Nos. 23-35226 & 23-35227

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

CENTER FOR BIOLOGICAL DIVERSITY, et al.,
Plaintiffs/Appellants,
v.
BUREAU OF LAND MANAGEMENT, et al.,
Defendants/Appellees

Appeals from the United States District Court for the District of Alaska
Nos. 3:23-cv-58 & 3:23-cv-61 (Hon. Sharon L. Gleason)

FEDERAL DEFENDANTS' OPPOSITION TO PLAINTIFFS' MOTIONS FOR INJUNCTION PENDING APPEAL

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GLOSSARY

ANILCA	Alaska National Interest Lands Conservation Act
BLM	Bureau of Land Management
CBD	Center for Biological Diversity (and other Plaintiffs/Appellants in No. 23-35227)
ConocoPhillips	ConocoPhillips Alaska, Inc.
EIS	Environmental Impact Statement
FSEIS	Final Supplemental Environmental Impact Statement
GHG	Greenhouse gas
IAP	Integrated Activity Plan
NEPA	National Environmental Policy Act
NPR-A	National Petroleum Reserve in Alaska
NPRPA	Naval Petroleum Reserves Production Act
ROD	Record of Decision
SEIS	Supplemental Environmental Impact Statement
SILA	Sovereign Iñupiat for a Living Arctic (and other Plaintiffs/Appellants in No. 23-35226)
TLSA	Teshekpuk Lake Special Area

INTRODUCTION

Last month, the Bureau of Land Management ("BLM") issued a Record of Decision ("ROD") approving the Willow Master Development Plan ("Willow Project"), which authorized Defendant-Intervenor ConocoPhillips Alaska, Inc. ("ConocoPhillips"), to construct and operate infrastructure necessary to produce and transport oil and gas resources located in the National Petroleum Reserve – Alaska ("NPR-A"). Before issuing the ROD, BLM prepared an environmental impact statement ("EIS") and a supplemental EIS ("SEIS") pursuant to the National Environmental Policy Act ("NEPA"), which analyzed the environmental impacts of the proposed development. Now and over the next few weeks remaining in this winter, ConocoPhillips is conducting initial winter-dependent work, including gravel mining and construction of a new gravel road and subsistence boat ramp.

Two sets of environmental groups—led, respectively, by Sovereign Iñupiat for a Living Arctic (collectively, "SILA") and the Center for Biological Diversity (collectively, "CBD")—sued BLM, alleging that BLM failed to comply with NEPA and other statutes. Plaintiffs sought to preliminarily enjoin ConocoPhillips from proceeding over the next

few weeks. After conducting a thorough, fact-intensive analysis of the record, which includes numerous declarations, the district court denied Plaintiffs' request because they had not shown irreparable harm from this winter's activities and the balance of equities and public interest tipped sharply against injunctive relief. The district court subsequently denied their motions for an injunction pending appeal.

This Court should not grant the "extraordinary and drastic" relief that the district court denied. *See Lopez v. Brewer*, 680 F.3d 1068, 1072 (9th Cir. 2012). Plaintiffs fail to show that the district court abused its discretion or clearly erred in its factual findings on the non-merits criteria for preliminary relief. Nor are Plaintiffs likely to succeed on the merits. BLM thoroughly analyzed the environmental impacts of the Willow Project in its environmental documents, in compliance with NEPA, the Naval Petroleum Reserves Production Act ("NPRPA"), and the Alaska National Interest Lands Conservation Act ("ANILCA").

STATEMENT OF THE CASE

A. Statutory Background

1. The Naval Petroleum Reserves Production Act

The 23 million acres that comprise the National Petroleum Reserve in Alaska were originally designated a naval petroleum reserve by executive order in 1923. *See N. Alaska Env't Ctr. v. Kempthorne*, 457 F.3d 969, 973 (9th Cir. 2006). In 1976, Congress enacted the NPRPA, Pub. L. No. 94-258, 90 Stat. 303, giving the area its current name of NPR-A and placing it under the jurisdiction of the Secretary of the Interior. In response to the 1979 oil crisis and reflecting a desire to quickly move from federal to private oil development, Congress amended the NPRPA in 1980, directing the Secretary to undertake "an expeditious program of competitive leasing of oil and gas in the [NPR-A]." Department of the Interior Appropriations Act for Fiscal Year 1981, Pub. L. No. 96-514, 94 Stat. 2957, at 2964-65 (1980). Congress directed that activities taken pursuant to the NPRPA "shall include or provide for such conditions, restrictions, and prohibitions as the Secretary deems necessary or appropriate to mitigate reasonably foreseeable and significantly adverse effects on the surface resources of the" NPR-A. 42

U.S.C. § 6506a(b). Thus, "[t]he NPRPA directs BLM to lease [NPR-A] land to private entities for oil and gas development, while taking such measures as BLM deems necessary or appropriate to mitigate adverse environmental impacts." *N. Alaska Env't Ctr. v. U.S. Dep't of the Interior*, 983 F.3d 1077, 1081 (9th Cir. 2020) (citing 42 U.S.C. § 6506a).

BLM's oil and gas program in the NPR-A consists of three basic stages: leasing, exploration, and development. At the leasing stage, and through the development of an "integrated activity plan" ("IAP"), BLM determines which lands to make available for leasing, which lands to defer or make unavailable, and what special stipulations and other mitigation to apply programmatically to oil and gas activities to protect resources on the surface. Once BLM adopts such a plan, it may offer for sale and ultimately issue oil and gas leases in any area in which such leasing has been authorized, following the process outlined in 43 C.F.R. Part 3130.

The leasing stage is just the first step toward development in the NPR-A. Before any lessee may *explore* for oil and gas, it must obtain authorization under procedures set forth in 43 C.F.R. Part 3150 (governing geophysical surveys) and 43 C.F.R. Part 3160 (governing

drilling operations). If a lessee discovers oil or gas, it may seek approval to *develop* the resources by submitting an application for a permit to drill that includes a drilling plan and a surface use plan of operations. *Id.* § 3162.3-1. At that stage, BLM may require additional project-specific stipulations to further protect surface resources. *Id.* § 3131.3.

2. National Environmental Policy Act

NEPA seeks to ensure that federal agencies consider the environmental impacts of proposed major federal actions. 42 U.S.C. § 4332(C); *see also Winter v. NRDC, Inc.*, 555 U.S. 7, 16 (2008). The statute mandates no specific substantive results "but simply provides the necessary process." *Neighbors of Cuddy Mountain v. Alexander*, 303 F.3d 1059, 1070 (9th Cir. 2002) (internal quotation marks omitted). Ultimately, NEPA "merely prohibits uninformed—rather than unwise—agency action." *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 351 (1989).

NEPA requires agencies to take a "hard look" at the environmental consequences of a proposed federal action. *Id.* at 350. When an agency determines that a particular federal action will have significant environmental impacts, it must prepare an Environmental

Impact Statement ("EIS"). 42 U.S.C. § 4332(2)(C). On review, if a court concludes that an EIS "contains a reasonably thorough discussion of the significant aspects of the probable environmental consequences," and that its "form, content and preparation foster both informed decision-making and informed public participation," then NEPA is satisfied. *City of Carmel-by-the-Sea v. U.S. DOT*, 123 F.3d 1142, 1150-51 (9th Cir. 1997) (internal quotation marks omitted).

3. Section 810 of the Alaska National Interest Lands Conservation Act

Section 810(a) of ANILCA, 16 U.S.C. § 3120(a), establishes a two-step process for federal agencies to evaluate the effects of federal land use on subsistence resources. It creates a "procedural mechanism which insures…local input into the administrative decision-making process" with respect to subsistence uses and needs, *Kunaknana v. Clark*, 742 F.2d 1145, 1150-51 (9th Cir. 1984), and it identifies specific determinations the agency must make before proceeding with actions that significantly restrict subsistence uses, *id.*; *see also infra* pp. 31-32.

B. BLM's Planning for the NPR-A

In 2012, BLM issued an IAP/EIS, which analyzed development scenarios and environmental consequences for all BLM-managed

federal lands and oil and gas resources within the NPR-A. 1-GovEx-152. BLM issued a ROD approving that IAP in 2013. *Id.* BLM then issued a revised IAP/EIS in 2020, and after that plan was challenged, BLM issued a new ROD for the IAP/EIS in 2022 ("2022 IAP ROD"). *See id.*; 2-GovEx-455. The 2022 IAP made 52 percent of the NPR-A available for oil and gas leasing and established lease stipulations and required operating procedures applicable to oil and gas activities, including the Willow Project. *See* 1-GovEx-048; 2-GovEx-455.

C. The Willow Project

1. 2020 EIS and Subsequent Litigation

BLM issued multiple leases in the Willow area to ConocoPhillips between 1999 and 2017, and after exploration drilling, ConocoPhillips announced discovery of oil and gas prospects in the Willow area in 2017. ECF No. 48-17 (No. 3:23-cv-00058-SLG) at 7. In 2018, ConocoPhillips requested that BLM approve its plan to develop oil and gas resources on the leases. 1-GovEx-179. ConocoPhillips's proposal included five drill sites, a processing facility, gravel roads, and other infrastructure. *Id.* In 2020, BLM issued the Willow Master Development Plan Environmental Impact Statement ("2020 EIS") analyzing the proposal, followed by a

Record of Decision ("2020 ROD"). *See Sovereign Iñupiat for a Living Arctic v. BLM* ("*SILA IV*"), 555 F. Supp. 3d 739, 752-53 (D. Alaska 2021). The 2020 ROD adopted ConocoPhillips's proposal of a project with five drill sites, but deferred approval on two of those sites at ConocoPhillips's request. *Id.*

Two sets of nearly the same plaintiff groups in the instant suit challenged the 2020 EIS and ROD, alleging that BLM's environmental analysis did not comply with NEPA. The district court denied their motions for a preliminary injunction but later granted their motions for an injunction pending appeal. *Sovereign Iñupiat for a Living Arctic v. BLM* ("*SILA I*"), 516 F. Supp. 3d 943 (D. Alaska 2021); *Sovereign Iñupiat for a Living Arctic v. BLM* ("*SILA II*"), Case No. 3:20-cv-00290-SLG, 2021 WL 454280 (D. Alaska Feb. 6, 2021). The plaintiffs ultimately moved to dismiss the appeals because ConocoPhillips agreed not to undertake construction that winter. *See Sovereign Iñupiat for a Living Arctic v. BLM* ("*SILA III*"), No. 21-35085, 2021 WL 3371588 (9th Cir. March 9, 2021).

In August 2021, the district court granted the plaintiffs summary judgment in part, holding that BLM violated NEPA. *SILA IV*, 555 F.

Supp. 3d at 805. The district court concluded that BLM failed to estimate "the downstream greenhouse gas emissions that will result from consuming oil abroad." *Id.* at 767 (citing *Ctr. for Biological Diversity v. Bernhardt* ("*Liberty*"), 982 F.3d 723 (9th Cir. 2020) (quotation marks omitted)). The court also held that, in analyzing alternatives, BLM failed to acknowledge the extent of its authority under the NPRPA, 42 U.S.C. § 6506a(b), to consider measures ensuring that greater protection be given to surface values within an area known as the Teshekpuk Lake Special Area ("TLSA"). *Id.* at 769-70. And the court held that BLM had improperly narrowed its analysis based on its view that ConocoPhillips had the right to extract all possible oil and gas on its leases. *Id.* The district court vacated BLM's approval of the Willow Project, and no party appealed.

2. 2023 ROD and Winter 2023 Construction

Following the district court's 2021 decision, BLM began preparing an SEIS to address the identified deficiencies. 87 Fed. Reg. 6,890-91 (Feb. 7, 2022); *see also* 1-GovEx-012-13. BLM released the Final SEIS ("FSEIS") in January 2023, 1-GovEx-126, and approved the Willow Project in a ROD in March 2023. 1-GovEx-038.

In the FSEIS, BLM considered numerous new alternative concepts and analyzed four action alternatives in detail, including a new action alternative, Alternative E, which would approve three drill sites (sites BT1, BT2, and BT3), defer approval of a fourth (BT5), and disapprove a fifth (BT4). 1-GovEx-018-19. BLM also considered different methods for the delivery of construction components to the remote development area. *Id.* The ROD approved the development of three drill sites (sites BT1, BT2, and BT3), as described in Alternative E, and the delivery of components using a river crossing (referred to as the Colville River Crossing module delivery option). 1-GovEx-013, 22; *see also* 1-GovEx-014 (describing infrastructure included in Alternative E as approved). The ROD disapproved, rather than deferred, the fourth drill site (BT5). 1-GovEx-022.

Alternative E and Module Delivery Option 3 (Colville River Crossing) allow less construction of surface infrastructure and "would result in fewer overall environmental impacts—including impacts to important surface resources, subsistence uses and resources, and the climate—than the other action alternatives and module delivery options and therefore is considered by BLM to be the environmentally preferred

alternative." 1-GovEx-19-20. The modification of Alternative E selected in the ROD, by disapproving rather than deferring the fourth drill site (BT5), further reduced infrastructure and impacts to surface resources, subsistence uses and resources, and the climate. 1-GovEx-022.

The 2023 FSEIS also substantially expands the discussion of greenhouse gas ("GHG") emissions and climate change. *See* 1-GovEx-213-34 (new text highlighted in yellow). The FSEIS presents quantified predictions for multiple GHG emissions streams related to the Willow Project for each action alternative and quantifies downstream combustion GHG emissions resulting from the predicted change in domestic and foreign oil consumption. *See* 1-GovEx-226 (Table 3.2.7); 1-GovEx-227 (Table 3.2.8) (providing quantified estimates of total GHG emissions addressing domestic and foreign impacts).

BLM's climate change analysis includes discussions of observed, 1-GovEx-214-15, and projected, 1-GovEx-215-16, climate trends in the Arctic and North Slope, and extensively discusses the effects of the project on climate change, 1-GovEx-217-34. The FSEIS then presents BLM's predicted climate effects of each of the alternatives, starting with quantified GHG emissions for the no-action alternative using an energy

substitution model. 1-GovEx-222-23. BLM next analyzed the "social cost of greenhouse gases" for each action alternative, first by presenting calculated direct and indirect GHG emissions per alternative, 1-GovEx-226-28, and then translating this to social cost comparisons (in dollars) per alternative, 1-GovEx-228-34. BLM also identified lease stipulations and required operating procedures "intended to mitigate climate change impacts from development activity," including ambient air monitoring and restrictions to protect vegetation and tundra. 1-GovEx-218-20. In providing cooperating agency feedback on a preliminary version of the FSEIS, the U.S. Environmental Protection Agency explained that the FSEIS contained "the most transparent analysis [it] has seen" regarding GHG emissions and their social cost. 2-GovEx-449.

BLM issued the ROD on March 13, 2023. ConocoPhillips immediately began constructing ice roads to a planned gravel site. 2-GovEx-472. ConocoPhillips plans to conduct limited work in the remaining days of winter, consisting of (1) opening a gravel mine site to generate gravel that will be used to construct infrastructure, (2) constructing approximately 3 miles of gravel road that will provide access to the Willow Project area, and (3) commencing construction of a

subsistence boat ramp.[1] 2-GovEx-468-69, 474-76. While the exact final day of work is uncertain and weather dependent, ConocoPhillips predicts that all winter work this season will end around April 25, 2023, and no additional work at the new gravel mine site would occur before the next winter construction season. *See* 2-GovEx-476; 1-GovEx-197.

D. Proceedings Below

Plaintiffs filed their complaints on March 14 and March 15, 2023, and each moved for a temporary restraining order and preliminary injunction on March 16, 2023. ECF No. 23 (No. 3:23-cv-00058-SLG); ECF No. 24 (No. 3:23-cv-00061-SLG). The district court expedited consideration of the motions, and denied them on April 3, 2023. *See* SILA Ex. 22, ECF No. 5-23 (No. 23-35226) ("SILA Ex. 22"), at 44.

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[1] Following this winter's activities, ConocoPhillips plans to conduct limited gravel work at its existing Kuparuk development outside of the NPR-A using gravel sources in that development, to prepare for transportation and staging of Willow construction components. *See* 2-GovEx-468; 1-GovEx-014; 1-GovEx-173. Plaintiffs do not appear to allege irreparable harm from this work or seek to enjoin it. *See, e.g.*, CBD Mot. Inj. Pending Appeal ("CBD Mot."), ECF No. 5-1 (No. 23-35227), at 11-15 (alleging harm from "this winter's construction activities" and their effect on "undisturbed" land); SILA Mot. Inj. Pending Appeal ("SILA Mot."), ECF No. 5-1 (No. 23-35226), at 6-11 (discussing harms from new gravel mine site and roads and Plaintiffs' member's "ability to hunt and fish in the remaining infrastructure-free areas around his home").

The district court concluded that Plaintiffs failed to show they would be irreparably harmed by ConocoPhillips's planned construction this winter. The district court noted that the planned construction "will cause surface disruption on only a very small fraction of the NPR-A—0.00015 percent" and that noise disruption from blasting would be "short-lived" and distant from the town of Nuiqsut. *Id.* at 20, 24.

The district court also concluded that the balance of the equities and public interest both "tip sharply" against granting preliminary injunctive relief. *Id.* at 43. While one of Plaintiffs' members offered a declaration addressing adverse effects to subsistence hunting, the district court found more persuasive the considerable evidence from other local residents who indicated that even the limited 2023 winter road building would greatly benefit subsistence hunting. *Id.* at 37-40. The district court also found that there are "substantial economic interests at issue," including for residents of Nuiqsut who "are relying on the seasonal jobs and income associated" with the winter construction. *Id.* at 34. And in reaching its conclusion, the district court weighed potential harms from the winter construction "against the economic damages, benefits to most subsistence users, and the state

and federal legislative pronouncements of the public interest that would be impacted by a preliminary injunction prohibiting these construction activities at this time." *Id.* at 43.

The district court did not reach the merits because Plaintiffs failed to establish any of the other three preliminary injunction factors. *Id.* at 43-44. The district court subsequently denied Plaintiffs' motions for an injunction pending appeal. ECF No. 78 (No. 3:23-cv-58-SLG); ECF No. 87 (No. 3:23-cv-61-SLG).

LEGAL STANDARDS AND STANDARD OF REVIEW

Like preliminary injunctive relief, an injunction pending appeal is an "extraordinary and drastic remedy," *Munaf v. Geren*, 553 U.S. 674, 689 (2008), granted only "upon a clear showing that the plaintiff is entitled to such relief," *Winter*, 555 U.S. at 22. A plaintiff seeking a preliminary injunction must show: "(1) it is likely to succeed on the merits; (2) it is likely to suffer irreparable harm if the preliminary injunction is not granted; (3) the balance of equities tips in its favor; and (4) an injunction is in the public's interest." *Conservation Cong. v. U.S. Forest Serv.*, 720 F.3d 1048, 1054 (9th Cir. 2013) (citing *Winter*, 555 U.S. at 20, 22). This Court has stated that, alternatively, "'serious

questions going to the merits' [rather than a likelihood of success on the merits] and a hardship balance that tips sharply toward the plaintiff can support issuance of an injunction, assuming the other two elements of the *Winter* test are also met." *All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131-32 (9th Cir. 2011).

The standard for reviewing a motion for injunction pending appeal is "similar to," but not the same as, the standard for reviewing a motion for preliminary injunction. *See Feldman v. Ariz. Sec'y of State's Off.*, 843 F.3d 366, 367 (9th Cir. 2016) (en banc); *E. Bay Sanctuary Covenant v. Biden*, 993 F.3d 640, 660-61 (9th Cir. 2021) (en banc); 16A Wright & Miller, Federal Practice and Procedure § 3954 (5th ed. 2022). In weighing whether to grant Plaintiffs the "extraordinary remedy" of an injunction pending appeal, the question is whether Plaintiffs are likely to succeed in showing that the district court abused its discretion in denying the injunction. *See John Doe Co. v. Consumer Fin. Prot. Bureau*, 849 F.3d 1129, 1131 (D.C. Cir. 2017); *E. Bay*, 993 F.3d at 660-61. Moreover, the likelihood of irreparable harm that the Court must consider at this juncture is the likelihood that Plaintiffs will experience irreparable harm during the pendency of their *appeals* from the denial

of the preliminary injunction—as opposed to during the pendency of the merits in the district court. *See Doe #1 v. Trump*, 957 F.3d 1050, 1062 (9th Cir. 2020).

Ultimately, in reviewing the district court's denial of an injunction, this Court will review the district court's legal conclusions de novo and its factual findings for clear error. *Roman v. Wolf*, 977 F.3d 935, 941 (9th Cir. 2020). Under this "very deferential" factual review, a finding of fact is "clearly erroneous if it is implausible in light of the record, viewed in its entirety, or if the record contains no evidence to support it." *Nat'l Wildlife Fed. v. Nat'l Marine Fisheries Serv.*, 422 F.3d 782, 793-94 (9th Cir. 2005) (citations omitted).

Plaintiffs' merits arguments will be reviewed pursuant to the deferential standard of the Administrative Procedure Act, under which agency action will be upheld unless "it is 'arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.'" *Westlands Water Dist. v. Dep't of the Interior*, 376 F.3d 853, 865 (9th Cir. 2004) (quoting 5 U.S.C. § 706(2)(A)). Review is most deferential where a court reviews scientific judgments and technical analyses within the agency's expertise. *Id.* at 871.

ARGUMENT

Plaintiffs are not entitled to an injunction pending appeal.

As to the merits, when BLM supplemented the Willow Project 2020 EIS following the district court's 2021 decision, the agency directly responded to the errors identified by the court and approved only a scaled-back version of the project that permits fewer drill sites, and substantially less infrastructure in the TLSA, than ConocoPhillips had proposed. BLM also complied with Section 810 of ANILCA.

As to harm and the public interest, the district court did not clearly err in concluding, after carefully combing through the record, that: (1) Plaintiffs failed to show that they would be irreparably harmed by the 2023 winter construction activities, which will end soon, and (2) the balance of equities and public interest tip sharply in favor of denying injunctive relief.

I. Plaintiffs are not likely to succeed on, and have not even raised serious questions going to, the merits.

The district court did not address the merits because it found the other preliminary injunction factors dispositive. SILA Ex. 22 at 44. Nevertheless, Plaintiffs have failed to show that they are likely to prevail on the merits of the claims they raise in their preliminary

injunction motions, or even raised any serious questions going to the merits.

A. BLM did not violate NEPA.

BLM's alternatives analysis did not violate NEPA. Plaintiffs ignore BLM's thorough process of identifying and screening alternatives and the substantial revisions made in response to the 2021 district court decision.

NEPA's implementing regulations direct an agency to "[r]igorously explore and objectively evaluate all reasonable alternatives." 40 C.F.R. § 1502.14(a) (2019).[2] An agency's choice of alternatives is governed by a "rule of reason," under which it "need not consider an infinite range of alternatives, only reasonable or feasible ones." *Westlands Water Dist.*, 376 F.3d at 868 (citation omitted). NEPA does not require an agency to discuss "[a]lternatives that are unlikely to be implemented," *Res. Ltd., Inc. v. Robertson*, 35 F.3d 1300, 1307 (9th Cir. 1993) (quotations

[2] The Council on Environmental Quality ("CEQ") amended its NEPA regulations in 2020 and again in 2022. 85 Fed. Reg. 43,304 (July 16, 2020); 87 Fed. Reg. 23,453 (May 20, 2022). Because BLM began this NEPA process before those amendments' effective dates, BLM applied the prior regulations. 1-GovEx-257. This Response solely cites the CEQ regulations as codified at 40 C.F.R. Parts 1500-08 (2019).

omitted), alternatives that are "inconsistent with the [agency's] basic policy objectives," *see id.*, or "alternatives similar to alternatives actually considered," *Kempthorne*, 457 F.3d at 978 (quotation and citation omitted). "Thus, an agency's consideration of alternatives is sufficient if it considers an appropriate range of alternatives, even if it does not consider every available alternative." *Headwaters, Inc. v. BLM*, 914 F.2d 1174, 1181 (9th Cir. 1990). The "touchstone for [a court's] inquiry is whether an EIS's selection and discussion of alternatives fosters informed decision-making and informed public participation." *Morongo Band of Mission Indians v. F.A.A.*, 161 F.3d 569, 575 (9th Cir. 1998) (citation and quotations omitted).

As an initial matter, BLM rectified the only deficiencies identified by the district court in its 2021 summary judgment order. In reviewing the 2020 EIS, the district court held that BLM (1) "failed to consider the statutory directive that 'maximum protection' be given to surface values within the TLSA," and (2) improperly "developed its alternatives analysis based on the view that ConocoPhillips has the right to extract all possible oil and gas on its leases." *SILA IV*, 555 F. Supp. 3d at 770. BLM had argued that ConocoPhillips's lease rights precluded the

agency from considering alternative configurations or locations of drill pads. *Id.* at 768. The court rejected this argument, explaining that ConocoPhillips's leases are subject to certain conditions and that BLM's position was "inconsistent with its own statutory responsibility to mitigate adverse effects on the surface resources." *Id.* at 769 (citing 42 U.S.C. § 6506a(b)). The court explained that "infrastructure is allowed, and indeed anticipated, within the TLSA." *Id.* But it concluded that BLM's explanation erroneously "presupposes the preclusion of any alternative development scenarios within the TLSA based on the lease terms." *Id.* The district court directed BLM to "reassess its alternatives analysis consistent with the terms of this order." *Id.* at 770.

BLM followed the court's direction in the 2023 FSEIS and ROD. *See* 1-GovEx-018-20. The FSEIS contains 266 pages discussing how BLM developed alternatives. 1-GovEx-237-87; 2-GovEx-289-309. BLM and cooperating agencies generated and considered an extensive list of "alternative components"—essentially, different project design features, configurations, and timelines. BLM reasonably explained why it ultimately included some components but declined to include others within the action alternatives analyzed in detail. *See generally* 1-

GovEx-286-87; 2-GovEx-289-309. Among the numerous alternative components considered by BLM for the first time in the SEIS were alternative components number 36 and 44, which would reroute the project's access road outside of the Colville River Special Area (leaving no facilities there), and prohibit all infrastructure in the TLSA, respectively. 2-GovEx-289-301. BLM developed an entirely new Alternative (Alternative E) that reduced impacts over alternatives considered in the 2020 EIS and specifically eliminated an entire drilling pad and its associated infrastructure from within the TLSA.

In contrast with the 2020 ROD, BLM ultimately approved a modified version of Alternative E, which amounts to a substantially scaled-back version of the project that authorizes only three drilling pads, specifically denying ConocoPhillips's request for a fourth and fifth pad. 1-GovEx-019-23. Compared to ConocoPhillips's proposal (Alternative B in the FSEIS), Alternative E—as modified in the ROD—"significantly reduces the footprint of project infrastructure and the level of construction and operational activities, both within and outside of the sensitive TLSA, and thereby substantially reduces impacts to a broad range of surface resources." 1-GovEx-022 (noting that reduced

length of road and pipelines will also reduce adverse impacts to caribou). The slimmer project profile works in concert with broader lease stipulations adopted in the programmatic 2022 IAP ROD,[3] including specific measures to eliminate or reduce adverse effects within the TLSA. *See* 1-GovEx-013; *see also* 2-GovEx-455-61. Plaintiffs are thus incorrect that BLM "repeated" its earlier error. *See* SILA Mot. Inj. Pending Appeal ("SILA Mot."), ECF No. 5-1 (No. 23-35226), at 13.

Brushing aside BLM's significant new analysis, Plaintiffs contend that BLM "improperly limit[ed] the scope of its authority to consider alternatives" based on the "assumption that it must not strand economically viable quantities of recoverable oil and must allow 'full development of the Willow Reservoir.'" SILA Mot. at 13; CBD Mot. Inj. Pending Appeal ("CBD Mot."), ECF No. 5-1 (No. 23-35227), at 8-9. Relatedly, Plaintiffs assert that the "alternatives in the final SEIS are

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[3] Some of the same Plaintiff organizations challenged the 2020 IAP/EIS, and many of them supported the 2013 ROD and its reinstitution through the 2022 IAP ROD. *See* Decl. of Benjamin Greuel ¶¶ 13-14, ECF No. 23-4 (No. 3:23-cv-00058-SLG) ("In response to our litigation, the Biden administration decided to review the IAP/EIS and ultimately reinstated the protections provided under the 2013 IAP."). This represents another significant difference between the present challenge to the 2023 Willow decisions and litigation challenging the 2020 Willow decisions.

variants of the same project ConocoPhillips proposed." CBD Mot. at 7; *see also* SILA Mot. at 14-15 (suggesting that all action alternatives "presented only small variations on ConocoPhillips' proposed project"). These arguments misconstrue the district court's 2021 decision and ignore BLM's extensive new analysis in the 2023 FSEIS.

When the district court held in 2021 that BLM improperly limited alternatives "based on the view that ConocoPhillips has the right to extract all possible oil and gas on its leases," the court had before it a much different alternatives analysis. *SILA IV*, 555 F. Supp. 3d at 770. In the 2020 EIS, "[e]ach action alternative considered the same drill site locations and would produce the same amount of oil." *Id.* at 768 n.156. The 2023 FSEIS, by contrast, made meaningful variations between the action alternatives, including the number and total surface area of drill site gravel pads (ranging from 62.8 to 88.3 acres); infield pipelines (ranging from 30.2 to 47.0 miles); gravel roads (ranging from 27.2 to 37.4 miles); ice roads (ranging from 431.2 to 962.4 miles); and infrastructure in special areas (ranging in the TLSA from 61.2 acres/4.9 miles of pipeline to 179.6 acres/12.2 miles of pipeline). *See* 1-GovEx-203-08 (including Table 2.7.1's comparison of action alternatives).

BLM also considered alternatives that produce less oil. *Contra* CBD Mot. at 7-8. First, BLM thoroughly analyzed the no-action alternative, under which no oil would be produced. Then BLM approved an alternative in the ROD (modified Alternative E) that is projected to result in the development of less oil than ConocoPhillips's proposal—576 million barrels rather than 628.9 million barrels. *See* 1-GovEx-023; *see also* 1-GovEx-021, 1-GovEx-188 (modified Alternative E in the ROD is projected to include up to 199 wells, fewer than the 251 wells anticipated under the other action alternatives). And modified Alternative E is also projected to have lower direct and indirect GHG emissions than the other action alternatives studied in detail. *See* 1-GovEx-023; 1-GovEx-226-27.

Finally, in addition to the no-action alternative, BLM considered an alternative component (No. 44) that would have prohibited all infrastructure in the TLSA by eliminating drill site BT4 and shifting drill site BT2 south to just outside the TLSA. 2-GovEx-297. Plaintiffs argue that BLM improperly rejected this component. *See* CBD Mot. at 7; SILA Mot. at 14-15. But BLM satisfied NEPA's requirement that it "briefly discuss" its reasons for not incorporating this component, *see* 40

C.F.R. § 1502.14(a) (2019), and Plaintiffs ignore BLM's explanation in arguing otherwise.

BLM declined to carry forward alternative component No. 44 for multiple reasons. BLM explained that eliminating infrastructure in the TLSA would "completely eliminate access to oil and gas resources in several" Willow leases in the TLSA that could only be reached by a drill site located within the TLSA. 2-GovEx-297. It would also "substantially reduce access" to oil and gas resources in additional leases that could only be reached in part from a drill site location just outside of the TLSA. *Id.* And it would "create significant overlap in drilling reach between drill sites BT1 and BT2," as BT2 moved outside of the TLSA would be substantially closer to BT1. *Id.* An alternative with no infrastructure in TLSA is not reasonable or feasible due to the limits of available drilling technology and the fact that approximately 67 percent of ConocoPhillips's Willow Project "leases by surface area are located in the TLSA." *Id.* BLM reasoned that this alternative component would not meet the project's purpose and need and eliminated it from detailed evaluation. *Id.*

NEPA does not require BLM to consider this alternative component in greater detail. As the district court explained in 2021, "infrastructure is allowed, and indeed anticipated, within the TLSA."[4] *SILA IV*, 555 F. Supp. 3d at 769. Still, consistent with BLM's statutory authority, the 2023 FSEIS and ROD contain significant elements designed to avoid, reduce, or otherwise mitigate impacts in the TLSA. *See* 1-GovEx-013; 1-GovEx-042-115 (identifying lease stipulations, required operating procedures, design features, and additional adopted mitigation measures); 2-GovEx-385-446. For example, BLM will develop compensatory mitigation for impacts on the TLSA and its caribou herd, including protecting surface areas, ensuring a buffer along all shores of the lake, and moving infrastructure farther from calving areas. 1-GovEx-077; 2-GovEx-349.

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[4] The Willow leases, issued between 1999 and 2017, are "non-[no surface occupancy]" leases; this Court has explained that they contain stipulations that "authorize the government to impose reasonable conditions on drilling, construction, and other surface-disturbing activities…[but] they do not authorize the government to preclude such activities altogether." *See Conner v. Burford*, 836 F.2d 1521, 1524 (9th Cir. 1988), reprinted as amended at 848 F.2d 1441. Under that precedent, ConocoPhillips does possess development rights in its leases, subject to reasonable regulation.

The new action alternatives, along with the no-action alternative, correct the errors identified by the district court and satisfy NEPA's dual purposes of informed decision-making and meaningful public involvement. *See* 40 C.F.R. § 1502.1; *Morongo Band*, 161 F.3d at 575. Plaintiffs overlook much of BLM's analysis, and they fail to demonstrate that the analysis was arbitrary or capricious.

What Plaintiffs appear to want is more analysis of additional, unspecified variants somewhere between the no-action alternative and Alternative E. But this Court has rejected similar arguments in NEPA cases. *See, e.g.*, *Mont. Wilderness Ass'n v. Connell*, 725 F.3d 988, 1004-05 (9th Cir. 2013) (rejecting argument that BLM was required to consider additional "mid-range alternative[s]"); *Westlands Water Dist.*, 376 F.3d at 871-72 (reversing district court ruling finding range of alternatives to be inadequate, holding that "[t]he EIS was not required to consider more mid-range alternatives to comply with NEPA"). BLM considered a reasonable range of alternatives and explained why Plaintiffs' preferred alternative was not workable. It thus satisfied NEPA's requirement that agencies take a "hard look" at the environmental consequences of a proposed federal action.

B. BLM did not violate the NPRPA.

Both Plaintiffs at times suggest that BLM has violated the NPRPA, although it is not entirely clear whether this is an independent argument or part of their NEPA argument. *See* SILA Mot. at 12-15; CBD Mot. at 9. In any event, BLM properly applied the NPRPA's resource-protection requirements.

The NPRPA requires that certain oil and gas activities within designated special areas of the NPR-A provide "maximum protection" of surface values:

> Any exploration within the Utukok River, the Teshekpuk Lake areas, and other areas designated by the Secretary of the Interior containing any significant subsistence, recreational, fish and wildlife, or historical or scenic value, shall be conducted in a manner which will assure the maximum protection of such surface values to the extent consistent with the requirements of this Act for the exploration of the reserve.

42 U.S.C § 6504(a). A separate section of the NPRPA applies more broadly throughout the NPR-A:

> Activities undertaken pursuant to this Act shall include or provide for such conditions, restrictions, and prohibitions as the Secretary deems necessary or appropriate to mitigate reasonably foreseeable and significantly adverse effects on the surface resources of the [NPR-A].

Id. § 6506a(b).

Consistent with these requirements, the FSEIS and ROD contain numerous required operating procedures, design features, and other mitigation measures specifically designed to avoid or mitigate adverse impacts in the TLSA. *See supra* pp. 27-28; 1-GovEx-013; 1-GovEx-042-115. Plaintiffs do not engage with these measures, instead repeating their argument that BLM was required to consider an alternative that eliminates all infrastructure in the TLSA. *See* SILA Mot. at 13-15. BLM's approach is fully consistent with the NPRPA.

C. BLM did not violate ANILCA Section 810.

SILA contends that BLM violated Section 810 of ANILCA, 16 U.S.C. § 3120(a), in two ways. SILA first contends that BLM failed to consider alternatives that reduce impacts to subsistence uses. SILA Mot at 15. Second, SILA asserts that this failure to evaluate alternatives led BLM to erroneously conclude that Alternative E was the alternative that involved the minimal amount of public lands necessary to accomplish the project purpose. *Id.* at 17-18. The record demonstrates that BLM fully complied with Section 810.

Section 810 establishes a two-step process. *See Kunaknana*, 742 F.2d at 1150-51; *Se. Alaska Conservation Council v. U.S. Forest Serv.*,

443 F. Supp. 3d 995, 1015 (D. Alaska 2020). At Tier 1, the threshold question is whether the agency's action "would significantly restrict subsistence uses[.]" 16 U.S.C. § 3120(a). To make that finding, the agency considers the effect of such action "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." *Id.* If an agency determines that the proposal will significantly restrict subsistence uses, it may not authorize the action unless it satisfies the Tier-2 requirements. Tier 2 requires the agency to give notice, hold a hearing, *see id.* § 3120(a)(1) & (2), and determine that:

> (A) such a significant restriction of subsistence uses is necessary, consistent with sound management principles for the utilization of the public lands, (B) the proposed activity will involve the minimal amount of public lands necessary to accomplish the purposes of such use, occupancy, or other disposition, and (C) reasonable steps will be taken to minimize adverse impacts upon subsistence uses and resources resulting from such actions.

Id. § 3120(a)(3); *see also Kunaknana*, 742 F.2d at 1150-51 (explaining process).

BLM's Section 810 analysis and determinations are found in Appendix G of the FSEIS and Appendix B of the ROD, respectively. Consistent with the requirements of Tier 1, FSEIS Appendix G contains a thorough analysis of all four action alternatives (including Alternative E), the no-action alternative, the three module delivery options, and the "cumulative case," a comprehensive discussion of impacts of the Willow Project and other reasonably foreseeable future actions. *See* 2-GovEx-310-81. BLM developed Alternative E to address the district court's concerns that it had not considered an alternative that provided greater protection of the TLSA. Alternative E reduced infrastructure within the TLSA relative to the previously analyzed alternatives in order to protect caribou movement and migration and reduce the effects of development on the traditional subsistence way of life of the community of Nuiqsut. 1-GovEx-121. For each alternative, BLM evaluated the effects on subsistence uses and needs, the availability of other lands, and other alternatives that would reduce or eliminate the use of public lands needed for subsistence purpose. *See* 2-GovEx-310-81.

BLM concluded that all action alternatives, including Alternative E, may significantly restrict subsistence uses due to altered distribution

of caribou and furbearers and limitations on subsistence user access near the Willow Project area. BLM noted, however, that Alternative E would result in fewer impacts within the TLSA, a key habitat and migratory area for caribou, by reducing infrastructure there by 43% and relocating infrastructure (including roads, pipelines, and the nearest drill site) farther from calving and mosquito-free areas that are particularly important for caribou. 1-GovEx-120-21; 2-GovEx-341-51. Contrary to SILA's contentions, *see* SILA Mot. at 16-17, these reductions were not meaningless. BLM further explained that the Tier-2 determinations regarding the alternative ultimately selected by the agency would be made available in the ROD making that selection. 2-GovEx-381.

Consistent with that representation, Appendix B of the ROD summarizes the Section 810 evaluation and presents BLM's Tier-2 determinations specific to the alternative selected by the ROD. *See* 1-GovEx-027-28. With regard to the first two Tier-2 determinations required by Section 810, BLM determined that the modified Alternative E adopted by the ROD was necessary to fulfill the purpose and need of the proposed action and would involve the minimal amount of public

lands necessary to accomplish that purpose. 1-GovEx-120-22. On the latter point, the modifications to Alternative E approved by BLM would "further reduce[] impacts to subsistence uses by disapproving drill site BT5," as compared to the version of Alternative E that BLM studied at Tier 1, which disapproved drill site BT4 but deferred approval of BT5.[5] 1-GovEx-122. Elimination of these drill sites reduces impediments to caribou movement and subsistence user access that were the basis of BLM's positive "may significantly restrict subsistence uses" finding. 1-GovEx-123. The ROD also imposes numerous protective and mitigation measures designed to reduce impacts. *See* 1-GovEx-048-114 (identifying and discussing mitigation measures). While the no-action alternative would result in fewer impacts than Alternative E, it would not accomplish the purpose and need of the proposed action because it

[5] SILA asserts that BLM "admitted" that Alternative E's reduction of infrastructure in the TLSA would only have "minimal" benefits. SILA Mot. at 16-17. But SILA only cites a discussion of *direct* impacts. BLM explained that the benefit of TLSA design features and stipulations is primarily "a lessening of *indirect* impacts (e.g., impacts related to resource availability resulting from deflection of caribou)." 2-GovEx-349 (emphasis added). The difference between Alternatives E and B when such indirect impacts are taken into account is much more significant than Plaintiffs portray.

would not produce oil discovered on ConocoPhillips's leases. 2-GovEx-342; 1-GovEx-121; *see also Hoonah Indian Ass'n v. Morrison*, 170 F.3d 1223, 1229-30 (9th Cir. 1999).[6]

Thus, the record shows that, contrary to SILA's contentions, BLM fully considered alternatives that would minimize the use of public lands needed for subsistence purposes in both its Tier-1 and Tier 2-analyses. BLM did not improperly limit its analysis to avoid stranding economically viable oil reserves. *See supra* pp. 21-29. BLM also reasonably concluded that the modified Alternative E would involve the minimal amount of public lands necessary to accomplish the purpose and need of the project. *See* 1-GovEx-121-22; 2-GovEx-349.

In sum, Plaintiffs have not raised serious questions on the merits, much less shown that they are likely to succeed on any of their claims.

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[6] SILA does not appear to challenge BLM's third required Tier-2 finding—that BLM will take reasonable steps to minimize adverse impacts upon subsistence users. Regardless, the record shows that BLM incorporated various mitigation measures into Alternative E to minimize impacts. 1-GovEx-122-23. For example, Alternative E includes construction of subsistence boat ramps, avoidance of overwintering fish habitat, and measures to ensure caribou crossings. *See* 1-GovEx-122; 1-GovEx-048-114.

II. Plaintiffs have not demonstrated a likelihood of irreparable harm while these appeals are pending.

After a thorough review of the record in both cases, the district court concluded that Plaintiffs failed to establish that they will be irreparably harmed if ConocoPhillips proceeds with its planned construction activities over the next few weeks. SILA Ex. 22 at 31. Plaintiffs have failed to show this conclusion was clearly erroneous.

To satisfy the required irreparable harm for an injunction pending appeal, Plaintiffs must show that there is a likelihood of irreparable harm before this Court can decide these appeals, and those harms must be related to the merits arguments Plaintiffs raise in their underlying suits. *See Pac. Radiology Oncology, LLC v. Queens Med. Ctr.*, 810 F.3d 631, 635-36 (9th Cir. 2015) (movant must "establish a relationship between the injury claimed in the party's motion and the conduct asserted in the complaint"); *see also Park Vill. Apartment Tenants Ass'n v. Mortimer Howard Tr.*, 636 F.3d 1150, 1161 (9th Cir. 2011).

As an initial matter, the district court found that this winter's construction activities "are substantially narrower in scope than the Willow Project as a whole," noting that the total surface disturbance from these limited activities "will range from 10.4 acres to 38.5 acres."

SILA Ex. 22 at 18 (citing ECF No. 48-11 (No. 3:23-cv-58-SLG)). The court explained that, while many of Plaintiffs' declarants express concern about negative impacts from the extraction of oil and gas over the lifetime of the Willow Project, such impacts are irrelevant to the activities Plaintiffs seek to enjoin, which involve no oil and gas extraction. *Id.* at 19 (citing ECF Nos. 23-4 through 23-9, & 23-11 (No. 3:23-cv-58-SLG); ECF Nos. 24-24 through 24-28, 24-30, & 24-32 (No. 3:23-cv-61-SLG)). And the district court found that proposed blasting activities this winter would not cause irreparable injury because the noise and vibration would be short-lived, the noise would rise only to the volume of conversational speech in the town of Nuiqsut miles away, and ConocoPhillips plans to conduct blasting approximately one time each day—and only after providing notice to residents. *Id.* at 20 (citing ECF No. 48-25 (No. 3:23-cv-58-SLG)).

The district court also carefully considered potential subsistence impacts from ConocoPhillips's work over the next few weeks and concluded that Plaintiffs had not established irreparable harm. The court found that there were competing narratives from subsistence hunters on how the winter construction activities would affect caribou,

but reasonably relied on BLM's determination that the winter activities would cause surface disruption on only a tiny fraction of caribou habitat. *Id.* at 23-24 (citing ECF Nos. 48-11 & 23-1 (No. 3:23-cv-58-SLG)). The court concluded that this factual record does not support a showing of irreparable harm to caribou hunters. *Id.* The district court also credited BLM's determination that the winter activities would have only minimal impacts on fish, given the gravel mine's distance from winter fish habitat. *Id.* at 21-22.

The district court studied the declarations submitted by Plaintiffs. The court found that Dr. Rosemary Ahtuangaruak, the Mayor of Nuiqsut, had not shown that the winter activities would cause "substantial and immediate" irreparable harm to her. *Id.* at 26 (quoting *City of Los Angeles v. Lyons*, 461 U.S. 95, 111 (1983)). The court specifically differentiated the harms Dr. Ahtuangaruak alleged in 2023 from those she alleged in 2021. *Id.* at 26-27 (citing ECF No. 24-23 (No. 3:23-cv-61-SLG)). And the court noted that the gravel mine would be "located many miles away from" the area another declarant expressed intent to go this summer. *Id.* at 27-28 (citing ECF No. 23-6 (No. 3:23-cv-58-SLG)).

Finally, the court was not swayed by CBD's assertion that this winter's activities will create a "bureaucratic steam roller" that may skew a decision on remand. *Id.* at 30 ("In the event of a second remand to the agency, the Court assumes that BLM would comply with the law."). If any legal error were to be identified and BLM's decision vacated—which BLM has shown is unlikely—ConocoPhillips's limited work over the next few weeks will have no impact on a future decision by BLM.

The decision below shows that the district court grappled with and closely analyzed the factual record, and in such a context, this Court's review is "very deferential." *See Nat'l Wildlife Fed.*, 422 F.3d at 794. In their motions, Plaintiffs quibble with the district court's findings, *see, e.g.*, CBD Mot. at 16-17, but ultimately they fail to carry their "burden of showing that the district court's finding that there is not a likelihood of irreparable harm is illogical, implausible, or unsupported by the record." *Doe v. Snyder*, 28 F.4th 103, 112 (9th Cir. 2022).

III. The district court's conclusion that the balance of equities and the public interest tip sharply against an injunction was not an abuse of discretion.

Plaintiffs must further establish that a preliminary injunction would serve the public interest and that the balance of equities is in their favor; when the government is the opposing party, these factors merge, *Drakes Bay Oyster Co. v. Jewell*, 747 F.3d 1073, 1092 (9th Cir. 2014) (citation omitted). An injunction "is a matter of equitable discretion," and "[t]he assignment of weight to particular harms is a matter for district courts to decide." *Earth Island Inst. v. Carlton*, 626 F.3d 462, 475 (9th Cir. 2010). Plaintiffs have failed to show that the district court "clearly erred" in balancing the equitable interests. *See id.*

Contrary to Plaintiffs' assertion, *see* SILA Mot. at 19, CBD Mot. at 21-20, the district court properly considered the equities and public interest related to this winter's construction activities. The district court carefully "weighed the environmental harm posed by the proposed Winter 2023 Construction Activities against the economic damages, benefits to most subsistence users, and the state and federal legislative pronouncements of the public interest that would be impacted by a preliminary injunction *prohibiting these construction activities at this*

time." SILA Ex. 22 at 23, 32-43 (emphasis added). The court recognized that an injunction "would have an immediate economic impact on Nuiqsut," crediting the "numerous declarations showing that Nuiqsut residents are relying on the seasonal jobs and income associated with the Winter 2023 Construction Activities." *Id.* at 34-35 (citing ECF Nos. 48-7, 48-8, & 53-2 (No. 3:23-cv-58-SLG)). The court also noted that many Nuiqsut subsistence hunters state that this winter's planned construction will yield faster and safer access to subsistence resources. *Id.* at 38-39 (citing ECF Nos. 23-10, 48-3 through 48-6, & 53-2 (No. 3:23-cv-58-SLG)).

The court gave "considerable weight to the fact that Kuukpik, the North Slope Borough, and [the Arctic Slope Regional Corporation] have all intervened to express their support for the Willow Project and Winter 2023 Construction Activities." *Id.* at 40. And in assessing the public interest, the court noted that the Alaska House and Senate and Alaska's Congressional Delegation all expressed unanimous support for the Willow Project and construction activities this winter. *Id.* at 41-42 (citing *Stormans, Inc. v. Selecky*, 586 F.3d 1109, 1140 (9th Cir. 2009);

Golden Gate Rest. Ass'n v. City & Cty. of San Francisco, 512 F.3d 1112, 1126–27 (9th Cir. 2008)).

Plaintiffs have not shown clear error, or an abuse of discretion, in the district court's findings "that the balance of the equities and the public interest tip sharply against preliminary injunctive relief." SILA Ex. 22 at 43.

CONCLUSION

For the foregoing reasons, Plaintiffs' motions for an injunction pending appeal should be denied.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

1. This response complies with the type-volume limit sought in Federal Appellees' motion for additional words, filed along with this response, because it contains 8,080 words.

2. This document complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type-style requirements of Federal Rule of Appellate Procedure 32(a)(6) because this document has been prepared in a proportionally spaced typeface using Microsoft Word 2016 in 14-point Century font.

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