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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

SOVEREIGN IÑUPIAT FOR A LIVING
ARCTIC, et al.,

Plaintiffs,

v.

BUREAU OF LAND MANAGEMENT, et al.,

Defendants,

and

CONOCOPHILLIPS ALASKA, INC., et al.,

Intervenor-Defendants.

Case No.: 3:23-cv-00058-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-00061-SLG

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

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**CONOCOPHILLIPS ALASKA, INC.'S RESPONSE TO MOTIONS FOR LEAVE
TO FILE PROPOSED AMICUS CURIAE BRIEFS**

ConocoPhillips Alaska, Inc. (“ConocoPhillips”) hereby responds to the motions for leave to submit an amicus brief filed by the Institute for Policy Integrity at New York University School of Law; Patagonia, Inc.; the Sabin Center for Climate Change Law; a group of seven Congressional representatives; and the Naqsragsmiut Tribal Council. As an initial matter, the proposed amici briefs collectively would add 138 pages of briefing to Plaintiffs’ opening round of summary judgment briefing. If the Court accepts the briefs, then the Defendants and Intervenor-Defendants will have to decide whether to ignore or respond to those voluminous pages. ConocoPhillips defers to the Court’s discretion on whether to accept or decline the proposed amici briefs, but notes that there are ample reasons to deny, or limit the Court’s consideration of, the proposed amici briefs. In this regard, ConocoPhillips offers two observations on the pending motions and proposed briefs.

First, the proposed amici briefs reflect a “divide-and-conquer strategy that implicate[s] some coordination among the filers”¹ and Plaintiffs—all of whom share the basic goal of “stopping Willow.” An amicus curiae is generally “an impartial individual who suggests the interpretation and status of the law, gives information concerning it, and

¹ *United States v. Microsoft*, No. C15-102RSM, 2016 WL 11782815, at *2 (W.D. Wash. Nov. 14, 2016).

advises the Court in order that justice may be done, rather than to advocate a point of view so that a cause may be won by one party or another.”² None of the proposed amici are impartial and all of them advocate a point of view that squarely aligns with Plaintiffs’ goals. By way of a few brief examples:

- Proposed amicus Institute for Policy Integrity (“Institute”) co-signed joint comments to the 2022 Draft Supplemental Environmental Impact Statement (“EIS”) for the Willow project with plaintiff Wilderness Society, and Earthjustice, counsel for the CBD plaintiffs.³ The Institute also submitted joint comments on the 2020 EIS with plaintiffs Sierra Club and the Wilderness Society.⁴ And SILA’s counsel, Trustees for Alaska, relies on the Institute to support arguments in its comments.⁵ The Institute has previously advocated against oil and gas development in Alaska⁶ and joined with plaintiff Sierra Club to oppose such efforts.⁷

² *Cnty. Ass’n for Restoration of Env’t (CARE) v. DeRuyter Bros. Dairy*, 54 F. Supp. 2d 974, 975 (E.D. Wash. 1999).

³ AR773546.

⁴ AR642523.

⁵ AR509731-32.

⁶ Submission to U.S. Bureau of Land Management by Institute for Policy Integrity at NYU School of Law, *Comments on Arctic Coastal Plain EIS Scoping* (June 19, 2018), https://policyintegrity.org/documents/IPI_Comments_on_Arctic_Coastal_Plain_EIS_Scoping_061918.pdf.

⁷ Comments to Bureau of Land Management from Environmental Defense Fund, Institute for Policy Integrity at New York University School of Law, Montana Environmental Information Center, Sierra Club, and Union of Concerned Scientists, *Quantifying and Monetizing Greenhouse Gas Emissions from the Coastal Plain Oil and Gas Leasing Sovereign Iñupiat for a Living Arctic, et al. v. BLM, et al.* – Case No. 3:23-cv-00058-SLG *Center for Biological Diversity, et al. v. BLM, et al.* – Case No. 3:23-cv-00061-SLG

- Proposed amicus Patagonia, Inc. has a history of funding many of the organizations who are Plaintiffs in this litigation, and it acts as a conduit for donations to those organizations via its website.⁸ Patagonia also submitted comments in opposition to Willow that align with the views expressed in comments submitted by Plaintiffs.⁹
- Proposed amici U.S. Congress Representatives Jared Huffman (CA), Raúl Grijalva (AZ), Becca Balint (VT), Nanette Diaz Barragán (CA), Katie Porter (CA), Don Beyer (VA), and Alexandria Ocasio-Cortez (NY) have actively attempted to stop Willow via political means, including releasing statements such as “[t]he only acceptable Willow project is no Willow project”¹⁰ and petitioning the Secretary of Interior to “suspend the Right of

Program (June 19, 2019), https://policyintegrity.org/documents/Joint_SCC_Comments_to_BLM_on_Coastal_Plain_Scoping_061918.pdf.

⁸ See, e.g., Patagonia, Patagonia Action Works, *Sierra Club*, <https://www.patagonia.com/actionworks/organizations/sierra-club/> (last visited Aug. 1, 2023); *id.*, *Natural Resources Defense Council*, <https://www.patagonia.com/actionworks/organizations/natural-resources-defense-council/> (last visited Aug. 1, 2023); *id.*, *Center for Biological Diversity*, <https://www.patagonia.com/actionworks/organizations/center-for-biological-diversity/> (last visited Aug. 1, 2023); *id.*, *Trustees for Alaska*, <https://www.patagonia.com/actionworks/organizations/trustees-for-alaska/> (last visited Aug. 1, 2023); *id.*, *Earthjustice*, <https://www.patagonia.com/actionworks/organizations/earthjustice/> (last visited Aug. 1, 2023).

⁹ AR772931; AR650005.

¹⁰ Press Release, Natural Resources Committee Democrats, *Grijalva, Ocasio-Cortez, Huffman, and Sen. Markey Issue Joint Statement on Willow Project Decision* (Mar. 13, 2023), <https://democrats-naturalresources.house.gov/media/press-releases/grijalva-ocasio-cortez-huffman-and-sen-markey-issue-joint-statement-on-willow-project-decision>.

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Way Permit (ROW) immediately and reject any future filings by ConocoPhillips for an Application for Permit to Drill (APD).”¹¹

- Proposed amicus Sabin Center for Climate Change Law (“Sabin Center”) claims to be an “academic think tank.”¹² But it frequently advocates a partisan view against oil and gas development¹³ and, in so doing, also coordinates with many of the Plaintiffs.¹⁴

Second, many of the proposed amici briefs raise legal issues and claims that have not been raised by Plaintiffs. With rare exceptions not applicable here, courts “do not consider on appeal an issue raised only by an amicus.”¹⁵ For example, proposed amici

¹¹ See Letter to Deb Haaland, Secretary, Dep’t of Interior (Apr. 1, 2023), https://bowman.house.gov/_cache/files/b/f/bf9e7a3a-4622-4487-985b-36f48f669135/877BFD37787C57C6D1109ADE0D0E6BD3.2023.4.13-willow-letter-final.pdf (signed by Members of Congress Jared Huffman, Raúl Grijalva, Nanette Diaz Barragán, Katie Porter, and Alexandria Ocasio-Cortez, among others).

¹² Counsel for the Sabin Center did not contact counsel for ConocoPhillips (or, apparently, any defendants or intervenor-defendants) to request a position on its motion.

¹³ See AR853853-864 (Comments on Coastal Plain Oil and Gas Leasing Program EIS, submitted by Jessica Wentz of the Sabin Center for Climate Change Law).

¹⁴ See, e.g., *Defending the Planet Ep4: Climate Change in the Courts*, Columbia Law School Podcast (June 24, 2021), https://scholarship.law.columbia.edu/defending_the_planet/5/ (Michael Burger and Michael Gerrard of Sabin Center, and Peter Lehner, managing attorney at Earthjustice, discussing environmental lawsuits to compel corporations to curb emissions).

¹⁵ *Swan v. Peterson*, 6 F.3d 1373, 1383 (9th Cir. 1993); *United States v. Nunez*, No. 21-50131, 2022 WL 17883604, at *4 n.2 (9th Cir. Dec. 23, 2022) (“Because [the court] do[es] not entertain legal issues raised for the first time in an appeal by a party appearing as an amicus,” it will not consider where an amicus “seeks to introduce new facts outside of the record and advance arguments not raised by the parties” (citing *Pres. Coal., Inc. v. Pierce*, 667 F.2d 851, 862 (9th Cir. 1982))), *petition for cert. docketed* (U.S. Dec. 23, 2022) (No. 22-7629); *United States v. Vazquez-Botet*, 532 F.3d 37, 52 (1st Cir. 2008) *Sovereign Inupiat for a Living Arctic, et al. v. BLM, et al.* – Case No. 3:23-cv-00058-SLG *Center for Biological Diversity, et al. v. BLM, et al.* – Case No. 3:23-cv-00061-SLG

Naqsrarmiut Tribal Council—which has never elected to file any formal public comments over many years of Willow NEPA reviews or to intervene in this litigation—makes ANILCA arguments in its proposed brief that are not made by any party.¹⁶ As two other examples, the amicus brief by the members of Congress makes new statutory interpretation claims regarding NEPA analysis, and the Institute argues for vacatur based on issues not raised by Plaintiffs.¹⁷

In sum, ConocoPhillips defers to the Court’s discretion to accept or decline the proposed amici briefs. For the reasons stated above, ConocoPhillips submits that the proposed briefs provide little or no impartial information to assist the Court and merely reflect a coordinated effort to oppose the Willow project. Additionally, should the Court accept any or all of the proposed amici briefs, it should decline to consider any claims and arguments raised by proposed amici that are not raised by Plaintiffs.

DATED: August 1, 2023.

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By: /s/ Ryan P. Steen

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(“[W]e ordinarily will not consider novel arguments advanced by an amicus on appeal, but not also raised by a party or another entity which has formally intervened.”).

¹⁶ See Dkt. 114-1 at 13-17. Counsel for Naqsrarmiut Tribal Council also did not contact counsel for ConocoPhillips (or, apparently, any defendants or intervenor-defendants) to request a position on its motion.

¹⁷ See Dkt. 117-001 at 8-12 (members of Congress); Dkt. 110-001 at 5-13 (Institute). *Sovereign Inupiat for a Living Arctic, et al. v. BLM, et al.* – Case No. 3:23-cv-00058-SLG *Center for Biological Diversity, et al. v. BLM, et al.* – Case No. 3:23-cv-00061-SLG

CERTIFICATE OF SERVICE

I hereby certify that on August 1, 2023, I filed a true and correct copy of the foregoing document with the Clerk of the Court for the United States District Court of Alaska by using the CM/ECF system. Participants in Case No. 3:23-cv-00058-SLG and Case No. 3:23-cv-00061-SLG who are registered CM/ECF users will be served by the CM/ECF system.

/s/ Ryan P. Steen

Ryan P. Steen