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IN THE 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

Sovereign Iñupiat for a Living Arctic v. Bureau of Land Mgmt.
No. 3:23-cv-00058-SLG, 3:23-cv-00061-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-DEFENDANT ARCTIC SLOPE REGIONAL CORPORATION'S
COMBINED OPPOSITION TO PLAINTIFFS' MOTIONS FOR INJUNCTIONS
PENDING APPEAL**

Sovereign Inupiat for a Living Arctic v. Bureau of Land Mgmt.

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

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INTRODUCTION

Arctic Slope Regional Corporation (ASRC) opposes the motions for injunction pending appeal filed by Plaintiffs in the SILA and CBD cases.¹

In this brief, ASRC will address the public interest and balance of the equities factors from the perspective of its approximately 13,900 Iñupiat shareholders, many of whom live in the North Slope region where the Willow project will be located. ASRC filed two prior briefs in these cases, with accompanying declarations, addressing aspects of these issues.² In the interest of avoiding repetition, ASRC refers the Court to those briefs and declarations as they bear on the public interest and balance of the equities factors.

ASRC's mission is to actively manage its business, lands, resources, and investments to enhance Iñupiat cultural and economic freedom, with continuity, responsibility, and integrity. To fulfill this mission, ASRC is committed to responsible development of natural resources in a manner that respects Iñupiat subsistence values while ensuring proper care of the environment, habitat, and wildlife. Plaintiffs' proposed

¹ *Sovereign Iñupiat for a Living Arctic, et al. v. Bureau of Land Management, et al.*, Case No. 3:23-cv-00058-SLG ("SILA"), ECF No. 169 and *Center for Biological Diversity, et al. v. Bureau of Land Management, et al.*, Case No. 3:23-cv-00061-SLG ("CBD"), ECF No. 190.

² ASRC opposed plaintiffs' motions for preliminary injunction, and ASRC opposed plaintiffs' requests for vacatur in the event of remand on the merits. ASRC's Combined Opposition to Plaintiffs' Motions for Preliminary Injunction, SILA ECF No. 50 and CBD ECF No. 56; ASRC's Summary Judgment Brief, SILA ECF No. 142 and CBD ECF No. 154.

injunction pending appeal threatens that mission by seeking to stall or even cancel a project that would bring substantial and needed benefits to ASRC's shareholders. While many of these benefits are economic, the economic benefits are not the whole story. The economic stability provided by the Willow Project will play a critical role in sustaining the continued vitality of the Iñupiat communities on the North Slope. In turn, those communities are essential to sustaining Iñupiat culture. For these reasons, ASRC steadfastly supports the Project and opposes an injunction that would delay or derail the Project.

ARGUMENT

I. ASRC's Interest in the Willow Project

A. Arctic Slope Regional Corporation.

ASRC is one of twelve land-owning Alaska Native regional corporations established under the Alaska Native Claims Settlement Act of 1971 ("ANCSA").³ ASRC's region, the North Slope of Alaska, encompasses 55 million acres. The region includes the villages of Point Hope, Point Lay, Wainwright, Atkasuk, Utqiagvik (formerly Barrow), Nuiqsut, Kaktovik, and Anaktuvuk Pass. The residents of these villages are also residents of the North Slope Borough. The Borough's residents are predominantly Iñupiat people, many of whom are also among ASRC's approximately 13,900 Iñupiat shareholders.⁴ ASRC is one of the largest Alaskan-owned and operated

³ 43 U.S.C. §§ 1601–1629h.

⁴ Declaration of Rex A. Rock, Sr., Nov. 29, 2023 (Rock Decl.) ¶ 1.

companies.⁵ ASRC holds title to approximately five million acres of land conveyed to it under ANCSA, including land with energy, mineral, and other resource potential.⁶

Under ANCSA, Native corporations, including ASRC, “provide benefits to [their] shareholders who are Natives or descendants of Natives or to [their] shareholders’ immediate family members who are Natives or descendants of Natives to promote the health, education or welfare of such shareholders or family members.”⁷ Consistent with this unique Congressional mandate, ASRC provides financial returns to its Iñupiaq shareholders in the form of jobs and dividends. Since its inception, ASRC has paid approximately \$1.56 billion in dividends to its shareholders.⁸ In addition, under ANCSA’s revenue sharing provision, ASRC distributes a portion of its net revenues to other Alaska Native corporations, for the ultimate benefit of their Alaska Native shareholders. Since ASRC’s inception, ASRC’s distributions to other Alaska Native corporations exceed \$1.6 billion.⁹

ASRC’s mission is not purely financial. ASRC is deeply committed to preserving the Iñupiat way of life, culture and traditions, including the ability for its shareholders to

⁵ *Id.* ¶ 19.

⁶ *Id.* ¶¶ 10-11.

⁷ 43 U.S.C. § 1606(r) (authorizing ANCs “to promote the health, education, or welfare of such shareholders or family members is expressly authorized and confirmed” and stating that “[e]ligibility for such benefits need not be based on share ownership in the Native Corporation”).

⁸ Rock Decl. ¶ 16.

⁹ *Id.* ¶ 17.

participate in their traditional subsistence and recreational activities.¹⁰ This commitment drives ASRC's management of its nearly 5 million acres of land in the North Slope region, and ASRC's position on proposed development of non-ASRC lands in the region. In keeping with ASRC's cultural values, ASRC has utilized less than 2% of its land for natural resource development. The vast majority of ASRC's land is protected, preserved, or treated as de facto wilderness for cultural and subsistence use by its Iñupiat shareholders.¹¹

B. Benefits to ASRC's Iñupiat Shareholders from the Project.

Oil and gas development is the primary economic generator for the North Slope.¹² North Slope oil production has declined steadily since its peak in 1988 at 1.97 million barrels per day, to less than 500,000 barrels per day today.¹³ The industry, and the Project, remain critical to the region. According to a 2019 North Slope Borough Census Report, more than a quarter of Iñupiat households in the North Slope Borough fell below the poverty level in 2019, even before the Covid-19 pandemic.¹⁴ The Census Report also estimated the unemployment rate to be as high as 32% in 2019, and the employment level

¹⁰ *Id.* ¶ 13.

¹¹ *Id.* ¶ 10.

¹² Supplemental Environmental Impact Statement ("SEIS") at 292 (released Feb. 1, 2023) (noting that "the oil industry is the major private industry employer" in Nuiqsut), available at <https://eplanning.blm.gov/eplanning-ui/project/109410/570>.

¹³ *Id.* at 293.

¹⁴ North Slope Borough 2019 Economic Profile & Census Report at 109–10, https://www.north-slope.org/wp-content/uploads/2022/03/2019_NSB-EconomicProfileAndCensusReport_Final.pdf; Rock Decl. ¶ 67.

in 2022 was even lower because the economy is still recovering from the economic impacts of the pandemic.¹⁵ Corporate dividends from ASRC and other Alaska Native Corporations were the second major contributor to income for Iñupiat households in the North Slope Borough (38%), after wages (49%).¹⁶

The Project would have a peak production of up to 180,000 barrels of oil per day over its 30-year life, which would help offset declines in production from the North Slope oil fields and contribute to the local, state, and national economies.¹⁷ Direct benefits to ASRC's shareholders include contracting opportunities for ASRC subsidiaries; job opportunities for its shareholders in a region where unemployment is high and volatile; increased dividend income to supplement shareholders' household incomes (many of which fall below the poverty level); increased tax revenue to the Borough and NPR-A community grants that will translate into improvements in the quality of life for ASRC's shareholders in the North Slope region; enhanced access for subsistence uses that ASRC secured through sustained participation throughout the agencies' NEPA processes; and sustaining the viability of North Slope communities that are vital to the endurance of Iñupiat culture and language within the Iñupiat homeland.

¹⁵ SEIS at 293, 295; Rock Decl. ¶¶ 67-68. The U.S. Census Report, based on a five-year average for the 2016-2020 years, found the unemployment rate in Nuiqsut to be 13%, reflecting "the lack of employment opportunities for community residents." SEIS at 291-92 (citing Tab. 3.15.1).

¹⁶ SEIS at 293, 295.

¹⁷ *Id.* at ES-1.

1. Contracting Opportunities for ASRC's Subsidiaries.

The Project provides opportunities for ASRC's subsidiaries to enter into contracts with ConocoPhillips Alaska, Inc. (CPAI) to support the Project.¹⁸ Through a competitive bidding process, ASRC's subsidiary ASRC Energy Services, LLC (AES) entered into service contracts with ConocoPhillips in support of the Project, including a pipeline construction contract and a logistics support contract.¹⁹ Other contracting opportunities may arise as the Project progresses.

These contracts will generate revenue for ASRC that will be distributed to ASRC's Iñupiat shareholders as dividends, and to other Alaska Native corporations under ANCSA's revenue sharing provisions.²⁰ In addition, ASRC invests a portion of its revenues in initiatives that promote and support shareholder training and occupational development, healthy communities, and sustainable local economies.²¹ One such training program that Willow revenue will support is expansion of AES's "Nutaaq" (which means "new learner" in Iñupiat) training program.²² This is a paid, entry level training program

¹⁸ Rock Decl. ¶ 26.

¹⁹ *Id.* ¶¶ 28, 30. AES has been working with ConocoPhillips for more than two decades to develop oil and gas resources on the North Slope of Alaska. *Id.* ¶ 23. AES employs 130 ASRC shareholders across the North Slope, almost all of whom have jobs supporting oil and gas development. Rock Decl. ¶¶ 19-21.

²⁰ SEIS at 296 ("If local oil industry support companies, such as those owned by Kuukpik or ASRC, earn revenues on the Project, this would indirectly affect local incomes through increased dividends."); SEIS at 292 ("Nuiqsut Iñupiat households receive 57% of their income from dividend payments (e.g., Kuukpik, ASRC).").

²¹ Rock Decl. ¶ 15.

²² *Id.* ¶ 32.

for ASRC shareholders who typically do not have sufficient training, skills, qualifications, or experience to obtain full time, regular employment in a trade position. Through the paid training program, AES invests in internal and external training and apprenticeships to enable employees to obtain skilled trade positions, at AES or elsewhere, in craft fields like electrical, welding, scaffolding, pipefitting, heavy equipment operating, and additional trades. ConocoPhillips is a key supporter of the Nutaaq program, contributing both funding for Nutaaq training and positions supporting ConocoPhillips' work. The majority of Nutaaq graduates go on to work for AES supporting ConocoPhillips' operations at the Kuparuk and Alpine oil fields.²³

Any delay or cancellation of the Willow project is expected to reduce the opportunities for ASRC shareholders to obtain valuable training to work in Alaska trades.²⁴ As another example, for the past few years, ASRC has partnered with the Arctic Slope Native Association and the North Slope Borough to provide medical travel funds to shareholders. The grant funding provided by ASRC is made possible through revenues from projects like Willow.²⁵

2. Employment of ASRC Shareholders.

Contracts between ConocoPhillips and ASRC's subsidiaries will result in jobs for ASRC's Iñupiat shareholders and North Slope residents.²⁶ AES and its subsidiaries

²³ Rock Decl. ¶ 32.

²⁴ *Id.*

²⁵ *Id.* ¶ 36.

²⁶ *Id.* ¶¶ 27-31; SEIS at 296 ("Local residents may also be employed by local industry

expect to employ approximately 825 people to support the Project.²⁷ As examples, AES submitted a successful competitive bid for a large Willow construction project. In order to perform this construction contract, AES expects to employ approximately 340 craft and trade personnel during each winter construction season for the next four years.²⁸ AES also submitted a successful competitive bid for a logistics support contract for the Project. For this contract, AES anticipates employing approximately 40 people per year over a six-year period.²⁹ AES also invested significant time, effort and expense to build a talented senior project management and staff team of approximately 45 people to oversee and support the construction work.³⁰ Given the small employment base and high unemployment rate on the North Slope, these jobs “can substantially affect the local and regional economy.”³¹

3. Benefits to ASRC Shareholders from Tax and Royalty Payments that Fund Government Services in the North Slope Region.

BLM projects revenues for the State of Alaska and North Slope Borough from federal royalties and state and local taxes of approximately \$10 billion.³² Taxes and

support companies contracted to provide goods and services during construction.”); SEIS § 3.15.2.3.1. and 294 (Support service jobs also make up 58% of all oil industry jobs statewide).

²⁷ Rock Decl. ¶ 27.

²⁸ *Id.* ¶ 28.

²⁹ *Id.* ¶ 30.

³⁰ *Id.* ¶ 29.

³¹ SEIS at 296–97.

³² SEIS Table 3.15.5; BLM, Willow Master Development Plan Record of Decision (Mar. 12, 2023), available at <https://eplanning.blm.gov/eplanning-ui/project/109410/570>

royalties paid by the Project will support important social services and programs that directly benefit ASRC's Iñupiat shareholders.

The North Slope Borough receives approximately 96% of its revenues from taxes levied on oil and gas infrastructure.³³ It is projected that the Project will provide over one billion dollars to the North Slope Borough through property taxes.³⁴ ASRC's shareholders receive vital services from the Borough, including educational services such as support for Alaska's only tribal college; health care services; fire, police, and search and rescue services; water and sewer infrastructure; and heating and electrical subsidies to partly offset extremely high energy costs. The Borough also spends millions of dollars each year to address the impacts of global climate change, including building and rebuilding protective coastal berms, rebuilding roads, and addressing the consequences of melting permafrost. The Project's revenues will enable the Borough to continue and even enhance these services.³⁵

In addition, Nuiqsut and other North Slope communities are eligible for grant funding under the NPR-A Impact Grant Program.³⁶ Under this program, the federal government pays a portion of its oil and gas royalties to the State of Alaska. From these funds, the State provides grants to North Slope communities to fund programs or projects

at 12.

³³ Rock Decl. ¶ 37.

³⁴ *Id.*; Declaration of Nagruk Harcharek, Nov. 28, 2023 (Harcharek Decl.) ¶ 10.

³⁵ See Rock Decl. ¶¶ 38-39, Ex. H at 3; Harcharek Decl. ¶ 10.

³⁶ SEIS at 292.

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that offset development impacts or improve communities most directly or severely impacted by oil and gas development.³⁷ In fiscal years 2018-2021, the NPRA Grant Program paid over \$43.6 million in grant funds for 65 community projects.³⁸ For fiscal year 2023, recommended funding for NPR-A projects totaled \$12.3 million, benefitting the communities of Anaktuvuk Pass, Atkasuk, Nuiqsut, Utqiagvik, and Wainwright.³⁹ Past grants to Nuiqsut have supported general government operations, youth center operations and maintenance, a boat ramp, community center maintenance, a natural gas pipeline, building conversions, graveyard fencing, City Hall renovation, a playground, and the Colville River Access Road.⁴⁰ The Project is expected to add over \$2.5 billion to the NPR-A Grant program, to the direct benefit of Nuiqsut and other communities.⁴¹

4. Benefits from Infrastructure Associated with the Project.

As part of the Project, ConocoPhillips will build roads and other local infrastructure. These infrastructure projects are expected to lower the cost of living and provide greater access for subsistence activities to local Iñupiat residents.⁴² Nuiqsut residents currently have access to the Dalton Highway (and the state's gravel road system) four months of the year (by ice road); during the rest of the year, Nuiqsut is only

³⁷ *See id.* at 439.

³⁸ Harcharek Decl. ¶ 10 and Ex. D.

³⁹ *Id.*

⁴⁰ SEIS at 293; Harcharek Decl. ¶ 11.

⁴¹ Rock Decl. ¶ 41; Harcharek Decl. ¶ 11.

⁴² Rock Decl. ¶¶ 56, 59. *See also* SEIS §§ 2.5.3.2 and 2.5.13.

accessible by air with scheduled and chartered flights from Utqiagvik.⁴³ Nuiqsut's residents have identified road connectivity as a high priority. New roads will lower the cost of living—including the cost of goods and services—and provide greater access for subsistence activities.⁴⁴ Gravel cells opened to build roads for the Project will be available for community development uses. Without industry involvement, such access would be “cost prohibitive.”⁴⁵

5. Benefits for Subsistence Activities.

Contrary to the narrative advanced by Plaintiffs, the proposed project will enhance opportunities for subsistence activities by local residents.⁴⁶ New roads for the Willow project will be open for use by local residents and include pullouts for subsistence activities.⁴⁷ There will be options for new boat ramps on several creeks, allowing easier access for subsistence users.⁴⁸ The Nuiqsut ATV trail will be improved for easier

⁴³ SEIS at 291; *see also id.* §§ 2.5.3.2 and 2.5.13.

⁴⁴ *See* Rock Decl. Ex. H at 4.

⁴⁵ *Id.*

⁴⁶ *See* Declaration of Doreen Leavitt, Nov. 17, 2023 (Leavitt Decl.) ¶¶ 7, 13, 15; Harcharek Decl. ¶ 13, 14; Rock Decl. ¶ 56, 58, 59. *See also* SEIS §§ 2.5.3.2 and 2.5.13. Doreen Leavitt is a tribal citizen of the Iñupiat Community of the Arctic Slope (ICAS), the federally-recognized regional tribal government for the North Slope. She is ICAS's Director of Natural Resources, and its Secretary. She lives in Utqiagvik. Leavitt Decl. ¶¶ 1, 2. Nagruk Harcharek is President of The Voice of the Arctic Iñupiat (VOICE), a non-profit organization comprised of North Slope governments, corporations, non-profits, and other entities. He is a native of Utqiagvik and has lived in Utqiagvik for most of his life. Harcharek Decl. ¶¶ 1, 2.

⁴⁷ Leavitt Decl. ¶¶ 7, 13; Harcharek Decl. ¶¶ 13, 14; Rock Decl. ¶¶ 56, 59.

⁴⁸ Leavitt Decl. ¶ 7; Rock Decl. ¶ 56.

subsistence access.⁴⁹ Five miles of ATV trails near Anaktuvuk Pass will be improved for subsistence use.⁵⁰ Compensatory mitigation of wetlands will protect a large area of coastal wetland for subsistence use.⁵¹ In light of these facts, there is no basis for concluding that the Project's effect on subsistence activities balances in favor of an injunction.

6. The Project Enhances the Survival of North Slope Communities That Are Vital to the Preservation of Iñupiat Culture, Language, and Identity.

The preceding discussion largely identifies the financial benefits of the Project to residents of the North Slope, including ASRC's shareholders. But it is important to recognize that the benefits from the project to the North Slope Iñupiat residents are not just "economic" in nature. As the declarations from Rex Rock, Doreen Leavitt and Nagruk Harcharek demonstrate, there is a much bigger picture. For the Iñupiat communities, "economic stability is inextricably tied to community and cultural sustainability."⁵² As Mr. Harcharek summarizes, "without an economy, we risk losing our communities, and without our communities, our culture risks decimation."⁵³

If North Slope residents – especially younger people—cannot obtain good jobs,

⁴⁹ Rock Decl. ¶ 56.

⁵⁰ Rock Decl. ¶ 56.

⁵¹ Leavitt Decl. ¶ 15, Rock Decl. ¶ 58.

⁵² Leavitt Decl. ¶ 17.

⁵³ Harcharek Decl. ¶ 15

they will leave their communities.⁵⁴ Reduced dividends to ASRC shareholders have the same effect, as reduced incomes drive people away from high-cost communities.⁵⁵ If government services familiar to most Americans cannot be provided to ASRC's shareholders in the North Slope due to a dwindling tax base, residents will leave their villages.⁵⁶ As these communities wither from economic starvation, the Iñupiat culture, language, and way of life will be threatened as well. "In modern times it is economic interests that will ultimately allow people to return, or stay in, their home villages where they can keep those villages and our culture not just alive, but vibrant."⁵⁷ "It is critical to the sustainability of our culture that we have economically viable North Slope communities so that our people will remain in our villages and thrive."⁵⁸

C. The Project Has Broad Support from the Alaska Natives Who Live on the North Slope, and Other Alaska Natives.

ASRC's assessment of the Project's benefit to the residents of the North Slope is joined by others who represent the interests of the indigenous people of Alaska, as reflected in the expressions of support for the Project submitted with Mr. Rock's

⁵⁴ Leavitt Decl. ¶ 8.

⁵⁵ Rock Decl. ¶ 35. "[W]hen shareholders' economic needs are not met, they may leave our villages, which can impact the sustainability of our culture, language, traditions, and identity." *Id.*

⁵⁶ Harcharek Decl. ¶¶ 8, 12, 15.

⁵⁷ Leavitt Decl. ¶ 18.

⁵⁸ Leavitt Decl. ¶ 3. *See also* Harcharek Decl. ¶ 15.

Declaration⁵⁹ and Mr. Harcharek's Declaration.⁶⁰ Supporting organizations include the Alaska Federation of Natives and the ANCSA Regional Association. In addition, the project has the strong support of the federally-recognized tribal government for the North Slope, the Iñupiat Community of the Arctic Slope (ICAS), as stated in the declaration of its Director of Natural Resources and Secretary, Doreen Leavitt.⁶¹

The benefits of the project to the Iñupiat people of the North Slope were recognized in a resolution adopted by an Alaska non-profit corporation, The Voice of the Arctic Iñupiat ("VOICE").⁶² VOICE is a broad-based organization whose member organizations include North Slope local governments, ANCSA regional and village corporations (including ASRC), and tribes on the North Slope.⁶³ Most of VOICE's member representatives are elected officials who were elected to their respective positions by the North Slope Iñupiat.⁶⁴

VOICE's purposes include promoting the social welfare of the Iñupiat of the Arctic Slope, promoting an understanding of the North Slope economy, and encouraging culturally safe and responsible development for economic sustainability.⁶⁵ In November

⁵⁹ See Rock Decl. Exs. K, L, and M, and ¶¶ 62, 63, 72, 73, 74.

⁶⁰ Harcharek Decl. ¶ 6 and Exs. A, B, and C.

⁶¹ Leavitt Decl. ¶¶ 12, 16, 19.

⁶² Rock Decl. ¶ 73 and Ex. M; Harcharek Decl. ¶ 6 and Ex. A.

⁶³ Harcharek Decl. ¶ 5 (identifying VOICE's member organizations); Rock Decl. ¶ 73.

⁶⁴ Harcharek Decl. ¶ 3.

⁶⁵ Rock Decl. ¶ 73. See also Rock Decl. Ex. M and Harcharek Decl. Ex. A.

2022, VOICE’s Board passed a resolution recognizing that the region and communities will benefit from responsible development that will strengthen the North Slope Borough’s tax base, provide contracting opportunities for tribes and Alaska Native Corporations, and provide access to grants for community projects through the NPR-A Impact Mitigation Grant Program.⁶⁶ This resolution supported advancement of the Willow Project “to further support the economic foundation of the North Slope region and ensure the sustainability and viability of its eight communities and the Iñupiaq culture.”⁶⁷ These points are reinforced by the declaration of VOICE’s president, Nagruk Harcharek, submitted with this brief.

As discussed above, the declarations from ICAS (the regional tribal government) and VOICE emphasize how funds from the Project will facilitate the preservation of Iñupiat communities, language and culture.⁶⁸ The economic stability provided by the Project plays a vital part in sustaining the Iñupiat communities on the North Slope. Those communities, in turn, sustain the Iñupiat language and culture. As VOICE’s President Nagruk Harcharek summarizes:

Maintaining our Iñupiaq culture and subsistence practices are not inconsistent with responsible resource development; they are necessarily intertwined. Loss of the Willow Project would negatively impact the Iñupiat. When people cannot afford to engage in subsistence activities, cannot heat their homes, lose access to vital governmental services due to loss in tax base, they leave. Without an economy, we risk losing

⁶⁶ Rock Decl. ¶ 73 and Ex. M; Harcharek Decl. ¶ 6 and Ex. A.

⁶⁷ Rock Decl. Ex. M and Harcharek Decl. Ex. A.

⁶⁸ Leavitt Decl.; Harcharek Decl.

our communities, and without our communities, our culture risks decimation.⁶⁹

II. The Balance of Equities and Public Interest Factors Support Denial of an Injunction Pending Appeal.

In support of their motions, plaintiffs continue to advance the narrative that even the slightest environmental harm outweighs all other harm from an injunction and dictates entry of an injunction pending appeal. In its April 2023 Order, this Court rejected this one-sided interpretation, and it should do so again.⁷⁰ Plaintiffs' position is wholly inconsistent with the very concept of a *balance* of the equities and a full consideration of the public interest. Under their formulation, there is no true balancing of the equities, because potential environmental harm automatically outweighs every other category of harm, and public interests other than environmental protection are effectively ignored.

When the Court fully considers all harm that may occur if the project is enjoined pending appeal, it is clear that the balance of hardships falls heavily on the Intervenor-Defendants and the communities and residents of the North Slope, and the public interest weighs against entry of an injunction. First, CPAI asserts that an injunction preventing the work planned for the 2023-24 winter construction season could end the Project. If so, all of the benefits to ASRC and its subsidiaries, ASRC's Iñupiat shareholders, and the

⁶⁹ Harcharek Decl. ¶ 15

⁷⁰ Order re Motions for Temporary Restraining Order and Preliminary Injunction, April 3, 2023 at pp. 31-44.

North Slope communities outlined on pages 4 to 13 above and in the Declarations from Rex Rock (ASRC), Doreen Leavitt (ICAS), and Nagruk Harcharek (VOICE) will be lost in their entirety. To be specific, this means:

- Loss of AES's existing construction and logistics contracts to support the Project, and loss of future contracts in support of the Project.
- Loss of contract revenue that would otherwise pay dividends to ASRC shareholders and contribute to revenue-sharing with other ANCs.
- Loss of contract revenue that would support important initiatives for ASRC shareholders, such as the Nutaaq training program at AES, and community and economic development projects for North Slope residents and communities.
- Loss of jobs for ASRC's shareholders, including the opportunity to work on 825 jobs anticipated by AES and its subsidiaries.
- Loss of millions of dollars that AES has invested in project-specific equipment to fulfill construction contracts for the Project.
- Loss of billions of dollars that the NSB would receive in taxes over the life of the project, and loss of the services that the NSB could provide with these tax revenues, including critical education services; fire, police, and search and rescue services; water and sewer infrastructure; heating and electric subsidies; and global-warming impact mitigation.
- Loss of community grants funded through the NPR-A Impact Grant

Program.

- Loss of economic activity that will sustain North Slope communities and the continued vitality of Iñupiat language and culture.
- Loss of anticipated infrastructure improvements related to the Project.
- Loss of improved access for hunting and other subsistence activities.

Plaintiffs speculate that the same benefits could still be achieved at some time in the future, if this Court's Judgments are eventually affirmed on appeal. The hypothesis that the Project will resume after appeals are completed is untested and speculative at best, but even if the Project recommences after appeals are complete, there will be significant harm to ASRC, its subsidiaries, and its Iñupiat shareholders from an injunction pending appeal.⁷¹ If work on the Project cannot proceed as planned in the 2023-24 winter season alone, AES estimates a loss of approximately 349 jobs over the next few months, and \$59 million in revenue.⁷² Moreover, AES spent significant amounts to assemble a highly-qualified senior project management team to oversee and support the construction work. If the Project is enjoined for the 2023-24 winter season,

⁷¹ The duration of any such injunction pending appeal—and the delay in the benefits otherwise flowing from the project—is unknown based on two factors: the time for the U.S. Court of Appeals to reach a decision on the appeals, and the possibility that even if the plaintiffs lose their Ninth Circuit appeals, they will file petitions for rehearing and petitions for review by the United States Supreme Court and seek to extend their injunction for additional months or even years.

⁷² Rock Decl. ¶¶ 31, 35. If an injunction pending appeal similarly prevents work during the 2024-25 season, AES's job losses are estimated at 733, and its revenue loss is projected to be \$182 million. Rock Decl. ¶¶ 31, 35.

AES will lose this senior project management team.⁷³ If the Project returns at some indefinite time in the future, AES would need to duplicate its costs to assemble a new team. AES could also be required to bring new team members up to speed on the Project, and to update its data on the Project, thus repeating millions of dollars' worth of employee time already spent to prepare for work on the Project.⁷⁴ In short, AES and ultimately ASRC would bear significant costs from an injunction that prevents them from working on the Project during the 2023-24 Winter construction season.

The costs of delay do not fall only on corporations and institutions. These costs fall directly on individuals—in this case, the people who expect to have AES jobs this winter, including ASRC's Iñupiat shareholders. Delay is not an abstract concept for people who will lose their jobs. They will feel the impact immediately. Even in the longer term, every individual's time in the workforce is finite. Men and women who lose the opportunity for a good job now, or for essential job training now, may never make up the lost income, even if the Project resumes at some future date.

⁷³ Rock Decl. ¶ 29.

⁷⁴ Rock Decl. ¶ 34.

CONCLUSION

For the foregoing reasons, and the reasons stated in the Declarations submitted with this brief, Arctic Slope Regional Corporation respectfully requests that the Court deny Plaintiffs' motions for injunctions pending appeal.

DATED: November 29, 2023.

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CERTIFICATE OF SERVICE

I hereby certify that on November 29, 2023, I filed a true and correct copy of the foregoing document with the Clerk of the Court for the United States District Court – District of Alaska by using the CM/ECF system, thereby serving counsel of record who are registered CM/ECF users via the CM/ECF system.

Dated: November 29, 2023.

/s/ Tae Kim
Tae Kim