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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
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

NORTH SLOPE BOROUGH'S RESPONSE IN OPPOSITION TO PLAINTIFFS' MOTIONS FOR INJUNCTION PENDING APPEAL

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GLOSSARY

BLM	Defendant Bureau of Land Management
Borough	Intervenor-Defendant North Slope Borough
CBD	Plaintiffs Center for Biological Diversity, Defenders of Wildlife, Friends of the Earth, Greenpeace, Inc., and Natural Resources Defense Council
ConocoPhillips	Intervenor-Defendant ConocoPhillips Alaska, Inc.
FSEIS	BLM, Willow Master Development Plan, Final Supplemental Environmental Impact Statement (Jan. 2023)
NEPA	National Environmental Policy Act
NPR-A	National Petroleum Reserve-Alaska
NPRPA	Naval Petroleum Reserves Production Act
Petroleum Reserve	National Petroleum Reserve-Alaska
ROD	BLM, Willow Master Development Plan, Record of Decision (Mar. 13, 2023)
SILA	Plaintiffs Sovereign Iñupiat for a Living Arctic, Alaska Wilderness League, Environment America, Northern Alaska Environmental Center, Sierra Club, and The Wilderness Society
TLSA	Teshekpuk Lake Special Area
Willow	Willow Master Development Plan

I. INTRODUCTION

Plaintiffs Sovereign Iñupiat for a Living Arctic ("SILA") and Center for Biological Diversity ("CBD") once again seek emergency injunctive relief pending appeal to halt ConocoPhillips Alaska, Inc.'s ("ConocoPhillips") winter construction activities for the Willow Master Development Plan ("Willow"). Without identifying any specific errors in this Court's thorough 109-page order, Plaintiffs simply restate or reference some of the arguments this Court has already analyzed and rejected and ignore the significant equitable and public interests the winter construction activities will provide to the people of Alaska's North Slope this season.

When dismissing Plaintiffs' claims, this Court evaluated the evidence, made extensive factual findings, and appropriately concluded that Plaintiffs had failed to show that the Bureau of Land Management ("BLM"), U.S. Fish and Wildlife Service, or the National Marine Fisheries Service acted arbitrarily and capriciously when preparing a Final Supplemental Environmental Impact Statement ("FSEIS"), supporting Endangered Species Act determinations, and issuing a Record of Decision ("ROD") for Willow. This Court correctly dismissed Plaintiffs' claims with prejudice and, as it did with their motions for preliminary injunction earlier this year, should similarly deny their requests for injunctive relief pending appeal.

II. BACKGROUND

The North Slope Borough ("Borough") is the area-wide local government representing residents living in eight remote villages on the North Slope of Alaska. Its creation in 1972 marked the first time Native Americans had taken control of their destiny

through the use of municipal government. Declaration of Josiah Patkotak ¶ 5 ("Patkotak Decl."). It was a bold move by indigenous people to regain control of their lives and future. *Id*. ¶ 5. The Borough's jurisdiction spans the entire northern portion of Alaska and includes the National Petroleum Reserve-Alaska ("Petroleum Reserve" or "NPR-A"), an area Congress set aside long ago to ensure the nation "would have adequate petroleum supplies," H.R. Rep. No. 94-81(I) at 5 (1975), and where ConocoPhillips will construct Willow. Patkotak Decl. ¶ 4. Four Borough villages are located within the boundaries of the Petroleum Reserve: Nuiqsut, Atqasuk, Utqiaġvik, and Wainwright. *Id*.

The people of the North Slope—the majority of whom are Native Alaskan Iñupiat—have subsisted on the NPR-A's resources for thousands of years. They rely on responsible development of oil and natural gas resources to support and sustain employment and essential government services that enable them to remain on their homelands and participate in a modern economy. *Id*. ¶¶ 12, 23. Revenue from taxes on oil and natural gas infrastructure allows the Borough to invest in public utilities (including reliable sewer, water, and heat) and provide essential services to its eight communities across a region the size of Wyoming that has extremely limited economic opportunity. *Id*. ¶¶ 4, 11, 23. These services include education, health (including clinics in each village, hospitals, and increased sanitation), wildlife management, and emergency services (including aircraft and crew that conduct regular medevac and search and rescue operations throughout the North Slope). *Id*. ¶ 11. In addition to these vital services, the Borough also spends tens of millions of dollars every year to address and remediate climate-related impacts to its communities,

including building and replenishing coastal berms, rebuilding roads, armoring essential areas, and relocating or protecting residences and other critical infrastructure. *Id*. ¶ 14.

Willow will provide an estimated $1.25 billion in Borough property tax revenues over its 30-year lifespan and is projected to generate billions of dollars for the NPR-A Impact Grant Program, which provides additional funds to local communities. *Id*. ¶ 13. For the construction of oil and gas infrastructure this 2023-2024 winter season, ConocoPhillips has executed contracts with Alaska-based companies—many of whom are affiliates of Alaska Native corporations—and these activities will provide approximately 1,800 jobs, with significant benefits to North Slope residents through short-term employment opportunities. *Id*. ¶¶ 23-24. Finally, although Plaintiffs claim construction activities will hinder access to subsistence resources, it is well established that the construction of gravel roads and boat ramps during the winter season will aid subsistence hunters by expanding access for better hunting and harvesting opportunities. *Id*. ¶ 22. Construction and development of Willow is in the public interest and critical to support and ensure the continued social, cultural, and economic well-being of North Slope Alaskans.

As this Court is aware, following BLM's preparation of the FSEIS and ROD that authorized Willow, Plaintiffs sought preliminary injunctive relief to enjoin ConocoPhillips' 2023 winter construction activities. This Court denied those requests along with Plaintiffs' subsequent requests for an injunction pending appeal, and the U.S. Court of Appeals for the Ninth Circuit denied Plaintiffs' motions for emergency injunctive relief pending appeal. *SILA v. BLM*, 2023 WL 2759864 (D. Alaska Apr. 3, 2023). The parties then proceeded to file motions for summary judgment. On November 9, 2023, this Court thoroughly rejected

Plaintiffs' arguments, dismissed their claims with prejudice, and entered final judgment. *SILA v. BLM*, 2023 WL 7410730 (D. Alaska Nov. 9, 2023).

Plaintiffs' claims here remain meritless. Plaintiffs have failed once again to satisfy their burden of establishing any likelihood of success on the merits and have failed to demonstrate any irreparable harm during the upcoming winter construction season. As this Court has already found, Willow's continued development is in the public interest. The upcoming winter construction activities will provide a broad range of significant benefits to North Slope residents immediately and over the longer term. And, as this Court also correctly found when it dismissed Plaintiffs' claims, BLM complied with the prior remand order, provided extensive additional analyses and environmental review, and satisfied all applicable statutory and regulatory obligations.

III. STANDARD OF REVIEW

"The standard for evaluating an injunction pending appeal is similar to that employed by district courts in deciding whether to grant a preliminary injunction." *Feldman v. Ariz. Sec'y of State's Office*, 843 F.3d 366, 367 (9th Cir. 2016) (citations omitted); *see also Nken v. Holder*, 556 U.S. 418, 428-29 (2009). When evaluating such a motion, the court considers "whether the moving party has demonstrated that they are likely to succeed on the merits, that they are likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in their favor, and that an injunction is in the public interest." *S. Bay United Pentecostal Church v. Newsom*, 959 F.3d 938, 939 (9th Cir. 2020) (citations omitted). When the government is a party, the balance of equities and public interest factors merge. *Drakes Bay Oyster Co. v. Jewell*, 747 F.3d 1073, 1091

(9th Cir. 2014). Failure to satisfy any one of these factors bars relief. *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008).

IV. ARGUMENT

Plaintiffs fail to demonstrate that an injunction pending appeal is warranted, or that there is a basis or need for a short-term injunction. As was the case the last time this Court reviewed Plaintiffs' request to enjoin winter construction activities, the balance of equities and public interest tip sharply against an injunction, Plaintiffs have failed to show any irreparable harm, and Plaintiffs have failed to demonstrate any likelihood of success on the merits. Although Plaintiffs contend the 2023-2024 winter construction activities will be "far more impactful" to the environment than last year's activities,[1] the only major construction activities planned at the Willow site are related to additional gravel mining, the installation of 4.6 miles of pipelines and eight miles of gravel road, the installation of several gravel pads and portions of the airstrip facilities, completion of one of the subsistence boat ramps, and installation of a bridge on the Willow access road. Brodie Second Decl. ¶¶ 6, 9-12, SILA ECF 177-12. This work will result in total surface disturbance of approximately 204.1 acres of the 23,229,653 acres within the Petroleum Reserve (equivalent to approximately 0.000879 percent of the NPR-A). *Id*. ¶ 13. The

[1] Although SILA focuses its arguments on the 2023-2024 winter construction season, CBD focuses more broadly on the next two years and beyond. CBD Motion at 4, CBD ECF 190. CBD's expansive focus is misplaced and improper. *Winter*, 555 U.S. at 22 ("applicant must demonstrate that in the absence of a preliminary injunction, 'the applicant is likely to suffer irreparable harm before a decision on the merits can be rendered.'") (emphasis added and citation omitted). Given that briefing in this matter is currently scheduled to conclude in February 2024, the Ninth Circuit is likely to issue a decision prior to the 2024-2025 winter construction season. *See* SILA ECF 174; CBD ECF 194.

upcoming winter construction will bring 1,800 jobs to the North Slope, significantly increase access opportunities for subsistence hunting and fishing, and provide important economic and social benefits to the State of Alaska, Alaska Native corporations, the Borough, and their respective constituents. Because Plaintiffs have failed to demonstrate any of the factors required for injunctive relief, let alone all of them, this Court must deny their motions.

A. The Balance of Equities and the Public Interest Tip Sharply Against Injunctive Relief.

Plaintiffs fail to establish that the balance of equities and public interest warrant injunctive relief. "The assignment of weight to particular harms is a matter for the district courts to decide," *Earth Island Inst. v. Carlton*, 626 F.3d 462, 475 (9th Cir. 2010), and courts may not "abandon a balance of harms analysis just because a potential environmental injury is at issue." *Lands Council v. McNair*, 537 F.3d 981, 1005 (9th Cir. 2008) (citation omitted), *overruled in part on other grounds by Winter*, 555 U.S. 7. Furthermore, "[e]conomic harm may indeed be a factor in considering the balance of equitable interests." *Earth Island*, 626 F.3d at 475. It is also well-settled that courts "should pay particular regard for the public consequences in employing the extraordinary remedy of an injunction." *Stormans, Inc. v. Selecky*, 586 F.3d 1109, 1139 (9th Cir. 2009) (citation omitted). This Court previously weighed these factors with respect to Willow and concluded that "the balance of the equities and the public interest tip sharply against preliminary injunctive relief." *SILA v. BLM*, 2023 WL 2759864, at *15 (emphasis added).

Here, seven months later, Plaintiffs have failed to demonstrate any change in this balance of equities, let alone a significant change that now justifies injunctive relief.

1. The Immediate Benefits from Winter Construction Activities to North Slope Residents Outweigh Any Alleged Harms.

When describing irreparable injuries, Plaintiffs conflate winter construction activities and final Willow operations, *see, e.g.*, SILA Motion at 8, SILA ECF 169 (alleging irreparable harm from Willow's greenhouse gas emissions), and ignore the considerable benefits that the 2023-2024 winter construction activities will provide to North Slope residents. One of Plaintiffs' declarants goes so far as to claim that oil and gas exploration has caused widespread illness and death comparable to "genocide." Maupin Decl. ¶ 24, SILA ECF 169-9. Such wildly hyperbolic assertions are insufficient to support an injunction of winter activities and ignore contradictory evidence that responsible oil and gas development has had a positive impact on North Slope residents, including on their overall health and life expectancy.

While Borough residents will continue to rely on subsistence resources, responsible oil and gas development has allowed them to benefit from high living standards the rest of the modern world takes for granted, such as access to modern health care, sanitation and water infrastructure, and quality education. Patkotak Decl. ¶ 12. These improvements, none of which would be possible without tax revenues from responsible oil and gas development in the North Slope, have resulted in a significant increase in life expectancy, and opportunities for Borough residents to build a future in the modern world. *Id*. Indeed,

"responsible oil and gas development is essential to the economic survival and public interest of the Borough and its residents." *Id*. ¶ 10 (emphasis added).

The North Slope Borough Assembly supports Willow as serving the public interest and, in 2021, voted unanimously (with one abstention) to approve the rezoning of lands to allow Willow's construction to begin. *Id*. ¶ 25. As part of that rezoning process, the Borough, leveraging its considerable experience and expertise, evaluated potential impacts to subsistence and took that expertise into account when finding that Willow served the public interest. *Id*. In suggesting that Willow is incompatible with the cultural and subsistence interests of the Native Alaskans who live on the North Slope, Plaintiffs fail to recognize that nearly three-quarters of Borough residents are Iñupiat, who have depended on the subsistence resources of the North Slope's lands and waters for thousands of years. *Id*. ¶¶ 7, 18. Over 98% of Iñupiat households utilize subsistence foods, and the social fabric of Borough communities revolves around subsistence traditions. *Id*. ¶ 7. The Borough has therefore worked closely with BLM, in the interests of its residents, to ensure the protection of subsistence and cultural resources. *Id*. ¶ 9. The Borough served as a cooperating agency in the development of Willow's environmental impact statements, and various Borough departments and employees participated in that process. *Id*. The Borough also uses its own permitting requirements to make sure Willow-related activities comply with "appropriate mitigation measures, zoning requirements, and stipulations . . . that are protective of the environment, wildlife, human health, and our residents' cultural well-being." *Id*. ¶ 17.

As the affected local government, the Borough has a unique duty to regulate responsible development while ensuring the health and well-being of its citizens and

environment. *Id*. ¶ 16. Through its four decades of experience managing and permitting oil and gas exploration, development, and production, among other activities, on the North Slope, the Borough has developed significant mitigation measures to achieve an appropriate balance between protecting the North Slope's residents and environment while facilitating, when appropriate, responsible oil and gas development. *Id*. The Borough has invested considerable time and resources to ensure that Willow includes provisions that will protect the Borough's and the region's resources, not threaten them.

Plaintiffs suggest that the NPR-A is an untouched wilderness area, but this is not true. In addition to being an area utilized by the Iñupiaq for thousands of years, as well as an area that now contains four villages with a combined population of approximately 6,000 people, it is a petroleum reserve where, over time, extensive seismic surveying has occurred along with the drilling of more than 100 exploratory wells and the construction of infrastructure and facilities to support those drill sites. *Id*. ¶ 15. The area near Utqiaġvik also has multiple wells along with supporting infrastructure needed to supply gas to the village, and, throughout the Petroleum Reserve, there are hundreds of allotments, cabins, hunting and fishing camps, and trails and ice roads for village travel and subsistence hunting. *Id*.

Notwithstanding the inaccuracy of Plaintiffs' characterizations, the public interest benefits of this winter's construction activities far outweigh the relatively minor disturbances necessary to achieve them. The gravel roads and boat ramp, once constructed, will provide increased and safer access for subsistence and recreational uses. *Id*. ¶ 22. Many people who live on the North Slope view the road construction associated with Willow "as

a significant benefit." *Id*.; *SILA v. BLM*, 2023 WL 2759864, at *13 ("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"). The construction itself will also bring approximately 1,800 jobs to the region this winter, and Plaintiffs concede that "the loss of construction jobs during the appeal period would be significant." CBD Motion at 12. In addition to direct jobs, 2023-2024 winter construction will provide much-needed economic support for an area that depends on resource development as its "primary economic generator." Patkotak Decl. ¶ 10. These economic benefits, on which the Borough depends to promote the health and well-being of its residents, greatly outweigh any purported "harms" Plaintiffs allege, most of which also lack veracity.

2. Any Delay of Willow's Completion Would Harm the Borough, Its Residents, and the Public Interest.

In addition to the immediate impacts to Nuiqsut, as the village closest to Willow, and Borough residents from loss of seasonal employment and subsistence access, any action that enjoins, delays, or otherwise impacts oil and gas leasing activities within the Borough's jurisdiction—including enjoining this winter's construction activities and thereby delaying or preventing Willow's completion—would have significant negative impacts on the Borough's economy and its ability to generate tax revenue to provide critical services to its residents. *Id*. ¶ 26. When considering whether to award injunctive relief, "[b]oth the economic and environmental interests are relevant factors, and both carry weight." *League of Wilderness Defs./Blue Mountains Biodiversity Project v. Connaughton*, 752 F.3d 755, 765 (9th Cir. 2014) (citation omitted).

As this Court has already recognized, "there are substantial economic interests at issue in this case." *SILA v. BLM*, 2023 WL 2759864, at *12 (emphasis added). As noted above, the Borough specifically approved Willow's construction by rezoning the site from a Conservation District to a Resource Development District after concluding the project serves the public interest. Patkotak Decl. ¶ 25. Willow offers significant tax benefits for the Borough, as its authority to tax oil and gas development infrastructure is "by far the most significant source of funding for community services and infrastructure" on the North Slope. *Id*. ¶ 10. Willow is expected to provide $1.25 billion in Borough property taxes, which will be critical to support the Borough's ability to provide and invest in public infrastructure, essential services, and utilities (including reliable sewer, water, and heat) to its villages. *Id*. ¶¶ 11-13. This includes funding for critical Borough priorities related to health, education, wildlife management, and emergency services. *Id*. ¶ 11. These tax benefits will begin to flow to the Borough next year based on the infrastructure that ConocoPhillips constructed in winter 2023, and they will significantly increase the following year based on the infrastructure ConocoPhillips plans to construct during the 2023-2024 winter season. *Id*. ¶ 26. These direct economic benefits to the Borough and its residents would be irrevocably lost if any injunction resulted in the failure of Willow. *See* Dunn Second Decl. ¶ 16, SILA ECF 177-11.

Willow is also expected to generate between $2.27 and $3.56 billion in royalty revenue sharing for the NPR-A Impact Grant Program. Patkotak Decl. ¶ 13. These grants support workforce development, comprehensive community planning, infrastructure and utilities, and land management and permitting. Borough residents need these services, and

the Borough is obligated to provide them. *Id*. ¶ 26. Any delay or loss of Willow's anticipated tax revenue and NPR-A Impact Grant funds would directly and significantly impair the Borough's ability to provide essential government functions, support its economy, and provide for the health and well-being of its residents. *Id*.

The public interest is considerable and weighs against injunctive relief when the few ground-disturbing activities that an injunction would halt would have minimal environmental impact and do not include the extraction of oil and gas.

B. The Declarations on Which Plaintiffs Rely Are Insufficient to Show Irreparable Harm Absent Injunctive Relief.

In an attempt to show irreparable harm, Plaintiffs rely on a number of declarations, many of which this Court has already determined are insufficient, all of which fall short of what is required, and at least one of which is inadmissible. Plaintiffs bear the burden of demonstrating "that irreparable injury is likely" if the limited 2023-2024 winter construction activities are not enjoined before the Ninth Circuit makes a determination on the merits of the appeal. *Winter*, 555 U.S. at 22 (citation omitted). They cannot rely on claims of injury from Willow in its entirety. *SILA v. BLM*, 2023 WL 2759864, at *7. Plaintiffs also must demonstrate that any such irreparable injury is "imminent" and not "speculative." *Friends of the Wild Swan v. Weber*, 767 F.3d 936, 946 (9th Cir. 2014) (citation omitted); *Goldie's Bookstore, Inc. v. Superior Ct. of Cal.*, 739 F.2d 466, 472 (9th Cir. 1984). Importantly, the Ninth Circuit has rejected "a rule that any potential environmental injury automatically merits an injunction." *Lands Council v. McNair*, 537 F.3d at 1005.

As documented in ConocoPhillips' and Kuukpik's Responses, Plaintiffs' allegations of general harm reflect vague and speculative concerns that are contradicted by the record and the testimony of other Nuiqsut residents. ConocoPhillips Resp. at 16-30; Kuukpik Resp. at 8-16. Plaintiffs rely on declarations from Sam Kunaknana, Daniel Ritzman, and Rosemary Ahtuangaruak, but this Court previously concluded, based on the same general concerns that are reiterated here, that those declarants failed to demonstrate they would suffer irreparable harm from last winter season's construction activities. *SILA v. BLM*, 2023 WL 2759864, at *8-10 (analyzing alleged concerns about noise and vibration, fishing, caribou hunting, and use and enjoyment of the land). The activities planned for the upcoming construction season are mostly a continuation of work already started and in the same general area. Accordingly, the concerns raised by these declarants, which are essentially the same concerns previously raised and rejected, remain insufficient to demonstrate irreparable harm.

SILA also relies on the declarations of Siqiñiq Maupin and Robert Thompson. SILA Motion at 7-8, SILA ECF 169. But neither Ms. Maupin nor Mr. Thompson demonstrate any personal harm that will result from the upcoming 2023-2024 winter construction activities. *Nat'l Wildlife Fed'n v. Nat'l Marine Fisheries Serv.*, 886 F.3d 803, 822 (9th Cir. 2018) ("Plaintiffs seeking injunctive relief must show that they themselves are likely to suffer irreparable harm absent an injunction.") (citation omitted). Ms. Maupin merely raises general allegations of vague and broad harm associated with Willow and other projects without providing any evidence of harm to herself from the activities that will occur this winter. SILA Motion at 7 (citing Maupin Decl. ¶¶ 18-24). Similarly, Mr.

Thompson focuses generally on concerns about climate change impacts on polar bears. *Id.* at 8 (citing Thompson Decl. ¶¶ 2-4, 6-11, 16, SILA ECF 169-7). This Court previously determined that concerns about Willow's impact on global climate change "are not relevant" to Plaintiffs' motions to enjoin construction work that does not involve extraction of any oil and gas. *SILA v. BLM*, 2023 WL 2759864, at *7.

CBD's declarant Dr. Ahtuangaruak also fails to show harm to herself. Instead, in addition to her prior unavailing concerns, she raises the potential for harm to her nephews, who purportedly use the area where Willow will be constructed. Ahtuangaruak Decl. ¶¶ 16-18, CBD ECF 190-2; *see also* CBD Motion at 7-8 (citing Ahtuangaruak Decl. ¶¶ 15-22). Allegations of harms to others are insufficient to support injunctive relief. *Nat'l Wildlife Fed'n v. Nat'l Marine Fisheries Serv.*, 886 F.3d at 822.

CBD's other declarations are similarly unavailing. Josh Oboler claims that he intends to take a trip to the Teshekpuk Lake Special Area ("TLSA") this coming June. CBD Motion at 9 (citing Oboler Decl. ¶ 9-11, CBD ECF 190-4). However, no construction will occur in the TLSA this winter season; the closest construction will occur approximately 34.7 miles away, and the winter construction season typically terminates by the end of April. Brodie Decl. ¶ 14. CBD also relies on the previously filed testimony of one of its members, Jeff Fair, who claims that he intends to visit areas of the Reserve that "could be affected by Willow construction in the next several years," and is concerned about potential impacts of Willow on yellow-billed loons. CBD Motion at 9-10 (citing Fair Decl. ¶¶ 4, 9-11, 15, 17, 26, CBD ECF 115-3). These statements fail to establish a connection between

Mr. Fair and any alleged harm associated with construction activities planned for this winter season.

CBD also relies on a self-purported "declaration" from Gary Kofinas, Anne Gunn, and Donald E. Russel on impacts to caribou and caribou subsistence.[2] CBD Motion at 5-6 (citing CBD Exhibit 1, CBD ECF 190-1). The cited document is not a sworn statement and is inadmissible under FRAP 8(a)(2)(B)(ii). To be admissible, an unsworn "declaration" must contain the following language: "I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)." 28 U.S.C. § 1746(2); *United States v. Bueno-Vargas*, 383 F.3d 1104, 1111 (9th Cir. 2004) (this language ensures that "the declarant understands the legal significance of the declarant's statements and the potential for punishment if the declarant lies"). Because it is not a "sworn statement" and does not comply with the requirements of 28 U.S.C. § 1746, this Court should not consider CBD's Exhibit 1. *See*, *e.g.*, *Sagdai v. Travelers Home & Marine Ins. Co.*, 639 F. Supp. 3d 1091, 1101 (W.D. Wash. 2022).

C. Plaintiffs Have Neither Established a Likelihood of Success Nor Raised Serious Questions on the Merits.

SILA argues that it is likely to prevail on its claims that BLM failed to comply with the Naval Petroleum Reserves Production Act ("NPRPA") and National Environmental Policy Act ("NEPA") with respect to BLM's consideration of a reasonable range of

[2] BLM already provided a thorough analysis of these issues in the FSEIS. *E.g.*, BLM_3512_AR820945-70; BLM_3512_AR821021-68; BLM_3512_AR824200-51. And, this Court previously upheld the adequacy of BLM's NEPA analysis with respect to the Teshekpuk Caribou Herd. *SILA v. BLM*, 555 F. Supp. 3d 739, 770-73 (D. Alaska 2021). Plaintiffs have not challenged the adequacy of BLM's caribou analysis in this proceeding.

alternatives. SILA Motion at 9-15. SILA, however, fails to identify any specific error in this Court's analysis and instead simply reiterates its prior argument, which this Court already correctly rejected. CBD also fails to identify any error in this Court's analysis and instead merely asserts that it is likely to succeed on the merits of its NEPA claims regarding the FSEIS's range of alternatives and its consideration of climate impacts, and declines to "restate their arguments here." CBD Motion at 2. Accordingly, Plaintiffs have failed to establish any likelihood of success on the merits.

1. This Court Correctly Found That BLM Considered and Evaluated a Reasonable Range of Alternatives.

In suggesting that BLM failed to consider a reasonable range of alternatives, SILA mischaracterizes BLM's efforts on remand, misconstrues BLM's obligations under NEPA and the NPRPA, and ignores BLM's thorough approach to developing, considering, and evaluating alternatives in the FSEIS.

In 2021, this Court concluded that BLM's analysis of alternatives was deficient to the extent that: (1) BLM developed alternatives based on the view that ConocoPhillips had the right "to extract all possible oil and gas from its leases"; and (2) BLM failed to consider the statutory directive that it give "maximum protection" to surface values in the TLSA. *SILA*, 555 F. Supp. 3d at 805. Following remand, as an initial step, BLM revised Willow's statement of purpose:

> The purpose of the Proposed Action is to construct the infrastructure necessary to allow the production and transportation to market of federal oil and gas resources in the Willow reservoir located in the Bear Tooth Unit (BTU), while providing maximum protection to significant surface resources within the NPR-A, consistent with BLM's statutory directives.

BLM_3512_AR820723-24. This Court found this statement of purpose reasonable and noted that Plaintiffs had not claimed otherwise. *SILA v. BLM*, 2023 WL 7410730, at *6.

SILA claims, as it did in its motion for summary judgment, that BLM was required to consider alternatives with less infrastructure and lower greenhouse gas emissions. SILA Motion at 11. But an agency need not consider alternatives that "extend beyond those reasonably related to the purposes of the project." *League of Wilderness Defs.-Blue Mountains Biodiversity Project v. U.S. Forest Serv.*, 689 F.3d 1060, 1071 (9th Cir. 2012) (citation omitted); *Westlands Water Dist. v. U.S. Dep't of the Interior*, 376 F.3d 853, 868 (9th Cir. 2004). Courts review an agency's range of alternatives "under a 'rule of reason' standard that requires an agency to set forth only those alternatives necessary to permit a reasoned choice." *Pac. Coast Fed'n of Fishermen's Ass'ns v. Blank*, 693 F.3d 1084, 1099 (9th Cir. 2012) (citation omitted). As this Court correctly noted, *SILA v. BLM*, 2023 WL 7410730, at *10, an EIS "need not consider an infinite range of alternatives, only reasonable or feasible ones," *Westlands Water*, 376 F.3d at 868 (citation omitted), and NEPA does not compel the agency to evaluate additional "mid-range" alternatives. *Mont. Wilderness Ass'n v. Connell*, 725 F.3d 988, 1004-05 (9th Cir. 2013); *see also SILA v. BLM*, 2023 WL 7410730, at *10 (citing *Montana Wilderness Ass'n*, 725 F.3d 988). Finally, an EIS only needs to "briefly discuss" the reasons for eliminating an alternative not selected for detailed examination. *Protect Our Communities Found. v. Jewell*, 825 F.3d 571, 581 (9th Cir. 2016).

This Court correctly found that, contrary to Plaintiffs' assertions, following remand, BLM considered an extensive range of new potential alternative configurations, "ranging

from 61.2 acres to 179.6 acres of gravel road and gravel pad construction and from 4.9 to 12.2 miles of pipeline construction." *SILA v. BLM*, 2023 WL 7410730, at *11. Although BLM rejected Plaintiffs' identified alternative, this Court noted that Plaintiffs had failed to show "why another alternative was necessary to foster informed decisionmaking and public participation," which is the touchstone of the NEPA inquiry. *Id*. at *10 (quoting *Montana Wilderness Ass'n*, 725 F.3d at 1005).

BLM rejected Plaintiffs' proposed alternative because "it would not meet the Project's purpose and need and would strand an economically viable quantity of recoverable oil," explaining:

> Approximately 67% CPAI's BTU leases by surface area are located in the TLSA. This concept would completely eliminate access to oil and gas resources in several BTU leases located in the TLSA, substantially reduce access to such resources in additional BTU leases located in the TLSA, and create significant overlap in drilling reach between drill sites BT1 and BT2, which would have the net effect of having all of the surface impacts of a road and two pads but with far less resource recovery.

BLM_3512_AR821965.

Furthermore, BLM balanced its obligations to explore for oil and gas and mitigate impacts to surface resources. The FSEIS provides a detailed overview of the alternatives development process, BLM_3512_AR821926-31, including BLM's consideration of special areas and protections for surface resources. BLM_3512_AR821948-50. Through this process, BLM identified a new alternative for detailed review that eliminated a proposed drill site in the TLSA and identified and evaluated nine potential new locations for the other TLSA drill site to further minimize and mitigate potential impacts to surface resources. BLM_3512_AR821980-82. This resulted in Alternative E, a mid-range

alternative that would reduce infrastructure in the TLSA by 40% relative to the other action alternatives, produce less oil overall, and lower potential greenhouse gas emissions. BLM_3512_AR821712; BLM_3512_AR821859. The ROD selected Alternative E, and disapproved a deferred fourth drill site, resulting in only three drill sites, compared to the five originally proposed.[3]

This Court also correctly rejected Plaintiffs' attempt to buttress their deficient NEPA arguments by alleging violations of the NPRPA. *SILA v. BLM*, 2023 WL 7410730, at *14-15. The NPRPA mandates that the "Secretary shall conduct an expeditious program of competitive leasing of oil and gas in the Reserve in accordance with this Act." 42 U.S.C. § 6506a(a) (emphasis added). While Congress recognized that any exploration within designated special areas "shall be conducted in a manner which will assure the maximum protection of such surface values," that "maximum protection" is only afforded "to the extent consistent with the requirements of this Act for the exploration of the reserve." *Id.* § 6504(a). Plaintiffs also ignore that NPRPA's authorization to "include or provide for such conditions, restrictions, and prohibitions . . . to mitigate reasonably foreseeable and significantly adverse effects on the surface resources of the [NPR-A]" is explicitly reserved to the Secretary's discretion depending on what she "deems necessary or appropriate." *Id.* § 6506a(b) (emphasis added). While important, protection of designated special areas does not supersede Congress' directive to expeditiously explore and develop oil and gas

[3] ConocoPhillips has since relinquished some of its leased lands within the NPR-A, including significant acreage within the TLSA.

resources and is contingent on the Secretary's discretion. As this Court correctly recognized:

> [a]lthough Congress directed "maximum protection" be accorded to significant surface values in the TLSA and other Special Areas while undertaking oil and gas activities in the NPR-A, it still clearly envisioned that the TLSA would be developed for oil and gas production.

SILA v. BLM, 2023 WL 7410730, at *7 (emphasis added); *see also* H.R. Conf. Rep. No. 94-942, at 21 (1976) ("'maximum protection of such surface values' is not a prohibition of exploration-related activities within such areas, it is intended that such exploration operations will be conducted in a manner that will minimize the adverse impacts on the environment.") (emphasis added). Accordingly, SILA's attempt to rely on the NPRPA is misplaced and unavailing.

Because the FSEIS includes a reasonable range of alternatives, complies with this Court's prior directive to reassess the alternatives analysis, and sufficiently explains why BLM eliminated certain alternatives from more detailed consideration, Plaintiffs have failed to demonstrate likelihood of success on the merits of these claims.

D. CBD's Request for a "Short-Term Injunction" Should Be Denied.

As an alternative to an injunction pending appeal, CBD seeks a "short-term injunction to preserve current conditions on the ground while Plaintiffs seek an emergency injunction from the Ninth Circuit Court of Appeals." CBD Motion at 1. CBD's request is baseless. ConocoPhillips will not start ground-disturbing activities for more than three weeks. Even if this Court issues its order on December 4, that is 17 days before planned activities, allowing plenty of time for the Ninth Circuit to consider Plaintiff's "emergency"

request on an expedited basis if it chooses to do so. There is no "imminent" harm to "current conditions on the ground" that would warrant such injunctive relief from this Court.

V. CONCLUSION

For the reasons above, this Court should deny Plaintiffs' requests for an injunction pending appeal and CBD's request for a "short-term" injunction. Because Plaintiffs have not demonstrated that they are likely to succeed on the merits or that they are likely to suffer irreparable harm in the absence of injunctive relief, and because the equities and public interest tip sharply against injunction, Plaintiffs are not entitled to the relief they seek.

Pursuant to Local Rule 7.4(a)(2), I certify that this document contains 5,633 words.

Respectfully submitted,

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Dated: November 29, 2023

CERTIFICATE OF SERVICE

I hereby certify that on the 29th day of November 2023, I filed a true and correct copy of the foregoing and accompanying documents with the Clerk of the Court for the United District Court – District of Alaska by using the CM/ECF system. Participants in Case Nos. 3:23-cv-00058-SLG and 3:23-cv-00061-SLG who are registered CM/ECF users will be served electronically by the CM/ECF system.

/s/ Tyson C. Kade
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