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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ALASKA

ALASKA INDUSTRIAL DEVELOPMENT AND EXPORT AUTHORITY, et al, Plaintiffs, and STATE OF ALASKA, Intervenor-Plaintiff, v. JOSEPH R. BIDEN, JR., in his official capacity as President of the United States, et al., Defendants, and NATIVE VILLAGE OF VENETIE TRIBAL GOVERNMENT, et al. Intervenor-Defendants	Case No. 3:21-cv-00245-SLG **PLAINTIFFS' AND INTERVENOR-PLAINTIFF'S MOTION FOR RELIEF FROM FINAL JUDGMENT (FED. R. CIV. P. 60(B)(5)-(6))**

This Court released its final decision on the parties' dueling summary judgment motions on August 7, 2023 (the "Order"). That decision, Dkt. 72, rejected each claim

alleged by Plaintiffs in their Second Amended Complaint, Dkt. 34. As this Court stated in its Order, each of Plaintiffs' claims challenged "President Joe Biden's Executive Order 13990" ("EO 13990") and the actions the U.S. Department of the Interior ("DOI") and the Bureau of Land Management ("BLM", with both agencies collectively referred to as "DOI") took to implement that order's directive to place a temporary moratorium (the "Moratorium") on the federal government's implementation of an oil and gas leasing program (the "Program") on the Coastal Plain of the Arctic National Wildlife Refuge ("ANWR" or the "Refuge").[1] The crux of Plaintiffs' claims was Federal Defendants' refusal to allow development of oil and gas resources on seven oil and gas leases issued to Plaintiff the Alaska Industrial Development and Export Authority ("AIDEA") pursuant to the Program; the motivation for such claims was the potential for a judgment that would allow such development on AIDEA's leases.

These claims are moot. Following the entry of the Order, on September 6, 2023, DOI served AIDEA with a letter cancelling AIDEA's Coastal Plain oil and gas leases.[2] The lease cancellation is a new final agency action.[3] Concurrently, BLM announced the

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[1] Dkt. 72 at 2.

[2] *See* Exhibit A hereto, September 6, 2023 letter from Deputy Secretary of the Interior Tommy Beaudreau to AIDEA; *see also* Dkt. 79 at 4, n. 2; *see also Gwich'in Steering Committee v. Haaland,* Case No. 3:20-cv-00204-SLG, Dkt. 98, Defendants' Status Report on Issuance of Draft Supplemental Environmental Impact Statement, at 2 ("Defendants advise that the Draft Supplemental Environmental Impact Statement for the Program was issued on September 6, 2023… While not an identified milestone in the aforementioned review of the Program, Defendants further advise that the remaining oil and gas leases issued in January 2021 under the Program were cancelled in a decision dated September 6, 2023.").

[3] The leaseholder, Plaintiff AIDEA, will shortly be filing a new lawsuit seeking to overturn this new unlawful final agency action (lease cancellation). The lease cancellation decision (Exhibit A hereto) concludes by stating that it is the final decision of the Department of Interior not subject to the normal internal appeals process within the Department.

availability of a draft Coastal Plain Oil and Gas Leasing Program Supplemental Environmental Impact Statement ("SEIS").[4] But for these September 6, 2023 agency actions, Plaintiffs would have appealed from the Court's final order. However, the cancellation of AIDEA's leases, and the release of the draft SEIS, have rendered all of Plaintiffs' claims relating to both the suspension of the leases, and the Program Moratorium, little more than an academic exercise. Now, even if Plaintiffs were to prevail in an appeal, no meaningful relief could be granted. In the absence of any leasehold interest, Plaintiffs lack the ability to pursue development on the Coastal Plain. As Federal Defendants observe in their Opposition to Plaintiffs' and Intervenor-Plaintiffs' Motion to Alter or Amend Summary Judgment Order and Judgment, Plaintiffs "could not undertake lease implementation actions regardless of whether they prevail on their Motion [to Alter or Amend] because the Department of Interior cancelled the corresponding leases on September 6, 2023."[5]

Because Plaintiffs' claims in this case, and any potential claims on appeal, have been rendered moot, Plaintiffs and Intervenor-Plaintiff respectfully request that the Court vacate its August 7, 2023 decision pursuant to Fed. R. Civ. P. 60(b)(5), and the United States Supreme Court's guidance in *United States v. Munsingwear.*[6] In the alternative, for the reasons described *infra,* Plaintiffs request relief from the judgment pursuant to Fed. R.

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[4] *Id., see also* 88 F.R. 62104-05, Notice of Availability of the Draft Coastal Plain Oil and Gas Leasing Program Supplemental Environmental Impact Statement.

[5] Dkt. 79 at 4, n. 2.

[6] 340 U.S. 36 (1950).

Civ. P. 60(b)(6), as the cancellation of the leases prior to DOI's completion of its SEIS review process, and without providing Plaintiffs an opportunity to respond to alleged deficiencies in the leases, is an extraordinary circumstance which was not anticipated by Plaintiffs or the Court before the entry of the Order.

I. PLAINTIFFS' CLAIMS HAVE BEEN RENDERED MOOT

Plaintiffs' Second Amended Complaint alleges seven claims, five of which challenged the Coastal Plain Moratorium generally (Counts I, II, IV, VI, and VII) and two of which challenged actions taken by DOI/BLM specific to AIDEA's leases (Counts III and V). Plaintiffs' standing to challenge the Moratorium arose from their particularized claims of injury relating to an inability to engage in the development of the lands leased to AIDEA. Each claim was rejected by the Court in its final Order.

Prior to the cancellation of AIDEA's leases, Plaintiffs filed a Motion to Alter or Amend the Court's Order pursuant to Fed. R. Civ. P. 59(e), Dkt. 76, requesting the Court alter its judgment to allow for non-environment-impacting lease activities to proceed during the remainder of the Moratorium. Additionally, Plaintiffs intended to pursue appellate review of the Court's summary judgment order. In the event that the Order was reversed, possible eventual remedies could have included, *inter alia,* orders (1) allowing Plaintiffs to engage in non-surface-disturbing efforts on the leased lands; (2) allowing the resumption of Plaintiffs' abilities to move forward with limited surface-disturbing development of AIDEA's leased lands.

Following the cancellation of the leases, however, no such remedies are available in response to either the Rule 59(e) Motion or upon appeal. Even if the Ninth Circuit were

to reverse the summary judgment decision, the reinstatement of AIDEA's leases would not be the result, nor would AIDEA or its contractors be permitted to begin archaeological or seismic activities on the leased lands, or further oil and gas development activities, as it no longer holds any leasehold interest to such lands. As Federal Defendants concede, there is no circumstance in which Plaintiffs would be permitted to engage in non-ground-disturbing activities on the leased lands.[7] Nor would the lifting of the Moratorium allow Plaintiffs to engage in ground-disturbing lease implementation activities. AIDEA and its contractors have no right to develop the Coastal Plain without leases. To the extent the Moratorium shutdown the entire Coastal Plain oil and gas program beyond implementation of AIDEA's leases, DOI's release of its draft SEIS on September 6, 2023 shows the agency is moving forward with its review process. Given the release of that draft SEIS, no aspect of the Moratorium initiated in 2021 remains to which meaningful relief can be granted. Federal Defendants predict completing their analysis and releasing its Final SEIS just nine months from now, by the end of the second-quarter 2024.[8]

In the absence of any available remedy, this case is moot. Mootness, "the doctrine of standing set in a time frame,"[9] "restricts judicial power to the decision of cases and controversies, so that our elected government retains the general power to establish social

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[7] Dkt. 79 at 4, n. 2.

[8] *Gwich'in Steering Committee v. Haaland,* Case No. 3:20-cv-00204-SLG, Dkt. 98, at 2.

[9] *Native Village of Noatak v. Blatchford,* 38 F.3d 1505, 1509 (9th Cir. 1994) (*overruled on other grounds by Bd. of Trustees of Glazing Health and Welfare Trust v. Chambers,* 941 F.3d 1195 (9th Cir. 2019)).

policy."[10] As with standing, "the federal courts lack power to make a decision unless the plaintiff has suffered an injury in fact, traceable to the challenged action, and likely to be redressed by a favorable decision."[11] If one of these "required prerequisites to the exercise of judicial power disappears while the litigation is pending, then in the absence of an applicable doctrinal exception, the judicial branch loses its power to render a decision on the merits of the claim" and the claim is moot.[12]

Nor is the potential for an advisory ruling on a question of law sufficient to vest the federal courts with jurisdiction over a dispute. A case or controversy exists justifying declaratory relief only when "the challenged government activity . . . is not contingent, has not evaporated or disappeared, and, by its continuing and brooding presence, casts what may well be a substantial adverse effect on the interests of the petitioning parties."[13] The adverse effect, however, must not be "so remote and speculative that there [is] no tangible prejudice to the existing interests of the parties."[14] The court must be able to grant effective relief, or it lacks jurisdiction and abstain from ruling on the matter.[15]

Unfortunately, despite the resources invested by all parties over the course of the above-captioned litigation, the cancellation of AIDEA's leases has swiftly and definitively

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[10] *Nome Eskimo Community v. Babbitt,* 67 F.3d 813, 815 (9th Cir. 1995) (*citing Lujan v. Defenders of Wildlife,* 504 U.S. 555, 559-61 (1992)).

[11] *Snake River Farmers' Ass'n v. Department of Labor*, 9 F.3d 792, 795 (9th Cir.1993).

[12] *Nome Eskimo Community,* 67 F.3d at 815.

[13] *Super Tire Engineering Co. v. McCorkle,* 416 U.S. 115, 122 (1974).

[14] *Id*. at 123 (*discussing Oil Workers Unions v. Missouri*, 361 U.S. 363, 371 (1960)).

[15] *GTE California, Inc. v. Federal Communications Comm'n,* 39 F.3d at 945 (9th Cir. 1994) (*citing Iron Arrow Honor Soc'y v. Heckler*, 464 U.S. 67, 70 (1983)); *see also Nome Eskimo Community v. Babbitt,* 67 F.3d 813, 814 (9th Cir. 195); *Alaska Wilderness League v. Jewell,* 637 F. Appx. 976, 978 (9th Cir. 2015).

eliminated any live controversy between the parties relating to either the Moratorium more broadly, or to AIDEA's leases specifically. While it is possible that a subsequent suit challenging the cancellation of AIDEA's leases could provide AIDEA with an avenue toward meaningful relief, the cancellation itself is not appropriately addressed in this case. In this case, there is now no relief that can be granted to Plaintiffs by either this Court or by the Ninth Circuit which could provide Plaintiffs with anything more than an advisory ruling, applicable only to future events as of now unforeseeable.

II. THE MOOTNESS OF PLAINTIFFS' CLAIMS DEPRIVES THE COURT OF ARTICLE III JURISDICTION, REQUIRING VACATUR

Federal Defendants' decision to render Plaintiffs' claims moot following the Court's summary judgment decision requires vacatur of that decision, pursuant to Fed. R. Civ. P. 60(b).[16] Vacatur is an automatic remedy which must be granted where mootness pending appeal results from the unilateral action of the party who prevailed in the trial court. [17]

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[16] Vacatur due to happenstance or the actions of the prevailing party mooting the case before the non-prevailing party could appeal is common, as discussed below, but there is little authority on whether the pertinent sub-section of Fed. R. Civ. P. 60(b) is (b)(4), (b)(5), or (b)(6). *See, e.g., Am. Games, Inc. v. Trade Prod., Inc.,* 142 F.3d 1164, 1168 (9th Cir. 1998) (suggesting that sub-section (b)(5) is applicable to requests for vacatur on mootness grounds where the mootness resulted from the *appellant's* actions, rather than the actions of a party who prevailed in the lower court). Fed. R. Civ. P. 60(b)(5) allows the Court to relieve a party from a final judgment where "applying [the judgment] prospectively is no longer equitable." Fed. R. Civ. P. 60(b)(5). This provision arises from "the historic power of a court of equity to modify its decree in the light of changed circumstances." *Wright & Miller,* § 2863 Judgment Satisfied or No Longer Equitable, 11 Fed. Prac. & Proc. Civ. § 2863 (3d ed.). The inquiry involved in a motion made pursuant to this rule requires "asking only whether 'a significant change either in factual conditions or in law' renders continued enforcement of the judgment 'detrimental to the public interest.'" *Horne v. Flores*, 557 U.S. 433, 453 (2009) (*citing Rufo v. Inmates of Suffolk Cty Jail,* 502 U.S. 367, 384 (1992)).

[17] *U.S. Bancorp Mortg. Co. v. Bonner Mall P'ship*, 513 U.S. 18, 25 (1994).

In *United States v. Munsingwear,*[18] the procedure of automatic vacatur was established to "clear[] the path for future relitigation of the issues between the parties and eliminates a judgment, review of which was prevented through happenstance."[19] The United States Supreme Court explained that "when that procedure is followed, the rights of all parties are preserved; none is prejudiced by a decision which in the statutory scheme was only preliminary."[20] Following *Munsingwear,* "[w]hen a civil case becomes moot pending appellate adjudication, '[t]he established practice . . . in the federal system . . . is to reverse or vacate the judgment below and remand with a direction to dismiss.'"[21] The "touchstone of vacatur is equity."[22] Thus, "[v]acatur is in order when mootness occurs through happenstance—circumstances not attributable to the parties...."[23]

Vacatur must also "be granted where mootness results from the unilateral action of the party who prevailed in the lower court."[24] In light of the equitable origins of vacatur, moot cases are to be disposed of in the manner "'most consonant to justice' . . . in view of the nature and character of the conditions which have caused the case to become moot."[25]

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[18] 340 U.S. 36 (1950).

[19] *Id.* at 39-40.

[20] *Id.* at 40.

[21] *Arizonans for Official English v. Arizona,* 520 U.S. 43, 71 (1997) (alterations in original) (quoting United States v. Munsingwear, Inc., 340 U.S. 36, 39 (1950)).

[22] *Dilley v. Gunn,* 64 F.3d 1365, 1369–71 (9th Cir. 1995).

[23] *Id.* (citation omitted); *see also Alaska Wilderness League v. Jewell,* 637 F. App'x 976, 981 (9th Cir. 2015).

[24] *U.S. Bancorp Mortg. Co.*, 513 U.S. at 25.

[25] *United States v. Hamburg–Amerikanische Packetfahrt–Actien Gesellschaft,* 239 U.S. 466, 477–478 (1916) (*quoting South Spring Hill Gold Mining Co. v. Amador Medean Gold Mining Co.,* 145 U.S. 300, 302 (1892)).

The public interest is also a relevant factor, since "[j]udicial precedents are presumptively correct and valuable to the legal community as a whole. They are not merely the property of private litigants and should stand unless a court concludes that the public interest would be served by a vacatur."[26]

As a consequence of Federal Defendants' cancellation of AIDEA's leases, Plaintiffs have been deprived of the opportunity to obtain judicial review on its Motion to Alter or Amend or appellate review of the Court's summary judgment decision. This judgment, which is by its express terms favorable to DOI, BLM, and the other Defendants, will therefore serve as instructive precedent to future litigants if not vacated. The public interest is not well served by allowing parties who have benefitted from a trial court judgment to preserve the precedent set by that judgment without appellate review by unilaterally acting to render the controversy giving rise to the judgment moot. Plaintiffs respectfully request that the Court vacate its August 7, 2023 summary judgment decision.

III. FEDERAL DEFENDANTS' CANCELLATION OF AIDEA'S LEASES IS AN EXTRAORDINARY CIRCUMSTANCE WHICH REQUIRES VACATUR OF THE AUGUST 7, 2023 ORDER.

Vacatur is also appropriate pursuant to Fed. R. Civ. P. 60(b)(6). Relief pursuant to this subsection of Rule 60 is addressed to the "wide discretion" of the district court, and is "available only in 'extraordinary circumstances.'"[27] While this is a high standard, "a change in facts upon which [a decision] is based usually constitutes an exceptional

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[26] *U.S. Bancorp*, 513 U.S. at 26-27 (*quoting Izumi Seimitsu Kogyo Kabushiki Kaisha v. U.S. Philips Corp.,* 510 U.S. 27, 40 (1993) (Stevens, J., dissenting)).

[27] *Fed. Trade Comm'n v. Hewitt*, 68 F.4th 461, 468 (9th Cir. 2023) (*quoting Buck v. Davis,* 580 U.S. 100, 123, (2017)).

circumstance."[28] In this regard, it should be noted that DOI's cancellation letter provided plaintiffs with no other remedies or right to appeal administratively. It was an abrupt final decision by the agency.

Throughout the course of the above-captioned case, Federal Defendants repeatedly represented to Plaintiffs and to the Court that no cancellation of AIDEA's leases would occur until after the completion of a full, supplemental NEPA process.[29] DOI described itself as having undertaken "the preparation of a supplemental NEPA analysis, and… a temporary halt on Department activities related to the Program pending completion of that supplemental analysis," and contended that "there is a disconnect between the injuries Plaintiffs claim to suffer – temporary inability to obtain economic benefits and information through surveys – and an order directing Defendants to cease the temporary suspension of efforts to implement the Program."[30] As a result of Federal Defendants' representations, Plaintiffs had throughout the case been operating under the assumption — apparently shared by the Court — that Defendants' suspension of AIDEA's leases was "temporary," and that there was no indication that cancellation was a reasonably foreseeable possibility prior to DOI completing its SEIS review and without first providing Plaintiffs the opportunity to respond to alleged deficiencies invalidating the leases through participation

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[28] *Stotts v. Memphis Fire Dep't*, 679 F.2d 541, 562 (6th Cir. 1982), reversed on other grounds *Firefighters Loc. Union No. 1784 v. Stotts*, 467 U.S. 561, 104 (1984).

[29] *See, e.g.,* Defs.' Resp. in Opp'n to Pls.' Mots. For Summ. J., Dkt 63 at 31 ("AIDEA's argument hinges on the hollow assertion that it is suffering "[a]n indefinite and categorical suspensions of all leases' that contradicts any reasonable reading of the record or the situation… At a factually comparable stage of development, courts have upheld temporary suspension of lease operations.").

[30] Dkt. 63 at 34, 25.

in the SEIS comment period or other means.[31] As the Court noted, no part of the record in this case contained any "statement or suggestion that the Program, including the ROD, is terminated or that AIDEA's leases are cancelled."[32] To the contrary, the Court observed, "Agency Defendants have instead evidenced an intent to continue implementing the Program."[33]

Yet, on September 6, 2023 — following the expiration of the deadline for motions to alter or amend the summary judgment order — DOI released its draft SEIS, and summarily cancelled AIDEA's leases. This cancellation occurred without providing AIDEA or the other Plaintiffs with an opportunity to defend against the cancellation. The development of this case thus reflects a tactical decision by Federal Defendants to defend against Plaintiffs' claims on the premise that the suspension of AIDEA's leases was a

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[31] DOI provided notice of the lease suspension through a letter sent to Plaintiff AIDEA on June 1, 2021. In that letter, DOI stated that suspension of the lease was necessary in order "to complete further environmental analysis under NEPA." AR 3365. The letter further represented that "BLM will undertake this additional NEPA analysis to determine whether the leases should be reaffirmed, voided, or subject to additional mitigation measures" and that when the additional NEPA analysis is "complete, the BLM will issue a new decision concerning the suspension of operations and production (SOP) of the Leases." AR 3365. NEPA requires the agency to seek comment on a draft EIS before releasing a final EIS and ROD. 42 U.S.C. § 4336a(c); 40 CFR 1502.9(b), 1503.1, and 1503.4. By informing AIDEA that DOI would use and complete a NEPA process to evaluate the lawfulness of the leases prior to issuing a decision on their suspension, DOI assured AIDEA that AIDEA would have an opportunity to submit comments defending its leases.

A year later, in its August 19, 2022 letter to AIDEA entitled Addendum to the Suspension of Operations and Production, DOI again assured AIDEA that it was conducting a NEPA analysis to determine whether leases should be affirmed, voided, or subject to additional mitigation measures. AR 3405. As mentioned above, the completion of the NEPA analysis both guarantees and requires an opportunity for public comment which would allow Plaintiffs to respond to the alleged legal deficiencies that DOI ultimately relied upon as grounds for invalidating and cancelling the lease agreements. Instead, DOI cancelled the leases prior to providing any opportunity for Plaintiffs to respond or file comments opposing such actions. This improper lack of process and is a claim that will be addressed in Plaintiffs' new litigation challenging the lease cancellation.

[32] Dkt. 72 at 17.

[33] *Id.*

temporary, rather than permanent, impairment of Plaintiffs' rights. This approach resulted in summary judgment in Defendants' favor. Following this successful defense, once "the writing was on the wall," Federal Defendants immediately departed from their prior course of action, and cancelled the leases without providing AIDEA with an opportunity to submit comments, evidence, or argument in defense of its leases.

This is an extraordinary circumstance. The timing of the cancellation of the leases suggests that the decision may well have been contemplated *prior to* the issuance of the summary judgment decision. Thus, the Court may have rendered its decision on a set of operative facts that were illusory, or, at the very least, dramatically different from those facts that emerged immediately after the Court issued its decision.

Plaintiffs and the Court do not, and cannot, know whether any "new evidence" exists that would justify relief pursuant to Fed. R. Civ. P. 60(b)(2). At this juncture, there is no way to determine whether Federal Defendants (1) had made up their minds to cancel the leases prior to the August 7, 2023 summary judgment decision; or (2) made this decision only after receiving and reviewing the August 7, 2023 decision. If it is revealed in the course of subsequent litigation that the cancellation decision was approved prior to the August 7, 2023 decision, then that may well constitute new evidence which bears directly on the reasoning underlying the summary judgment decision. Alternatively, if the cancellation was authorized subsequent to the grant of summary judgment, that would of course be a post-judgment development.

It makes little sense in a moot case for the parties to expend resources on discovery in an attempt to pin down the precise point in time when Federal Defendants decided to

cancel AIDEA's leases. Fortunately, Civil Rule 60(b)(6) offers an avenue for relief which does not require the resolution of that fact question. Regardless of when the cancellation decision occurred, it was not contemplated by Plaintiff or the Court for the duration of this case. In tandem with the mootness of the parties' controversy, extraordinary circumstances exist which justify providing Plaintiffs relief from the summary judgment decision.

IV. CONCLUSION

Following DOI's cancellation of AIDEA's leases, there is no longer any meaningful and effective relief that this court or an appellate court can grant to Plaintiffs in this case. Concurrent with the instant Motion, AIDEA has filed a new lawsuit challenging the lease cancellation. That lawsuit will address the facts and claims surrounding the cancellation, and can address any lingering questions about Federal Defendants' Program Moratorium, to the extent a Moratorium still exists in the absence of any active Coastal Plain leases.

The cancellation of AIDEA's leases renders the continued litigation of the instant case, however, no more than an academic exercise. After obtaining a favorable summary judgment order, Federal Defendants swiftly and unilaterally rendered the case moot, through no fault of Plaintiffs. Because appellate review of the summary judgment decision is not available, Plaintiffs respectfully request vacatur of the Order pursuant to Fed. R. Civ. P. 60(b)(5) and (6).

Respectfully submitted this 17th day of October, 2023.

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