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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

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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

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**STATE OF ALASKA'S COMBINED OPPOSITION TO PLAINTIFFS' MOTIONS  
FOR INJUNCTION PENDING APPEAL**

## INTRODUCTION

The State of Alaska (“State”) opposes the Plaintiffs’ Motions for Injunction Pending Appeal<sup>1</sup> because the requested injunctions are without merit and contrary to significant public interest. The Plaintiffs, Sovereign Iñupiat for a Living Arctic, *et al.*, (“SILA”) and Plaintiffs, Center for Biological Diversity, *et al.*, (“CBD”) (collectively “Plaintiffs”) were denied preliminary injunctions before this Court<sup>2</sup>, denied injunctions pending appeal before this Court<sup>3</sup>, similarly denied injunctions before the 9<sup>th</sup> Circuit<sup>4</sup>, dismissed on the merits with prejudice and thus denied requested remand and vacatur before this Court<sup>5</sup>, and now again seek extraordinary and drastic injunctive relief to halt and effectively terminate the Willow Project. Plaintiffs have failed to meet their burdens to show irreparable harm to their members would likely result from ConocoPhillips’ construction activities while the appeals are pending and the balance of the equities and public interest does not favor Plaintiffs for any injunction.

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<sup>1</sup> *Sovereign Iñupiat for a Living Arctic, et al. v. BLM*, 3:23-cv-00058-SLG, Dkt. 169 (“SILA Motion”); *Center for Biological Diversity, et al. v. BLM*, 3:23-cv-00061-SLG, Dkt. 190 (“CBD Motion”), (collectively “Plaintiffs’ Motions”).

<sup>2</sup> SILA, Dkt. 74; CBD, Dkt. 82.

<sup>3</sup> SILA, Dkt. 78; CBD, Dkt. 87.

<sup>4</sup> SILA, 23-35226; CBD, 23-35227.

<sup>5</sup> SILA, Dkt. 166; CBD, Dkt. 184, (“Decision”).

The State as a sovereign state, a state with recognized legal rights under the National Petroleum Reserves Production Act (Reserves Act) and the Alaska National Interest Lands Conservation Act (ANILCA) at issue in this case, a cooperating agency in the multiple, detailed, and prolonged environmental impact statements underpinning the Willow Project approvals, a neighboring landowner and land manager, a regulatory and taxing authority, contributes significant expertise on Arctic oil and gas development, subsistence, socio-economic issues in Alaska, and other public interest views to aid the Court in its consideration of the balance of equities and public interests at stake. Accordingly, the State's combined opposition is supported by the accompanying declaration of the State's Acting Commissioner of Labor and Workforce Development<sup>6</sup>, and the State's previously submitted declarations from the State's Director of the Division of Oil and Gas within the Department of Natural Resources<sup>7</sup> and the State Pipeline Coordinator within the Division of Oil and Gas<sup>8</sup>.

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<sup>6</sup> Exhibit 1, Declaration of Catherine Muñoz.

<sup>7</sup> SILA, Dkt. 52-1.

<sup>8</sup> SILA, Dkt. 52-3.

## APPLICABLE STANDARDS

This Court uses a four-element test akin to the standard for preliminary injunctions when considering whether to grant an injunction pending appeal. *Southeast Alaska Conservation Council v. U.S. Army Corps of Eng'rs*, 472 F.3d 1097, 1100 (9th Cir. 2006). For the “extraordinary remedy” Plaintiffs seek, they must establish that (1) they are likely to succeed on the merits; (2) they are likely to suffer irreparable harm without injunctive relief; (3) the balance of equities tips in their favor; and (4) an injunction is in the public interest. *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 22 (2008). The third and fourth elements, balance of equities and public interest, merge together in this case because the government is a party. *Nken v. Holder*, 556 U.S. 418, 435 (2009).

## ARGUMENT

The Plaintiffs have failed to meet the high burdens to establish any of the elements above for the extraordinary relief requested. While the elements for a motion for injunction pending appeal are essentially the same as a motion for preliminary injunction, the posture and associated burden on the first element is a bit different because here the Plaintiffs have received a lengthy well-reasoned Decision dismissing all their claims on the merits. The Plaintiffs’ Motions

summarily restate arguments from their briefing on the merits without offering any new analysis for why they are likely to succeed on the merits on appeal when this Court has thoroughly ruled against the merits of the Plaintiffs' claims. SILA Motion at 9-15; CBD Motion at 4-5.

In order to avoid duplication with briefing of the Defendants and other Intervenor-Defendants, due to the shortened motion schedule, and to best employ the State's unique expertise and public interest perspectives, the State focuses its arguments on the Plaintiffs' now repeated failures to show irreparable harm and how the merged balance of equities and public interest elements do not support any injunction.

## **I. PLAINTIFFS FAIL TO CLEARLY DEMONSTRATE LIKELY IRREPARABLE HARM**

Plaintiffs fail to show likely irreparable harm to Plaintiffs related to caribou or subsistence during the appeal period. CBD's Motion asserts that construction activities for the Willow Project during the appeal period "are likely to cause population-level effects" to the Teshekpuk Lake Caribou Herd that would irreparably harm the Plaintiffs. CBD Motion at 5. CBD's Motion included an unsigned, unsworn, purported "Declaration of Likely Impacts to Caribou and Caribou Subsistence from the Construction Phase of the Willow Project, National

Petroleum Reserve in Alaska.” CBD Motion, Dkt. 190-1. The document lists three individuals as authors and includes a brief description of each author. *Id.* at 2.

Notably, none of the authors descriptions include specific examples of personal experience, work experience, or research expertise on the Teshekpuk Lake Caribou Herd in particular or subsistence practices in Nuiqsut in particular. *Id.* Instead, the document is a derivative sporadically referenced opinion piece that cannot establish any likely harm to the Plaintiffs. The document should not be regarded by the Court as any sort of factual declaration or given weight as a study.

The document explains that it is the product of some peer reviewed publications, not that it itself has been subject to peer review. *Id.* at 3. The document appears to be entirely prepared for litigation since the introduction notes that it describes impacts “more likely than not to occur as a result of the next two years constructing the Willow Project,” which is approximately the time requested for injunction pending appeal here. *Id.* at 3. It is for the Court to determine whether *irreparable* harm is “likely to occur” to the Plaintiffs during the appeal period from Willow construction, not undeclared opinion pieces from non-parties.

Moreover, many statements in the document are missing citations entirely, contain vague assertions of “experience elsewhere”, and other opinion leaps and

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characterization parading as scientific conclusions. *See, id.* at 5, at 9 (seemingly leaping off a series of studies spanning different years and different areas to conclude that the noise and traffic caused by Willow construction will be similar to that of an unnamed “oilfield area” at some unspecified time and thereby Willow construction “will also lead to higher calf mortality” at some unspecified time and of no specific duration.). The reference list also includes two references that do not appear to be cited in the document text. *Id.* at 20 & 21. One citation found in the documents text on review of the reference list appears to reference a study of responses by wildebeest. *Id.* at 7 & 20. This is likely a citation error, but it certainly spotlights the concerns about the level of critical scientific analysis and review underpinning the document.

The document posits without reference or specificity that “a significant portion of caribou hunting grounds” will be made “inaccessible” to community residents. *Id.* at 17. This is easily refuted by the fact that the Willow Project footprint is small compared to the range of the Teshekpuk Lake Caribou Herd and the size of the Reserve, the construction activity during the appeal would be even smaller in scale than the overall project, and notably that numerous declarants and parties to this case have espoused the benefits of the roads and ramps from the

Willow construction activity for access to subsistence resources. SILA, Dkt. 74 at 24; Decision at 53 -54 (recounting the tundra access ramps, pullouts from gravel roads, and subsistence boat ramps and mitigation measures included in the approvals for the Willow Project and Kuukpik Corporation's description of the mitigation measures as "groundbreaking.").

In this Court's prior decision denying the Plaintiffs' requests for preliminary injunctions during the winter 2023 construction season, the Court considered the nature and scope of the construction activities planned in the Reserve during the period requested for injunction against the Plaintiffs' similar allegations of harm due to concerns about impacts to caribou and subsistence. SILA, Dkt. 74 at 24 & 29. While the construction activities planned during the appeal period are greater than those of winter 2023, construction of eight miles of gravel road this winter compared to about three miles earlier this year does not appreciably change the calculus in a Reserve of 23 million acres from what was previously considered by this Court. SILA, Dkt. 74 at 11 & 29; SILA, Dkt. 177 at 15.

As the Court explained in its earlier denial of preliminary injunctions, the Bureau of Land Management ("BLM") considered impacts to caribou and subsistence of concern to the Plaintiffs. SILA, Dkt 74 at 24. The Court properly



deferred to BLM's use of expertise in the record. *Id.* The Federal Defendants' opposition to the Plaintiffs' Motions now similarly notes analysis in the record on this issue and the defective nature of the CBD Plaintiffs' unsigned document. SILA, Dkt. 175 at 9-10.

As to the other declarations submitted by the Plaintiffs, those declarations likewise fail to establish irreparable harm to the Plaintiffs during the appeal period. The declarations are largely similar to the prior declarations considered by the Court and found insufficient to demonstrate, not just allege, likely irreparable harm. SILA, Dkt. 74 at 25-31. The declaration of Mr. Kunaknana attempts to tie allegations of harm to the construction activities during the appeal period at least, but fails to demonstrate the harms as specific, immediate, substantial, permanent, causally related to the construction, or likely to occur. SILA, Dkt. 169-8.

## **II. AN INJUNCTION IS CONTRARY TO THE BALANCE OF EQUITIES AND PUBLIC INTERESTS**

### **A. Any injunction would result in extraordinary economic harms to public and private entities.**

The Plaintiffs' requested injunctions would halt construction of the Willow Project for at least one year and places the entire Willow Project and its associated benefits at risk. The Court's prior decision denying the Plaintiffs' requests for preliminary injunctions considered the record and declarations on the multitude of

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economic harms, both public and private, that would have followed from an injunction of the last winter construction season. SILA, Dkt. 74 at 34-36. The Court analyzed the balance of environmental harms against economic and other harms based on guidance from *Earth Island Institute v. Carlton*, 626 F.3d 462, 475 (9th Cir. 2010). *Id.* at 32-33. This Court characterized the economic interests then as “substantial” and found that the economic harms from an injunction would extend to residents of Nuiqsut and interests beyond Nuiqsut. *Id.* at 34-35.

Given that the Plaintiffs now seek a longer injunction and the construction activity is planned to be greater during the appeal period, the economic harms under any measure can only be greater now. The Plaintiffs’ Motions offer no explanation as to why the Court’s prior balancing was incorrect or should be inapplicable now. The balance of harms tips even more sharply now against injunction.

Both Plaintiffs’ Motions, without factual support, characterize loss of construction jobs from an injunction pending appeal as temporary or just delayed benefits. SILA Motion at 17; CBD Motion at 14. The Plaintiffs’ Motions fail to recognize the many layers of economic harms from the requested injunction and the actual employment opportunities and outcomes in Nuiqsut and Alaska.

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The State’s Acting Commissioner of Labor and Workforce Development, Catherine Muñoz states “delay to the Willow Project from a short term injunction or injunction pending appeal would have real impacts to employment outcomes for Alaskans, especially for Alaskans living near the Willow Project, including the residents of Nuiqsut.” Ex. 1, Decl. Muñoz ¶ 2. Commissioner Muñoz explained that from 2015 to 2022 “[j]obs have fallen steeply...in the North Slope Borough” and that “increased employment activity adds critical funding for local families and supports the local economy.” *Id.* at ¶ 3. The Commissioner remarked on important job training opportunities that Willow construction brings: “Willow’s employment will also include significant training opportunities for North Slope Borough residents, and other Alaskans, further broadening their skills capacity for future employment opportunities after Willow construction season has ended.” *Id.* at ¶ 2. Oil and gas jobs in 2022 in the North Slope Borough paid higher average annual wages than the overall average annual wages in the Borough. *Id.* at ¶ 4 (\$156,372 compared to \$115,260). An injunction pending appeal in this case would cause significant economic harms given “[o]il and gas jobs continue to play a vital role in Alaska’s economy as they provide substantial revenue to the state and high-paying jobs in a region where the cost of living is amongst the highest in the state.” *Id.*

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None of the cases cited by the Plaintiffs in support of environmental harms tipping the balance against economic harms for injunctive relief involved post-pandemic recovery in remote communities with high costs of living and limited employment and training opportunities combined with economic investments and government revenues to the scale of the Willow Project. SILA Motion at 17; CBD Motion at 14. These facts exacerbate the public and private harms of an injunction pending appeal far beyond any “temporary” delay of economic benefits.

The State maintains that any injunction puts the Willow Project overall at risk, and therefore, the associated billions of dollars of tax and royalty revenues for the federal government, state, and local governments are not just considered “postponed”, but also potentially “foregone.” AR917058 -59. For argument only, assuming the balance of interests analysis on motion for an injunction pending appeal should *not* consider these foreseeable risks of project loss associated impacts to private and public parties besides the permittee and should *only* consider economic impacts expected for the next two years, the Plaintiffs still miss the mark on the balance of equities and public interests.

First, the Plaintiffs’ Motions only account for “postponed” jobs in their cursory economic balance arguments. The Plaintiffs failed to account for the loss

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of federal, state, and local tax revenues and other fees that will be due over the next two years due to the construction activities. Specifically, the increased activity impacts on property tax revenues, corporate income tax revenues, and bed tax and other excise tax revenues that the federal, state, and local governments would receive from the increased economic activity during the next two years of construction. AS 43.56; AS 43.20; AR917058 -59 (noting that the City of Nuiqsut could also potentially benefit from high bed tax revenues and tobacco tax during construction).

Second, the characterization of economic benefits as just being “postponed” is inaccurate because not only would an injunction pending appeal postpone economic benefits, the benefits overall would be lessened due to the costs of uncertainty and inefficiencies of delays on large project timelines. The uncertainty and delays due to an injunction at this stage in the Willow Project would create public harms to orderly public planning and permitting. The Willow Project will require many other federal, state, and local permits, approvals, reviews, and consultations. AR821894. Many of these reviews will involve expertise and technical analysis. *See*, SILA, Dkt. 53-3¶ 6, Dec. Strupulis (describing the “rigorous technical and financial ‘fit, willing, and able’ analysis” on pipeline

construction applications with the State.). Delay due to an injunction pending appeal would be harmful to public administration processes because staff with necessary expertise might leave, institutional knowledge currently employed may be lost, other resource needs may arise, and various hurdles of budgetary and logistical planning may occur. Any of those possibilities could result in increased timelines and costs to the State and other stakeholders in the Willow Project.

The State's Director of the Division of Oil and Gas, Derek Nottingham, explained that delay in projects creates uncertainty and "an inability for these organizations to plan effectively in hiring qualified people, adequately managing their existing and future accounts, and generating quality products." SILA, Dkt. 52-1 at ¶4, Dec. Nottingham. Stops and starts on large projects carry costs and increased risks that tip the balance against injunction here.

**B. Any injunction would be contrary to public welfare and safety for the continuation of subsistence lifestyles.**

Plaintiffs Motions allege irreparable harms to subsistence uses during the appeal period outweigh economic harms to require an injunction. CBD Motion at 14; SILA Motion at 6. This Court's decision denying preliminary injunctions considered nearly identical allegations from the Plaintiffs against declarations of benefits to most subsistence users from construction of the Willow Project with the

subsistence access and mitigation measures. SILA, Dkt. 74 at 38-39. The Court stated that “[o]verall, the record does not demonstrate that the construction of the gravel road extension and boat launch would be against the interest of most subsistence uses.” *Id.* at 39-40. The construction during the appeal period would be for the continuation of the gravel road and boat ramp. AR820746. Yet, the Plaintiffs again offer no explanation as to why the Court should weigh the benefits of construction on subsistence users any differently now, and indeed it should not.

The State as a sovereign has interests in promoting the health, safety, and welfare of its citizens. The State agrees with Kuukpik Corporation that these roads may improve safety and health for State residents by improving access to subsistence resources, enabling subsistence resources to be obtained more safely, and helping rural communities maintain their populations and subsistence lifestyles. In ANILCA, Congress acknowledged that the national interests in environmental and other values of these lands existed while admonishing that those protections and values should not deprive the “State of Alaska and its people” of economic and social needs. 16 U.S.C. § 3101(d). The maintenance of healthy communities and subsistence lifestyles is part and parcel of the economic and social needs of these communities. The Plaintiffs’ requested injunctions would

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harm public health and safety due to the delays in construction of roads and boat ramps that are a key part of the environmental and mitigation measures for the Willow Project.

**C. Any injunction would be contrary to the significant public interests for energy security.**

The purpose of the Reserve Act was to protect the Navy's and then the nation's overall energy security needs, a purpose that still rings true today. 42 U.S.C. § 6506a. This Court in its decision denying preliminary injunctions reasoned that "allowing the Winter 2023 Construction Activities to proceed would be consistent with the Congressional directive to the Secretary of the Interior to conduct 'an expeditious program of competitive leasing of oil and gas in the' NPR-A". SILA, Dkt. 74 at 42-43. Again, the Plaintiffs' Motions offer no rationale for why the Court should weigh the public interest expressed in the Reserves Act and echoed in the uniquely aligned amicus brief of the State's Legislature and Federal Delegation any differently now. SILA, Dkt. 49-1 at 12-14. The same public interests and purposes hold true for the lengthier delay from the injunctions pending appeal requested now.

The Willow Project's target reservoir is the Nanushuk formation that is productive on State lands as well as the Reserve. SILA Dkt 52-1, at ¶ 6, Dec.

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Nottingham. A delay in the Willow Project due to the requested injunctions “generates the potentiality for ineffective or limited development of the Nanushuk formation.” *Id.* Oil produced from the Willow Project, and any other projects that produce from the Nanushuk formation, would be shipped down the Trans-Alaska Pipeline System (“TAPS”). TAPS is critical national energy infrastructure to meet the energy demands in Alaska, Washington, California, and other portions of the U.S. West Coast. SILA Dkt. 52-3. at ¶ 8, Dec. Strupulis. The delay due to any injunction would be contrary to the purposes of the Reserves Act and important domestic energy security needs.

## CONCLUSION

The injunction requested would result in likely millions of dollars leaving the State’s economy, vital jobs and job training losses, and risk billions in future federal, state, and local revenues. The economic, public welfare, and energy security harms that could follow from injunction pending appeal substantially outweigh any harms to the Plaintiffs. The Plaintiffs failed to meet the heavy burdens for the drastic injunctions sought and the motions should be denied.

DATED: November 29, 2023.

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## CERTIFICATE OF COMPLIANCE

Pursuant to Local Civil Rule 7.4(a)(3), I certify that this brief complies with the type-volume limitation of Local Civil Rule 7.4(a)(2) because it contains 3,331 words, excluding the parts of the brief exempted by Local Civil Rule. 7.4(a)(4). This memorandum has been prepared with proportionately spaced typeface, Times New Roman size 14 font.

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## CERTIFICATE OF SERVICE

I hereby certify that on November 29, 2023, the foregoing was filed electronically with the Clerk of Court using the CM/ECF system. Notice of this filing will be sent to all counsel of record by operation of the court's electronic filing system.

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