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Attorneys for Plaintiffs Native Village of Nuiqsut et al.

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA**

NATIVE VILLAGE OF NUIQSUT, ALASKA)
WILDERNESS LEAGUE, CENTER FOR BIOLOGICAL)
DIVERSITY, FRIENDS OF THE EARTH, NATURAL)
RESOURCES DEFENSE COUNCIL, and the SIERRA)
CLUB,)

Plaintiffs,

) Case No.

v.

)
BUREAU OF LAND MANAGEMENT; DAVID)
BERNHARDT, in his official capacity as Acting Secretary)
of the Interior; TED MURPHY, in his official capacity as)
Acting Alaska State Director of the Bureau of Land)
Management; and NICHELLE JONES, in her official)
capacity as District Manager of the Bureau of Land)
Management Arctic District Office,)

Defendants.

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF
(5 U.S.C. §§ 701-706; 42 U.S.C. § 4332)

INTRODUCTION

1. This action arises from the Bureau of Land Management's (BLM) failure to fulfill its obligations under the National Environmental Policy Act (NEPA) when it approved ConocoPhillips Alaska Incorporated's (ConocoPhillips) 2018-19 winter exploration program (winter exploration program) in the National Petroleum Reserve-Alaska (Reserve), just west of the community of Nuiqsut.

2. The Western Arctic, managed by BLM as the 23-million-acre Reserve, is recognized as a globally important ecological resource, home to caribou, bears, muskoxen, and millions of migratory birds. When Congress created the Reserve, it authorized the Secretary of the Interior to designate special areas for "maximum protection." One of these areas set aside by Congress is the Teshekpuk Lake Special Area. Along with supporting the highest density of shorebirds in the Arctic, this Special Area provides important habitat for the Teshekpuk Caribou Herd.

3. Nuiqsut is on the eastern border of the Reserve. Community members depend on the fish and wildlife of the Reserve, especially in areas within and near the Teshekpuk Lake Special Area, for essential traditional subsistence hunting, trapping, and fishing activities. These subsistence activities provide vital nutrition, and traditional hunting, trapping, and fishing practices, and passing along to future generations these practices, are critical to the community's cultural identity. Caribou hunting in the area, particularly in the winter, is especially important.

4. On December 7, 2018, BLM signed a Record of Decision approving

ConocoPhillips' winter exploration program in the northeastern portion of the Reserve. Pursuant to this approval, ConocoPhillips plans to construct an expansive network of oil exploration wells, ice roads, and ice pads. The plan represents significant westward expansion of oil and gas activity into previously undeveloped areas of the Reserve, including large portions of the ecologically and culturally important Fish Creek watershed within the Teshekpuk Lake Special Area.

5. In addition to this winter exploration program, BLM has approved ConocoPhillips' geotechnical exploration program, which will include drilling up to 125 onshore boreholes to identify potential gravel sources for future oil development projects and up to 40 offshore boreholes to delineate routes for transporting supplies from ships to onshore oil development projects. These activities, including substantial vehicle traffic over large areas, will occur this winter and mostly in the same geographic area as ConocoPhillips' oil exploration program. ConocoPhillips also plans to construct a gravel road and pad for the Greater Mooses Tooth 2 Development Project (GMT2) this winter, again in the same geographic area as the winter exploration program.

6. NEPA requires BLM to consider the potential direct, indirect, and cumulative effects of the winter exploration program and to evaluate all reasonable alternatives. If the agency's preliminary analysis raises substantial questions regarding whether the action, standing alone or in conjunction with other ongoing and foreseeable projects, *may* have a significant effect on the environment, the agency is required to prepare an Environmental Impact Statement (EIS). If the agency decides not to prepare

an EIS, it must supply a convincing statement of reasons to explain why a project's impacts are insignificant.

7. ConocoPhillips' winter exploration program, independently and together with other past, present, and reasonably foreseeable future actions, including construction of the GMT2 gravel road and pad and ConocoPhillips' geotechnical exploration program, has potentially significant environmental effects. In particular, these ConocoPhillips activities are likely to displace and adversely affect caribou in the area and interfere with essential subsistence use of the region. BLM's issuance of a Finding of No Significant Impact (FONSI) despite, and without evaluating adequately, these apparent potentially significant effects, its failure to consider the winter exploration program and geotechnical exploration program together in a single EIS, and its failure to consider any reasonable alternatives to ConocoPhillips' proposed action were arbitrary, capricious, and not in accordance with law, in violation of NEPA, 42 U.S.C. § 4332(2)(C), and the Administrative Procedure Act (APA), 5 U.S.C. § 706(2).

JURISDICTION & VENUE

8. The Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 and may issue a declaratory judgment and further relief pursuant to 28 U.S.C. §§ 2201-2202. Judicial review is available under the APA, 5 U.S.C. §§ 701-706. Venue is appropriate under 28 U.S.C. § 1391(e).

PLAINTIFFS

9. The Native Village of Nuiqsut, situated in Nuiqsut, Alaska, is the Federally Recognized Tribal Government that preserves and exercises the Tribe's inherent sovereign rights and powers, to conserve and develop tribal land and resources pursuant to tribal law and custom and federal law, and to establish justice, make for themselves, pursuant to the Indian Reorganization Act of June 18, 1934, as amended on May 1, 1936. The Native Village of Nuiqsut is responsible for over 400 tribal members. The Native Village of Nuiqsut depends on the Colville River Delta and Beaufort Sea for many food resources such as fish, seals, bowhead whales, ducks, geese, caribou, fur-bearing animals, and berries. The Native Village of Nuiqsut's members heavily depend on the subsistence food provided by land, rivers, and sea. The area that lies within the Reserve is the last of the members' resources for subsistence foods, as its river is tied to the oceans, and it is the area where the caribou migrate and calve. The community is surrounded by oil wells from the east now to the west, and the oil activities are threatening the Native Village of Nuiqsut's members' way of life.

10. Plaintiff Alaska Wilderness League (AWL) is a nonprofit organization founded in 1993 with approximately 100,000 members, including many members in Alaska. AWL's mission is to galvanize support to secure vital policies that protect and defend America's last great wild public lands and waters. AWL advocates for the protection of Alaska's wild lands and waters and works to prevent environmental degradation on Alaska's public lands and waters, including the Reserve. AWL actively

works on issues related to oil and gas development and the protection of Special Areas and values in the Reserve. AWL also works closely with communities in the Arctic affected by development. AWL is committed to honoring the human rights and traditional values of the people of the Arctic.

11. Plaintiff Center for Biological Diversity (the Center) is a national non-profit organization. The Center's mission is to ensure the preservation, protection, and restoration of biodiversity, native species, ecosystems, public lands, and public health. The Center has more than 1.4 million members and online activists. The Center is actively involved in species and habitat protection issues throughout the United States. As part of these efforts, the Center works to protect Arctic wildlife that lives in and near the Reserve from the numerous harms inherent in oil and gas exploration and development.

12. Plaintiff Friends of the Earth is a tax-exempt, 501(c)(3) organization and a not-for-profit corporation existing under the laws of the District of Columbia. Friends of the Earth is a membership organization consisting of nearly 140,000 members and more than 1.7 million activists nationwide, including more than 400 members who live in Alaska. Friends of the Earth is also a member of Friends of the Earth-International, which is a network of grassroots groups in 74 countries worldwide. Friends of the Earth's mission is to protect our natural environment, including air, water, and land, to create a more healthy and just world. Friends of the Earth utilizes public education, advocacy, legislative processes, and litigation to achieve its organizational goals. Friends

of the Earth is concerned about the potential adverse impacts that fossil fuel exploration and development activities in Alaska's Arctic, including the Reserve, have on the climate and people, fish, birds, and other species that depend on this region. Therefore, on behalf of its members and activists, Friends of the Earth actively engages in advocacy to influence U.S. energy and environmental policies affecting Alaska's Arctic.

13. Plaintiff Natural Resources Defense Council (NRDC) is a non-profit environmental advocacy organization with more than three million members and online activists. It has a longstanding and active involvement in the protection of the natural values of the Arctic, including the wildlife, wilderness, and other values of the Reserve, from the adverse effects of oil and gas exploration and development. With its nationwide membership and a staff of lawyers, scientists, communications specialists, and other environmental professionals, NRDC gathers, analyzes, and uses information about federal government proposals to shape its advocacy and inform its members on a diverse range of land and wildlife management and resource development issues, including those associated with climate change.

14. Plaintiff Sierra Club is a national nonprofit organization of approximately 790,000 members dedicated to exploring, enjoying, and protecting the wild places of the earth; to practicing and promoting the responsible use of the earth's ecosystems and resources; to educating and enlisting humanity to protect and restore the quality of the natural and human environment; and to using all lawful means to carry out these objectives. The Alaska Chapter of the Sierra Club

has approximately 1,800 members throughout the state. The Sierra Club actively works to protect the Reserve and other wild places in Alaska from the harmful effects of oil and gas development and exploration.

15. Members of plaintiff groups use and enjoy—and intend to continue to use and enjoy—the Reserve for various purposes, including subsistence activities, recreation, wildlife viewing, education, research, photography, and/or aesthetic and spiritual enjoyment. Members of plaintiff groups also use or otherwise enjoy migratory wildlife from the Reserve. BLM’s approval of ConocoPhillips’ winter exploration program will directly and irreparably injure these interests.

16. The defendants’ unlawful actions adversely affect plaintiffs’ organizational interests in their members’ use and enjoyment of the public lands in and resources of the Reserve. BLM’s approval of ConocoPhillips’ winter exploration program will directly and irreparably injure these interests.

17. Each of the plaintiff groups monitors the use of public lands in the Reserve and compliance with the laws respecting these lands, educates its members and the public concerning the management of these lands, and advocates policies and practices that protect the natural and cultural values and sustainable resources of these lands. It is impossible to achieve these organizational purposes fully without adequate information and public participation in the processes required by law for the management of these public lands. The interests and organizational purposes of the plaintiffs will be directly and irreparably injured by defendants’ violations of law as described in this complaint.

DEFENDANTS

18. Defendant BLM is an agency of the United States Department of the Interior entrusted with the conservation and management of resources within the Reserve.

19. Defendant David Bernhardt is the Acting Secretary of the U.S. Department of the Interior. He is sued in his official capacity.

20. Defendant Ted Murphy is the Acting Alaska State Director of BLM. He is sued in his official capacity.

21. Defendant Nichelle Jones is the Acting District Manager of the Arctic District Office of BLM, the office that oversees the management of the Reserve. She is sued in her official capacity.

STATUTORY FRAMEWORK: THE NATIONAL ENVIRONMENTAL POLICY ACT

22. NEPA is the United States' basic national charter for protection of the environment. It requires federal agencies to take a hard look at environmental consequences and consider less-damaging approaches before approving actions involving public resources. 42 U.S.C. §§ 4331-47. The Council on Environmental Quality has promulgated regulations implementing NEPA that are binding on federal agencies.

23. NEPA requires that all federal agencies prepare a “detailed statement” regarding all “major Federal actions significantly affecting the quality of the human environment.” 42 U.S.C. § 4332(2)(C). This statement, known as an EIS, must, among other things: rigorously explore and objectively evaluate all reasonable alternatives; analyze all direct, indirect, and cumulative environmental impacts; and include a

discussion of the means to mitigate adverse environmental impacts. 40 C.F.R. §§ 1502.14, 1502.16.

24. Direct effects include those that “are caused by the action and occur at the same time and place.” 40 C.F.R. § 1508.8(a). Indirect effects include effects that “are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable.” *Id.* § 1508.8(b). Cumulative effects are “the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions.” *Id.* § 1508.7

25. An agency must “study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources.” 42 U.S.C. § 4332(2)(E). This requirement extends to “all such proposals” and not just proposals covered by an EIS. 40 C.F.R. § 1507.2(d).

26. An agency must consider “cumulative actions” together in the same EIS. 40 C.F.R. § 1508.25. “Cumulative actions” are those that “when viewed with other proposed actions have cumulatively significant impacts.” *Id.*

27. An agency considering a major federal action may prepare an environmental assessment (EA) to preliminarily determine whether an EIS is necessary. 40 C.F.R. § 1501.4.

28. Like an EIS, an EA must analyze an action’s potential direct, indirect, and

cumulative effects and must include a discussion of all reasonable alternatives. 40 C.F.R. § 1508.9.

29. If substantial questions exist regarding whether the action may have a significant effect on the environment, including a cumulatively significant effect when considered together with other past, present, and reasonably foreseeable actions, the agency must prepare an EIS.

30. If an agency decides not to prepare an EIS, it must supply a convincing statement of reasons to explain why a project's impacts are insignificant.

STATEMENT OF FACTS

I. THE RESERVE AND TESHEKPUK LAKE SPECIAL AREA

31. President Warren G. Harding set aside the 23.7-million-acre Reserve in 1923. In 1976, the Naval Petroleum Reserves Production Act (Reserves Act) transferred jurisdiction over the Reserve from the Navy to the Secretary of the Interior, expressly recognizing the importance of protecting and managing the unique natural, fish and wildlife, scenic, and historical values of the Reserve.

32. The Reserves Act requires that any oil exploration activities conducted within Special Areas designated by the Secretary of the Interior as containing “any significant subsistence, recreational, fish and wildlife, or historical or scenic value” be conducted in a manner that assures “maximum protection” of these surface values. Pub. L. 94-258, Title I § 104(b), 90 Stat. at 304 (codified at 42 U.S.C. § 6504(a)).

33. In 1977, the Secretary of the Interior adopted regulations for management

and protection of the Reserve. 42 Fed. Reg. 28,720, 28,720 (June 3, 1977). The regulations require BLM to “take such action . . . necessary to mitigate or avoid unnecessary surface damage and to minimize ecological disturbance throughout the reserve to the extent consistent with the requirements of the Act for the exploration of the reserve.” 43 C.F.R. § 2361.1(a).

34. The regulations also indicate that surface values of the Reserve may be protected by limiting, restricting, or prohibiting the use of and access to lands within the Reserve, including within Special Areas. 43 C.F.R. § 2361.1(e)(1). In 1977, the Secretary of the Interior designated regions around Teshekpuk Lake and the Colville River, among others, as Special Areas within the Reserve. 42 Fed. Reg. 28,723, 28,723 (June 3, 1977).

35. The Teshekpuk Lake Special Area protects essential caribou habitat; subsistence resources and uses; and world-class waterbird and shorebird nesting, staging, and molting habitat. The Teshekpuk Lake Special Area provides calving, insect relief, and wintering areas for the 40,000 caribou of the Teshekpuk Caribou Herd. The population has declined 40 percent over the past decade, down from nearly 69,000 in 2008.

36. The Fish Creek area, which is where much of the winter exploration program will take place, is an especially important part of the Teshekpuk Lake Special Area because it is one of the only places on the arctic coastal plain where caribou overwinter.

II. NUIQSUT

37. Nuiqsut is on the eastern border of the Reserve, about 35 miles south of the Beaufort Sea. Subsistence activities in the Reserve, especially in areas within and near the Teshekpuk Lake Special Area, are vital to the members of the Native Village of Nuiqsut.

38. Subsistence hunting and trapping embody significant cultural, social, and spiritual values, and the continued viability of the subsistence way of life is of the greatest importance to members of the Native Village of Nuiqsut.

39. Subsistence resources are nutritionally critical because they constitute a mainstay of the diet for Nuiqsut residents and are commonly fresher and healthier than available store-bought food. They are also economically critical because, due to high transportation costs and relatively small market sizes, the cost of store-bought food in northern Alaska communities is much higher than in Alaska's major urban population centers. Most households in Nuiqsut receive more than half of their food from subsistence.

40. Caribou hunting is especially important in Nuiqsut, particularly in winter. The Fish Creek area where this winter exploration program will occur is extremely valuable to people in Nuiqsut because it is one of the few areas where caribou remain on the coastal plain throughout the year and has historically been one of the few areas close to Nuiqsut where people could hunt and trap without interference from infrastructure and industrial activity.

III. THE WINTER EXPLORATION PROGRAM

41. As a first step toward the ultimate exploitation of potential oil resources, ConocoPhillips has engaged in exploration activities on its leases within the Reserve. This exploration is generally undertaken in the winter, when companies create, using water withdrawn from nearby lakes, a network of ice roads and drill pads to transport drilling machinery, supplies, and personnel to drilling locations, where drilling occurs from similarly constructed ice pads.

42. ConocoPhillips has undertaken winter exploration programs in the Reserve during most of the previous ten years, usually authorized by BLM one year at a time in EAs, as with the current program. These previous exploration programs include the 2017-18 winter exploration program, which, with five wells and construction of up to 71 miles of ice roads and nine ice pads, was similar in scale to the 2018-19 winter exploration program. ConocoPhillips' extensive lease holdings and stated plans to continue to expand its operations in the Reserve demonstrate that it is likely to continue to engage in substantial winter exploration activities in future years.

43. On October 11, 2018, BLM released ConocoPhillips' proposed exploration program for the winter of 2018-19.

44. BLM issued a draft EA on November 9, 2018, on which the plaintiffs submitted detailed comments on November 21, 2018.

45. On December 7, 2018, BLM signed a Record of Decision approving ConocoPhillips' Application Permit to Drill (AA081747/ AA081787/ AA081807/

AA081808/ AA081810/ AA081834/ AA090707/ AA090710/ AA091675/ AA092673/
AA094405/ AA094413) and a Right-of-Way Grant (FF097462).

46. BLM issued a final EA for the program, and based on that document, issued a FONSI. BLM considered only two alternatives: ConocoPhillips' proposal and a no-action alternative, which describes the impacts of not proceeding with the exploration program.

47. Pursuant to this approval, ConocoPhillips is authorized to drill new exploratory wells and engage in intensive construction activity, including 67 miles of ice roads and 23 ice pads. The winter exploration program represents significant westward expansion into previously undeveloped areas of the Reserve, including significant portions of the ecologically and culturally important Fish Creek watershed.

48. ConocoPhillips' winter exploration program, both independently and together with other past, present, and reasonably foreseeable future actions, including construction of the GMT2 gravel road and pad and ConocoPhillips' geotechnical exploration program, has potentially significant effects, particularly to the Teshekpuk Caribou Herd and subsistence activities. Absent a convincing explanation why these potential effects are not significant, BLM must prepare an EIS.

IV. EFFECTS OF THE WINTER EXPLORATION PROGRAM ON CARIBOU

49. The winter exploration program will occur within the winter range of the Teshekpuk Caribou Herd.

50. ConocoPhillips' ice roads and drilling rigs will extend further west and

northwest than previous winter activities into one of the primary overwintering areas for the Teshekpuk Caribou Herd and one of the rare areas on the arctic coastal plain that can support caribou throughout the year.

51. Winter exploration activities have potentially significant impacts on caribou: surface vehicular traffic, aircraft traffic, and drilling activities will disturb caribou at a vulnerable time, potentially forcing them to flee the area for the remainder of the winter. Given the scarcity of overwintering habitat on the coastal plain, these caribou cannot easily relocate to similar habitat.

52. Increased movement due to disturbance forces caribou to expend energy resources that are already depleted in the winter, which can result in a loss of body mass. Caribou displaced from habitats with more nutritious forage and caribou that expend energy responding to disturbances may not be able to compensate for these losses of energy reserves in the winter, which would potentially reduce the individual's survival and reproduction. This is a particular concern because winter body mass of female caribou strongly correlates with the likelihood of their calving success and survival.

53. BLM has provided no convincing reasons why the impacts will not be significant. Instead, the EA concludes, without any discussion of the particular vulnerability of these overwintering caribou, that “[o]nly minor impacts would be expected” and that the proposed action “would not reduce population levels or distribution during the winter season.”

V. EFFECTS OF THE WINTER EXPLORATION PROGRAM ON SUBSISTENCE ACTIVITIES OF MEMBERS OF THE NATIVE VILLAGE OF NUIQSUT

54. ConocoPhillips' activities fall directly within the "heavy use" segment of Nuiqsut's contemporary subsistence use areas, including the caribou subsistence use area.

55. The project area is a particularly valuable source of food because it is one of the rare areas where caribou range throughout the year, including in winter, and it has been one of the few areas near town without infrastructure and industrial activity.

56. Members of the Native Village of Nuiqsut use the area year-round for subsistence activities; however, the peak of activity, including for caribou and furbearers, such as wolves, foxes, and wolverines, occurs in the winter months.

57. Winter exploration activities, including construction and traffic, can displace game species from areas in which they would otherwise be present.

58. Winter exploration will also cause hunters to avoid the area. This displacement leads to hunters having to travel further to harvest resources. Being required to travel further to conduct these activities increases the risk, time, and costs involved for subsistence users.

59. These disruptions have long-term consequences: When subsistence users' opportunities to engage in traditional activities are limited, transmittal of knowledge about those activities is reduced. Individuals and families' loss of intimate familiarity with an area may constitute a permanent reduction in Nuiqsut's subsistence use area, and residents have reported that oil development activities have led to a decline of hunting in

areas east of the community.

60. Despite these potentially significant effects to subsistence activities, the EA concludes that no new significant impacts to subsistence are anticipated.

61. As with impacts to caribou, BLM fails to provide a convincing explanation why the impacts of this winter exploration program will not be significant.

VI. CUMULATIVE EFFECTS OF THE WINTER EXPLORATION PROGRAM AND OTHER PLANNED WINTER CONSTRUCTION AND EXPLORATION ACTIVITIES

62. ConocoPhillips' winter exploration activities will occur within the context of extensive concurrent activities in and near the project area, with potentially significant cumulative effects to caribou and subsistence activities.

63. In addition to this winter exploration program, BLM has approved ConocoPhillips' geotechnical exploration program, which will include drilling up to 125 onshore boreholes to identify potential gravel sources for future oil development projects and up to 40 offshore boreholes to delineate routes for transporting supplies from ships to onshore oil development projects. This activity will occur this winter in the same geographic area as ConocoPhillips' winter exploration program. It will utilize planned exploration ice roads and will also involve extensive tundra tractor routes to move a mobile drilling sleigh and camps.

64. ConocoPhillips also plans to construct a gravel road and pad for the GMT2 development this winter, in the same geographic area as the winter exploration and geotechnical exploration programs.

65. The cumulative effects of these three actions are not evaluated or described in the EA and have not been considered in any other NEPA analyses.

66. Each of these activities will independently affect caribou and subsistence activities in ways similar to ConocoPhillips' winter exploration program, including disturbance and displacement of caribou and furbearers.

67. GMT2 construction activity will present particularly significant impacts because gravel mined east of Nuiqsut will be hauled with large trucks over an ice road to the GMT2 area.

68. This road construction and the completed road will interfere with and deflect caribou.

69. Dust deposition as a result of road construction could result in changes to vegetation composition, including reducing lichen cover, a key caribou winter food source.

70. Habitat fragmentation from roads can impede caribou migratory patterns and foraging options.

71. The cumulative effects of construction, roads, noise, vehicle traffic, plane travel, off-road tundra travel, and other activity associated with these projects will compound disturbance to caribou and subsistence activities.

72. These activities together will impose new potentially significant impacts on subsistence activities by surrounding Nuiqsut with oil and gas activities and expanding activity in the Fish Creek area.

73. BLM has acknowledged that this is expected to be the most active winter season that Nuiqsut has experienced to date, with likely subsistence impacts due to oil and gas exploration, active construction, and existing infrastructure virtually surrounding the community.

74. Despite these apparent potentially significant cumulative effects, the EA concludes, without support or analysis, that no new cumulative impacts are anticipated.

CLAIMS FOR RELIEF

I. FIRST CLAIM FOR RELIEF (POTENTIALLY SIGNIFICANT IMPACTS TO CARIBOU AND SUBSISTENCE ACTIVITIES)

75. Plaintiffs incorporate by reference each of the allegations in paragraphs 1 through 74.

76. NEPA requires federal agencies to prepare an EIS for “major Federal actions significantly affecting the quality of the human environment.” 42 U.S.C. § 4332(2)(C).

77. If there exist substantial questions whether the action may have a significant effect on the environment, the agency must prepare an EIS.

78. If an agency decides not to prepare an EIS for a major federal action, it must supply a convincing statement of reasons to justify its conclusion that a project will not have significant impacts on the environment. 40 C.F.R. § 1508.13.

79. BLM’s winter exploration program approval is a final, major federal agency action.

80. Winter exploration activities have potentially significant impacts on caribou. Among other harmful impacts, surface vehicular traffic, aircraft traffic, and drilling activities disturb caribou, which may force them to abandon the local area for the remainder of the winter. Increased movement due to winter disturbance can result in a loss of body mass, which strongly negatively correlates with the likelihood of calving success and survival for female caribou.

81. As BLM has acknowledged, the winter exploration program will occur within an important overwintering area for the Teshekpuk Caribou Herd, encompassing a large area around Fish Creek, which is a rare area where caribou range year round. BLM has acknowledged that the program will deflect caribou from the area.

82. This winter exploration activity will occur within the “heavy use” segment of Nuiqsut’s contemporary subsistence use areas, including the caribou subsistence use area. As BLM has acknowledged, winter exploration activities can displace game species from areas in which they would otherwise be present, cause hunter avoidance, and require hunters to travel further, with potentially significant immediate and long term effects on the community.

83. The information before the agency raised substantial questions about whether the winter exploration program would have significant environmental impacts to caribou and subsistence activities, yet BLM concluded that only minor impacts would be expected.

84. BLM provides no convincing justification for concluding that impacts to

caribou and subsistence activities will be insignificant.

85. BLM's failure to prepare an EIS in the face of substantial questions regarding significant environmental impacts was arbitrary, capricious, and not in accordance with law, in violation of NEPA, 42 U.S.C. § 4332(2)(C), and the APA, 5 U.S.C. § 706(2).

86. Alternatively, BLM's decision to issue a FONSI without providing a convincing statement of reasons to justify its conclusion that the project's impacts to caribou and subsistence activities will be insignificant was arbitrary, capricious, and not in accordance with law, in violation of NEPA, 42 U.S.C. § 4332(2)(C), and the APA, 5 U.S.C. § 706(2).

II. SECOND CLAIM FOR RELIEF (POTENTIALLY SIGNIFICANT CUMULATIVE EFFECTS)

87. Plaintiffs incorporate by reference each of the allegations in paragraphs 1 through 74.

88. NEPA requires federal agencies to prepare an EIS for "major Federal actions significantly affecting the quality of the human environment." 42 U.S.C. § 4332(2)(C).

89. If there exist substantial questions whether the action, considered together with other past, present, and reasonably foreseeable future actions, may have cumulatively significant effects on the environment, the agency must prepare an EIS.

90. If an agency decides not to prepare an EIS for a major federal action, it

must supply a convincing statement of reasons to justify its conclusion that a project will not have significant impacts on the environment. 40 C.F.R. § 1508.13.

91. BLM's winter exploration program approval is a final, major federal agency action.

92. BLM must consider the cumulative impacts of this action with all other past, present, and reasonably foreseeable future actions. 40 C.F.R. § 1508.7. These cumulative effects must be discussed in enough detail to provide adequate analysis of how the projects together affect the environment.

93. The winter exploration program activities will occur within the context of extensive concurrent activities in and near the project area, including construction of the GMT2 road and pad and ConocoPhillips' physically intrusive geotechnical exploration program.

94. These additional activities occurring in the same area substantially increase the potential for significant impacts to caribou and subsistence activities. Additional roads, vehicle traffic, plane travel, and off-road tundra travel will compound disturbance.

95. The EA includes no discussion of the cumulative effects of the winter exploration program, the GMT2 road and pad construction, and ConocoPhillips' physically intrusive geotechnical exploration program. BLM provides no convincing justification for concluding that cumulative impacts to caribou and subsistence activities will be insignificant.

96. BLM's failure to prepare an EIS in the face of substantial questions

regarding significant cumulative environmental impacts was arbitrary, capricious, and not in accordance with law, in violation of NEPA, 42 U.S.C. § 4332(2)(C), and the APA, 5 U.S.C. § 706(2).

97. Alternatively, BLM's decision to issue a FONSI without providing a convincing statement of reasons to justify its conclusion that the cumulative impacts to caribou and subsistence activities will be insignificant was arbitrary, capricious, and not in accordance with law, in violation of NEPA, 42 U.S.C. § 4332(2)(C), and the APA, 5 U.S.C. § 706(2).

III. THIRD CLAIM FOR RELIEF (FAILURE TO CONSIDER THE WINTER EXPLORATION PROGRAM AND GEOTECHINCAL EXPLORATION PROGRAM TOGETHER IN THE SAME EIS)

98. Plaintiffs incorporate by reference each of the allegations in paragraphs 1 through 74.

99. An agency must consider "cumulative actions" together in a single EIS. 40 C.F.R. § 1508.25(a)(2).

100. ConocoPhillips' winter exploration program and its geotechnical exploration program are cumulative actions. They were considered by the agency in the same general timeframe, will occur in the same geographic area at the same time, are in furtherance of the same goal—ConocoPhillips developing oil and gas on its leases in the northeast portion of the Reserve—and they will have cumulatively significant effects to caribou and subsistence activities.

101. BLM's failure to consider the winter exploration program and geotechnical

exploration program together in a single EIS was arbitrary, capricious, and not in accordance with law, in violation of NEPA, 42 U.S.C. § 4332(2)(C), its implementing regulations, 40 C.F.R. § 1508.25, and the APA, 5 U.S.C. § 706(2).

IV. FOURTH CLAIM FOR RELIEF (FAILURE TO CONSIDER ALL REASONABLE ALTERNATIVES)

102. Plaintiffs incorporate by reference each of the allegations in paragraphs 1 through 74.

103. NEPA requires an agency to develop and assess appropriate alternatives in any proposal involving unresolved conflicts concerning uses of available resources. NEPA, 42 U.S.C. § 4332(2)(E); 40 C.F.R. §§ 1507.2(d), 1508.9(b).

104. In its EA, BLM failed to consider appropriate alternatives, including alternatives proposed in comments on BLM's draft EA that would limit the scale of exploration by permitting fewer wells or require ConocoPhillips to comply with all Best Management Practices.

105. BLM's decision to approve ConocoPhillips' winter exploration program without considering appropriate alternatives and comparing the environmental impacts of those alternatives was arbitrary, capricious, and not in accordance with law and violated NEPA, 42 U.S.C. § 4332(2)(C), its implementing regulations, 40 C.F.R. § 1502.14(a), and the APA, 5 U.S.C. §§ 702, 706.

PRAYER FOR RELIEF

Wherefore, plaintiffs respectfully request that the Court:

1. Enter a declaratory judgment that defendants' decisions to approve the winter exploration program and issue a FONSI were arbitrary, capricious, and/or not in accordance with law;
2. Vacate defendants' Record of Decision approving the winter exploration program;
3. Enjoin further exploration activities in the Reserve until BLM has complied with the requirements of NEPA;
4. Award plaintiffs the costs of this action, including reasonable attorneys' fees pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412; and
5. Grant such other relief as this Court deems just and proper.

Respectfully submitted this 28th day of February, 2019.

s/ Rebecca Noblin

Rebecca Noblin (Alaska Bar. No. 0611080)
EARTHJUSTICE

s/ Jeremy Lieb

Jeremy C. Lieb (Alaska Bar. No. 1810088)
EARTHJUSTICE

s/ Eric Jorgensen

Eric P. Jorgensen (Alaska Bar. No. 8904010)
EARTHJUSTICE

*Attorneys for Plaintiffs Native Village of Nuiqsut, Alaska
Wilderness League, Center for Biological Diversity,
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