

NOS. 23-35226 & 23-35227 _____

**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.,

Defendant Appellees,

and

CENTER FOR BIOLOGICAL DIVERSITY, et al.,

Plaintiffs-Appellants,

v.

BUREAU OF LAND MANAGEMENT, et, al.,

Defendant Appellees

Appeals from the United States District Court for the District of
Alaska

Case Nos. 3:23-cv-58 & 3:23-cv-61 (Hon. Sharon L. Gleason)

**STATE OF ALASKA’S OPPOSITION TO PLAINTIFFS’
MOTIONS FOR INJUNCTION PENDING APPEAL**

STATE OF ALASKA

TREG TAYLOR

ATTORNEY GENERAL

Mary Hunter Gramling

Chief Assistant Attorney General

Alaska Bar No. 1011078

P.O. Box 110300

Juneau, AK 99811-0300

Telephone: (907) 465-3600

Email: mary.gramling@alaska.gov

Attorney for State of Alaska

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INTRODUCTION

The State of Alaska (“State”) opposes the Plaintiffs’ Motions for emergency injunction pending appeal¹ because the requested injunctions are without merit and contrary to the public interest. Following a lengthy, robust review with consideration of extensive public comments, the Bureau of Land Management (“BLM”) approved the record of decision (“ROD”) on the Willow Master Development Plan (“MDP”) and related federal agency actions to allow ConocoPhillips Alaska, Inc. (“ConocoPhillips”) to begin construction on the Willow Project in the National Petroleum Reserve in Alaska (“NPR-A”). The Plaintiffs, Sovereign Iñupiat for a Living Arctic, *et al.*, (“SILA”) and the Plaintiffs, Center for Biological Diversity, *et al.*, (“CBD”) (collectively “Plaintiffs”) were denied preliminary injunctions before the district court and now seek that same extraordinary relief before this Court.

The district court correctly ruled that (1) the Plaintiffs’ failed to meet their burdens to show that irreparable harm to their members would result from ConocoPhillips’ limited winter construction activities and (2) the balance of

¹ *Sovereign Iñupiat for a Living Arctic, et al. v. BLM*, ECF No. 5 (No 23-35226) (“SILA Motion”); *Center for Biological Diversity, et al. v. BLM*, ECF No. 5 (No. 23-35227) (“CBD Motion”)(collectively “Plaintiffs’ Motions”).

equities and public interest did not support the Plaintiffs' requests for preliminary injunctions.²

As it did in the district court, the State submits the 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 Department of Natural Resources, and the State Pipeline Coordinator within the Division of Oil and Gas explaining why an injunction now and delay of the Willow Project is against the public interest.³ The State as a sovereign state, a state with recognized legal rights under laws at issue in the case, interests under the cooperating agency in the SEIS, neighboring landowner, and taxing authority has significant expertise and interests to aid the Court in consideration of the public interests at stake here.

STANDARD OF REVIEW

The district court's denial of a motions for preliminary injunction is reviewed under an abuse of discretion standard. *E. Bay Sanctuary Covenant v. Biden*, 993 F.3d 640, 669 (9th Cir. 2021). This Court employs the four-element test for a preliminary injunction when considering whether to grant an injunction pending appeal. *Southeast Alaska Conservation Council v. U.S. Army Corp of*

² *Sovereign Inupiat for a Living Arctic, et al. v. BLM*, ECF No. 74 (Order Re Motions for Temporary Restraining Order and Preliminary Injunction ("Order"))(Case No. 3:23-cv-00058-SLG).

³ State's Exs. 1 - 3.

Engineers, 472 F.3d 1097, 1000 (9th Cir. 2006). In order to be entitled to such an “extraordinary remedy”, the Plaintiffs must establish that 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. *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 22 (2008). The balance of equities and public interest elements merge together in this case because the government is a party. *Nken v. Holder*, 556 U.S. 418, 435 (2009). The State maintains that the Plaintiffs have failed to meet the demanding burdens to establish any of the four elements for the extraordinary relief requested. In order to avoid duplication, the State focuses its arguments on the merged public interest element.

ARGUMENT

A. The district court appropriately recognized that the substantial economic harms from a preliminary injunction.

The district court appropriately weighed the significant economic harms that would follow from a preliminary injunction in the balance of equities analysis. Order at 33. The district court considered the multitude of declarations from the Intervenor-Defendants outlining the various economic harms to local residents of Nuisqsut and the State from a halt to the construction activities this winter. Order at 34-36. The district court also recognized the strained economic environment in the communities surrounding the Willow Project, namely that these rural

communities are still recovering from pandemic-induced hardships. Order at 34.

Among the declarations quoted in the Order was that of the State’s Acting Commissioner of Labor and Workforce Development who declared that a delay from a preliminary injunction “would have real impacts to the employment outcome[s] for Alaskans, especially for Alaskans living near the Willow Project, including the residents of Nuiq[su]t.” Order at 36; State’s Ex. 2, ¶2. The Acting Commissioner’s declaration also describes that the Willow Project offers higher paying jobs in an area where the cost of living is among the highest in the state. State’s Ex. 2, at ¶4. The Acting Commissioner further explained the significant job training opportunities and skills capacity that would follow from the employment opportunities after the construction season has concluded. *Id.* at ¶2. The Acting Commissioner clarified based on employment data “substantial new employment opportunities for Alaskans on the North Slope that would be jeopardized by a restraining order to stop work on the Willow Project.” *Id.*

The Plaintiffs Motions’ argue that these economic interests were inflated by the district court or that the harms would not be an “effect” of the injunction. *SILA Mot.* at 33; *CBD Mot.* at 36. This is not supported by the decision because the declarations considered by the district court clearly explain that these economic harms would follow from the halt to construction due to a preliminary injunction.

Unlike *Southeast Alaska Conservation Council* where this Court granted an

injunction pending appeal after the mining company admitted that activities for the disposal of mining tailing were not scheduled to begin until much later, here, ConocoPhillips has construction activities underway and has a limited period of time in order to complete those activities. 472 F.3d at 1100. Moreover, the case is distinguishable from the facts of other cases involving economic harms in the balance of equities because this case involves *post-pandemic recovery* in a remote area with a high cost of living and limited employment opportunities. These facts exacerbate the harms and further support the balance of equities that weighs against an injunction.

B. An injunction pending appeal is against the public interest.

The district court appropriately considered the comprehensive expressions of public interest against the requested injunctions. Order at 41-43. First, the federal government in approving the ROD and the related approvals to allow ConocoPhillips to move forward with the winter construction season should enjoy a presumption that the federal government in acting in the public interest by implementing the provisions of the National Petroleum Reserves Production Act, 42 U.S.C. §§6501-6508, (“The Production Act”), in particular that the directive for expedited leasing in the NPR-A. Order at 43.

Second, the district court carefully reviewed the public interest expressions for the project to move forward in the current construction season made by the

Alaska Legislature, the Alaska Congressional delegation, the State of Alaska, the North Slope Borough, Arctic Slope Regional Corporation, and Kuukpik Corporation. Order at 38 – 43. In particular, these expressions of public interest were not limited to economic interests but also included public interests in health and safety and access to subsistence resources. Order at 39 (noting that Kuukpik Corporation had explained the gravel roads and boat ramp would be beneficial for subsistence access and “search and rescue”). The State as a sovereign has interests in promoting the health, safety, and welfare of its citizens and agrees with the District court and Kuukpik Corporation that access for health and safety and increased subsistence is a substantial public interest that factors heavily against the delay an injunction would bring.

Additionally, the State’s declarations explain that the public interest in proceeding with the construction this season because the delays from the injunction would result in a whole year lost and “[g]iven 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” in the critical infrastructure of the Trans-Alaska Pipeline System. State’s Ex. 3, at ¶10. The State’s declaration from Director Nottingham also explained the informational loss for the responsible development of State lands that would follow from delay due to injunction. State’s Ex. 2, at ¶5.

CONCLUSION

For the reasons above, the injunctions requested should be denied as contrary to the public interest.

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on April 13, 2023.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

/s/Mary Hunter Gramling
Mary Hunter Gramling
Chief Assistant Attorney General

CERTIFICATE OF COMPLIANCE

I certify that:

- (i) This document uses proportionally spaced, 14-point, roman style font and therefore complies with the typeface style requirements of Federal Rules of Appellate Procedure 32(a)(5) and (6); and
- (ii) This document contains 1307 words.

/s/Mary Hunter Gramling
Mary Hunter Gramling
Chief Assistant Attorney General

TABLE OF EXHIBITS

Exhibit No. (Dist. Court Doc. No.)	Description
1 (52-1)	Declaration of Derek Nottingham
2 (52-2)	Declaration of Catherine Catherine Muñoz
3 (52-3)	Declaration of Anthony Strupulis

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 INUPIAT FOR A LIVING)
ARCTIC, et al.,) **DECLARATION OF DEREK**
Plaintiffs,) **NOTTINGHAM**

v.)
BUREAU OF LAND MANAGEMENT, et al.,)
Defendants,)
and)
CONOCOPHILLIPS ALASKA, INC., et al.,)
Intervenor-Defendants) Case No.: 3:23-cv-0058-SLG

CENTER FOR BIOLOGICAL DIVERSITY,)
et al.,)
Plaintiffs,)
v.)
BUREAU OF LAND MANAGEMENT, et al.,)
Defendants,)
and)
CONOCOPHILLIPS ALASKA, INC., et al.,)
Intervenor-Defendants) Case No.: 3:23-cv-0061-SLG

I, Derek W. Nottingham, declare as follows:

1. My name is Derek W. Nottingham, and I am the Director of the Division of Oil and Gas for the State of Alaska. Based on my experience and information provided to me by others, I have personal knowledge of the facts set forth herein or believe them to be true. If asked, I could testify truthfully about these matters.

2. I have been the Director of the Division of Oil and Gas since January 28, 2022, and have been in State service since August 17, 2020. Prior to my tenure with the State of Alaska I was in a managerial position with British Petroleum ("BP") overseeing development of the Prudhoe Bay oil field on Alaska's North Slope. I have over 25 years of oil and gas experience primarily with major oil and gas exploration and production companies such as BP, Chevron, and Texaco. I have obtained a B.S. and M.S. degree in Petroleum Engineering from Louisiana State University as well as an M.B.A from Boise State University. I am also a licensed professional engineer in Alaska.

3. 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, and 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.

4. A delay in the project generates a high degree of uncertainty for the organizations that provide many of the services necessary to facilitate a project as large as Willow – well drilling, facilities fabrication and construction, pipeline contractors, transportation and shipping, and other relevant contractors. This uncertainty creates an inability for these organizations to plan effectively in hiring qualified people, adequately managing their existing and future accounts, and generating quality products. Ultimately, these inefficiencies result in economic loss for all parties involved – the State of Alaska, ConocoPhillips, and the contractors, and may irrecoverably impair their business if the project does not proceed. Promoting these beneficial economic activities, and the livelihoods of the Alaskans who engage in them, is a core responsibility of the State of Alaska.

5. The Division of Oil and Gas that I manage is responsible for administering the State of Alaska’s royalty interest in production from its own leases, which regularly accounts for amounts of state revenue in excess of \$1 billion annually. Royalty represents the share of oil that is allocable to the resource owner, who issues leases to potential developers. Royalty is valued “at the well-head,” meaning that costs associated with its transportation to market can be deducted from its value. In Alaska, these costs

are based in part on large, relatively fixed costs that are spread across the number of barrels transported down the Trans Alaska Pipeline System (TAPS). 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.

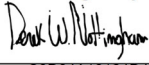
Alternatively, if the project is delayed, this benefit would correspondingly be delayed. If such a delay results in the project not being developed, it would significantly devalue the State's royalty revenue from the development of its own resources, cumulatively on an order of magnitude of hundreds of millions or billions of dollars – in addition to the billions of dollars of state and community revenues that may be received directly from the project if it is developed.

6. A delay in the project generates the potentiality for ineffective or limited development of the Nanushuk formation, Willow's primary reservoir target. The formation is known to be productive on significant portions of State of Alaska and Federal lands and is currently being explored by several producers. ConocoPhillips has decades of experience managing North Slope reservoirs and has unique expertise in drilling long extended reach, horizontal wells. They additionally have unique expertise in enhanced oil recovery techniques in these types of reservoirs. 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 ConocoPhillip's 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.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on March 24, 2023.

DocuSigned by:

C8D84A18124D46E...
Derek Nottingham

CERTIFICATE OF SERVICE

I hereby certify that on March 24, 2023, a copy of the foregoing **DECLARATION OF DEREK NOTTINGHAM** was served on all registered parties via the CM/ECF electronic distribution system.

/s/ Mary Hunter Gramling

Mary Hunter Gramling
Senior Assistant Attorney General

Certificate Of Completion

Envelope Id: 71D8046050D5441E88528F7DF6A45401	Status: Completed
Subject: Complete with DocuSign: Declaration - Nottingham 3-24-23 for signature.pdf	
Source Envelope:	
Document Pages: 6	Signatures: 1
Certificate Pages: 3	Initials: 0
AutoNav: Enabled	Envelope Originator:
Enveloped Stamping: Disabled	Derek Nottingham
Time Zone: (UTC-09:00) Alaska	PO Box 110206
	Juneau, AK 99811
	derek.nottingham@alaska.gov
	IP Address: 158.145.14.23

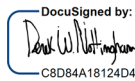
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Status: Original	Holder: Derek Nottingham	Location: DocuSign
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Signer Events

Derek Nottingham
derek.nottingham@alaska.gov
Director - Division of Oil and Gas
State of Alaska
Security Level: Email, Account Authentication (None)

Signature

DocuSigned by:

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Signature Adoption: Drawn on Device
Using IP Address: 10.2.136.87

Timestamp

Sent: 3/24/2023 10:26:00 AM
Viewed: 3/24/2023 10:26:11 AM
Signed: 3/24/2023 10:26:23 AM

Electronic Record and Signature Disclosure:

Accepted: 3/6/2023 10:05:13 AM
ID: 577347ba-669c-47df-a937-701ee480c129
Company Name: State of Alaska

In Person Signer Events**Signature****Timestamp****Editor Delivery Events****Status****Timestamp****Agent Delivery Events****Status****Timestamp****Intermediary Delivery Events****Status****Timestamp****Certified Delivery Events****Status****Timestamp****Carbon Copy Events****Status****Timestamp****Witness Events****Signature****Timestamp****Notary Events****Signature****Timestamp****Envelope Summary Events****Status****Timestamps**

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Certified Delivered	Security Checked	3/24/2023 10:26:11 AM
Signing Complete	Security Checked	3/24/2023 10:26:23 AM
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Payment Events**Status****Timestamps****Electronic Record and Signature Disclosure**

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Please read this Electronic Records and Signature Disclosure (ERSD). It concerns your rights regarding electronically undertaking, and the conditions under which you and the State of Alaska agree to electronically undertake, the transaction to which it relates (the “TRANSACTION”).

Consent to Electronically Undertake the TRANSACTION

You can electronically undertake the TRANSACTION only if you confirm that you meet the following requirements by selecting the box next to “I agree to use electronic records and signature” (the “AGREE BOX”):

1. you can fully access and have read this ERSD;
2. you can fully access all of the information in the other TRANSACTION records;
3. you can retain all of the TRANSACTION records in a form that you will be able to fully access for later reference;
4. you consent to undertake the TRANSACTION electronically; and
5. you are authorized to undertake the TRANSACTION. (Please note that falsely undertaking the TRANSACTION may subject you to civil liabilities and penalties and/or to criminal penalties.)

If you cannot or are not willing to confirm each of these five things, do not select the AGREE BOX.

Withdrawing Consent

If you select the AGREE BOX, you can withdraw your consent to electronically undertake the TRANSACTION at any time before you complete the TRANSACTION: simply do not finalize it. The only consequence of withdrawing your consent is that you will not finalize the TRANSACTION.

If you select the AGREE BOX, your consent will apply only to this TRANSACTION. You must separately consent to electronically undertake any other transaction with the State of Alaska.

Paper Option for Undertaking the TRANSACTION

You may undertake the TRANSACTION with the State of Alaska using paper records. (State of Alaska employees who want to undertake the TRANSACTION in paper should contact the agency responsible for the TRANSACTION.) Print the paper records on the website of the State of Alaska agency responsible for the TRANSACTION, or request them from the agency. The State of Alaska homepage is at <http://alaska.gov/>.

Copies of TRANSACTION Records

After completing the TRANSACTION but before closing your web browser, you should download the TRANSACTION records. Or you can download the records within 30 days after

completing the TRANSACTION using the link in the DocuSign email sent to the email address you used to complete the TRANSACTION. The State of Alaska will not provide a paper copy of the TRANSACTION records as part of the TRANSACTION. Under the Alaska Public Records Act (APRA), AS 40.25.100–.295, you can request a copy from the agency responsible for the TRANSACTION, but if too much time has passed, the agency may no longer have the records when you make your request. If required under the APRA, the agency will charge a fee.

Required Hardware and Software

For the minimum system requirements to electronically undertake the TRANSACTION, including accessing and thereby retaining the TRANSACTION records, visit <https://support.docusign.com/guides/signer-guide-signing-system-requirements>. These requirements may change. In addition, you need access to an email account.

How to Contact the State of Alaska

To ask a question on this ERSD or the DocuSign document generated after you complete the TRANSACTION or on using DocuSign to electronically undertake the TRANSACTION, contact the Alaska Department of Administration at either of the following addresses:

State of Alaska
Department of Administration
550 West 7th Avenue
Suite 1970
Anchorage, AK 99501
Reference: DocuSign

doa.commissioner@alaska.gov
Subject: DocuSign

To ask any other question on the TRANSACTION records or to update the information for contacting you electronically, contact the State of Alaska agency responsible for the TRANSACTION using the contact information in the TRANSACTION records or, if those records contain no contact information, using the contact information on the agency's website. Again, the State of Alaska homepage is at <http://alaska.gov/>.

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)
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et al.,)
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Defendants,)
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and)
)
CONOCOPHILLS ALASKA INC., *et al.*)
)
Intervenor-Defendants)
_____)

Case No. 3:23-cv-00058-SLG

DECLARATION OF

I, Catherine Muñoz, declare as follows:

1. I am the Acting Commissioner of the Alaska Department of Labor and

Workforce Development, and have worked in this capacity, or as Deputy Commissioner of the Alaska Department of Labor and Workforce Development for over four years.

2. A delay to the Willow Project from a Temporary Restraining Order or Preliminary Injunction would have real impacts to employment outcomes for Alaskans, especially for Alaskans living near the Willow Project, including the residents of Nuiqsut. As noted in the Bureau of Land Management's Record of Decision, dated March, 2023, page 22, "The (Willow) Project would result in additional employment opportunities in Nuiqsut...even a small number of additional jobs would positively impact the community's relatively small labor force. Project construction would increase household incomes for Nuiqsut residents employed with the project." It is also certain that the Willow Project would provide additional employment opportunities for residents of Alaska's North Slope Borough and other population centers in Alaska. 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. Though employment projections vary between ConocoPhillips Alaska's (from their January 2023 Willow Fact Sheet) projection of 2,500 construction jobs and 300 permanent jobs, or the Bureau of Land Management's projection of 1,700 jobs during peak construction (under Alternative E) with an additional 290 annual average jobs at the drill site and 10 supporting jobs in the Municipality of Anchorage, these figures reflect substantial new employment opportunities for Alaskans on the North Slope that would be jeopardized by a restraining order to stop work on the Willow Project.

3. Oil and gas employment makes up a substantial part of total employment for the North Slope Borough. In 2015, oil and gas employment accounted for 9,287 jobs in the Borough, which was over 50 percent of the 16,058 jobs in the Borough. Jobs have fallen steeply since then in the North Slope Borough. Early estimates for 2022, from the Department of Labor and Workforce Development's Research and Analysis Section, counted 10,104 total jobs in the Borough, a decrease of 5,954 jobs over the past seven years. Over that same period, oil and gas employment in the North Slope Borough decreased to 4,694 jobs in 2022, a decrease of 4,593 jobs. Oil and gas employment continues to play a critically important role in the overall employment outlook for the residents of the North Slope Borough. 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.

4. Oil and gas jobs provide higher-than-average wages for Alaskans. From data provided by the Alaska Department of Labor and Workforce Development's Research and Analysis Section, average oil and gas wages grew 20.01% from 2019 to 2021, with wages growing from \$150,259 to \$180,475. During the same time, oil and gas production wages grew from \$232,546 to \$261,758 (12.6%). Oil and gas drilling wages grew from \$112,690 to \$124,522 (10.5%). Oil and gas support wages grew from \$103,564 to \$119,248 (15.3%). The most recent data available, from fourth quarter 2021 to third quarter 2022, shows oil and gas wages growing again, with 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. Oil and gas jobs continue to play a vital role in Alaska's economy as they provide high-paying jobs in a region where the cost of living is amongst the highest in the state.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on March 24, 2023.

A handwritten signature in black ink, appearing to read "Catherine Mung", is written over a horizontal line.

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.,)	DECLARATION OF
)	ANTHONY STRUPULIS
Plaintiffs,)	
)	
v.)	
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BUREAU OF LAND MANAGEMENT, et al.,)	
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Defendants,)	
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and)	
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CONOCOPHILLIPS ALASKA, INC., et al.,)	
)	Case No.: 3:23-cv-0058-SLG
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Defendants,)	
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and)	
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CONOCOPHILLIPS ALASKA, INC., et al.,)	
)	Case No.: 3:23-cv-0061-SLG
Intervenor-Defendants)	
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I, Anthony Strupulis, declare as follows:

1. My name is Anthony Strupulis, and I am the State Pipeline Coordinator for the Department of Natural Resources, Division of Oil and Gas. Based on my experience and information provided to me by others, I have personal knowledge of the facts set forth herein or believe them to be true. If asked, I could testify truthfully about these matters.

2. In my current capacity I have been with the Division of Oil and Gas for over five years. I am a registered Civil Engineer in the State of Alaska and I have over 27 years of experience.

3. A delay to the Willow Project from a temporary restraining order or preliminary injunction could cause ConocoPhillips to delay submission of their Willow Sales Oil Pipeline Right-of-Way and their Willow Diesel Pipeline Right-of-Way applications under AS 38.35 as well as a delay to the to their Willow Utility Pipeline (Seawater) Easement application under AS 38.05.850.

4. A delay of any kind to the AS 38.35 application submission would likely shift construction for the Willow Sales Oil Pipeline and the Willow Diesel Pipeline to the following winter construction season because a decision and associated authorizations would be too late to accommodate ConocoPhillips' current project schedule.

5. A month or two of delay now will result in missing an entire winter construction season leading to a full year lost. As it currently stands, the AS 38.35 authorization schedule is extremely tight and there is very little capacity for schedule

delays.

6. The application process involves a rigorous technical and financial “fit, willing, and able” analysis of the applicant and the proposed development. The “fit, willing, and able” analysis assesses whether the applicant has the technical and financial means to execute and operate a complex pipeline project while meeting critical operational and safety standards. The technical review ensures that the proposed design meets or exceeds industry technical pipeline standards, and federal and state pipeline regulations, as applicable. A technical review also determines the applicant’s ability to operate and maintain the pipeline and in the case of unplanned events or incidents, to be able to respond in an effective way to ensure safety, environmental protection, and continued pipeline integrity. The financial analysis includes a review and analysis of the applicant’s financial information to determine if the company can perform their responsibilities to build, operate, and maintain the pipeline and respond to any incidents or events during the life of the lease and at the end of the lease assure the state that the applicant can dismantle, remove, and restore the leasehold to the satisfaction of the Commissioner of Natural Resources.

7. The Willow Project is critical to the continued reliability of the Trans-Alaska Pipeline System (TAPS). Current throughput in TAPS is just under 500,000 barrels per day, which is down significantly from the peak flows of 2,000,000 barrels per day in the 1980s. Lower throughput flows impede operational efficiency and potentially safe operations.

8. TAPS is a critical national energy infrastructure asset and is responsible for the transportation of a significant amount of the crude oil utilized to meet energy demands in Alaska, Washington, California, and other portions of the U.S. West Coast.

9. The nature of the operations of the pipeline has changed significantly with the drop in production. During the peak flow era, oil was delivered to Valdez 80-100° Fahrenheit. Today it arrives in Valdez at about 50° Fahrenheit. The consequences of this temperature drop include wax precipitating out of the crude oil as it cools in the pipeline. The result of this is increased maintenance effort to remove the wax. There are also several places along the 800-mile pipeline where heat is added to the pipeline in order to mitigate wax formation and to prevent entrained water from freezing in the crude oil. Additional throughput would help alleviate and avoid this operational challenge and promote reliable and safe operation of the critical TAPS asset.

10. 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 avoiding what could become an increasing operational issue with wax and ice over the next decade.

11. Reductions in the temperature of TAPS as a result of declining production

could potentially lead to frost heave in certain areas where the pipeline is buried because the pipeline is no longer able to keep the surrounding soil thawed. The result of this would be differential movement of the buried pipeline which puts large amounts of stress on the pipe and lead to integrity concerns.

12. Pipeline integrity concerns can become environmental concerns when temperatures, pressures, and/or external loads exceed design values. Left unaddressed, the consequences could result in a release of crude oil to the environment. The prevention and avoidance of such releases is of the utmost importance to the State Pipeline Coordinator.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on March 24, 2023.



Anthony Strupulis

CERTIFICATE OF SERVICE

I hereby certify that on March 24, 2023, a copy of the foregoing **DECLARATION OF ANTHONY STRUPULIS** was served on all registered parties via the CM/ECF electronic distribution system.

/s/ Mary Hunter Gramling

Mary Hunter Gramling
Senior Assistant Attorney General