits of development of oil and gas resources related to the Willow Project are realized in accordance with appropriate mitigation measures, zoning requirements, and stipulations included in Borough-issued permits that are protective of the environment, wildlife, human health, and our residents' cultural well-being.

14. In addition, the Borough has an interest in the Willow Project and this litigation due to our wildlife management role and our responsibility to promote responsible resource development in a manner that protects our residents' subsistence rights and resources. The Native Alaskan Iñupiat and other indigenous peoples of the region have depended on the North Slope's subsistence resources for their physical health, cultural well-being, and survival for thousands of years. The social fabric of our communities revolves around subsistence traditions. Any threat to subsistence resources

is a threat to the continued vitality of Borough communities and viability of the Iñupiat culture.

15. The Borough's Department of Wildlife Management ("Wildlife Department") promotes sustainable subsistence harvests and monitors the population and health of fish and wildlife species through research, cooperation, and collaboration with Alaska Native subsistence hunters, federal and state agencies, researchers, industry partners, consultants, and nonprofit organizations. The Wildlife Department is actively engaged in research and management efforts related to bowhead whales, polar bears, brown bears, caribou, muskoxen, Steller's and spectacled eiders, and other species, including migratory birds. The Wildlife Department has considerable expertise—with personnel including seven PhD-level wildlife biologists who specialize in arctic wildlife species and the arctic environment and Alaska Native subsistence resource specialists who have traditional ecological knowledge and perspectives that inform wildlife management matters. The Wildlife Department conducts scientific research, contributes to the body of knowledge regarding the status of various North Slope species and potential threats to their habitat, and participates in species conservation efforts throughout the region.

16. The Willow Project implicates the Borough's vested interest in mitigating the impacts of development activity on, and maintaining appropriate protections for, local wildlife for the benefit of our residents, and in particular, protecting the subsistence resources on which our Native Alaskan Iñupiat residents depend. Pursuant to the Willow MDP, the Borough has a significant role in exercising our management and regulatory

DECL. OF HARRY K. BROWER, JR. IN SUPPORT OF INTERVENTION – 8

*Center for Biological Diversity, et al. v. Bureau of Land Mgmt., et al.*

Case No. 3:23-cv-00061-SLG

Case 3:23-cv-00061-SLG Document 25-1 Filed 03/17/23 Page 8 of 14

**NSB\_8**

authority and substantive biological and traditional expertise in a manner that protects our residents' cultural and subsistence resources while promoting and ensuring responsible resource and economic development.

17. The development authorized under the Willow MDP will involve new roads and local infrastructure. On the North Slope, the additional access to subsistence areas and connectivity provided by roads is viewed by many residents as a significant benefit. For example, roads associated with existing industrial development near the Borough villages of Utqiagvik and Nuiqsut are used to expand access to otherwise low-use areas and improve the ability of our residents to pursue subsistence opportunities. Road connectivity associated with the Willow MDP would benefit Borough residents by reducing air traffic and increasing subsistence and recreational access. Project support facilities under the Willow MDP would include seven road turnouts with subsistence access ramps and three boat ramps for subsistence use. These new roads would assist in the annual construction of the Community Winter Access Trail (constructed using packed snow) between Nuiqsut and Utqiagvik and may reduce costs associated with that work.

18. In addition, exploration and development activities related to the Willow Project will increase employment opportunities for the residents of Nuiqsut and other Borough villages, as such development activities have done in other Native communities on the North Slope. Currently, economic opportunities in our communities are limited due to their isolated locations. Development on the North Slope brings jobs to the Borough's communities, including for Borough residents. More than one-third of jobs held by

Borough residents are directly or indirectly supported by the oil and gas industry. Construction of the Willow Project facilities is projected to employ up to 1,650 workers at the peak of construction and an average of 373 annual workers. Once the project is operational, CPAI estimates that the Project will directly employ approximately 406 full-time, North Slope-based employees. Even a small number of these jobs going to locals would positively impact Nuiqsut's labor force.

19. Not only would project construction increase household income for Nuiqsut and Utqiagvik residents employed by the Willow Project, but if the Willow Project utilizes subsidiaries of local Alaska Native corporations, local shareholders of these Native corporations will benefit from dividend income.

20. The North Slope Borough Assembly supports the Willow Project as a project that serves the public interest. Previously, on January 15, 2021, the North Slope Borough Assembly voted 9 to 0, with one abstention, to adopt ordinance 76-06-75, which approved the rezoning of lands from the Conservation District to the Resource Development District to allow the Willow Project to begin construction. Notably, in addition to the BLM's prior analyses, the Borough also evaluated potential impacts to subsistence as part of its approval process for the administrative authorizations necessary for CPAI to proceed with activities for the Willow MDP.

21. A potential judgment granting the Plaintiffs' requested relief would significantly injure the Borough's interests. To the extent the Plaintiffs' requested relief enjoins, delays, or otherwise impacts oil and gas leasing activities within the Borough's

jurisdiction, such relief would have a significant negative impact on the Borough's economy and the ability to generate tax revenue to provide critical services, including health and educational services, to our residents. In this case, the Borough stands to lose hundreds of millions of dollars in lost tax revenue and in NPR-A Impact Grants over the life of the Willow Project. The loss of this revenue would directly and significantly impair the Borough's ability to provide essential government functions, support our economy, and provide for the health and well-being of our residents.

22. A potential judgment in the Plaintiffs' favor would correspondingly impact the Borough's interest in planning, zoning, and permitting activities and managing wildlife on lands within our jurisdiction in a manner that is protective of the environment, natural resources, our citizens, and wildlife. As a Home Rule Borough, planning, zoning, and permitting are essential aspects of our ability to grow our economy and provide increased opportunities for our citizens, allowing the Borough to impose requirements through the planning process and permitting requirements to meet our economic, environmental, wildlife management, and social and cultural objectives. Plaintiffs' requested relief undercuts the Borough's regulatory authority to work with other government partners to establish appropriate mitigation measures, zoning requirements, and stipulations within any Borough-issued permits to ensure that the economic and social benefits of oil and gas development are achieved in an environmentally responsible manner.

23. A potential judgment in the Plaintiffs' favor will also negatively impact the ability of Borough residents to obtain employment related to the Willow Project in a geographic area that struggles with employment due to its remote nature.

24. Finally, the Borough expended considerable time and resources cooperating with the BLM in the preparation of the EIS and SEIS for the Willow MDP. The Borough's interest in preserving the results of that cooperative process would be impaired if the BLM is required to reevaluate the Willow MDP. The Borough would be forced to incur additional costs and expend additional resources to once again participate in any further EIS preparation.

25. The Defendants in this litigation do not adequately represent the Borough's interests. As the affected local government, the Borough is uniquely responsible for protecting and promoting appropriate economic development in our region and for regulating lands and wildlife within our jurisdiction through planning, zoning, and permitting in a manner that promotes the public health, safety, welfare, and economic stability of our residents and communities. Further, unlike the Defendants, the Borough stands to lose hundreds of millions of dollars in municipal tax revenue and NPR-A Impact Grants if the Willow Project does not proceed, which would compromise our ability to provide critical services to and employment opportunities for our communities' residents. The Defendants do not share this obligation to provide direct services, including health and educational services, to our communities, nor do they share our direct interest in increasing subsistence access and access to services for our residents. Because the Defendants do not

share these interests, particularly those regarding the economic and social health of the Borough's residents, the Defendants cannot adequately represent the Borough in this litigation.

26. The Borough and our residents offer a unique perspective on the NPR-A and its resources. Nearly three-quarters of Borough residents are Native Alaskan Iñupiat. The Iñupiat have strong cultural and subsistence ties to the NPR-A area, as they have occupied these lands and have depended on the subsistence resources of the NPR-A's lands and waters for their physical health, cultural well-being, and survival for thousands of years. These interests are not represented by the existing parties to this litigation.

27. The injuries to the Borough's interests discussed above are redressable by this Court. A judgment in favor of the Defendants, and against the Plaintiffs, would protect the Borough's interests, including the Borough's interests in tax revenues, economic and infrastructure development opportunities, and access to services and the provision of employment and subsistence benefits for our residents.



I declare under the penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief.

Executed on March 12, 2023, at Barrow, Alaska.

  
Harry K. Brower, Jr.

# EXHIBIT 2

# **Willow Master Development Plan**

## **Appendix B.5**

### **Draft Supplemental EIS Comments and BLM Responses**

**January 2023**

No.	Comment	Comment Response	Commenter
6501-240	<p>ConocoPhillips’ proposal would result in significant industrial activity within and adjacent to the Teshekpuk Lake and Colville River Special Areas. The DSEIS purports to include a new alternative to lessen the impacts to the Special Areas, but the design and analysis fall short of what is required by the NPRPA to protect them and by NEPA to analyze the impacts of the Willow Project on the Special Areas resources, values, and purposes.<sup>437</sup></p> <p>As EPA highlighted in their scoping comments on the DSEIS, BLM should have evaluated alternatives precluding any drill sites within the Teshekpuk Lake Special Area given current extended reach drilling technology.<sup>438</sup></p> <p>Instead, all project alternatives involve the placement of infrastructure (temporary and permanent) in the Special Areas.</p>	<p>BLM considered an alternative concept that eliminated all infrastructure within the Teshekpuk Lake Special Area and Colville River Special Area (see Appendix D.1, <i>Alternatives Development</i>, Section 3.5). Designation as a special area does not preclude development within that special area.</p> <p>The Willow Project would employ extended reach drilling.</p>	Trustees for Alaska
6501-243	<p>BLM did not consider any potential alternative sites for gravel mines for this project, nor did BLM consider an alternative which would reduce the gravel footprint for the Willow project. BLM did not even consider an option where the gravel mine would be outside of the Ublutuooh (Tig̃m̃iaq̃siug̃vik) River 0.5-mile setback.<sup>449</sup></p> <p>The DSEIS simply states that mine development is “allowed in the setback area” but the cited lease stipulation states that such development may be “authorized on a case-by-case basis.”<sup>450</sup> Yet, BLM does not articulate why these particular gravel mines should be authorized on a case-by-case basis. BLM also failed to explain how these particular mines would be consistent with its objectives for protecting this waterway under Lease Stipulation/Best Management Practice K-1. In other words, while BLM’s K-1 stipulation does not prohibit authorization of these mines, it does not follow that BLM should simply approve them without further analysis or consideration. Instead, BLM has to base its waiver of the stipulation on some justification. That explanation is wholly absent in the draft SEIS.</p> <p>It is also troubling that BLM did not consider alternatives that would reduce the size of, or relocate, the proposed gravel mines. The potentially significant impact to water quality, wildlife habitat, and subsistence users within the setback area is essential to BLM’s alternatives review, as impacting water quality in a high-use subsistence area is a highly relevant factor BLM must consider in exercising its discretion to choose the no-action alternative in order to meet the FLPMA and Part 3600 public interest mandates. As described in more detail below, these gravel mines are detrimental to the public interest due to their short- and long-term damage to the environment.<sup>451</sup> As noted herein, BLM must undertake a full review of the impacts from these mines under FLPMA and NEPA, and include such an analysis in a revised or supplemental EIS.</p>	<p>BLM did consider potential alternative mine sites (see Appendix D.1, <i>Alternatives Development</i>, Sections 3.2.5, 3.2.10.1, and 3.3) and alternative concepts that might reduce the overall gravel footprint. Known gravel resources on the Arctic Coastal Plain are extremely limited and all three known gravel deposits were evaluated for use in the Willow Project. The proposed gravel mine site is included in the resource analyses found throughout Chapter 3 of the Supplemental EIS.</p>	Trustees for Alaska
6501-275	<p>The draft SEIS fails to adequately analyze and impose mitigation of Willow’s GHG emissions and resulting climate impacts consistent with NEPA and BLM’s current mitigation policy. Proper analysis and imposition of mitigation will show that BLM must consider an emissions reduction alternative and that it can and must choose the no-action alternative.</p>	<p>The Supplemental EIS includes evaluation of the No Action Alternative which would preclude oil production from the Willow development, and each action alternative includes a range of avoidance and minimization measures to reduce impacts of the development, including limiting the period of operations of the Project.</p> <p>BLM developed Alternative E (Three-Pad Alternative [Fourth Pad Deferred]) to reduce impacts in the Teshekpuk Lake Special Area and this alternative would produce less oil overall and reduce the Project’s gross greenhouse gas emissions.</p>	Trustees for Alaska

Willow Master Development Plan		Final Supplemental Environmental Impact Statement	
No.	Comment	Comment Response	Commenter
30956-6	BLM’s analysis must be revised to include viable alternatives that could reduce these significant impacts to subsistence and sociocultural systems and public health. Less disruptive alternatives that have not yet been considered include avoiding Special Areas entirely and leaving these areas in a more natural state for subsistence use. Further, eliminating the use of modules for transporting project infrastructure should be evaluated as a way to reduce impacts of barging on whaling crews. BLM should also consider requiring roadless seasonal drilling to reduce the risks of blowouts and eliminate the impacts barging on whaling crews. BLM should also consider requiring roadless seasonal drilling to reduce the risks of blowouts and eliminate the impacts from extensive year-round vehicle traffic.	BLM evaluated all of these alternative concepts for the Draft Supplemental EIS; the Final Supplemental EIS has been revised to include additional details on alternative concepts considered for the Willow Project. Please see Appendix D.1, <i>Alternatives Development</i> , for a description of why these concepts were not carried forward for full analysis.	Sovereign Iñupiat for a Living Arctic
30958-2	Crossing Alternatives: Several crossing locations for the Colville River for Module Delivery Options were dismissed from consideration due to lack of data regarding stability and grounding of the proposed ice bridge. However, additional information regarding ice bridge loads indicates possible construction and stability if most of the ice bridge is grounded, with allowance of marginal flow through slots or culverts. The crossing at Ocean Point therefore is a plausible alternative. Additionally, with this new information, it may be possible to reconsider some of the previous crossing alternatives/locations north of Ocean Point, thereby minimizing ice road construction and haul distances.	Other crossing locations for an ice bridge over the Colville were eliminated due to the topography of the river bluffs and known year-round water flow north of Ocean Point. See Appendix D.1, <i>Alternatives Development</i> , for a description of why these alternative concepts were eliminated.	U.S. Fish and Wildlife Service
30960-14	The BLM should have considered an alternative that protects migratory bird species, developed in close coordination with regional, state, and federal wildlife agencies. No such alternative is evaluated in the SEIS. It is standard practice for BLM to evaluate the impacts of oil and gas projects on migratory birds and to propose mitigation measures such as changing the timing of drilling and operations to minimize impacts on migratory birds.	All action alternatives were developed with input from regional, state, and federal wildlife agencies. Impacts to migratory birds from the Project were evaluated in Section 3.11, <i>Birds</i> .  The Willow Supplemental EIS was developed in accordance with the requirements of the Migratory Bird Treaty Act (MBTA) and the MBTA Memorandum of Understanding put in place by EO 13186. BLM coordinated closely with eight cooperating agencies, including the U.S. Fish and Wildlife Service, State of Alaska Department of Fish and Game, and North Slope Borough Wildlife Department to develop and evaluate over 50 alternative concepts for consideration in the Supplemental EIS. BLM evaluates several mitigation measures that are designed to protect migratory birds, including measures that limit when construction can occur. See Section 3.11.2.1, <i>Avoidance, Minimization, and Mitigation</i> (Birds), and Appendix I.1 for descriptions of measures to reduce the impacts from the action alternatives to migratory birds.	Audubon Society
30960-15	Here, BLM did not consider a reasonable range of alternatives because the agency did not evaluate an option including protections for migratory birds and a Migratory Bird Conservation Plan (MBCP) and did not "rigorously explore and objectively evaluate"25 the MBCP option in its SEIS in order to make an informed decision and facilitate public understanding. The BLM must evaluate an alternative that rigorously explores and evaluates the MBCP option (and actually reviews a draft of the MBCP and its potential impacts), provides for robust and ongoing consultation with state and federal wildlife agencies, and establishes a decision-making framework for migratory birds. Until the BLM has done so, it has not analyzed a reasonable range of alternatives and is in violation of NEPA.	A migratory bird conservation plan is not required for the Willow Supplemental EIS. Each of the action alternatives include required operating procedures that will protect migratory birds (see Section 3.11, Table 3.11.1).	Audubon Society
30962-19	EPA is concerned that BLM has eliminated potential alternatives for analysis that include reducing the number and/or size of drill pads within the Teshekpuk Lake Special Area (TSLA) due to the significant restriction of Nuiqsut subsistence uses (according to the Section 810 analysis) and strongly recommends that the FSEIS include an alternative or mitigation measure that does so.	Alternative E would reduce infrastructure in the Teshekpuk Lake Special Area (TSLA) by eliminating drill site BT4 and its corresponding access road and pipelines, which reduces infrastructure in the TSLA by more than 40% relative to other action alternatives. BLM also evaluated an alternative concept that would eliminate all infrastructure in the TSLA. See Appendix D.1, <i>Alternatives Development</i> , for a detailed analysis of alternative concepts considered but eliminated.	U.S. Environmental Protection Agency
30962-20	Given the data available now in the DSEIS and the high potential of technological advancements over the project life, EPA recommends that FSEIS consider deferring pad development in the TSLA. This deferral could allow the project proponent to undertake additional consultation with stakeholders in the community of Nuiqsut to further address concerns some stakeholders have raised regarding potential impacts to caribou migration and subsistence hunting, while also addressing recent litigation regarding development in the TSLA.	BLM has considered multiple alternative concepts to reduce impacts in the Teshekpuk Lake Special Area (TSLA) (see Appendix D.1, <i>Alternatives Development</i> ). Alternative E would significantly reduce infrastructure in the TSLA by only allowing one drill site in the TSLA. Deferring construction and operation of drill sites in the TSLA would not eliminate or reduce impacts in the special area. It is speculative to assume that additional consultation or technological advances would significantly reduce the impacts of these drill sites.	U.S. Environmental Protection Agency
4973-4	It continues to fail to evaluate a meaningful range of alternatives to the project. For example, all the action alternatives would result in roughly the same amount of oil production and therefore nearly identical climate impacts. The BLM failed to examine an alternative that would defer development of the project until there’s a plan to limit warming to 1.5 degrees Celsius.	The Supplemental EIS includes evaluation of the No Action Alternative (Alternative A) which would preclude oil production from the Willow Project, and each action alternative includes a range of avoidance and minimization measures to reduce impacts from the development, including impacts related to climate change.	Christopher Lish

# **Willow Master Development Plan**

## **Appendix D.1**

### **Alternatives Development**

**January 2023**

### 3.5.6 Alternative Components Carried Forward\*

In developing the new alternative(s) to be considered in this Supplemental EIS, additional alternative concepts were incorporated into the new action alternative. Table D.3.9 summarizes those alternative components carried forward as either alternatives or alternative components for analysis in this Supplemental EIS. Sections 3.5.4.1 through 3.5.4.3 provide additional detail on the alternative concepts and how they were incorporated into this Supplemental EIS for further analysis.

**Table D.3.9. Alternative Components Considered and How They Are Carried Forward in the Supplemental Environmental Impact Statement\***

Component Number	Alternative Component Considered	Description of How an Alternative Component is Carried Forward in the Environmental Impact Statement
45	BT2 north of Fish Creek (four-pad alternative)	Carried forward in this Supplemental EIS (Site V0) as Alternative E: Three-Pad Alternative (Fourth Pad Deferred).
48	Relocate drill site BT5 out of the yellow-billed loon setback buffer	Incorporated into this Supplemental EIS (Site V1) as part of Alternative E: Three-Pad Alternative (Fourth Pad Deferred).
51	Locate the Project mud plant at the Willow Operations Center instead of on K-Pad	Carried forward in this Supplemental EIS. Alternative B evaluates the mud plant located at the Willow Operations Center and Alternative E evaluates the mud plant at K-Pad. Either location may be selected in the Project's Record of Decision.
52	Construct the Project in two phases with a pause between developments	Incorporated into this Supplemental EIS as part of Alternative E: Three-Pad Alternative (Fourth Pad Deferred). Only three drill site pads would be authorized for construction should Alternative E be selected in BLM's Record of Decision; a fourth pad would not be authorized for construction prior to Project Year 7. BLM may also consider additional deferrals under this Alternative. Under Alternatives B, C, and D, BLM's Record of Decision could authorize only three drill site pads in Phase 1 and two additional drill site pads in Phase 2.

Note: BLM (Bureau of Land Management); BT2 (drill site BT2); BT5 (drill site BT5); EIS (Environmental Impact Statement).

#### 3.5.6.1 Pad Concept – BT2 North of Fish Creek\*

Under this alternative concept, the project would eliminate one drill site (BT4) and construct four drill sites (Figure D.3.12), with one drill site (BT2) remaining in the TLSA, north of Fish Creek. BLM requested CPAI identify possible siting locations for drill site BT2 and CPAI identified 9 total potential locations (V0 through V8) for preliminary analysis (Figure D.3.13).

Site V0 was the location initially proposed by CPAI to maximize reservoir access, consistent with other engineering and environmental constraints. This location would avoid steep terrain and high-valued wetlands such as flooded tundra. This site would overlap yellow-billed loon nest setback buffers as defined in ROP E-11 (BLM 2022).

Site V1 would be approximately 0.4 mile south of the V0 location. The V1 location would intersect yellow-billed loon nest setback buffer ROP E-11 and ROP E-2 fish-bearing waterbody setback (BLM 2022) around an unnamed lake. The V1 location would place gravel fill in an area with high-value flooded tundra wetlands. Gravel pad construction in very wet or flooded tundra presents additional engineering and long-term operational and maintenance challenges, and often requires a greater gravel volume to construct. Saturated or flooded areas can cause additional challenges for summer activities by increasing the potential for subsidence, erosion, and settling, likely requiring a large portion of the pad to be covered in rig mats during the drilling phase. This would increase overall pad traffic, activity, and noise. The V1 site is also located in an area with steep topography and near an unnamed lake. Compared to the V0 location, the V1 site would have increased engineering and operations and maintenance challenges, while reducing reservoir access. The V1 location would likely result in greater environmental impacts.

The V2 location would be approximately 0.5 mile south of the V0 location. The V2 location would intersect a ROP E-2 fish-bearing waterbody setback buffer associated with an unnamed lake and ROP E-2 fish-bearing waterbody setback buffer from Willow Creek 8. The V2 location would also occupy steep topography which would require an increased gravel volume for fill in wetlands near an unnamed lake and Willow Creek 8. Compared to the V0 location, the V2 location would have increased engineering challenges and reduced reservoir access. The V2 location would likely result in greater environmental impacts.



The V3 location would be approximately 0.3 mile south of the V0 location. The V3 location would intersect yellow-billed loon nest setback buffer ROP E-11 and an ROP E-2 fish-bearing waterbody setback around an unnamed lake. The V3 location would place gravel fill in an area of high-value flooded tundra wetlands. Compared to the V0 location, the V3 site would have increased engineering and operations and maintenance challenges, while reducing reservoir access. The V3 location would likely result in greater environmental impacts.

The V4 location would be approximately 0.2 mile south of the V0 location. The V4 location would intersect yellow-billed loon nest setback buffer ROP E-11 and an ROP E-2 fish-bearing waterbody setback around an unnamed lake. Compared to the V0 location, the V4 location would likely result in greater environmental impacts and slightly reduced reservoir access.

The V5 location would be approximately 0.5 mile south of the V0 location. The V5 location would cross steep terrain at its southwest corner and would intersect high-value flooded tundra wetlands at its northwest corner. The northeast corner of the drill site pad would intersect the LS K-1 setback buffer for Fish Creek, which is a high-priority subsistence use area. The V5 location would also place the gravel pad in closer proximity to an area of active natural erosional subsidence connected to Fish Creek. Placement of the gravel pad near the flooded and eroded area could exacerbate the natural environmental changes already occurring at this location. Compared to the V0 location, the V5 location would result in increased engineering and operational and maintenance challenges, reduce reservoir access, and likely have greater environmental impacts.

The V6 location would be approximately 0.4 mile southwest of the V0 location. This location was proposed by the U.S. Fish and Wildlife Service for feasibility analysis. The V6 pad location would intersect yellow-billed loon nest setback buffer ROP E-11. However, the V6 location is located on sloping terrain and would require approximately 20% more gravel fill than the V0 location (as well as the associated gravel-hauling traffic). The V6 location would also result in a large reduction to the reservoir access compared to the V0 location. Compared to the V0 location, the V6 location would result in increased engineering and operational and maintenance challenges and would likely have greater environmental impacts.

The V7 location would be approximately 2.3 miles northwest of the V0 location. The V7 pad location would not intersect with any setback buffers. However, the V7 pad location would require more than a mile of additional gravel road and pipeline rack through two ROP E-11 yellow-billed loon nest setback buffers and at least two LS E-2 fish-bearing water waterbody setback buffers. This location would require more than 60,000 cubic yards of gravel to fill a minimum of 7 additional acres of wetlands compared to the V0 location. Due to the topography of the surrounding area, the access road and gravel pad constructed at the V7 location would be significantly thicker than the V0 location, further increasing the footprint and gravel fill requirements. An access road to the V7 pad location would also intersect two yellow-billed loon setback buffers (ROP E-11). Additionally, compared to the V0 location, the V7 location would reduce the reservoir access and have greater environmental impacts, including miles of gravel road within the TLSA.

The V8 location would be approximately 2.2 miles northwest of the V0 location. Like the V7 location, the V8 location would require more than a mile of additional gravel road and pipeline rack through two ROP E-11 yellow-billed loon setback buffers and at least two LS E-2 fish-bearing water waterbody setback buffers. The V8 location would also result in a larger footprint within the TLSA and occupy an area of wetter tundra where ponding and thermokarsting currently exist. The access road to the V8 gravel pad location would have to ascend a steep hill directly southeast of the pad, which would require an extensive amount of gravel fill to provide a road grade that would accommodate drill rig movements, increasing the V8 location's footprint. Compared to the V0 location, the V8 location would result in increased engineering and operations and maintenance challenges, reduce reservoir access, and have greater environmental impacts.

Figure D.3.13 shows the alternative pad siting locations and Table D.3.10 provides a summary comparison of the 9 siting location options considered for the drill site BT2 relocation.



**Table D.3.10. Summary of Relative Impacts for Different Drill Site BT2 North Siting Options\***

ID	Reservoir Access <sup>a</sup>	Road Length <sup>a</sup>	Pad Gravel Volume <sup>a</sup>	Loon Nest (ROP E-11)	Willow 8 Fish Bearing Waters (LS E-2)	Other Fish Bearing Waters (LS E-2)	Fish Creek (LS K-1)
V0	NA	NA	NA	Yes/No	No	No	No
V1	Less	Longer	More	Yes/No	No	Yes	No
V2	Less	Longer	Much more	No	Yes	Yes	No
V3	Less	Longer	More	Yes/No	No	Yes	No
V4	Less	Shorter	More	Yes/No	No	Yes	No
V5	Less	Longer	More	No	No	No	Yes
V6	Less	Shorter	More	Yes/No	No	No	No
V7	Much less	Much longer	Much more	No	No	No	No
V8	Much less	Much longer	Much more	No	No	No	No

Note: LS (lease stipulation); NA (not applicable); ROP (required operating procedure).

<sup>a</sup> Effects are relative to the proposed BT2 North drill site location V0.

This alternative concept best addresses the District Court's decision while being consistent with CPAI's lease development plans. This alternative concept would have the least amount of infrastructure within the TLSA relative to other four-pad alternative concepts and it would have less vehicle traffic and aircraft relative to the Disconnected BT2 alternative concept.

BLM has identified site V0 as the preferred location for drill site BT2 North and this location has been incorporated into Alternative E. The V0 pad location minimizes the gravel road length and overall gravel fill requirements, provides the best reservoir access, and would be the most compliant with ROPs outlined in the NPR-A IAP. Where an exception would be required, it would be required for the least important setback (i.e., a yellow-billed loon buffer under ROP E-11) (BLM 2021b). This location for BT2 North was also applied to the Disconnected BT2 alternative concept (Section 3.5.3.3, *Access Concept – Disconnected BT2*).

Preliminary impacts for BT2 North (site V0), are summarized in Table D.3.11.

**Table D.3.11. Summary of Preliminary Impacts for Alternative Concept BT2 North (Site V0)\***

Metric	Alternative B (Proponent's Project)	Alternative E (BT2 North)
TLSA gravel footprint (acres)	106.3	61.2
Total gravel footprint (acres)	484.0	428.4
Total gravel volume (million cubic yards)	4.9	4.5
Total ground traffic (number of trips)	3,188,910	3,145,870
Total fixed-wing traffic (number of trips)	12,101	11,983
Total helicopter traffic (number of trips)	2,421	2,421
Ice road (total miles)	495.2	431.2
Total freshwater use (million gallons)	1,662.4	1,478.7

Note: BT2 North (drill site BT2 North); TLSA (Teshekpuk Lake Special Area).

### 3.5.6.2 Pad Concept – Relocate BT5\*

Since the Project was initially proposed by CPAI and evaluated in BLM's Willow MDP Final EIS, two new yellow-billed loon nests have been observed at lakes adjacent to the proposed drill site BT5 pad location (CPAI 2021a). Based on this new data, BLM requested CPAI identify two new potential locations for drill site BT5 and its access road that would not encroach on yellow-billed loon nest setback buffers (ROP E-11).

This alternative concept would relocate drill site BT5 outside of yellow-billed loon setback buffers to the proposed Site V1 or site V2 locations (Figure D.3.14). In addition to the two proposed drill site locations, site V2 includes two options for the drill site access road: BT5 V2 Route A and BT5 V2 Route B. V2 Route A would cross the yellow-billed loon setback buffers along an alignment similar to what was previously proposed, and V2 Route B would travel to the north around the setback buffers, cross just into the TLSA and head south to drill site location BT5 V2.

The V1 Site location would be approximately 1.8 miles northeast of the previously proposed BT5 drill site location. The V1 Site would avoid overlapping two ROP E-11 yellow-billed loon nest setback buffers around two unnamed lakes. This location would also avoid a road crossing of those same nest buffers and lake shoreline

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

**Form 15. Certificate of Service for Electronic Filing**

**9th Cir. Case Number(s)** 23-35226 and 23-35227

I hereby certify that I electronically filed the foregoing/attached document(s) on this date with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit using the Appellate Electronic Filing system.

**Service on Case Participants Who Are Registered for Electronic Filing:**

☐ I certify that I served the foregoing/attached document(s) via email to all registered case participants on this date because it is a sealed filing or is submitted as an original petition or other original proceeding and therefore cannot be served via the Appellate Electronic Filing system.

**Service on Case Participants Who Are NOT Registered for Electronic Filing:**

☐ I certify that I served the foregoing/attached document(s) on this date by hand delivery, mail, third party commercial carrier for delivery within 3 calendar days, or, having obtained prior consent, by email to the following unregistered case participants *(list each name and mailing/email address)*:

--

**Description of Document(s)** *(required for all documents)*:

NORTH SLOPE BOROUGH'S RESPONSE IN OPPOSITION TO MOTIONS FOR INJUNCTION PENDING APPEAL
--

**Signature** s/ Tyson C. Kade

**Date** April 13, 2023

*(use "s/[typed name]" to sign electronically-filed documents)*