Jonathan W. Katchen, ABA No. 0411111
William R. Crowther, ABA No. 2211097
HOLLAND & HART LLP
420 L Street, Suite 550
Anchorage, Alaska 99501
Telephone: (907) 865-2600
Facsimile: (907) 865-2680
jwkatchen@hollandhart.com
wrcrowther@hollandhart.com

Attorneys for United States Senator Dan Sullivan, United States Senator Lisa Murkowski, and United States Representative Mary Sattler Peltola

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ALASKA

SOVEREIGN INUPIAT FOR A LIVING ARCTIC, et al., Plaintiffs, v. BUREAU OF LAND MANAGEMENT, *et al.*, Defendants, and CONOCOPHILLIPS ALASKA, INC., *et al.* Intervenor-Defendants	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.	No. 3:23-cv-00061-SLG

ALASKA CONGRESSIONAL DELEGATION'S *AMICUS CURIAE* BRIEF IN SUPPORT OF DEFENDANTS' AND INTERVENOR-DEFENDANTS' OPPOSITION TO PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

CASES

STATUTES

INTRODUCTION

The Alaska Congressional Delegation files this brief because (1) Alaska's leaders in the federal government have a special interest in ensuring that the federal laws which define the federal government's relationship with the State of Alaska are properly carried out according to the will of Congress, and (2) the vacatur sought by Plaintiffs would cause needless disruption and inequitable harm to Alaska and many diverse groups of Alaskans.

ARGUMENT

I. BLM's reasoned decision making struck the proper balance between competing uses required by the unique federal statutory scheme governing Alaskan development.

The Plaintiffs' motions misconstrue the Alaska-specific statutes at issue, upsetting the balance these statutes strike between resource development, environmental protection, and furthering subsistence uses and Alaska Native self-determination.

Congress has repeatedly made clear that the public has an important interest in safe and environmentally responsible oil and gas development on public lands.[1] Ensuring affordable energy has influenced U.S. energy, national security, and economic policy for

[1] *See, e.g., California Co. v. Udall*, 296 F.2d 384, 388 (D.C. Cir. 1961) ("The public does not benefit from resources that remain undeveloped, and the Secretary must administer the [Mineral Leasing Act] so as to provide some incentive for development."); Outer Continental Shelf Lands Act, 43 U.S.C. § 1332(3) ("the outer Continental Shelf is a vital national resource reserve held by the Federal Government for the public, which should be made available for expeditious and orderly development, subject to environmental safeguards, in a manner which is consistent with the maintenance of competition and other national needs").

decades.[2] For Alaska's North Slope, Congress determined in the Trans-Alaska Pipeline Authorization Act of 1973 that the national interest is advanced by bringing North Slope oil to market.[3] Specifically, Congress declared "that the crude oil on the North Slope of Alaska is an important part of the Nation's oil resources, and that the benefits of such crude oil should be equitably shared, directly or indirectly, by all regions of the country."[4]

To help meet these objectives, Congress, in 1980, mandated for the National Petroleum Reserve-Alaska ("NPR-A"), that the Secretary "conduct an *expeditious* program of competitive leasing of oil and gas in the Reserve in accordance with this Act."[5] Over

---

[2] *See, e.g.,* Energy Policy and Conservation Act, 42 U.S. § 6231(a) ("The Congress finds that the storage of substantial quantities of petroleum products will diminish the vulnerability of the United States to the effects of a severe energy supply interruption, and provide limited protection from the short-term consequences of interruptions in supplies of petroleum products."); Energy Policy Act of 2005, Pub. L. No. 109-58, § 961, 119 Stat. 594, 889 (2005) ("The Secretary shall carry out research, development, demonstration, and commercial application programs in fossil energy, including activities under this subtitle, with the goal of improving the efficiency, effectiveness, and environmental performance of fossil energy production, upgrading, conversion, and consumption. Such programs take into consideration the following objectives . . . . (4) Decreasing the dependence of the United States on foreign energy supplies. (5) Improving United States energy security."); Energy Independence and Security Act of 2007, Pub. L. No. 110-140, preamble., 121 Stat. 1492, 1492 (2007) (providing that the purpose of the Act is "[t]o move the United States toward greater energy independence and security").

[3] 43 U.S.C. § 1652(a) ("The purpose of this chapter is to insure that, because of the extensive governmental studies already made of this project and the national interest in early delivery of North Slope oil to domestic markets, the trans-Alaska oil pipeline be constructed promptly without further administrative or judicial delay or impediment. To accomplish this purpose it is the intent of the Congress to exercise its constitutional powers to the fullest extent in the authorizations and directions herein made and in limiting judicial review of the actions taken pursuant thereto.").

[4] Pub. L. 93–153, Title IV, §410, Nov. 16, 1973, 87 Stat. 594.

[5] Pub. L. No. 96-514, 94 Stat. 2964 (1980) (codified at 42 U.S.C. § 6506a) (emphasis added); 42 U.S.C. § 6506a(k)(1)(A) ("To encourage the greatest ultimate recovery of oil or gas or in the interest of conservation, the Secretary may waive, suspend, or reduce the rental fees or minimum

forty years later, this goal is finally within reach and further delay of the carefully considered and analyzed Willow Project thwarts this clear Congressional mandate.

Plaintiffs, however, ignore the overriding purpose of the Naval Petroleum Reserves Production Act, and seek judicial intervention to mandate that lands Congress designated for resource development in the NPR-A instead be managed as a *de facto* conservation unit. They are wrong. As discussed in depth by Intervenor-Defendant Arctic Slope Regional Corporation ("ASRC"), BLM dutifully complied with the Naval Petroleum Reserves Production Act's "maximum protection" of the Teshekpuk Lake Special Area while striking a reasoned balance between that protection and the expeditious development envisioned by the Act.[6] This balance is shown by the significant mitigation measures incorporated into Alternative E.[7]

---

royalty, or reduce the royalty on an entire leasehold (including on any lease operated pursuant to a unit agreement) . . . ."); *see generally ConocoPhillips Alaska, Inc. v. Alaska Oil & Gas Conservation Comm'n*, No. 3:22-cv-00121-SLG, 2023 WL 2403720, at *13 (D. Alaska Mar. 8, 2023); *ConocoPhillips Alaska, Inc. v. AOGCC*, Case No. 3:22-cv-00121-SLG at 2-3 (D. Alaska Mar. 8, 2023) (citing N. Alaska Env't Ctr. v. Norton, 361 F. Supp. 2d 1069, 1072 (D. Alaska 2005) (discussing how the Naval Petroleum Reserves Production Act recognizes the NPR-A "as a potential source for oil and gas exploration and production while simultaneously assuring that environmental concerns would not be overlooked")).

[6] Intervenor-Defendant Arctic Slope Regional Corporation's Summary Judgment Brief at 17-20, *Sovereign Iñupiat for a Living Arctic, et al. v. BLM, et al.* (No. 3:23-cv-00058-SLG), Doc. 142 ("ASRC Brief").

[7] North Slope Borough's Response in Opposition to Plaintiffs' Opening Briefs for Summary Judgment at 15-16; 21-22, *Sovereign Iñupiat for a Living Arctic, et al. v. BLM, et al.* (No. 3:23-cv-00058-SLG), Doc. 143 ("NSB Brief") (listing Alternative E's smaller footprint, shorter gravel roads, 40% less infrastructure within the TSLA, and the relocation of infrastructure as protection related changes).

Relatedly, BLM properly struck the balance drawn by the Alaska National Interest Lands Conservation Act ("ANILCA") between subsistence uses and resource development. The due consideration of subsistence uses is powerfully demonstrated by the sixteen-point list of subsistence-benefitting changes compiled by the Kuukpik Corporation, the Alaska Native village corporation for Nuiqsut, the village closest to the future Willow site.[8]

Finally, Congress has also made clear in the Alaska Statehood Act, Alaska Native Claims Settlement Act ("ANCSA"), and ANILCA, that certain lands, like those designated by Congress for oil development in the NPR-A, would be managed to generate economic opportunities and revenue for Alaska's socio-economic wellbeing, the viability of state and local governments, and the economic self-sufficiency of Alaska Natives, while development would be precluded on other lands for the purpose of environmental protection.[9] In approving Willow, BLM has executed this statutory scheme by engaging in

---

[8] Kuukpik's Combined Brief in Opposition to Plaintiffs' Motions for Summary Judgment at 12-13, 18, *Sovereign Iñupiat for a Living Arctic, et al. v. BLM, et al.* (No. 3:23-cv-00058-SLG), Doc. 144 ("Kuukpik Brief").

[9] *See, e.g., Sturgeon v. Frost* (*Sturgeon II*), 139 S. Ct. 1066, 1075-1076 (2019) (discussing the balance in ANILCA between "sufficient protection for the national interest in the scenic, natural, cultural and environmental values" and "adequate opportunity for satisfaction of the economic and social needs of the State of Alaska and its people"); FSEIS, Vol. 1 at 302 ("The desire to develop oil and gas resources on the North Slope was a major factor in passage of the ANCSA and creation of ANCSA Native corporations"); *see also ConocoPhillips Alaska, Inc v. Alaska Oil and Gas Conservation Commission*, 2023 U.S. Dist. LEXIS 39110 at *2-3 (D. Alaska Mar. 8, 2023) (citing *N. Alaska Env't Ctr. v. Norton*, 361 F. Supp. 2d 1069, 1072 (D. Alaska 2005) (discussing how the Naval Petroleum Reserves Production Act recognizes the NPR-A "as a

robust NEPA processes – spanning decades – and then selecting an alternative which allows for the responsible development of these lands while protecting subsistence uses and surface values. Respect for this balance is necessary to allow Alaska to exist and for the Alaska Natives living on the North Slope to continue their traditional way of life and pursue both beneficial development and self-determination as promised to them in ANCSA and ANILCA.

In short, Alaska's Native leaders, elected Federal and State representatives, a broad coalition of Alaskan economic, business, and labor organizations, and nearly every entity affected by the Willow Project on the North Slope, strongly object to Plaintiffs' attempt to overturn the Congressional mandate set forth in the Naval Petroleum Reserves Production Act which allows for an "expeditious program" that results in the responsible development of the NPR-A.[10] Plaintiffs' mischaracterization of the Act should come as no surprise given that Plaintiffs hope "Willow dies a death by a thousand cuts."[11] Similarly, Congressional amici from California, New York, and Arizona ignore the Congressional mandate to the

---

potential source for oil and gas exploration and production while simultaneously assuring that environmental concerns would not be overlooked")).

[10] *See* Brief for Alaska Congressional Delegation and Alaska State Legislature as Amici Curiae Supporting Defendants and Intervenor-Defendants' Opposition to Plaintiffs' Motion for Temporary Restraining Order and Preliminary Injunction at 8-10, *Sovereign Iñupiat for a Living Arctic v. BLM* (No. 3:23-cv-00058-SLG) (D. Alaska Mar. 24, 2023), Doc. 49-1 ("Alaska Elected Officials Amici Brief") (detailing the broad support for the Willow Project).

[11] ConocoPhillips Alaska, Inc.'s Opposition to Motions for Preliminary Injunction at 10, *Sovereign Iñupiat for a Living Arctic v. BLM* (No. 3:23-cv-00058-SLG) (D. Alaska Mar. 24, 2023), Doc. 48.

Secretary, and the commitments made to Alaska Natives in ANCSA and ANILCA, by simply proclaiming that "[t]he only acceptable Willow project is no Willow project."[12]

II. Vacatur of BLM's fundamentally sound decision would cause unnecessary disruption and inequitable harm to Alaskans.

Amici strongly believe that the challenged decisions are lawful. However, if an error is found, vacatur would be an inappropriate equitable remedy due to the grave consequences it would bring for the Alaskans that Amici represent.

Vacatur is not an automatic remedy for agency error, but instead requires balancing the "seriousness of the agency's errors against the disruptive consequences of an interim change that may itself be changed."[13] The disruptive consequences of continuing to delay this extensively analyzed Project are enormous. As set forth in the Delegation's amicus brief responding to Plaintiffs' motion for a preliminary injunction, this Project has received unprecedented *unanimous* support from Alaska's State and Federal elected leaders because it is unquestionably in the public interest and vital to Alaska, local stakeholders, and Alaskans more broadly.[14] And as detailed by ConocoPhillips, ASRC, Kuukpik, and the

---

[12] ConocoPhillips Alaska, Inc.'s Response to Motions for Leave to File Proposed Amicus Curiae Briefs at 4, *Sovereign Iñupiat for a Living Arctic v. BLM* (No. 3:23-cv-00058-SLG) (D. Alaska Aug. 1, 2023), Doc. 122.

[13] *SEIA v. FERC*, No. 20-72788, slip op. at 68 (9th Cir. Sep. 5, 2023) (quoting *Center for Food Safety v. Regan*, 56 F.4th 648, 663 (9th Cir. 2022) (internal quotation marks omitted).

[14] Alaska Elected Officials Amici Brief at 8-10; Joint Resolution No. 6, 33rd Legislature (Feb. 20, 2023), *Sovereign Iñupiat for a Living Arctic v. BLM* (No. 3:23-cv-00058-SLG), Doc. 49-3.

North Slope Borough, vacatur could end the Project entirely or substantially delay it, causing tremendous economic and subsistence related harms.[15]

As to the seriousness of the agency's errors, vacatur is appropriate when there are "fundamental flaws in the agency's decision [that] make it unlikely that the same rule would be adopted on remand."[16] The Ninth Circuit has recently re-iterated that even serious errors, such as the failure to complete an Environmental Assessment entirely, do not require vacatur in the face of drastic consequences.[17] BLM's decision to allow the Willow Project to move forward is not fundamentally flawed. Instead, it is the logical extension of Congress' mandate for the lands of the NPR-A to be expeditiously developed, the Biden administration's finding that the land allocations in the Integrated Activity Plan struck the proper balance between development, environmental protection, and subsistence,[18] and the

---

15 *See* ConocoPhillips Alaska, Inc.'s Brief in Opposition to Plaintiff's Summary Judgment Motions at 68-70, *Sovereign Iñupiat for a Living Arctic, et al. v. BLM, et al.* (No. 3:23-cv-00058-SLG), Doc. 141 ("ConocoPhillips Brief") (noting the catastrophic consequences of vacating the agency decision and that vacatur would make it highly unlikely that Willow would ever be constructed); ASRC Brief at 22-24 (listing the multiple forms of harm from the possible end of the Project, including billions of lost taxes and millions of lost revenue for local stakeholders and the substantial harm to individual ASRC Iñupiat shareholders springing from further Project delay); Kuukpik Brief at 29-31 (detailing the subsistence related harm from delaying or foreclosing the Willow Project's gravel roads and boat ramps); NSB Brief at 43-46 (giving specific examples of vacatur related harms, such as endangering the funding of a critical sea wall).

16 *SEIA*, No. 20-72788 at 68 (2023) (quoting *Pollinator Stewardship Council v. EPA*, 806 F.3d 520, 532 (9th Cir. 2015)).

17 *Id.* at 69; *see Cal. Cmtys. Against Toxics v. U.S. EPA*, 688 F.3d 989, 992 (9th Cir. 2012) (declining to vacate an EPA final rule when vacatur would delay a much needed power plant).

18 BLM_3377_AR516637, AR516652.

product of multiple rounds of reasoned decision making over many years by expert agencies. Any potential error does not necessitate vacatur.

Finally, vacatur, like injunctive relief, is an equitable remedy.[19] ASRC, representing 13,900 Iñupiat shareholders, Kuukpik, the only private landowner near Willow and the representative of the indigenous people of the Colville River Delta, and the North Slope Borough, the local government representing the eight remote Native villages on Alaska's North Slope, have cataloged the imminent and substantial economic and subsistence harms if BLM's ROD and related decisions are vacated.[20] In comparison, many of the harms claimed by Plaintiffs, such as a reduced opportunity for travelers to view wildlife and use the area for recreation combined with vague statements about climate change related harms, pale in comparison to the immense injustices that such a vacatur would cause for the residents of Alaska's North Slope.[21] Given this great disparity in harm, vacatur would be clearly inequitable.

---

19 *Pac. Rivers Council v. U.S. Forest Serv.*, 942 F. Supp. 2d 1014, 1018 (E.D. Cal. 2013).

20 ASRC Brief at 22-24; Kuukpik Brief at 29-31; NSB Brief at 43-46.

21 *See, e.g.,* Decl. of Daniel Ritzman at 9-18, *Sovereign Iñupiat for a Living Arctic v. Bureau of Land Mgmt.* (No. 3:23-cv-00058-SLG) (D. Alaska July 26, 2023), Doc 105-3 (discussing these harms affecting the Sierra Club and its members); Decl. of Kristen Miller at 9-13, *Sovereign Iñupiat for a Living Arctic v. Bureau of Land Mgmt.* (No. 3:23-cv-00058-SLG) (D. Alaska July 26, 2023), Doc. 105-5 (discussing the same with regard to the Alaska Wilderness League).

CONCLUSION

For the foregoing reasons, the Court must deny the Plaintiffs' motions for summary judgment and grant the Federal Defendants' and Intervenor Defendants' cross-motions for summary judgment.

DATED at Anchorage, Alaska this 7th day of September, 2023.

HOLLAND & HART LLP
Attorneys for United States Senator Dan Sullivan, United States Senator Lisa Murkowski, and United States Representative Mary Sattler Peltola

By: */s/ Jonathan W. Katchen*
Jonathan W. Katchen, AK Bar No. 0411111
William R. Crowther, AK Bar No. 2211097
420 L Street, Suite 550
Anchorage, AK 99501
Phone: (907) 865-2600
Facsimile: (907) 865-2680
Email: jwkatchen@hollandhart.com
wrcrowther@hollandhart.com

CERTIFICATE OF SERVICE

I hereby certify on September 7, 2023, I caused to be electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification and electronic service of the same to all counsel of record.

HOLLAND & HART LLP

/s/ Jonathan W. Katchen

CERTIFICATE OF COMPLIANCE WITH WORD LIMITS

I certify that this document contains 2,495 words, excluding items exempted by Local Civil Rule 7.4(a)(4), and complies with the word limit of Local Civil Rule 7.4(a)(2).

HOLLAND & HART LLP

/s/ Jonathan W. Katchen