

Ryan P. Steen (Bar No. 0912084)
ryan.steen@stoel.com
Jason T. Morgan (Bar No. 1602010)
jason.morgan@stoel.com
Luke A. Sanders (*admitted pro hac vice*)
luke.sanders@stoel.com
Tiffany Wang (*admitted pro hac vice*)
tiffany.wang@stoel.com
STOEL RIVES LLP
600 University Street, Suite 3600
Seattle, WA 98101
Telephone: 206.624.0900
Facsimile: 206.386.7500
Attorneys for Intervenor-Defendant
ConocoPhillips Alaska, Inc.

Whitney A. Brown (Bar No. 1906063)
whitney.brown@stoel.com
STOEL RIVES LLP
510 L Street, Suite 500
Anchorage, AK 99501
Telephone: 907.277.1900
Facsimile: 907.277.1920

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

SOVEREIGN INUPIAT 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

**INTERVENOR-DEFENDANTS' JOINT OPPOSITION TO PLAINTIFFS'
REQUEST FOR EXPEDITED CONSIDERATION OF MOTION FOR
INJUNCTION PENDING APPEAL**

Intervenor-Defendants ConocoPhillips Alaska, Inc., the North Slope Borough, the State of Alaska, Arctic Slope Regional Corporation, and Kuukpik Corporation jointly respond to Plaintiffs' Motion to Expedite¹ as follows:

Under Federal Rule of Appellate Procedure (FRAP) 8(a)(1), a party seeking an injunction pending appeal must first seek relief with the district court.² The purpose of this rule is to ensure that the court most familiar with the record has the opportunity to formulate a robust opinion to help inform the court of appeals.³ The caselaw cited by the Advisory Committee in its Notes to FRAP 8 explains that this Court retains jurisdiction over whether to issue an injunction pending appeal because its familiarity with the record makes it the "best and most conveniently able to exercise the nice discretion needed to determine th[e] balance of convenience" regarding whether to maintain the status quo.⁴ This is especially so where, as here, the record is "very voluminous."⁵

¹ Because Plaintiffs' motion in 3:23-cv-00058-SLG implicates the schedule in Case No. 3:23-cv-00061-SLG, Defendants Intervenor are filing this opposition in both cases.

² "A party must ordinarily move first in the district court for . . . an order suspending, modifying, restoring, or granting an injunction while an appeal is pending." Fed. R. App. P. 8(a)(1)(C). "The standard for evaluating an injunction pending appeal is similar to that employed . . . in deciding whether to grant a preliminary injunction." *Feldman v. Ariz. Sec'y of State's Off.*, 843 F.3d 366, 367 (9th Cir. 2016); *see Winter v. Nat. Res. Def. Council*, 555 U.S. 7 (2008).

³ *See* Fed. R. App. P. 8(a) advisory committee's notes to 1967 Adoption (citing *Cumberland Tel. & Tel. Co. v. La. Pub. Serv. Comm'n*, 260 U.S. 212, 219, 43 S. Ct. 75, 67 L. Ed. 217 (1922); *United States v. El-O-Pathic Pharmacy*, 192 F.2d 62 (9th Cir. 1951); *United States v. Hansell*, 109 F.2d 613 (2d Cir. 1940) (*per curiam*) (Hand, J., Chase, J., and Swan, C.J. sitting)).

⁴ *Cumberland*, 260 U.S. at 219 (*cited in* Fed. R. App. P. 8 advisory committee notes).

⁵ *Id.*; *Chevron v. Donziger*, 37 F. Supp. 3d 650, 651 (S.D.N.Y. 2014).

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

SILA Plaintiffs appear intent on rushing past this Court, with no apparent reason and without demonstrating good cause, particularly for the aggressive schedule they have proposed.⁶ As stated during the merits briefing, and as both sets of Plaintiffs were again informed on November 9, 2023, ConocoPhillips does not plan to resume surface-disturbing construction activities until December 21, 2023, at the earliest, depending on weather.⁷ Accordingly, there is ample time for the parties to submit briefing and evidentiary support and for the Court to write a considered decision on Plaintiffs' requests for injunctive relief to help inform the Court of Appeals of the equities in this case, should the Court deny the motions. Indeed, that is the very purpose of FRAP 8(a)(1).⁸ The short time in which SILA Plaintiffs request a decision includes reviewing 144 pages new Plaintiff declarations (plus whatever is filed by CBD, and opposing declarations) over a holiday weekend, and would deprive this Court of its ability to fully analyze the *Winter* factors and provide a thorough opinion.⁹ Given its extensive

⁶ See Local Civil Rule 7.3(a)(1)(A).

⁷ Case No. 3:23-cv-00058-SLG (SILA), Dkt. 141-2 at 5; Case No. 3:23-00061-SLG (CBD), Dkt. 153-2 at 5 (Decl. of Connor Dunn).

⁸ District courts retain authority under FRAP 8 to “help [the circuit court] greatly, particularly if [the district court] states why [it] does not think the appeal raises ‘any substantial question which should be reviewed.’” *Hansell*, 109 F.2d at 614 (cited by Advisory Committee); *Donziger*, 37 F. Supp. 3d at 651. This is because the circuit court “is not as well equipped as is the district court” to rule on injunctions pending appeal; the district court “necessarily knows more of the case than the circuit court of appeals can learn.” *El-O-Pathic*, 192 F.2d at 79 (cited by Advisory Committee); *id.* The circuit court should not “be left in a welter of assertion and counter-assertion . . . from which [it has] no adequate means of emerging.” *Hansell*, 109 F.2d at 614.

⁹ See *Feldman* 843 F.3d at 375 (citing *Winter*, 555 U.S. at 20-22); see also *id.*

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

knowledge of the record, this Court should have the opportunity to craft an opinion that fits the mold cast by its previous detailed orders on Plaintiffs' motions for summary judgment and motions for preliminary injunction.

Moreover, the schedule proposed by SILA Plaintiffs is extremely prejudicial to the Intervenor-Defendants. Despite their claims of urgency, SILA Plaintiffs waited six days after this Court issued its summary judgment order to file their motion for injunction pending appeal, and CBD Plaintiffs have stated they will wait until November 17 to file their motion (eight days after the summary judgment order). And yet, SILA Plaintiffs propose to require Defendants and Intervenor-Defendants to file responsive briefing and declarations only five days after CBD Plaintiffs file their belated motion. This is not reasonable and does not provide adequate time for Intervenor-Defendants to prepare briefs in response to *two* injunction motions and to assemble declarations in response to the *ten* declarations filed by SILA Plaintiffs (and presumably a similar amount of declarations from CBD Plaintiffs).

Intervenor-Defendants are, however, not opposed to an expedited, but reasonable, briefing schedule that allows sufficient time for preparation of responses, for this Court to issue a considered opinion, and for Plaintiffs to have a reasonable amount of time to request the same relief from the Ninth Circuit, should this Court deny their motions. In that vein, Intervenor-Defendants¹⁰ propose the following schedule:

¹⁰ Federal Defendants have stated that they can comply with Intervenor-Defendants' requested schedule.

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

A. **November 15, 2023:** SILA Plaintiffs file their motion for injunction pending appeal.

B. **November 17, 2023:** CBD Plaintiffs file their motion for injunction pending appeal (as CBD Plaintiffs have informed the parties they will do).

C. **November 29, 2023:** Federal Defendants and Intervenor-Defendants file responsive briefs and declarations in opposition to the motions for injunction pending appeal. Federal Defendants and each Intervenor-Defendant may file a single opposition brief in response to both motions and agree to coordinate as practicable to avoid redundancy in their briefs.¹¹

D. Plaintiffs either forego filing reply briefs or file such briefs as soon as practicable after November 29, 2023, at their election.

If the Court approves the above schedule, Intervenor-Defendants do not request a date by which the Court should issue a decision. Intervenor-Defendants note, however, that a decision by December 12, 2023, would give Plaintiffs sufficient time to seek any potential redress with the Ninth Circuit, if necessary, before the planned December 21 commencement of surface-disturbing activities.

¹¹ ConocoPhillips originally proposed an earlier filing date of November 23, but that was before Plaintiff CBD disclosed that it would delay filing its motion until November 17. *See* Dkt. 170-3.

DATED: November 16, 2023.

STOEL RIVES LLP

By: /s/ Ryan P. Steen

Ryan P. Steen (Bar No. 0912084)

Jason T. Morgan (Bar No. 1602010)

Whitney A. Brown (Bar No. 1906063)

Luke A. Sanders (admitted pro hac vice)

Tiffany Wang (admitted pro hac vice)

*Attorneys for Intervenor-Defendant
ConocoPhillips Alaska, Inc.*

Certification: Counsel for ConocoPhillips certifies that this Notice is 1128 words, in compliance with Local Civil Rule 7.4(a).

CERTIFICATE OF SERVICE

I hereby certify that November 16, 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 3:23-cv-00061-SLG who are registered CM/ECF users will be served by the CM/ECF system.

121491518.3 0028116-00168

/s/ Ryan P. Steen
Ryan P. Steen

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