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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

NATIONAL AUDUBON SOCIETY *et al.*, *Plaintiffs*, v. DAVID BERNHARDT *et al.*, *Defendants*, and ALASKA OIL & GAS ASSOCIATION *et al.*, *Intervenor-Defendant.*	Case No. 3:20-cv-00205-SLG

MOTION FOR PRELIMINARY INJUNCTION
(ORAL ARGUMENT REQUESTED)

INTRODUCTION

Pursuant to Federal Rule of Civil Procedure 65(a), Plaintiffs move for a preliminary injunction to stop Defendants from implementing an oil and gas leasing program on the Coastal Plain of the Arctic National Wildlife Refuge (Refuge), including by issuing oil and gas leases or authorizing seismic activities, pending adjudication of the merits. Plaintiffs request a decision on this motion by January 6, 2021, if possible, to prevent Defendants from awarding leases.

An injunction is necessary to halt the Interior Department's headlong rush to develop the Arctic Refuge before this Court can determine the legality of those efforts. Interior has brushed aside requirements designed to ensure consideration of environmental effects, values, and laws. Its haste threatens permanent harm by locking in government decisionmaking and scarring the Refuge in ways that cannot be undone. Allowing it to implement the Final Environmental Impact Statement and Record of Decision now would cause irreparable harm to Plaintiffs and their interests in viewing wildlife, conducting scientific research, and engaging in recreational activities in this globally unique environment. By contrast, the requested temporary stay of these actions would not harm Defendants.

FACTUAL BACKGROUND

This litigation is about protecting the unique resources of the Arctic National Wildlife Refuge, and in particular its Coastal Plain. Much of the Refuge was first set aside administratively in 1960 as the Arctic National Wildlife Range (Range) for "the

purpose of preserving unique wildlife, wilderness and recreational values." *See* 25 Fed. Reg. 12,598, 12,598-99 (Dec. 9, 1960) (Public Land Order 2214). In 1980, Congress expanded and re-designated it as the Arctic National Wildlife Refuge. Pub. L. No. 96-487, § 303(2) (1980) (codified at 16 U.S.C. § 668dd note). Through the Alaska National Interest Lands Conservation Act (ANILCA), Congress mandated that the Refuge be managed to conserve fish and wildlife populations and habitats in their natural diversity, naming polar bears, caribou, migratory birds, and other species. *Id.* § 303(2)(B). ANILCA specified as coequal management purposes: fulfilling international fish and wildlife treaties, protecting subsistence use opportunities, and ensuring water quality and the quantity necessary within the Refuge. *Id.* It also incorporated the purposes for which the Range was established. *See id.* § 305. And it expressly barred oil and gas related activities throughout the Refuge. *Id.* § 1003.

Recent years have seen two important changes in the Arctic Refuge. First, climate change has greatly altered both it and the nearshore ocean. Snowfall has, on average, distinctly declined, *see* Ex. 1 at 8, along with the extent of nearby sea ice and the period when fragile tundra is frozen, *see* Ex. 2 at 24-25, 54-57; Ex. 3 at 14. This has shortened the winter period during which mechanized travel is possible without seriously damaging and displacing soil and vegetation. *See* Ex. 3 at 6-8, 10. It has also greatly altered wildlife habitat and behavioral patterns, for instance increasingly leading polar bears to den onshore. *See* Ex. 2 at 56. Second, in 2017, Congress amended ANILCA, adding, as a purpose, "to provide for an oil and gas program on the [Refuge's] Coastal Plain" (the

Program), lifting the development ban, and mandating two lease auctions, one by December 22, 2021, and another by December 22, 2024, but otherwise leaving existing environmental protections in place. *See* Tax Cuts and Jobs Act of 2017 (Tax Act), Pub. L. No. 115-97, § 20001, 131 Stat. 2054, 2235-37 (2017).

In December 2018, the Bureau of Land Management (BLM) released a draft environmental impact statement (DEIS) describing options for the Program and considering some of their impacts. Ex. 4. Plaintiffs filed comments in March 2019, detailing serious deficiencies in the DEIS, including a failure to protect the Refuge's conservation values or even consider alternatives that adequately protected them, and numerous ways in which the DEIS omitted or obscured potentially significant environmental damage. Ex. 5. In particular, Plaintiffs commented that the DEIS failed to project the full impacts of the proposed program on climate change and noted the agency's obligation to make a determination that the proposed program was compatible with the purposes of the Refuge. *Id.* at 5-6, 12-16. In September 2019, BLM released a final environmental impact statement (FEIS) that failed to correct these problems. Ex. 2.

In August 2020, the Secretary of Interior (Secretary) signed a Record of Decision (ROD) for the Program, electing to open the entire Coastal Plain to oil and gas leasing, but failing to make the legally required determination that the Program was compatible with fulfilling all the Refuge's purposes. *See* Ex. 6. That same month, Kaktovik Iñupiat Corporation (KIC) applied for permits and authorizations to conduct seismic exploration over a large portion of the Coastal Plain, using enormous equipment that threatens

damage to tundra, wildlife, and water bodies, particularly when driven over low or variable snow cover or inadequately frozen ground. *See* 85 Fed. Reg. 79,082, 79,083 (Dec. 8, 2020); *infra* 17-19.

In recent weeks, the pace of Program implementation has quickened. On November 17, 2020, BLM issued a call for nominations and comments on which Coastal Plain areas to offer for lease, declaring to this Court: "BLM will receive nominations and comments for a 30-day period. Subsequently, should BLM determine to issue a notice of sale, it will publish such notice in the Federal Register…." Dkt. 20 at 2. Then, ten days before the conclusion of the thirty-day nomination and comment period, BLM published a notice of sale inviting bids on every acre of the Coastal Plain for auction on January 6, 2021. Dkt. 34 at 2; 85 Fed. Reg. 78,865, 78,865-66 (Dec. 7, 2020); Ex. 7. The following day, the Fish and Wildlife Service published a draft authorization for KIC to conduct seismic explorations in polar bear denning habitat. 85 Fed. Reg. at 79,113.

ARGUMENT

Plaintiffs request that this Court keep Defendants from implementing the Program, including by issuing oil and gas leases or authorizing seismic activities, pending adjudication of the merits. A party seeking a preliminary injunction must show (1) a likelihood of success on the merits, (2) irreparable harm in the absence of preliminary relief, (3) that the balance of equities favors relief, and (4) that an injunction is in the public interest. *Winter v. Nat. Res. Def. Council*, 555 U.S. 7, 20 (2008). Plaintiffs meet all these requirements.

A. Plaintiffs are likely to succeed on the merits.

1. Plaintiffs have standing to bring this case.

Protecting the Arctic Refuge's unique natural and wilderness values is central to Plaintiffs' missions. Ex. 12 ¶¶ 13-15; Ex. 13 ¶¶ 15-17; Ex. 15 ¶¶ 8-9; Ex. 19 ¶¶ 6-8. Plaintiffs have members who rely on the Coastal Plain for recreation, aesthetic values, subsistence uses, and their professional livelihoods, and whose interests will be harmed by oil and gas development in the Coastal Plain. *Infra* 15-17, 19. An order setting aside the ROD and FEIS and preventing implementation of the Program would redress those imminent harms. Plaintiffs thus have associational standing on behalf their members. *See Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560-61 (1992).

2. The Refuge FEIS failed to disclose significant greenhouse gas effects.

BLM violated the National Environmental Policy Act (NEPA) by failing to estimate the global greenhouse gas emissions potentially associated with its Program and the other alternatives it considered. The Ninth Circuit recently struck down an Interior Department decision that made the same choice on the same core rationale and record. *Ctr. for Biol. Diversity v. Bernhardt* (*CBD*), No. 18-73400, 2020 WL 7135484 (9th Cir. Dec. 7, 2020) (slip op. attached as Ex. 8). The Court's decision dictates the same result for BLM's failure to analyze global emissions here.

In *CBD*, the Court addressed a Bureau of Ocean Energy Management (BOEM) assessment of downstream greenhouse gas emissions from burning oil produced under a federal lease. To assess these impacts, BOEM predicted how the absence of oil and gas

from the project would affect demand for energy and resulting greenhouse gas emissions. *CBD* slip op. 14. Rather than assessing global emissions, however, it limited its analysis only to U.S. emissions. *Id.* at 16. Rejecting this self-imposed constraint, the Court concluded that the project's effects on foreign emissions are reasonably foreseeable indirect impacts. *Id.* at 19, 22. It held that NEPA requires an agency to quantitatively evaluate these emissions unless it "thoroughly explains why such an estimate is impossible." *Id.* at 21. Even then, it still has to "attempt to estimate the magnitude of such emissions." *Id* at 22. BOEM's failure to comply with either requirement in the face of record evidence showing that an assessment was feasible was fatal to its EIS.

BLM's analysis of the emissions impacts associated with the Program mirrors the analysis struck down in *CBD*. Using the same market-simulation approach, BLM undertook an analysis of how oil and gas that may be produced as a result of the Program would increase demand for energy and resulting greenhouse gas emissions. *Compare* Ex. 2 at 15-16 (describing the Program's emissions consequences based on how markets would react to the presence or absence of oil), *with CBD* slip op. 14 (same). Its conclusion was the same as BOEM's: that it lacked information for "credible modeling of foreign … emissions rates." Ex. 6 at 13; *see also* Ex. 2 at 15.

CBD squarely rejected BOEM's nearly identical assertion that it could not "estimate[] foreign emissions with accurate or credible scientific information." *CBD* slip op. 19. It did so on the basis of three studies, every one of which was before BLM here. *Compare id.* at 19-20, *with* Ex. 6 at 13, *and* Ex. 5 at 14 n.547. BLM complained that

these studies did not provide information about how different foreign countries substitute one form of energy for another in response to oil supply changes. Ex. 6 at 13; *see also* Ex. 2 at 88-91. But BOEM made the same assertion, *CBD* slip op. 19, and the Court found that nonetheless, these studies "confirm the effect of increasing domestic oil supply on foreign consumption and the feasibility of its estimation," *id.; see also id.* at 20 (finding that these studies also show that "increases in foreign oil consumption can be translated into estimates of greenhouse gas emissions").

CBD also forecloses BLM's assertion, like BOEM's, that the Program's effect on global emissions would be too small to alter its analysis. Ex. 6 at 14; *CBD* slip op. 18, 19. The *CBD* Court noted that a study, also cited in the record here, Ex. 5 at 14, "concludes that developing the [project] would cause an increase in global oil consumption ten times greater than the increase in domestic consumption forecasted by BOEM." Slip op. 20. It further pointed to a study, also cited in the record here, Ex. 6 at 13, that shows that including foreign consumption effects in an assessment led to "an increase in greenhouse gas emissions four times greater than that predicted by the model that did not account for global oil market effects." *CBD s*lip op. 20. The Court's rejection of BOEM's assertions as to the potential magnitude of impact, *id*. at 19-21, dictates the same outcome here.

BLM's remaining justification is that an assessment of emissions is not essential because the Tax Act mandates an oil and gas program. Ex. 6 at 14. This justification also lacks merit. As the FEIS itself attests, the Tax Act does not prevent BLM from

considering program alternatives that greatly vary the acreage opened to leasing. Indeed, the FEIS presents emissions estimates for a high-case and a low-case scenario, depending on predictions about how much oil may be produced from a program. Ex. 2 at 16.

BLM's failure to assess emissions globally is a consequential error going to the heart of the FEIS. It likely caused the FEIS to understate substantially the Program's total potential greenhouse gas emissions and those of the other alternatives considered. These are consequences that could well persuade a rational decisionmaker to weigh differently the discretionary decision about how much area to offer for lease. BLM's failure to assess global greenhouse gas emissions violates NEPA.

3. Defendants violated the Refuge Act by failing to find that the Program is compatible with Refuge purposes.

The Secretary failed to issue a written determination that the Program and associated new uses were compatible with the Refuge's purposes. This violated the Refuge Act.

The Refuge Act requires the Secretary to determine that any "new use of a refuge" is "a compatible use" before initiating or permitting that use. 16 U.S.C. § 668dd(d)(3)(A)(i). Congress was explicit that, in Alaska refuges, "oil and gas leasing" is a type of "use" for which a compatibility determination is required. ANILCA § 304(b). A use is "compatible" when "in the sound professional judgment of the [Fish and Wildlife Service] Director, [it] will not materially interfere with or detract from the fulfillment of the mission of the System or the purposes of the refuge." 16 U.S.C. § 668ee(1). A compatibility determination must be made in writing following adequate

opportunity for public comment. *Id.* § 668dd(d)(3)(B); 50 C.F.R. § 26.41. Congress did not draft or intend the Tax Act to exempt the Program from the Refuge Act's compatibility requirement. *See* 163 Cong. Rec. S7539-40 (daily ed. Nov. 30, 2017) (statement of Sen. Murkowski) (explaining the Tax Act "did not waive NEPA or any other environmental laws" and any program "will include a regular order environmental process").

The Secretary violated the Refuge Act by not making a compatibility determination for the Program before adopting it. The Tax Act's addition of an "oil and gas program on the Coastal Plain" as a Refuge *purpose*, Tax Act § 20001(b)(2)(B), does not excuse the Secretary's failure to confirm that the specific *use* he approved—this particular Program—is compatible: the Refuge Act is clear that a "use … for *any* purpose" still requires a compatibility finding. 16 U.S.C. § 668dd(d)(1)(A) (emphasis added); *cf. Audubon Soc'y of Portland v. Zinke*, No. 17-cv-00069-CL, 2019 WL 8371180, at *10 (D. Or. Nov. 18, 2019) (concluding that Congress's approval of lease land farming in a refuge did not make all such farming necessarily consistent with the refuge's purpose). The Secretary did state in the ROD that the Tax Act "included a Coastal Plain oil and gas program as a refuge purpose on equal footing with the other refuge purposes." Ex. 6 at 3. But this is not a determination that the specific "use" BLM ultimately adopted through the Program is compatible with those other purposes. And, in response to comments noting a compatibility determination was required, Ex. 5 at 9-10, BLM merely replied that all alternatives were designed "to account for all purposes" of

the Refuge, Ex. 2 at 92. This conclusory statement, again, does not address whether the Program is compatible with all Refuge purposes. *See Del. Audubon Soc'y v. Sec'y of Interior*, 612 F. Supp. 2d 442, 450 (D. Del. 2009) (finding Refuge Act violation where "record is simply devoid of anything that even purports to be a compatibility determination").

Indeed, the Program prioritizes oil and gas development over the other Refuge purposes in ways that, at the very least, raise serious questions as to compatibility. The Program, for instance, opens far more of the Coastal Plain to leasing and development than Congress required. *Compare* Tax Act § 20001(c)(1) (requiring BLM to offer two 400,000-acre lease sales), *with* Ex. 6 at 5 (making "approximately 1,563,500 acres, or the entire program area, available for oil and gas leasing"). And it places no limits on the location or extent of destructive activities like seismic surveys, at the expense of the Refuge's natural values. *See, e.g.*, Ex. 2 at 31 (noting all action alternatives allow for seismic testing "across the entire program area"). BLM does not deny these tradeoffs: its FEIS admits the Program will interfere with or detract from the fulfillment of the Refuge's conservation-oriented purposes. *E.g.*, *id.* at 70-71 (impacts on recreational values); *id.* at 74 (impacts on wilderness values). Particularly in light of these admissions and the public comments received, the Secretary was obligated to explain in writing how the Program was compatible with all the Refuge's purposes.

The Secretary made no effort to do so, thereby violating the Refuge Act.

4. Defendants failed to explain how they will or will not comply with environmental laws.

Defendants failed to explain in the FEIS or DEIS how the Program would achieve the requirements of ANILCA and the Refuge Act. This violated NEPA.

NEPA requires agencies, in an environmental impact statement, to "state how alternatives considered in it and decisions based on it will or will not achieve the requirements of … environmental laws and policies." 40 C.F.R. § 1502.2(d); *see League of Wilderness Defs. v. U.S. Forest Serv.*, 585 Fed. App'x 613, 614-15 (9th Cir. 2014) (agency was required "under NEPA, to include an explicit … analysis in its EIS" where legal compliance was at issue); *Mont. Wilderness Ass'n v. McAllister*, 658 F. Supp. 2d 1249, 1255 (D. Mont. 2009). In particular, where public comments "highlighted clear discrepancies" between the decision and applicable law, "NEPA requires that the agency ensure that its decision is consistent with the governing statutes and regulations." *Am. Wild Horse Pres. Campaign v. Zinke*, No. 16-cv-001-EJL, 2017 WL 4349012, at *13 (D. Idaho Sept. 29, 2017). "Some discussion ... addressing the concerns and issues raised in the public comments is required." *Id.*

Defendants failed to include in their FEIS any explicit analysis of how they will or will not comply with their challenging ANILCA and Refuge Act obligations. Those statutes require that the Refuge be "managed to fulfill" the purposes for which it was created, 16 U.S.C. § 668dd(a)(3)(A), including the original Range purposes, *see* ANILCA § 305, and ANILCA's conservation purposes, ANILCA § 303(2)(B). During

the NEPA process, Plaintiffs highlighted discrepancies between BLM's alternatives and those purposes, *see* Ex. 5 at 4, 7-10, not least BLM's decision to ignore the original Range purposes altogether, *see id.* at 4, 7-8. As noted above, BLM conceded some conflicts and proposed a Program that aggravated them. *See supra* 10.

Instead of coming forthrightly to grips with the very real problem of reconciling the Program (and its other alternatives) with seven other Refuge purposes, BLM took the evasive position that the Program "account[s]" for the other Refuge's purposes. Ex. 2 at 3-4. But that is not what NEPA requires of it. BLM asserting merely that it is accounting for purposes fails to show *how* it would or could "fulfill" them, as the Refuge Act requires. Just as considering a speed limit does not convey whether one is obeying or violating the limit, BLM's statement that it was considering or accounting for the Refuge purposes does not explain how (or even if) it was actually fulfilling them. Moreover, BLM did not make even an "accounting for" claim as to the three conservation purposes established by Public Land Order 2214. *See* Ex. 6 at 7 (naming the "other four refuge purposes"). In short, the FEIS nowhere explained how the Program and its alternatives will or will not comply with ANILCA § 305 and 16 U.S.C. § 668dd(a)(3)(A). It therefore violated its regulatory obligation to explicitly analyze how it would or would not achieve compliance with governing environmental laws.

B. Plaintiffs are likely to suffer irreparable harm without an injunction.

Plaintiffs are likely to suffer irreparable harm absent an injunction. Defendants' reliance on a fatally flawed FEIS and ROD has set them on a hasty course of action that

will harm the wildlife and resources of the Coastal Plain and exacerbate climate change in the region and globally. In particular, BLM's rush to award leases and authorize seismic exploration under the Program seeks to lock in place the unlawful Program and threatens irreparable harm to the fragile permafrost that supports all life on the Coastal Plain and to Plaintiffs' members' enjoyment and use of the area. Preliminary relief is needed to prevent such harm to Refuge values and to arrest Defendants' effort to commit the Coastal Plain to development before this Court can reach the merits of serious legal claims Plaintiffs raise.

"Environmental injury, by its nature, can seldom be adequately remedied by money damages and is often permanent or at least of long duration, *i.e.*, irreparable." *Amoco Prod. Co. v. Vill. of Gambell*, 480 U.S. 531, 545 (1987). In the NEPA context, irreparable environmental harm occurs "when governmental decisionmakers make up their minds without having before them an analysis . . . of the likely effects of their decision upon the environment." *Sierra Club v. Marsh*, 872 F.2d 497, 500-01 (1st Cir. 1989) (Breyer, J.); *see also High Sierra Hikers Ass'n v. Blackwell*, 390 F.3d 630, 642 (9th Cir. 2004) ("[I]rreparable injury flows from the failure to evaluate the environmental impact of a major federal action.").

Initiating major federal action without a proper NEPA analysis causes this irreparable environmental harm by setting in motion a bureaucratic steamroller that is difficult to stop. *See Marsh*, 872 F.2d at 500-01. In *Massachusetts v. Watt*, the First Circuit enjoined an oil and gas lease sale because

> if the lease sale then took place, and if the court *then* held that a supplemental EIS was required … the successful oil companies would have committed time and effort to planning the development of the blocks they had leased, and the Department of the Interior … would have begun to make plans based upon the leased tracts. Each of these events represents a link in a chain of bureaucratic commitment that will become progressively harder to undo the longer it continues. Once large bureaucracies are committed to a course of action, it is difficult to change that course—even if new, or more thorough, NEPA statements are prepared and the agency is told to "redecide."

716 F.2d 946, 952-53 (1st Cir. 1983). Other courts have found irreparable harm on the same or similar bases. *See Sierra Club v. U.S. Army Corps of Eng'rs*, 645 F.3d 978, 995 (8th Cir. 2011) (affirming district court's consideration of the "difficulty of stopping a bureaucratic steam roller, once started" (quoting *Marsh*, 872 F.2d at 504)); *W. Watersheds Project v. Zinke*, 336 F. Supp. 3d 1204, 1241, 1243 (D. Idaho 2018) (holding "incomplete observance of environmental laws and procedure . . . aided by agency inertia, combine to create irreparable harm," collecting analogous cases, and enjoining agency from conducting future lease sales).

This case fits squarely in this line of cases. First, Defendants propose to sell oil and gas leases that include a right of surface occupancy, which the Ninth Circuit has recognized constitutes the point of irreversible and irretrievable commitment of resources. *See Conner v. Burford*, 848 F.2d 1441, 1451 (9th Cir. 1988); *see also* Ex. 2 at 3, 7-9 (leases transfer rights to drill for and extract oil and gas from leased areas). In fact, the ROD makes clear that, once leases are awarded, Defendants cannot deny easements and rights-of-way or authorization for production and development on leases. *See* Ex. 6 at 9-10. Second, Defendants have already developed inordinate momentum towards

permanently determining the fate of the entire Coastal Plain. They adopted a ROD opening it all to leasing. *Id.* at 4-5. Holding nothing back, they are offering it all for sale in this first auction. Ex. 7 at 11. They have scheduled the lease almost a year before they have to. Tax Act § 20001(c)(1)(B)(ii)(I). And most recently, they further accelerated their march toward irrevocability by announcing the sale ten days earlier than they indicated to this Court—or at least strongly implied—they would. *Supra* 4. As a result, the steamroller effect, and associated harm, that *Marsh* warns against is particularly concerning.

The need to check this extraordinary bureaucratic momentum is especially clear here. As the Ninth Circuit recently recognized, an inadequate analysis of greenhouse gas emissions is exactly the kind of NEPA failing that should cause an agency decisionmaker to reconsider: "If [the agency] later concludes that such emissions will be significant, it may well approve another alternative included in the EIS or deny the lease altogether." *CBD* slip op. 23. In addition, the compounding failure or inability to complete a compatibility determination and explain how the Program fulfills all purposes of the Refuge call every aspect of the Program into question. This is, moreover, not a case where the risks of the activity are plausibly understood from previous environmental analysis. *Compare Winter*, 555 U.S. at 32 (finding irreparable harm unlikely based, in part, on decades of prior activity without documented harm to marine mammals). Rather, the Program greenlights many activities never before authorized in this unique environment.

Allowing Defendants to implement the Program by issuing leases, authorizing seismic exploration, or approving other activities, increases the likelihood that harmful activities will soon take place in leased areas, thus harming Plaintiffs. *See* Ex. 10 at 4, 8-10. The mere fact of a lease sale will destroy the sense of "wilderness" that users associate with the area, decreasing the number of people who come from around the world to see this largely pristine environment and harming Plaintiffs' members who guide trips in the Refuge. *See* Ex. 20 ¶ 15; Ex. 14 ¶ 15. The award of leases may also result in restrictions to public access, harming members who return to the Refuge and its Coastal Plain regularly to seek solitude in its vast expanses and appreciate, in the words of one member, the "humbling experience" of walking among thousands of caribou "that makes me feel both insignificant, and part of the world in a way that seems imperative to being human." Ex. 13 ¶ 19.

In addition, other activities, including overflights, aerial and ground-based seismic, and other human disturbance are more likely to occur in leased areas. These activities will harm Plaintiffs' members' interests in the Refuge. *See All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1135 (9th Cir. 2011) (concluding harm to members' abilities to "'view, experience, and utilize' . . . areas in their undisturbed state" is irreparable and warrants an injunction (citation omitted)). Noise and disturbance from these activities will harm wildlife and destroy the natural setting and opportunities for solitude that Defendants acknowledge make the Refuge "unique on a global scale." Ex. 2 at 68; *see, e.g.*, *id.* at 22, 35-36, 62-64 (aircraft noise is the most common impact on

caribou hunting and also affects reproductive success for birds); *id.* at 67 (small changes in physical setting will have "disproportionately large impacts on user experiences"); *id.* at 40 (seismic surveys would modify avian habitat and disturb muskoxen, wolves, wolverines, grizzlies, and any caribou that remain in the area during the winter); *id.* at 74 (presence of vehicles would affect "naturalness and opportunities for solitude" in the Coastal Plain). Plaintiffs' members include scientists, photographers, and recreational users of the Coastal Plain. Ex. 12 ¶¶ 13-14; Ex. 15 at ¶ 8; Ex. 13 ¶ 15). These members' interests depend on the Refuge remaining an undisturbed environment. Some members conduct scientific research on the Coastal Plain that depends on access to intact, undisturbed habitat put at risk by the Program. *See* Ex. 13 ¶ 18. Some of their research may become difficult or impossible if leases are signed because it will make access to these areas and authorization and funding for research more difficult. *See id.*; Ex. 17 ¶ 13. Other members operate guiding businesses and expect business to decline as many potential clients refuse to come to a Refuge no longer free of industrial development. Ex. 20 ¶¶ 13-15; Ex. 14 ¶ 15; Ex. 16 ¶¶ 11, 16.

Harm from seismic activities is particularly imminent and irreparable. Defendants are now on a path to approving a seismic application for activities occurring as early as this month. *See* Dkt. 21 at 19, ¶ 50 Dkt. 35 at 12, ¶ 50. Additional seismic activities are likely to happen "as soon as possible," particularly in leased areas. *See* Ex. 10 at 4; Ex. 2 at 40 (acknowledging that "seismic is most likely to occur in specific areas of lease

sales"); *id.* at 66 (stating that seismic activity is unlikely in areas closed to leasing because of a lack of demand for data in those areas).

This imminent seismic activity will cause multiple harms. Previous seismic work in the Coastal Plain left scars across the tundra that, in some cases, can be seen 33 years later. Ex. 2 at 28, 31-32. Seismic lines are not only visible scars—they cause significant, and in some cases irreversible, changes to tundra vegetation, hydrology, and permafrost. Ex. 2 at 31. As the FEIS acknowledges, seismic surveys, even when performed during the winter, will have "impacts on vegetation and disturbance of the active layer [that] would result in direct impacts on the soil quality and permafrost where seismic survey activities occur[,]" resulting in changes to drainage patterns and hydrology and accelerating permafrost thaw. *Id.* at 26. Some thermokarst features may never recover. *Id.* at 31-32. This disruption risks altering the area's geomorphology and upending decades-long research that one member has conducted in the area. Ex. 17 ¶¶ 9-12.

These harms will not be prevented by BLM's primary mitigation measure, a bar on tundra travel until "snow depths are an average of 9 inches, or 3 inches over the highest tussocks along the line of vehicle travel." Ex. 6 at 16. In the first place, averages are essentially meaningless in an environment like the Coastal Plain, where snow depth can vary significantly across even short distances and over the course of mere days. Ex. 11 at 16-17 (discussing the uneven and fast changing geographic distribution of snow depth); Ex. 3 at 7-8. This is particularly so for BLM's chosen threshold of 9 inches, since average snow on the Coastal Plain frequently is just above or below that height.

See Ex. 11 at 14 (graph showing how average snow depth on the Coastal Plain commonly varies around 9 inches). Snow that is on average just above 9 inches but varies widely will in many places be below it. Equally critically, snow in the Coastal Plain can and does rapidly shift over wide areas from being above 9 inches on average to below it, from one week or even day to the next. *Id.* at 7 (the rapidity of change is vividly illustrated by the .mov files linked in that study). Thus, surveys taken along planned lines of travel 7 to 20 days prior to surveys by 45-ton trucks, as the Interior Department now proposes, 85 Fed. Reg. at 79,085, would offer no assurance that snow is still at the required depth when the surveys are actually conducted. *See* Ex. 11 at 24-33, 35-44 (illustrating rapid drops in snow depth over two 10-day periods). And even when those surveys started out with the specified average depth, conditions can and do change so rapidly and for such long periods of time that massive equipment would have to traverse wide stretches of under-protected tundra just to return to the safety of mobile camps, themselves plausibly then sitting atop inadequate snow cover. *See id.* at 16 (noting that, after a strong wind event reduced snow depth across the Coastal Plain below 9 inches, "[t]he region then stayed largely below 9 inches for over a month").

This damage to the permafrost and tundra, the anchor of the Coastal Plain ecosystem, is irreparable. *Cf. Save Our Sonoran, Inc. v. Flowers*, 408 F.3d 1113, 1124 (9th Cir. 2005) (affirming finding of irreparable harm because, "once the desert is disturbed, it can never be restored"); *see also, e.g.*, Ex. 18 ¶ 20 (describing tracks in the tundra); Ex. 13 ¶ 20; Ex. 20 ¶ 9; Ex. 14 ¶ 15; Ex. 17 ¶¶ 7-9.

C. The balance of harms tips sharply in favor of Plaintiffs.

"[W]hen environmental injury is 'sufficiently likely, the balance of harms will usually favor the issuance of an injunction to protect the environment.'" *Idaho Sporting Cong., Inc. v. Alexander*, 222 F.3d 562, 569 (9th Cir. 2000) (quoting *Amoco Prod. Co.*, 480 U.S. at 545).

That is the case here. Irreparable environmental harm is likely. And there are no apparent countervailing harms to Defendants from an injunction: the deadline to hold a first lease sale in the Refuge is a year away, Tax Act § 20001(c)(1)(B)(ii)(I), and the actual production of oil and gas on leased lands likely will not begin until many years after the leases are issued, Ex. 2 at 19b.

D. A preliminary injunction advances the public interest.

The public interest favors granting this injunction. The Ninth Circuit recognizes "the public interest in careful consideration of environmental impacts before major federal projects go forward, and . . . [has] held that suspending such projects until that consideration occurs 'comports with the public interest.'" *All. for the Wild Rockies*, 632 F.3d at 1138 (citation omitted). Congress declared the public interest in all United States policies and laws being administered in compliance with NEPA "to the fullest extent possible." 42 U.S.C. § 4332. And the public also has an overarching interest in its government abiding by the laws and regulations governing it. *See, e.g.*, *East Bay Sanctuary Covenant v. Trump*, 932 F.3d 742, 779 (9th Cir. 2018); *Enyart v. Nat'l Conf. of Bar Exam'rs, Inc.*, 630 F.3d 1153, 1167 (9th Cir. 2011). Allowing Defendants to rush to

issue leases and permit seismic exploration despite the legal infirmities underlying the Program and the irreparable harm it threatens to the Refuge and those who rely on it, would nullify the precise public interests Congress intended to further in the Refuge Act and NEPA.

CONCLUSION

For the foregoing reasons, Plaintiffs request this Court to enter a preliminary injunction until this Court has been able to decide Plaintiffs' claims, enjoining Defendants and all persons covered under Fed. R. Civ. P. 65(d)(2) from taking any action implementing or relying on the adequacy of the ROD or FEIS, or otherwise authorizing activity related to oil and gas exploration or development in the Arctic National Wildlife Refuge, including issuing oil and gas leases or permitting oil and gas exploration activities within the Refuge.

Respectfully submitted this 15th day of December, 2020.

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CERTIFICATE OF COMPLIANCE WITH WORD LIMIT

I certify that this motion contains 5,660 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)(1).

Respectfully submitted this 15th day of December, 2020.

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TABLE OF EXHIBITS

Exhibit No.	Description	AR No.
1	M. Sturm *et al*., A Report on the Snow Cover of the 1002 Area of the Arctic National Wildlife Refuge, 2014-2019 (Aug. 28, 2019) (excerpt)	425
2	Bureau of Land Management, Coastal Plain Oil and Gas Leasing Program, Final Environmental Impact Statement, DOI-BLM-AK-0000-2018-0002-EIS (Sept. 2019) (excerpts)	Folder 661
3	M. K. Raynolds *et al. Landscape impacts of 3D-seismic surveys in the Arctic National Wildlife Refuge, Alaska,* ECOLOGICAL APPLICATIONS 0(0) 2020	130
4	Bureau of Land Management, Coastal Plain Oil and Gas Leasing Program, Draft Environmental Impact Statement, DOI-BLM-AK-0000-2018-0002-EIS (Dec. 2018) (excerpts)	647
5	Alaska Wilderness League *et al.*, Comments re: Notice of Availability of the Draft Environmental Impact Statement for the Coastal Plain Oil and Gas Leasing Program and Announcement of Public Subsistence-Related Hearings (Mar. 13, 2019) (excerpts)	Folder 614
6	Bureau of Land Management, Coastal Plain Oil and Gas Leasing Program Record of Decision (Aug. 2020) (excerpts)	671
7	Bureau of Land Management, Alaska State Office, Coastal Plain Alaska, Oil and Gas Lease Sale 2021: Detailed Statement of Sale (Dec. 2020) (excerpt)	
8	*Center for Biological Diversity v. Bernhardt*, No. 18-73400 (9th Cir. Dec. 7, 2020)	424
9	G. Siekaniec, Regional Director, U.S. Fish and Wildlife Service, Letter to Coastal Plain Oil and Gas Leasing Program Environmental Impact Statement Project Manager, Bureau of Land Management (Apr. 8, 2019)	346