

Ryan P. Steen (Bar No. 0912084)
ryan.steen@stoel.com
Jason T. Morgan (Bar No. 1602010)
jason.morgan@stoel.com
James C. Feldman (Bar No. 1702003)
james.feldman@stoel.com
STOEL RIVES LLP
600 University Street, Suite 3600
Seattle, WA 98101
Telephone: 206.624.0900
Facsimile: 206.386.7500

Attorneys for ConocoPhillips Alaska, Inc.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

SOVEREIGN IÑUPIAT FOR A LIVING
ARCTIC, et al.,

Plaintiffs,

v.

BUREAU OF LAND MANAGEMENT, et al.,

Defendants,

and

CONOCOPHILLIPS ALASKA, INC.,

Intervenor-Defendant.

No.: 3:20-cv-00290-SLG

**CONOCOPHILLIPS ALASKA, INC.'S PROPOSED EXPEDITED BRIEFING
SCHEDULE**

Sovereign Iñupiat for a Living Arctic et al. v. Bureau of Land Management et al.
Case No. 3:20-cv-00290-SLG 1

On February 8, 2021, the Court entered a text order directing the parties to file a proposed briefing schedule by the close of business on February 22, 2021.¹ The parties have been unable to agree upon a schedule for this case.²

ConocoPhillips respectfully asks this Court to expedite resolution of the merits of this case, and enter a briefing schedule that is the same as the schedule proposed by ConocoPhillips and Federal Defendants in the related case filed by Center for Biological Diversity (“CBD”) (No. 3:20-cv-00308). Consistent with that schedule, ConocoPhillips asks this court for an expedited decision by July 1, 2021. ConocoPhillips’ requested schedule will allow this litigation to proceed on the same schedule as the CBD case, which would efficiently allow for consolidated briefing. This schedule would also allow the case to be promptly resolved without causing another season of delay in the planning and construction of the Willow project. Timely completion of the Willow project is in the public interest, as expressed by the North Slope Borough,³ the State of Alaska,⁴ the

¹ Dkt. No. 55.

² Counsel for ConocoPhillips Alaska, Inc. (“ConocoPhillips”) and the Federal Defendants conferred regarding a schedule, but were unable to reach agreement. Counsel for Plaintiffs first proposed a schedule on Monday, February 22, 2021. Counsel for ConocoPhillips, Plaintiffs, and Federal Defendants were unable to agree upon a schedule.

³ See Declaration of Harry K. Brower (Dkt. 27-17 ¶ 10); Second Declaration of Harry K. Brower, Ninth Circuit Case No. 21-35085 (ECF No. 16-22); North Slope Borough Amicus Curiae Brief, Ninth Circuit Case No. 21-35085 (ECF No. 23-2).

⁴ Dkt. 23-3.

Arctic Slope Regional Corporation,⁵ and the Alaska Congressional Delegation.⁶ As the Mayor of the North Slope Borough explained, “delaying Willow construction would delay and put at risk public benefits from the Willow project” and delay of revenues needed “to provide essential public services” to North Slope residents.⁷ The Ninth Circuit’s order in this case has already delayed the start of construction by one year, and prompt review of the merits is necessary to minimize the risk of further delays.⁸

All parties support prompt resolution of the merits (before next winter), but waiting until the end of the year to reach the merits significantly increases the risk of additional delay. Specifically, if the Court finds some legal error in one of the agency approvals in this case, ConocoPhillips needs a final ruling from this Court at a time that will allow the agency to correct that error in time to potentially salvage some or all of the 2021-22 winter construction season. An adverse ruling by this Court any time after mid-

⁵ Dkt. 29-1.

⁶ See Alaska Delegation Deeply Troubled by 9th Circuit Decision to Halt Willow Project (February 17, 2021), available at: <https://donyoung.house.gov/news/documentsingle.aspx?DocumentID=401894>

⁷ Second Declaration of Harry K. Brower, Ninth Circuit Case No. 21-35085 (ECF No. 16-22) at ¶ 10.

⁸ As Senator Sullivan explained, “The Willow project will significantly help Alaska Native communities in the North Slope Borough with job opportunities and funding for schools, health clinics, and social services. Because of the already short construction season on the North Slope, this injunction will cause a domino effect of delay and uncertainty that will impact all operations on the project moving forward.” See *supra* note 6.

summer will likely foreclose that opportunity, and almost certainly result in another lost construction season for winter of 2021-22.

Conversely, if the Court upholds the challenged agency actions, all parties and the public interest are best served if the Court issues its order on the merits by July 1, 2021. This would provide ConocoPhillips sufficient time to arrange, contract, and mobilize for a full winter construction season in 2021-22. As set forth in the attached Second Supplemental Declaration of James Brodie, preparation for next winter's construction season is already underway, and requires ramping up to as many as 300 employees in the second half of 2021 to work on engineering and logistics, as well as entering into numerous contracts for the construction, fabrication and transportation of pipes, culverts, bridges, and other equipment to the North Slope for use next winter.⁹ ConocoPhillips must make important contracting decisions by early-July 2021 in order make those arrangements and plan for next winter's construction season.¹⁰ Although ConocoPhillips may be able to salvage some portion of the 2021-22 winter season if the Court upholds the agency decisions on the merits after July 1, 2021, the scope of that season will necessarily be reduced, causing further delays in the construction of the project.¹¹ Furthermore, ConocoPhillips' proposed schedule would also give Plaintiffs the

⁹ Second Declaration of James Brodie, ¶¶ 4-6.

¹⁰ *Id.* ¶ 6.

¹¹ *Id.* ¶ 7.

opportunity to seek an expedited Ninth Circuit appeal before construction begins, if they so choose.

The briefing schedule below is the same as that requested by Federal Defendants and ConocoPhillips in the CBD case and is consistent with local rules.¹² If approved by the Court, this proposed schedule would allow for consistently timed and consolidated briefing for these two cases, much in the same way the briefing was efficiently accomplished in the challenges filed by very similar plaintiffs groups to the 2016 and 2017 NPR-A lease sales. Plaintiffs in this case (“SILA”) rejected this proposed schedule because the administrative record for its Clean Water Act claims will not be filed until March 12, and SILA would prefer to wait and see if it wants to file a motion to complete the record. This delay is not necessary. If there is a record dispute, the briefing on the record dispute can occur in parallel with the briefing on the merits. ConocoPhillips’ proposed schedule below allows for Plaintiffs to file a five-page supplemental brief if the Court grants a motion to supplement the record, followed by a five-page supplemental opposition brief. Accordingly, this proposed schedule is reasonable, achievable, and results in no prejudice to any party.

¹² See Local Civil Rule 16.3.

In sum, the two cases have substantial overlap, and ConocoPhillips proposed schedule allows both cases to proceed to prompt resolution in an expedited manner, and provide important direction to all parties and the public on the Willow project.

For the foregoing reasons, ConocoPhillips proposes the schedule below:

1. March 12, 2021 – Administrative Record filed by U.S. Army Corps.
2. April 12, 2021 – Plaintiffs’ Opening Brief is due.
3. May 13, 2021 – Defendants’ and Intervenor’s Response Briefs are due.
4. June 1, 2021 – Plaintiffs’ Reply Brief is due.
5. The Court will endeavor to issue a ruling by July 1, 2021.
6. If the Court grants a motion to supplement the record, Plaintiffs may file a supplemental brief on the merits of five pages within 14 days to address the additional record materials, and Federal Defendants and Intervenor may each file a five-page response, seven days thereafter.

Respectfully submitted this 22nd Day of February, 2021.

STOEL RIVES LLP

By: s/ Jason T. Morgan

Ryan P. Steen (Bar No. 0912084)
Jason T. Morgan (Bar No. 1602010)
James C. Feldman (Bar No. 1702003)

Attorneys for ConocoPhillips Alaska, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on February 22, 2021, I filed a true and correct copy of the foregoing document with the Clerk of the Court for the United States District Court of Alaska by using the CM/ECF system. Participants in this Case No. 3:20-cv-00290-SLG who are registered CM/ECF users will be served by the CM/ECF system.

Brian Litmans	blitmans@trustees.org
Bridget Earley Psarianos	bpsarianos@trustees.org
Brook Brisson	bbrisson@trustees.org
Suzanne Bostrom	sbostrom@trustees.org
Caitlin Marie Cipicchio	ccipicchio@Enrd.usdoj.gov
Eric B. Fjelstad	efjelstad@perkinscoie.com
John Michael Ptacin	john.ptacin@alaska.gov
Rickey Doyle Turner , Jr	Rickey.Turner@usdoj.gov
Stacey M. Bosshardt	sbosshardt@perkinscoie.com

s/ Jason T. Morgan

Jason T. Morgan

109892747.1 0028116-00157

Sovereign Inñupiat for a Living Arctic et al. v. Bureau of Land Management et al.
Case No. 3:20-cv-00290-SLG 7