No. 20-35224

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

NATIVE VILLAGE OF NUIQSUT, et al.,
Plaintiffs/Appellants,

v.

BUREAU OF LAND MANAGEMENT, et al.,
Defendants/Appellees,

and

CONOCOPHILLIPS ALASKA, INC.,
Intervenor-Defendant/Appellee.

Appeal from the United States District Court for the District of Alaska
No. 3:19-cv-00056 (Hon. Sharon L. Gleason)

FEDERAL APPELLEES' ANSWERING BRIEF

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GLOSSARY

APA	Administrative Procedure Act
ANILCA	Alaska National Interest Lands Conservation Act
BLM	Bureau of Land Management
CEQ	Council on Environmental Quality
EA	Environmental Assessment
EIS	Environmental Impact Statement
FONSI	Finding of No Significant Impact
FONNSI	Finding of No New Significant Impact
IAP	Integrated Activity Plan
NEPA	National Environmental Policy Act
NPR-A	National Petroleum Reserve in Alaska
ROD	Record of Decision
SEIS	Supplemental Environmental Impact Statement

INTRODUCTION

As required by statute, the Bureau of Land Management (BLM) manages the National Petroleum Reserve in Alaska (Petroleum Reserve or NPR-A) consistent with the Nation's total energy needs. To fulfill its statutory mandate, BLM has issued an integrated activity plan (IAP) that strikes an appropriate balance between promoting oil and gas development and protecting surface resources.

ConocoPhillips Alaska, Inc. holds federal leases in the Petroleum Reserve. In December 2018, BLM approved various winter exploration activities on those leases as proposed by ConocoPhillips, including the drilling of as many as six wells and the construction of ice roads, snow trails, an ice airstrip, and ice pads. Before it approved those activities, BLM prepared an Environmental Assessment (EA) that analyzed the possible impacts thereof. Ultimately, BLM determined that it need not prepare a full-blown Environmental Impact Statement (EIS) because the activities would cause no significant impacts new or different from those that BLM had considered in the programmatic EIS that had accompanied the IAP. ConocoPhillips completed the approved activities on April 28, 2019, nearly a year-and-a-half ago.

The Native Village of Nuiqsut and several environmental groups (Plaintiffs) sued BLM in 2019. They claim that BLM violated the National Environmental Policy Act (NEPA) because the agency did not adequately consider the impacts of the exploration activities and because

it did not prepare an EIS. The district court denied Plaintiffs' summary judgment motion and entered judgment in BLM's favor.

For the reasons elaborated below, this appeal should be dismissed as moot. Alternatively, the judgment of the district court on the merits should be affirmed.

STATEMENT OF JURISDICTION

(a) Plaintiffs contend that the district court had subject matter jurisdiction under 28 U.S.C. § 1331 because Plaintiffs' claims arose under a federal statute, namely, NEPA, 42 U.S.C. §§ 4321 et seq. 4 Excerpts of Record (E.R.) 610–38. But as detailed in Part I of the Argument below, Plaintiffs' claims are now moot and thus jurisdictionally barred.

(b) The district court's judgment was final because it disposed of all claims against all defendants. 1 E.R. 2–74. This Court has jurisdiction under 28 U.S.C. § 1291.

(c) The district court entered judgment on January 9, 2020. 1 E.R. 1. Plaintiffs filed their notice of appeal on March 9, 2020, or 60 days later. 2 E.R. 76. The appeal is timely under Federal Rule of Appellate Procedure 4(a)(1)(B).

STATEMENT OF THE ISSUES

1. Whether this appeal should be dismissed as moot because ConocoPhillips completed the winter exploration activities more than a year ago, and because this is not an extraordinary case that is capable of repetition yet evading review.

2. Whether BLM reasonably considered the impacts of the exploration activities and adequately supported its finding of no new significant impact, such that an EIS was not required.

3. Whether BLM satisfied its obligation to consider alternatives under NEPA and the Alaska National Interest Lands Conservation Act.

PERTINENT STATUTES AND REGULATIONS

Except for those in the Addendum hereto, all applicable statutes and regulations are in the Addendum to Plaintiffs' Opening Brief.

STATEMENT OF THE CASE

A. Statutory and regulatory background

1. The National Environmental Policy Act

NEPA "is a procedural statute that requires . . . agencies to assess the environmental consequences of their actions before those actions are undertaken." *Klamath-Siskiyou Wildlands Center v. BLM*, 387 F.3d 989, 993 (9th Cir. 2004). To that end, the statute requires federal agencies to prepare an EIS for any "major Federal actions significantly affecting the quality of the human environment." 42 U.S.C. § 4332(2)(C); *see also* 40 C.F.R. §§ 1501.4, 1502.1, 1508.11.[1]

[1] The Council on Environmental Quality (CEQ) recently updated the NEPA regulations at 40 C.F.R. Parts 1500–1508. *See* 85 Fed. Reg. 43,304 (July 16, 2020). Unless otherwise noted, this brief cites the prior regulations in effect when BLM completed the EA and the Decision Record at issue. *Cf.* 40 C.F.R. § 1506.13 (2020) ("The regulations in this subchapter apply to any NEPA process begun after September 14, 2020.").

Instead of immediately preparing an EIS, an agency may prepare an EA to determine whether the proposed action will significantly affect the environment and, thus, whether an EIS is actually necessary. *Id.* §§ 1501.3(a), 1508.9. An EA is "a concise public document" that includes "brief discussions of the need for the proposal, of alternatives" and "of the environmental impacts of the proposed action and alternatives." *Id.* § 1508.9(a), (b).

EAs may rely on, or "tier to," analyses in earlier, broader EISs. *Id.* § 1508.28; 43 C.F.R. § 46.140. "Tiering" occurs when an agency considers "general matters in broader [EISs] (such as national program or policy statements)" and then "incorporat[es] by reference [those] general discussions" in "subsequent narrower statements or environmental analyses (such as regional or basinwide program statements or ultimately site-specific statements)." 40 C.F.R. § 1508.28. The applicable NEPA regulations encourage agencies to use tiering "to eliminate repetitive discussions of the same issues and to focus on the actual issues ripe for decision at each level of environmental review." *Id.* § 1502.20.

When an EA tiers to a prior EIS, the agency may reach one of four conclusions: (1) the proposed action would result in new and significant environmental impacts that were not previously considered in the prior EIS; (2) the proposed action would not result in a significant environmental impact—a finding of no significant impact (FONSI); (3) the proposed action would not result in any new and significant

impacts other than those already disclosed and analyzed in the prior EIS—a finding of no *new* significant impact (FONNSI); and (4) the proposed action will not go forward. 43 C.F.R. §§ 46.140, 46.325 (BLM's NEPA regulations). If the agency finds that the action will have no significant environmental impacts or no new significant impacts, it need not complete an EIS. *Id.* § 46.140(c); *see also* 40 C.F.R. § 1508.13.

2. Alaska National Interest Lands Conservation Act (ANILCA)

Section 810 of ANILCA requires federal agencies proposing certain actions resulting in the "use, occupancy, or disposition of public lands" in Alaska to evaluate (1) the action's effects on "subsistence uses and needs"; (2) the availability of other lands for the same purpose; and (3) "other alternatives which would reduce or eliminate the use, occupancy, or disposition of public lands needed for subsistence purposes." 16 U.S.C. § 3120(a).

3. The Naval Petroleum Reserves Production Act

The Nation's Petroleum Reserve consists of some 23 million acres on Alaska's North Slope. President Harding established the Petroleum Reserve in 1923, then known as Naval Petroleum Reserve Number 4, and the Navy managed it until Congress enacted the Naval Petroleum Reserves Production Act of 1976, 42 U.S.C. §§ 6501–6508. *See generally Northern Alaska Environmental Center v. Kempthorne*, 457 F.3d 969, 973

(9th Cir. 2006) (*NAEC*). In so doing, Congress placed the Petroleum Reserve under the jurisdiction of the Secretary of the Interior, 42 U.S.C. §§ 6502, 6503(a), to manage "in a manner consistent with the total energy needs of the Nation," Pub. L. No. 94-258, 90 Stat. 303, 303 (1976). Congress also renamed it the "National Petroleum Reserve in Alaska." *Id.* § 102, 90 Stat. at 303.

In 1980, "driven by the fuel crisis of the previous decade," Congress directed the Secretary of the Interior "to carry out an 'expeditious program of competitive leasing of oil and gas' on the Reserve." *NAEC*, 457 F.3d at 973 (quoting 42 U.S.C. § 6506a(a)). BLM implements that program on behalf of the Secretary. *Transfer of Responsibility and Authority*, 48 Fed. Reg. 8,982 (Mar. 2, 1983); *see also* 1 Supplemental Excerpts of Record (S.E.R.) 22. As part of its management authority, BLM may condition oil and gas activities in the Petroleum Reserve "to mitigate reasonably foreseeable and significantly adverse effects" on the surface resources. 42 U.S.C. § 6506a(b).

BLM may also designate special areas in the Petroleum Reserve "containing any significant subsistence, recreational, fish and wildlife, or historical or scenic value." *Id.* § 6504(a). The agency has designated five special areas, including the Teshekpuk Lake Special Area. 1 S.E.R. 22–23. That area "was designated primarily to protect important nesting, staging, and molting habitat for a large number of waterfowl." 1 S.E.R. 34. It also provides "important habitat for caribou and serves as

an important area for subsistence resources and uses." *Id.* Under the Naval Petroleum Reserves Production Act, oil and gas activities in special areas must "be conducted in a manner which will assure the maximum protection of such surface values to the extent consistent with the requirements of [the] Act for the exploration of the reserve." 42 U.S.C. § 6504(a).

4. Regulatory framework for oil and gas development in the Petroleum Reserve

Oil and gas development in the Petroleum Reserve involves three separate stages: (1) leasing, (2) exploration, and (3) development. *NAEC*, 457 F.3d at 977; 43 C.F.R. Parts 3130 (leasing), 3150 (exploration), 3160 (development). Activities at each stage require separate BLM approval (as well as approval by other local, state, and federal agencies). *See NAEC*, 457 F.3d at 977; 3 E.R. 272. Likewise, NEPA applies at each stage. *NAEC*, 457 F.3d at 977.

This case involves the exploration stage. Before a leaseholder may explore for oil and gas, it must obtain BLM's permission to do so under the procedures set forth in 43 C.F.R. Parts 3150 and 3160, governing geophysical surveys and drilling operations, respectively. BLM may reject the leaseholder's exploration plan or approve it "as submitted or with appropriate modifications or conditions." 43 C.F.R. § 3162.3-1(h)(1); *see also id.* § 3152.2(b) (BLM "shall include in each geophysical exploration permit terms and conditions deemed necessary to protect

values, mineral resources, and nonmineral resources."). BLM may also impose "[a]dditional stipulations needed to protect surface resources and special areas." *Id.* § 3131.3.

Exploration typically involves the drilling of wells to discover oil and, after a discovery, to define the limits of reservoirs. 1 S.E.R. 174. "Exploratory drilling typically occurs during the winter when conditions facilitate tundra travel and ice road, snow trails, ice airstrips, and ice pad construction." 1 S.E.R. 172. These activities are seasonal, and typically only plugged wells are left behind after drilling is complete. 1 S.E.R. 172–75 (describing typical winter exploration activities); 1 S.E.R. 175 ("Upon completion of drilling operations, all equipment and materials would be moved back to staging areas on ice roads or snow trails. No materials or drilling wastes (solid mud and cuttings) would remain at the site.").

After exploration, the final stage is development. This stage involves more extensive surface activities, such as the construction of gravel roads, airstrips, pipelines, and permanent facilities. 1 S.E.R. 176–192 (describing typical development activities). It also lasts much longer than a season: the "overall development phase, from construction of a staging area and remote base camp to production startup, could take 3 to 7 years, depending on the size and location of the new field." 1 S.E.R. 567. The operator must seek BLM approval of a drilling and surface use operations plan, as well as other approvals. 1 S.E.R. 29–30 (summarizing some of the permits required before approval of on-the-ground activities).

B. Factual background

1. The 2012 IAP/EIS

In 2012, BLM decided to approach oil and gas activities in the Petroleum Reserve more holistically than its previous practice of preparing separate IAPs for only parts of the Petroleum Reserve. 2 E.R. 81. To that end, BLM developed a single IAP and supporting EIS. *Id.* For the first time, the 2012 IAP/EIS "address[ed] the entire" Petroleum Reserve, providing "greater management consistency." *Id.* One of the goals of the IAP/EIS' was "to address the nation's need for production of more oil and gas through additional leasing in the NPR-A, and to protect surface values consistent with the exploration and development of oil and gas." *Id.* BLM sought to "consider consistent oil and gas leasing stipulations and best management practices across the entire Petroleum Reserve, while providing special protections for specific habitats and site-specific resources and uses." 1 S.E.R. 18. In developing the IAP/EIS, BLM consulted with tribes, native villages, and cooperating agencies. 1 S.E.R. 24. The agency also considered extensive public comments. *Id.*

The 2012 IAP/EIS superseded two earlier plans: one governing the northwestern portion of the Petroleum Reserve (the 2004 Northwest NPR-A IAP/EIS) and one governing the northeastern portion (the 2008 Northeast NPR-A Supplemental IAP/EIS). 1 S.E.R. 18. The 2012 IAP/EIS also addressed for the first time oil and gas development in the southwestern portion of the Petroleum Reserve. 2 E.R. 81.

The 2012 IAP/EIS considered "five alternatives that provide a broad range of oil and gas leasing availability, surface protections, and Special Area designations." 2 E.R. 83. To evaluate the environmental impacts of each alternative, BLM developed hypothetical exploration and development scenarios for each alternative. 1 S.E.R. 201. To account for uncertainty, BLM made a series of "reasonable assumptions" designed to "minimize the chance that the resultant impact analysis will understate potential impacts." *Id.* The IAP/EIS considered all aspects of winter exploration activities in the Petroleum Reserve and evaluated ranges of those activities across alternatives. *See, e.g.*, 1 S.E.R. 167–76, 200–34, 235–37.

On February 21, 2013, BLM issued a Record of Decision (ROD) adopting Alternative B-2 in the 2012 IAP/EIS. 2 E.R. 153. Under that Alternative, BLM prohibited leasing on approximately 11 million acres, almost half of the Petroleum Reserve, to protect important surface resources and subsistence uses. 3 S.E.R. 478. BLM designated the remaining 11.8 million acres as available for oil and gas leasing. *Id.* The agency also adopted lease stipulations and enforceable best management practices that impose requirements and restrictions on leaseholders like ConocoPhillips. 3 S.E.R. 464, 505–59.

In addition to its December 2018 approval of ConocoPhillips' winter exploration activities at issue, BLM also approved winter exploration activities in 2013, 2015, and 2017 under the 2012 IAP/EIS. 3 E.R. 347–

48. In approving each of those exploration plans, BLM prepared an EA that incorporated and tiered to the IAP/EIS. In each EA, BLM determined that the exploration activities would have no significant impacts. *Id.*

2. The Greater Mooses Tooth Unit

Along with the 2012 IAP/EIS, the EA at issue also relies on two supplemental EISs (SEIS) analyzing nearby development activities. In 2004, BLM issued the Alpine Satellite Development Plan Final EIS and accompanying ROD, which analyzed and approved ConocoPhillips' proposal to construct satellite drill pads in the Petroleum Reserve. 4 S.E.R. 761–64. Two of those drill pads (known as GMT1 and GMT2) are in what is known as the Greater Mooses Tooth Unit. *Id.* Ten years later, in 2014, BLM supplemented the Alpine EIS to analyze ConocoPhillips' revised proposal to construct the GMT1 drill pad (the GMT1 SEIS). 3 S.E.R. 575; *see also* 4 S.E.R. 707 (ROD approving the revised proposal). Then, in 2018, BLM similarly supplemented the Alpine EIS to analyze ConocoPhillips' revised proposal to construct the GMT2 drill pad (the GMT2 SEIS). 2 E.R. 194; *see also* 4 S.E.R. 952 (ROD approving the revised proposal). In hundreds of pages of analysis, the SEISs for both GMT1 and GMT2 detailed the direct, indirect, and cumulative impacts of the proposed actions on caribou and on subsistence activities in the Petroleum Reserve. 3 S.E.R. 607–705; 4 S.E.R. 783–921.

3. 2018–2019 winter exploration activities

In 2018, ConocoPhillips sought BLM's permission to drill as many as six oil and gas exploration wells (and to test those six wells and two other wells drilled under earlier authorizations) in leases that it holds in the Petroleum Reserve. 2 E.R. 223; 5 S.E.R. 1005–23, 1025–1193. ConocoPhillips planned to conduct these activities during winter 2018–2019, in the Bear Tooth Unit to the west of Nuiqsut and of the GMT1 and GMT2 projects. 2 E.R. 223. These activities were "geared towards developing the Willow prospect"—another potential ConocoPhillips development project. 3 E.R. 294; *see also* 3 E.R. 300 (referring to the winter exploration activities as "the proposed Willow area exploration").

After a comment period, BLM published a final EA that tiered to—and incorporated by reference—the 2012 IAP/EIS, as well as the GMT1 and GMT2 SEISs. 3 E.R. 263, 272–73. BLM's tiered NEPA analysis extensively discussed the direct, indirect and cumulative impacts of the 2018–2019 winter exploration activities on caribou and on subsistence activities. *See infra* pp. 32–45. The EA analyzed in detail ConocoPhillips' proposed action alternative and a "no action" alternative. *See, e.g.*, 3 E.R. 278–303. BLM also considered but eliminated from further study Plaintiffs' preferred alternative, which would have reduced the number of wells approved for drilling. 3 E.R. 291. In the judgment of the agency, that alternative "would not meet the purpose and need" of the proposed project. *Id.*

On December 7, 2018, BLM issued a Decision Record approving ConocoPhillips' 2018–2019 winter exploration activities. 3 E.R. 384–88. BLM simultaneously issued a FONNSI, which concluded that the exploration program would not have any *new* significant impacts—i.e., impacts *other than* those already disclosed and analyzed in the 2012 IAP/EIS, GMT1 SEIS, and GMT2 SEIS. 3 E.R. 377–83. And BLM issued a separate evaluation of the effects on subsistence uses and needs under Section 810 of ANILCA, 5 S.E.R. 1194, which likewise concluded that "[n]o new significant impacts have been identified," 5 S.E.R. 1199.

Under the Decision Record and associated permits, BLM authorized ConocoPhillips to drill as many as six wells from among ten potential sites, test two existing wells, gauge and monitor two existing wells, and retrieve a data logger at one location. 3 E.R. 278–79, 384–85. To these ends, the Decision Record and the permits authorized ConocoPhillips to build up to 57 miles of ice roads, 42.7 miles of snow trails, 23 ice pads, 1 ice airstrip, and temporary camps able to house 545 people. 3 E.R. 385. ConocoPhillips fully completed the approved activities on April 28, 2019. 1 S.E.R. 2–3.

C. Proceedings below

In March 2019, Plaintiffs sued BLM, claiming that its environmental analysis of the 2018–2019 winter exploration activities was deficient. 4 E.R. 643; *see also* 4 E.R. 610–38. Plaintiffs moved for summary judgment in May 2019. 4 E.R. 644. Plaintiff's motion was filed

after ConocoPhillips had completed the 2018–2019 exploration activities, 1 S.E.R. 2–3.

On January 9, 2020, the district court denied Plaintiffs' motion and upheld BLM's 2018 EA and Decision Record. 1 E.R. 33–74; *cf.* 1 E.R. 14–20 (dismissing Plaintiffs Center for Biological Diversity and Friends of the Earth for lack of standing). Although the winter exploration activities were complete, the court held that the case was not moot because the challenged action was capable of repetition yet evading review: the duration of the activities was "too short to allow full litigation before it ceases or expires," 1 E.R. 23–24; and there was a reasonable expectation that the plaintiffs will be subjected to the challenged action again, 1 E.R. 24–27. The court observed that at the time of its decision, "ConocoPhillips plans to return to the same general location . . . to conduct further exploratory drilling" in 2019–2020. 1 E.R. 26. And the court reasoned that "additional NEPA analyses for future exploration in the NPR-A will tier to and rely on the 2012 IAP/EIS, the GMT1 SEIS, and the GMT2 SEIS in the same manner as the 2018 EA." 1 E.R. 27.

On the merits, the district court held that BLM's finding of no new significant impacts was reasonable and that the 2018 EA was sufficient. 1 E.R. 33–74. The court determined that BLM properly tiered the EA to its prior NEPA analyses. 1 E.R. 30–32. And after a thorough evaluation of the record, the court concluded that BLM's analysis had satisfied its obligations under NEPA. 1 E.R. 34–62. That is, the EA "supplied a

convincing reason for why additional analysis was not necessary" by "tiering to NEPA documents that fully analyze the impacts on caribou of exploration activity to the southeast of Teshekpuk Lake." 1 E.R. 43. It was also "reasonable for the EA to determine that subsistence impacts associated with one season's winter exploration would be moderate and short-term." 1 E.R. 52. The EA tiered to the 2012 IAP/EIS and GMT2 SEIS, which "considered at length the impacts associated with hunter avoidance and reduced access to traditional hunting areas." *Id.* The court also determined that the agency gave "a convincing justification for why further discussion of cumulative impacts is unnecessary." 1 E.R. 62.

The district court rejected Plaintiffs' argument that BLM failed to consider a reasonable range of alternatives. 1 E.R. 62–74. The court explained that the EA's consideration of the preferred alternative and a no-action alternative was permissible under NEPA and ANILCA. *Id.* Further, the court held that BLM's decision to eliminate Plaintiffs' proposed alternatives was neither arbitrary nor capricious. *Id.*

The district court entered final judgment in BLM's favor. 1 E.R. 1.

SUMMARY OF ARGUMENT

1. This appeal should be dismissed as moot. The parties agree that ConocoPhillips completed the challenged winter exploration activities a year-and-a-half ago. This is not an "extraordinary case" that falls within the exception for cases capable of repetition yet evading review, because there is no reasonable expectation that Plaintiffs will

face the same or similar action in the future. To start, there is no evidence that ConocoPhillips plans to conduct additional exploration activities in the same area as the 2018–2019 activities or anywhere in the Petroleum Reserve any time soon. But even if ConocoPhillips applies to conduct exploration activities in the future, that application would involve areas, scopes, and issues different from those in the 2018 EA. It would also be subject to its own project-specific NEPA analysis with a separate administrative record. Nor would any future EA tier to the same 2012 IAP/EIS and development-stage SEISs: on June 26, 2020, BLM issued a new final IAP/EIS for the entire Petroleum Reserve. Going forward, BLM would tier to and incorporate *that* IAP/EIS in evaluating exploration activities in the Petroleum Reserve, instead of the older GMT1 and GMT2 SEISs and superseded 2012 IAP/EIS. Likewise, BLM would now apply the updated NEPA regulations. In short, it is no longer conceivable for BLM to issue a similar EA in the future.

2. An EIS was not required for the 2018–2019 exploration activities because BLM reasonably concluded that there would be no significant impacts beyond those that it had considered before. Plaintiffs have failed to show that BLM's FONNSI and underlying NEPA analysis were arbitrary or capricious. Plaintiffs mainly fault BLM for tiering the EA to its programmatic IAP/EIS and other broader development-stage SEISs. But BLM's use of tiering was entirely consistent with—and encouraged by—the applicable NEPA regulations. Considering the

tiered analysis collectively, the record shows that BLM took the requisite hard look at the exploration project's impacts on caribou and subsistence activities. Moreover, BLM reasonably considered the cumulative impacts of the proposed exploration activities and all other oil and gas activities planned near the project area at the same time.

3. BLM met its obligation under NEPA to consider reasonable alternatives. The EA discussed the preferred action alternative and a no-action alternative, which is all that this Court's precedent requires. BLM reasonably considered and eliminated from further study an alternative that would have reduced the number of approved wells. There is no evidence that this alternative would have met the project's purpose and need. And there is no merit to Plaintiffs' contention that BLM needed to consider the alternative to fulfill its statutory mandates. As the district court recognized, BLM reasonably rejected Plaintiffs' alternative, particularly given that the agency had determined that the exploration activities would have no new significant impacts. For the same reasons, BLM's consideration of alternatives also satisfied ANILCA.

STANDARD OF REVIEW

This Court reviews summary judgment rulings de novo and applies the same standard of review as the district court. *Center for Biological Diversity v. Export-Import Bank of United States*, 894 F.3d 1005, 1010–11 (9th Cir. 2018); *see also Foster v. Carson*, 347 F.3d 742, 745 (9th Cir. 2003) (reviewing question of mootness de novo).

BLM's compliance with NEPA is reviewed under the highly deferential standard of the Administrative Procedure Act (APA), 5 U.S.C. §§ 701–706. The APA grants courts authority to "hold unlawful and set aside" final agency action that is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." *Id.* § 706(2)(A). Plaintiffs bear the burden to show that BLM's decision "entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise." *Motor Vehicle Manufacturers Ass'n v. State Farm Mutual Automobile Insurance Co.*, 463 U.S. 29, 43 (1983); *accord Native Ecosystems Council v. Weldon*, 697 F.3d 1043, 1050–51 (9th Cir. 2012).

ARGUMENT

I. This appeal is moot and should be dismissed.

"Where an actual controversy does not persist throughout litigation, [a] case becomes moot." *Timbisha Shoshone Tribe v. U.S. Dep't of Interior*, 824 F.3d 807, 812 (9th Cir. 2016) (internal quotation marks omitted; alteration in original). A case is moot when "the issues presented are no longer live" or "the parties no longer possess a legally cognizable interest in the outcome." *Jones v. Williams*, 791 F.3d 1023, 1031 (9th Cir. 2015) (internal quotation marks omitted). Although the burden of proving mootness is heavy, an appeal must be dismissed when

it is "impossible for the court to grant any effectual relief whatever to a prevailing party." *Church of Scientology v. United States*, 506 U.S. 9, 12 (1992) (internal quotation marks omitted); *accord Feldman v. Bomar*, 518 F.3d 637, 642 (9th Cir. 2008).

The parties agree that ConocoPhillips has completed the 2018–2019 winter exploration activities at issue. Opening Brief 59; 1 E.R. 22–23. The ice roads and ice pads have melted away; the temporary equipment has been demobilized; and the wells have been drilled and capped. 1 S.E.R. 2–3. This Court cannot "undo what has already been done." *Friends of the Earth, Inc. v. Bergland*, 576 F.2d 1377, 1379 (9th Cir. 1978) (dismissing NEPA challenge to completed exploratory drilling operation as moot on appeal); *accord Headwaters, Inc. v. BLM*, 893 F.2d 1012, 1014–16 (9th Cir. 1989) (dismissing NEPA challenge as moot after timber on the disputed units had been cut); *Sierra Club v. Penfold*, 857 F.2d 1307, 1318 (9th Cir. 1988) (dismissing challenge to BLM's mine plan as moot because the "impacts of the Plan mines are not remedial since we cannot order that the Plans be 'unmined'").

Nor can Plaintiffs obtain any relief for their alleged harms. *Cf. Feldman*, 518 F.3d at 642; *Penfold*, 857 F.2d at 1318. The effects of the exploration activities cannot be reversed, and there is nothing else that BLM could do. Plaintiffs ask the Court to vacate the EA and the Decision Record approving the exploration activities. Opening Brief 59. But vacatur of those documents would be pointless because the activities that

BLM approved are completed. The EA and the Decision Record addressed only the 2018–2019 exploration activities. 3 E.R. 269–70. Even if the Court were to remand for further NEPA analysis of those completed activities, it would not prevent hypothetical future violations of NEPA. Opening Brief 59. Plaintiffs may not seek to set aside agency action based on their "nonconcrete interest in the proper administration of the laws." *Summers v. Earth Island Institute*, 555 U.S. 488, 497 (2009) (internal quotation marks omitted). "[R]elief under NEPA must be tailored to remedy the particular violations in the case." *Bergland*, 576 F.2d at 1379 (internal quotation marks omitted). It is not meant to be "prophylactic or punitive." *Id.*

Plaintiffs themselves identify no effective relief that may still be available. Opening Brief 2. Instead, Plaintiffs argue that their claims fall within the "capable of repetition yet evad[ing] review" exception to the mootness doctrine. *Id* at 2–3.; *see also* 1 E.R. 26–27. But that exception applies only when "(1) the duration of the challenged action is too short to allow full litigation before it ceases, and (2) there is a reasonable expectation that the plaintiffs will be subjected to it again." *Feldman*, 518 F.3d at 644 (internal quotation marks omitted). This is not one of those "extraordinary cases" that meets both prongs. *Doe v. Madison School District No. 321*, 177 F.3d 789, 798 (9th Cir. 1999) (en banc) (internal quotation marks omitted).

As an initial matter, the facts have changed since the district court's decision. *See Genesis Healthcare Corp. v. Symczyk*, 569 U.S. 66, 72 (2013) ("If an intervening circumstance deprives the plaintiff of a personal stake in the outcome of the lawsuit, at any point during litigation, the action can no longer proceed and must be dismissed as moot" (internal quotation marks omitted)). The district court observed that ConocoPhillips planned to conduct exploration activities in the same general area in winter 2019–2020. 1 E.R. 26. But winter 2019–2020 has now passed, and there is no evidence that ConocoPhillips plans to conduct any more winter exploration activities in the same area or elsewhere in the Petroleum Reserve in the near future.

And even if ConocoPhillips applies to conduct winter exploration activities sometime in the future, BLM would not issue an EA like the one at issue here. *See Ramsey v. Kantor*, 96 F.3d 434, 446 (9th Cir. 1996); *cf. Alaska Center for Environment v. U.S. Forest Service*, 189 F.3d 851, 856–57 (9th Cir. 1999). The EA here addressed specific wells to be drilled over the course of five months in 2018–2019. 3 E.R. 269–70, 385; *see also* 2 E.R. 223; 5 S.E.R. 1005–23, 1025–1193. Any future application for exploratory activities would involve different sites and have a different scope. It would also be subject to its own project-specific NEPA analysis, with its own administrative record. Plaintiffs would have the opportunity to challenge that analysis. *See Bergland*, 576 F.2d at 1379 (concluding that challenge to completed drilling operation was moot even

though the company "may engage in similar operations in other places"); *see also Oregon Natural Resources Council, Inc. v. Grossarth*, 979 F.2d 1377, 1379–80 (9th Cir. 1992) (holding that future timber sales, which would be based on different administrative records, could not revive a challenge to a cancelled sale).

The framework for BLM's environmental analysis has also changed since the EA (and the district court's decision). *See Arizonans for Official English v. Arizona*, 520 U.S. 43, 68 n.23 (1997) (parties have the obligation to bring mooting events to attention of courts). On June 26, 2020, BLM issued a new IAP/EIS for the Petroleum Reserve. 85 Fed. Reg. 38,388 (June 26, 2020). Similarly, on August 14, 2020, BLM issued a final EIS for the Willow Master Development Plan, which analyzes ConocoPhillips' proposed development activities located within the same area as most of the 2018–2019 exploration activities. 85 Fed. Reg. 49,677 (Aug. 14, 2020).[2]

Given these developments, it is no longer "likely that additional NEPA analyses for future exploration" will tier to the prior NEPA analyses "in the same manner as the 2018 EA." 1 E.R. 27. For instance, BLM would now rely on the new 2020 IAP/EIS instead of the 2012 IAP/EIS in preparing tiered NEPA analyses of proposed exploration

[2] As of the date of filing of this brief, the ROD for the Willow Development EIS was pending with BLM and is expected to be issued by the end of October 2020 or shortly thereafter.

activities in the Petroleum Reserve. And rather than relying on the cumulative effects analysis in the GMT2 SEISs (like it did in the 2018 EA), BLM would now rely on the cumulative effects analysis in the 2020 IAP/EIS and possibly also the more recent analysis in the 2020 Willow Development EIS.

Finally, updated NEPA regulations took effect on September 14, 2020. *See* 40 C.F.R. § 1506.13 (2020); 85 Fed. Reg. 43,304. Among other changes, the updated regulations generally modify how agencies are to analyze impacts, and they specifically eliminate the requirement to consider cumulative effects. *See* 40 C.F.R. § 1508.1(g) (2020). As a result, BLM would analyze any future exploration activities under a regulatory regime different from the one it applied in the 2018 EA.

Plaintiffs nonetheless suggest that this case is like other actions that this Court has found capable of repetition. Opening Brief 3 (citing *Wildwest Institute v. Kurth*, 855 F.3d 995 (9th Cir. 2017); *Shell Offshore, Inc. v. Greenpeace, Inc.*, 709 F.3d 1281 (9th Cir. 2013); *Greenpeace Action v. Franklin*, 14 F.3d 1324 (9th Cir. 1992)). But those cases actually confirm that the present case is moot.

In *Wildwest Institute*, for example, this Court determined that a warranted but precluded finding under the Endangered Species Act was capable of repetition because the agency was required by statute to make a new finding annually and the agency had repeatedly issued the same finding. 855 F.3d at 1003. By contrast, nothing suggests that BLM will

issue the same or similar EA in the future. Any new exploration activities would have to be approved by BLM through a new final agency action. *See* 43 C.F.R. Part 2800 (rights-of-way); *id.* Part 3160 (permits). In making its decision, BLM would apply different regulations and tier to different NEPA analyses. 40 C.F.R. § 1506.13 (2020); 85 Fed. Reg. 38,388.

For the same reasons, this case is also distinguishable from *Franklin* and from *Shell Offshore, Inc.* The agency action in *Franklin*—approval of an annual total allowable catch for a fishery—was likely to recur because the agency had already issued a new total allowable catch relying on the very same underlying biological opinion. 14 F.3d at 1330. Likewise, *Shell Offshore, Inc.* involved ongoing protests to drilling activities that were expected to last for several years. 709 F.3d at 1288. But here, ConocoPhillips has not proposed, and BLM has not approved, any future winter exploration activities. And even if ConocoPhillips were to apply in the future, BLM would not be able to tier to the same 2012 IAP/EIS and GMT SEISs. *Cf. Franklin*, 14 F.3d at 1330; 1 E.R. 26–27.

To be sure, the time from BLM's decision to the completion of the authorized activities (roughly five months) is short. But if Plaintiffs were concerned about the effects of the activities, they could have easily sought an injunction. *See Headwaters*, 893 F.2d at 1016. In any event, as discussed above (pp. 20–23), Plaintiffs fail on the second prong because they will not face the same or similar action in the future.

In sum, this appeal is moot and does not fall within the capable of repetition yet evading review exception. The appeal should be dismissed.

II. BLM was not required to prepare an EIS.

Plaintiffs argue that BLM should have prepared an EIS, rather than an EA, for the now-completed exploration activities. Opening Brief 18–46. But Plaintiffs misunderstand the relevant NEPA regulations and mischaracterize BLM's analysis. BLM took a hard look at the impacts of the exploration activities and reasonably determined that there would be no new significant impacts.

A. BLM appropriately tiered to prior NEPA analyses.

The applicable NEPA regulations encourage agencies like BLM to rely upon and tier to relevant analyses in past EISs. 40 C.F.R. § 1508.28; 43 C.F.R. § 46.140; *see also supra* pp. 4–5. Tiering "in compliance with the governing regulation is hardly arbitrary and capricious." *Theodore Roosevelt Conservation Partnership v. Salazar*, 616 F.3d 497, 512 (D.C. Cir. 2010) (citing 40 C.F.R. § 1508.28(a)). Rather, it promotes efficiency by enabling an agency to "rely on prior work," *Defenders of Wildlife v. Bureau of Ocean Energy Management*, 684 F.3d 1242, 1251 (11th Cir. 2012), and thereby "concentrate on issues specific to the current proposal." *Northern Alaska Environmental Center v. U.S. Dep't of Interior*, 965 F.3d 705, 718 (9th Cir. 2020); *accord Western Watersheds Project v. Abbey*, 719 F.3d 1035, 1049 (9th Cir. 2013) ("NEPA regulations encourage tiering to

decrease repetition so that agencies can 'concentrate on the issues specific to the subsequent action.'" (quoting 40 C.F.R. § 1502.20)).

As encouraged by the regulations and by precedent, BLM has adopted a tiered approach to its NEPA compliance for the Petroleum Reserve. BLM first prepared a programmatic EIS for the entire Petroleum Reserve—the 2012 IAP/EIS. BLM then prepared project-specific NEPA analyses that tiered back to that programmatic EIS and other relevant EISs where appropriate. For projects that have significant impacts that the agency did not analyze in the programmatic EIS, like the oil development activities proposed in the Alpine Development Project and the Willow Development Project, BLM prepared project-specific EISs and SEISs. *See* 2 E.R. 166–69, 194–97; 85 Fed. Reg. 49,677. But for many other projects, including the 2018–2019 winter exploration program at issue, BLM determined that a project-specific EIS was not warranted after preparing a tiered EA. 3 E.R. 346–48, 377–83.

Far from a "shell game," Opening Brief 18, this is exactly how tiering is supposed to work. *See, e.g.*, *Dine Citizens Against Ruining Our Environment v. Bernhardt*, 923 F.3d 831, 850–52 (10th Cir. 2019) (concluding that EAs for drilling permits were properly tiered to a previous planning EIS); *Defenders of Wildlife*, 684 F.3d at 1251 (affirming agency's exploratory drilling plan EA tiered to leasing EISs); *Theodore Roosevelt Conservation*, 616 F.3d at 512 (upholding a tiered EA for a drilling permit). BLM need not start from scratch every time it evaluates

a new project within a plan area. Indeed, it would be inefficient for BLM to ignore its earlier programmatic NEPA analysis.

It makes sense that BLM has historically prepared EAs for exploratory activities, which involve only temporary equipment and roads, trails, pads, and airstrips made of ice and snow that melt. *See supra* pp. 7–8. Conversely, when BLM has evaluated proposals for development activities in the Petroleum Reserve, which involve large-scale operations and permanent structures, it has prepared EISs and SEISs. 2 E.R. 166–69, 194–97; 85 Fed. Reg. 49,677. Simply put, this is not the practice of an agency seeking to avoid work or ignore the impacts. Opening Brief 18–21. Rather, the record reveals that BLM is complying with applicable NEPA regulations and appropriately considering the impacts of activities in the Petroleum Reserve.

1. BLM properly relied on and tiered to the 2012 IAP/EIS.

Plaintiffs suggest that it was somehow inappropriate for BLM to tier the EA to the 2012 IAP/EIS because the IAP/EIS is a broader EIS that addresses the entire Petroleum Reserve. Opening Brief 25–34. But NEPA regulations issued by the CEQ explicitly allow EAs to tier to broader NEPA analyses like the 2012 IAP/EIS. 40 C.F.R. § 1508.28(a). Likewise, Interior's NEPA regulations provide that an "environmental assessment prepared in support of an individual proposed action," like the one here, "can be tiered to a programmatic or other broader-scope

environmental impact statement." 43 C.F.R. § 46.140(c). Interior's regulations also explain that "[w]here the impacts of the narrower action are identified and analyzed in the broader NEPA document, no further analysis is necessary." *Id.* § 46.140(a).

Plaintiffs also wrongly suggest that the 2012 IAP/EIS lacks any relevant NEPA analysis. Opening Brief 42–46, 43. In that document, BLM evaluated the impacts of five alternatives, including a range of scenarios involving winter exploration activities. 2 E.R. 83; 1 S.E.R. 37–44, 172–76; *see also* 1 S.E.R. 157–58; 2 S.E.R. 296–97. In so doing, BLM extensively discussed various exploration activities like the ones conducted by ConocoPhillips in 2018–2019, such as the construction of ice roads, snow trails, ice airstrips, and ice pads; transportation of personnel and equipment; and drilling and plugging of exploration wells. 1 S.E.R. 172–75, 201–34.

For example, under the selected alternative (Alternative B-2), BLM assumed that "152 oil or gas exploratory or delineation wells" would be drilled from winter ice pads over a thirty-year period. 2 E.R. 129. BLM then evaluated the impacts of those winter exploration activities, including potential impacts on caribou. 2 S.E.R. 241–42, 298–300; *see infra* pp. 33–37 (describing EIS's analysis of potential caribou impacts). BLM conducted a similar analysis for each action alternative in the 2012 IAP/EIS. *See, e.g.*, 1 S.E.R. 172–76, 200–34; 2 S.E.R. 241–42 (Alternative A), 277–79 (Alternative B-1), 316–18 (Alternative C), 321–22 (Alternative

D), 337–38 (cumulative effects). That analysis covered all areas in the Petroleum Reserve open to leasing, including the area where ConocoPhillips conducted its 2018–2019 winter exploration activities. 1 S.E.R. 37–44; *see also* 1 S.E.R. 40 (observing that the selected alternative would make lands "in northeastern NPR-A near Fish Creek available").

Contrary to Plaintiffs' argument, the fact that the 2012 IAP/EIS provided a programmatic-level analysis does not preclude the possibility that it also includes relevant site-specific analysis. *Northern Alaska Environmental Center*, 965 F.3d at 715–16. Indeed, where possible, the 2012 IAP/EIS evaluated certain site-specific impacts. *See id.* at 716–18 (holding that the 2012 IAP/EIS included both programmatic and site-specific analysis of leasing impacts). Relevant here, BLM noted where the Teshekpuk Caribou Herd would be present and discussed the impact of exploration activities in those areas. 2 E.R. 129–32; *see also* 2 S.E.R. 242 (noting that "[e]xploratory drilling operations and ice roads would traverse Teshekpuk Caribou Herd caribou wintering areas"); 2 E.R. 90–93 (discussing areas available for exploration and development under the selected alternative); 2 E.R. 97–102 (discussing movement and distribution of the Teshekpuk Caribou Herd); 2 E.R. 129–30 (discussing extent of exploration authorized under the selected alternative). The agency also discussed certain environmentally sensitive areas. *See, e.g.*, 1 S.E.R. 15; 2 S.E.R. 257, 273, 299–304.

Of course, the 2012 IAP/EIS did not analyze all site-specific impacts. Nor did it analyze any *project*-specific impacts. *See* 1 S.E.R. 161 ("The petroleum-related activities described in this section are applicable in a general sense because the timing and location of future commercial-sized discoveries cannot be accurately predicted until exploration drilling occurs."). That was the whole point of BLM's 2018 EA: to analyze the impacts of ConocoPhillips' specific 2018–2019 winter exploration activities, including the potential exploratory wells. 3 E.R. 269–70. In that analysis, BLM needed to focus on only impacts new or different from those analyzed in the 2012 IAP/EIS, no matter if the impacts were "site-specific." 40 C.F.R. § 1502.20; 43 C.F.R. § 46.140; *accord Pit River Tribe v. U.S. Forest Service*, 469 F.3d 768, 783 (9th Cir. 2006); *Salmon River Concerned Citizens v. Robertson*, 32 F.3d 1346, 1356 (9th Cir. 1994).

BLM promised nothing more. Opening Brief 19–21, 25, 30. Instead, BLM explained that the level of further NEPA analysis would depend on the proposed activity. The 2012 IAP/EIS stated that future actions "including a proposed exploratory drilling plan" require "further NEPA analysis based on specific and detailed information about where and what kind of activity is proposed." 2 E.R. 85. Consistent with NEPA and applicable regulations, BLM recognized that actions "that are not anticipated to have a significant effect on the environment could be authorized after completion of an [EA]." *Id.* In other words, the 2018 EA is precisely the additional project-specific NEPA analysis contemplated

by the 2012 IAP/EIS. At any rate, this Court should review the EA based on what is required by NEPA and the applicable regulations, not by any alleged promises Plaintiffs infer in the record.

2. BLM properly tiered to and incorporated by reference the GMT1 and GMT2 SEISs.

Plaintiffs also claim that BLM arbitrarily and capriciously relied on the GMT1 and GMT2 SEISs—i.e., the SEISs that accompanied nearby development activities in the Petroleum Reserve. *See supra* p. 11; Opening Brief 36–37. But Plaintiffs forfeited that argument because they did not raise it in the district court. *See BankAmerica Pension Plan v. McMath*, 206 F.3d 821, 825 (9th Cir. 2000) ("The parties cannot raise new issues on appeal to secure a reversal of the lower court's summary judgment determination.").

Even if Plaintiffs had preserved the issue, they have not shown that BLM's reliance on the GMT1 and GMT2 SEISs was arbitrary or capricious. Nothing prohibits BLM from tiering to the SEISs. To the contrary, tiering a "lesser scope" EA to those SEISs—which are "broader environmental impact statements" prepared for activities within the Petroleum Reserve—aligns with the regulation's encouragement to tier "to eliminate repetitive discussions of the same issues." 40 C.F.R. §§ 1502.20, 1508.28.

In any event, this Court need not address whether BLM properly "tiered to" the SEISs. The applicable NEPA regulations also allowed

BLM to "incorporate material" by reference "when the effect will be to cut down on bulk without impeding agency and public review of the action. 40 C.F.R. § 1502.21; *accord id.* § 1500.4(j) ("Agencies shall reduce excessive paperwork by . . . [i]ncorporating by reference (§ 1502.21)."). Indeed, BLM cited those regulations in the EA. 3 E.R. 273, 280. Thus, even if BLM could not tier to the SEISs, they were "plainly incorporated by reference." *See California ex rel. Imperial County Air Pollution Control District v. U.S. Dep't of Interior*, 767 F.3d 781, 794 (9th Cir. 2014).

* * * * *

At bottom, Plaintiffs complain that the district court failed to evaluate the EA "standing alone" and instead "pointed back" to the programmatic EIS. Opening Brief 19. But courts must review tiered NEPA analyses together, and the district court did not err in so doing.

B. BLM's finding of no new significant impacts was reasonable.

After preparing a tiered EA, BLM must prepare an EIS only if it determines that the proposed action would result in *new* significant impacts not already analyzed in the prior EISs. 43 C.F.R. § 46.140(c); *Pit River Tribe*, 469 F.3d at 783; *Salmon River*, 32 F.3d at 1356. Thus, the issue here is not whether the exploration activities would have significant impacts, *see* Opening Brief 3, 22–25, 31–34 (so suggesting), but whether BLM rationally concluded that the exploration activities would have no *new* significant impact. 43 C.F.R. § 46.140(c). If "a reasonable basis

exists for [that] decision," then it should be upheld. *Northwest Ecosystem Alliance v. U.S. Fish & Wildlife Service*, 475 F.3d 1136, 1140 (9th Cir. 2007). Under that highly deferential standard, Plaintiffs have not shown that BLM's NEPA analysis was arbitrary or capricious.

1. Caribou

Plaintiffs argue that BLM failed to take a "hard look" at the impacts of the exploration activities on caribou, and that BLM's finding of no new significant impact was inadequate. Opening Brief 23–25. But Plaintiffs are wrong that BLM's impacts analysis shows that another EIS is required.

The record establishes that BLM thoroughly addressed the impacts of the 2018–2019 exploration activities on caribou. The 2012 IAP/EIS—to which the EA tiered—discussed the Teshekpuk Caribou Herd in detail, including its population trends, seasonable distribution, and calving success. 2 E.R. 97–102. The IAP/EIS then evaluated the potential impacts of exploration activities on caribou for each of the five alternatives considered. *See* 2 S.E.R. 241–57 (discussing effects of Alternative A on caribou resulting from various oil and gas activities, including seismic testing, exploratory drilling, construction of ice roads and ice pads, oil and gas production, effects of spills and gas releases, and reclamation), 277–84 (Alternative B-1), 299–303 (Alternative B-2, the selected alternative adopted in the 2012 IAP/EIS ROD), 316–20 (Alternative C), 321–25 (Alternative D).

The analysis observed that "[e]xploratory drilling operations and ice roads would traverse Teshekpuk Caribou Herd caribou wintering areas," 2 E.R. 120, and that "wintering Teshekpuk Caribou Herd caribou could be present in large numbers," 2 E.R. 130. It also acknowledged that "[a]ny caribou in the immediate vicinity of the activity would be disturbed, possibly having a negative effect." 2 E.R. 120. Although "conditions for winter survival vary from year to year," BLM explained that "it is not expected that there would be any long-lasting effects on the caribou" because the "animals are mobile" and winter exploration activities are "temporary." *Id.*; *see also* 2 E.R. 130 (concluding that impacts from exploratory drilling under the selected alternative would be similar "but somewhat less in spatial extent, frequency, and magnitude").

Likewise, the 2018 EA acknowledged that caribou "may inhabit the area" of ConocoPhillips' proposed winter exploration activities. 3 E.R. 276. BLM explained that those exploration activities "may disturb and displace wildlife [including caribou] from the immediate area of activities." *Id.* But those impacts "would be local in extent," 3 E.R. 371, and "would not reduce population levels or distribution during the winter season," 3 E.R. 276. "It would not be expected that caribou would vacate an extensive area adjacent to exploration activities." 3 E.R. 371. Thus, BLM concluded that "[o]nly minor impacts would be expected" from the temporary winter exploration activities within the project area and issued a FONNSI. 3 E.R. 276; *see also* 3 E.R. 273.

Plaintiffs attack BLM's finding by pointing to statements in the 2012 IAP/EIS that they assert "raise questions about potentially significant impacts." Opening Brief 31, 44–45. But Plaintiffs mischaracterize the record. They cite statements about future oil and gas *development* activities within the Petroleum Reserve, not exploration activities like the ones here. Opening Brief 31 (quoting 2 E.R. 132); *id.* at 44 (citing 2 E.R. 149; 4 E.R. 587; 4 E.R. 574–75). As discussed above (pp. 8), development activities are much more involved and permanent than temporary exploration activities, and consequently often lead to far greater impacts.

To the extent that Plaintiffs argue that the 2012 IAP/EIS shows potentially significant impacts from winter exploration, Opening Brief 32–34, that nonetheless fails to establish that BLM should have prepared an EIS. Again, the proper standard is whether the 2018–2019 exploration activities would result in any significant impacts that were not previously analyzed by BLM. 43 C.F.R. § 46.140(c); *see also Salmon River*, 32 F.3d at 1356 ("A comprehensive programmatic [EIS] generally obviates the need for a subsequent site-specific or project-specific [EIS], unless new and significant environmental impacts arise that were not previously considered."). Plaintiffs' belief that the IAP/EIS discusses significant impacts does not mean that BLM erred by finding that the exploration activities would result in no *new* significant impacts.

Plaintiffs have not established that the impacts from the 2018–2019 exploration activities are new or different from those analyzed in the 2012 IAP/EIS, such that BLM was required to prepare another EIS. Opening Brief 34–35. They argue that BLM did not consider recent information about caribou populations. *Id.* at 35 (citing 4 E.R. 565). But that information is included in the GMT2 SEIS, which the EA tiers to and incorporates by reference. 4 E.R. 565. There, BLM noted that the Teshekpuk Caribou Herd and the Central Artic Herd "have undergone recent changes in size, demography, and distribution," but the agency explained that "these changes are not thought to be related to oil field development." 4 S.E.R. 848. That analysis does not cast doubt on the EA's conclusion that ConocoPhillips' temporary winter exploration activities "would not reduce population levels or distribution during the winter season." 3 E.R. 276.

Plaintiffs also contend that BLM failed to analyze a new study that was published after the 2012 IAP/EIS, namely, a 2016 study of Norwegian reindeer cited by Plaintiffs in their comments to the Preliminary EA. *See* Opening Brief 35 (referencing 2 E.R. 255–61). That study concluded that variations in calf viability are most likely explained by varying levels of maternal body mass during winter. 2 E.R. 255, 259. But that does not undermine BLM's analysis of the effects on the Teshekpuk Caribou Herd. To the contrary, the 2012 IAP/EIS also recognized that exploration activities could disturb caribou in the

immediate vicinity, possibly leading to "a negative effect on their energy balance, hormonal status, and calving success." 2 E.R. 120. Likewise, BLM recognized in the EA that the "proposed action may disturb and displace" caribou from the immediate area. 3 E.R. 276. Ultimately, however, BLM concluded that those effects would be minimal because of the temporary nature of the exploration activities. *Id.* Those conclusions are entitled to substantial deference. *See Arizona Cattle Growers' Ass'n v. U.S. Fish & Wildlife Service*, 273 F.3d 1229, 1236 (9th Cir. 2001). BLM's finding of no new significant impacts should be upheld.

2. Subsistence

The district court rejected Plaintiffs' argument that BLM failed to adequately analyze the impacts of the exploration activities on subsistence activities. 1 E.R. 43–53. Plaintiffs do not raise that argument in their Opening Brief—they merely mention subsistence in passing and do not distinguish between impacts on caribou and on subsistence activities—and thus forfeit the issue. *See* Opening Brief 17–38; *Balser v. Dep't of Justice*, 327 F.3d 903, 911 (9th Cir. 2003).

In any event, BLM took a hard look at the impacts on subsistence activities. 1 E.R. 43–53; 3 E.R. 275, 380–82. The EA included multiple pages discussing the direct and indirect impacts of ConocoPhillips' exploration activities on subsistence activities. *See, e.g.*, 3 E.R. 275, 292–94; *see also* 1 E.R. 43–53 (thoroughly summarizing and upholding EA's analysis). BLM observed that "the project area is traditionally used for

winter furbearer hunting and trapping and limited caribou hunting." 3 E.R. 292. BLM recognized the "most likely direct impacts would be experienced by furbearer hunters and trappers." 3 E.R. 293. And it explained that "[s]ubsistence hunters would likely avoid the area either because they believe that resources will not be there or because they prefer not to hunt and trap around exploration activities." *Id.* That said, "[s]ome hunters . . . may take advantage of the ice roads to travel." *Id.* BLM thus concluded that these "[i]mpacts to subsistence use from this project in and of itself would be expected to be minor to moderate and short term (reduced traditional access and reduced availability of resources, primarily affecting families for whom furbearer harvesting is important)." 3 E.R. 275.

The EA tiered to and incorporated the 2012 IAP/EIS and GMT1 and GMT2 SEISs, which discussed in detail the impacts of winter exploration on subsistence activities. *See* 2 S.E.R. 264–72 (analyzing impacts to subsistence from seismic activities, exploratory drilling, and development); 2 S.E.R. 306–11 (same as to Alternative B-2); 4 S.E.R. 915–20 (discussing exploration-related impacts, including in the same area as the 2018–2019 winter activities). Those analyses support BLM's conclusion in the EA that one season's temporary exploration activities would result in only moderate and short-term impacts on subsistence activities. 3 E.R. 275.

For instance, in the 2012 IAP/EIS, BLM observed that the main subsistence activities in Nuiqsut—a small community of roughly 400 people established in the early 1970s—"revolve around the bowhead whale, caribou, fish, waterfowl, and ptarmigan." 2 E.R. 108; *see also* 2 S.E.R. 310 ("Fish provide approximately 30 to 40 percent of the community's subsistence harvest by weight."); 2 E.R. 113 (noting that caribou is "the most preferred mammal" and "a source of fresh meat throughout the year"). According to the agency, temporary exploration activities could impact subsistence activities, including the displacement of caribou from the drill sites and routes. 2 S.E.R. 307. But BLM explained that "Nuiqsut's subsistence resources would be better protected in Alternative B-2 [the selected alternative] because it makes most of the Teshekpuk Lake Special Area unavailable for leasing and prohibits leasing and new non-subsistence infrastructure in the Teshekpuk Lake Caribou Herd's core calving and insect relief area and important waterfowl habitat in the Teshekpuk Lake area." 2 S.E.R. 310.

Likewise, the GMT2 SEIS stated that "[d]uring the winter months, furbearer hunters pursue wolves (amaguq) and wolverines (qavvik), [and] target caribou . . . as needed and available," but that "[o]verall, Nuiqsut harvesters target the highest number of resources during the summer/fall months of August and September." 4 S.E.R. 803; *see also id.* (noting that caribou harvests occur "with the most intensity during the summer and fall months of June through October"). BLM acknowledged

that "[s]ubsistence harvesters often avoid areas of industrial construction due to discomfort about hunting near human or industrial activity." 4 S.E.R. 881. Nevertheless, ice roads "can be considered a countervailing effect" because they "facilitate access to remote areas that some subsistence hunters appreciate." 4 S.E.R. 945. The GMT2 SEIS also reported that Nuiqsut's per capita caribou harvest has remained generally stable as development has intensified around the village, and that "[m]ost hunters have continued to harvest caribou in desired amounts" while avoiding industry." 4 S.E.R. 870.

On this record, the 2018 EA took the requisite hard look at the impacts to subsistence activities and reasonably determined that the impacts from ConocoPhillips' 2018–2019 winter exploration activities would be moderate and short-term. 3 E.R. 275; 3 E.R. 293.

C. BLM properly considered cumulative effects.

In determining whether an action is significant for the purposes of preparing an EIS, an agency must also consider the action's "cumulative impacts." 40 C.F.R. § 1508.27(b)(7). "Cumulative impacts" are those caused by "the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions." 40 C.F.R. § 1508.7. Here, an EIS would be required only if it is reasonable to anticipate new cumulatively significant impacts not already analyzed in the prior NEPA analyses. *Id.* § 1508.7; 43 C.F.R. § 46.140(c).

As the district court held, the record "demonstrates that the 2018 EA took the requisite hard look at cumulative impacts to caribou and subsistence activities in the project area." 1 E.R. 62. In Chapter 4—which contains the EA's cumulative effects analysis—BLM analyzed the cumulative impacts from the five other projects it had approved within the Petroleum Reserve that were scheduled to occur that winter, including the geotechnical exploration and GMT2 construction projects. 3 E.R. 298–99; Opening Brief 40–41. BLM also considered the cumulative effects of six oil and gas projects outside the Petroleum Reserve that were scheduled to occur that winter. 3 E.R. 298–99.

The EA provides a detailed discussion of cumulative impacts to the two issue areas that its scoping process identified as potentially impacted: "subsistence, sociocultural systems, and environmental justice" and "fish and water resources." 3 E.R. 298–301. As to subsistence, BLM noted that the "cumulative scenario for winter 2018–2019 is likely more intense and extensive than previous winter seasons, or likely will be perceived as such by residents." 3 E.R. 299. And it acknowledged "likely impacts for subsistence from the cumulative scenario," including "hunter disturbance and avoidance and reduced local availability of resources." *Id.* BLM observed that potentially significant cumulative impacts to subsistence activities "have been described in previous NEPA analyses." 3 E.R. 299; *see also* 2 S.E.R. 354–77; 4 S.E.R. 914–21. That said, "[h]arvest levels have remained stable to date, and

no reduction in the overall abundance of subsistence resources would be anticipated." 3 E.R. 275; *see also* 4 S.E.R. 870. Thus, BLM concluded that the 2018–2019 exploration activities would not "add substantially" to those incremental past, present, and future impacts of oil and gas exploration activities in and around the Petroleum Reserve. 3 E.R. 299.

Plaintiffs fail to show that BLM's analysis was arbitrary or capricious. They contend that the "EA fails to provide any meaningful analysis of cumulative impacts from the GMT2 construction," Opening Brief 41, but they fail to mention that the EA tiers to and incorporates the GMT2 SEIS, which provides an extensive analysis of those impacts. 4 S.E.R. 914–21. As explained above (pp. 25–32), this Court must consider the agency's analysis in the EA along with the analyses to which it tiers. The GMT2 SEIS provides the information that Plaintiffs complain is lacking, including the location of the construction relevant to the exploration and development activities in the area, 4 S.E.R. 915–18; and the cumulative impacts of those activities on caribou, 4 S.E.R. 908–11. Given that analysis, BLM reasonably concluded in the EA that "the cumulative scenario for winter 2018–2919 is likely more intense and extensive than previous winter seasons," but that the around five months of temporary exploration activities would not "add substantially" to those impacts. 3 E.R. 299. Plaintiffs argue that the terms "intense" and extensive" are not sufficiently descriptive, Opening Brief 42, but they

may not "fly-speck" the EA or its incorporated NEPA documents. *Swanson v. U.S. Forest Service*, 87 F.3d 339, 343 (9th Cir. 1996).

Similarly, Plaintiffs contend that the EA makes only a "passing reference" to the 2019 geotechnical exploration program. Opening Brief 41. But, again, Plaintiffs ignore the relevant cumulative impacts analysis in the 2012 IAP/EIS and the GMT2 SEIS, to which the EA tiers. 1 E.R. 56. As the district court recognized, the 2012 IAP/EIS and GMT2 SEIS adequately captured the impacts of geotechnical exploration. 1 E.R. 57. The geotechnical exploration program provided for borehole drilling —shallow holes drilled to confirm the presence of gravel deposits near the surface and delineate those resources—in and around the surrounding area. 1 E.R. 56; 3 E.R. 391; *see also* 3 E.R. 401–02. Specifically, the program called for drilling boreholes near the GMT1 development as well as in several places within the 2018–2019 exploration activities. 3 E.R. 391. The 2012 IAP/EIS and the GMT2 SEIS thoroughly discuss the impacts of drilling activities in those areas, including the impacts on caribou. 2 S.E.R. 377–53; 4 S.E.R. 908–11. The GMT2 SEIS also anticipated and discussed the broader Willow Development Project, including the geotechnical exploration activities. 3 E.R. 393 (observing that some of the boreholes were needed "to acquire sufficient subsurface soil data to identify potential gravel resources for Willow development"); 4 S.E.R. 905 (cumulative effects section identifying Willow development and associated gravel mine); 4 S.E.R. 907 (same).

Plaintiffs' attack on BLM's tiered cumulative impacts analysis about the caribou is likewise without merit. Opening Brief 42–46. The record shows that the 2012 IAP/EIS extensively analyzed the cumulative impacts from oil and gas activities on caribou. 2 S.E.R. 337–53. The GMT2 SEIS also addressed the accumulation of exploration and development, including ConocoPhillips' 2018–2019 exploration activities. 4 S.E.R. 905, 908–10.

Nonetheless, Plaintiffs argue that more analysis is required because BLM did not "scientifically test" its assumption that impacts to the Teshekpuk Caribou Herd would not persist after exploration. Opening Brief 32, 44–45. But Plaintiffs offer no authority supporting the notion that BLM must "scientifically test" that assumption at the project stage, much less that its conclusion was somehow unreasonable. Plaintiffs also fail to show—in their brief or in their public comments—that an appropriate test even exists. *See City of Angoon v. Hodel*, 803 F.2d 1016, 2022 (9th Cir. 1986) (requiring Plaintiffs to "[s]tructure their participation so that it is meaningful, so that it alerts the agency to [their] positions and contentions" (internal quotation marks omitted)). Nor do Plaintiffs explain how the agency could further quantify the impacts.

To be sure, BLM recognized the difficulty of predicting the effect of extended oil and gas activities on the Teshekpuk Caribou Herd. 2 S.E.R. 338; 4 SE.R. 908. The agency also explained that it is hard to "test" its conclusions because conditions for winter survival vary from

year to year. 2 S.E.R. 338. But "some quotient of uncertainty . . . is always present when making predictions about the natural world." *American Wild Horse Campaign v. Bernhardt*, 963 F.3d 1001, 1008 (9th Cir. 2020) (internal quotation marks omitted; alteration in original). That is particularly true in this "novel situation." 1 E.R. 59. Uncertainty alone does not require BLM to prepare an EIS. *American Wild Horse*, 963 F.3d at 1008. Rather, the question is whether the agency provided reasons, based on the available research, for the assumptions that it made and the conclusions that it drew. *Id.* at 1008–09.

By tiering to and incorporating the 2012 IAP/EIS and the GMT2 SEIS, BLM acknowledged the existing evidence to assess the level of uncertainty and made reasonable predictions based on that data to conclude that the five-month-long exploration activities would not "add substantially" to the cumulative impacts discussed in its prior NEPA analyses. 2 S.E.R. 299, 338; 4 S.E.R. 908–10; *see also* 1 E.R. 59–60. Nothing in the record suggests that new relevant data was available in 2018, much less that it undercut BLM's analysis. *See supra* pp. 35–37. Thus, BLM properly tiered to the cumulative impacts discussion in the 2012 IAP/EIS and GMT2 SEIS and took the requisite hard look at the cumulative impacts of the five months of winter exploration activities.

* * * * *

In sum, BLM was not required to prepare an EIS.

III. BLM's alternatives analysis was not arbitrary or capricious.

A. BLM fulfilled its duty under NEPA to consider reasonable alternatives in the EA.

NEPA requires agencies to "study, develop, and describe appropriate alternatives to recommended courses of action" in its NEPA analysis. 42 U.S.C. § 4332(2)(E). Although this requirement applies to both EISs and EAs, this Court has been clear that "an agency's obligation to consider alternatives under an EA is a lesser one than under an EIS." *Native Ecosystems Council v. U.S. Forest Service*, 428 F.3d 1233, 1246 (9th Cir. 2005); *accord Western Watersheds*, 719 F.3d at 1050. In "an EA, an agency only is required to include a brief discussion of reasonable alternatives." *North Idaho Community Action Network v. U.S. DOT*, 545 F.3d 1147, 1153 (9th Cir. 2008); *accord* 40 C.F.R. § 1508.9(b). The agency need not consider every possible alternative, especially alternatives that are "infeasible, ineffective, or inconsistent with the basic policy objectives for the management of the area." *NAEC*, 457 F.3d at 978 (internal quotation marks omitted).

This Court's review of BLM's range of alternatives analysis is "governed by a rule of reason that requires an agency to set forth only those alternatives necessary to permit a reasoned choice." *California v. Block*, 690 F.2d 753, 767 (9th Cir. 1982) (internal quotation marks omitted). It is well-established that the "scope of an alternatives analysis

depends on the underlying 'purpose and need' specified by the agency for the proposed action." *League of Wilderness Defenders-Blue Mountains Biodiversity Project v. U.S. Forest Service*, 689 F.3d 1060, 1069 (9th Cir. 2012). BLM may reject as imprudent "[a]lternatives that do not accomplish the purposes of the project." *Arizona Past & Future Foundation v. Lewis*, 722 F.2d 1423, 1428 (9th Cir. 1983).

The district court correctly held that BLM's alternatives analysis satisfied NEPA. 1 E.R. 62–70. BLM evaluated two alternatives in detail in the EA: the proposed action and a no-action alternative. 3 E.R. 280–90 (discussing the proposed action), 291 (discussing the no-action alternative). BLM also considered another alternative that would have reduced the number of wells. 3 E.R. 291. But BLM reasonably decided to eliminate that alternative from its more detailed analysis because it "would not meet the purpose and need" of the project. *Id.*

Plaintiffs argue that BLM's alternatives analysis was inadequate for several reasons. Opening Brief 48–55. None establishes that BLM's analysis was arbitrary or capricious.

1. BLM was not required to evaluate a certain number of alternatives.

Plaintiffs first suggest that BLM erred simply because it considered only a proposed action alternative and a no-action alternative. Opening Brief 46–47. But that alone does not render the EA deficient. NEPA's requirement that the agency consider appropriate and reasonable

alternatives "does not dictate the minimum number of alternatives that an agency must consider." *Native Ecosystems*, 428 F.3d at 1246. Thus, to the extent that Plaintiffs complain that the EA provides in-depth analysis of only two alternatives, "a plain reading of the regulations dooms that argument." *Id.* (upholding the agency's consideration of only a no-action alternative and a preferred alternative).

Indeed, this Court has repeatedly upheld similar EAs that have considered only a no-action alternative and a proposed action alternative in detail. *See, e.g.*, *Earth Island Institute v. U.S. Forest Service*, 697 F.3d 1010, 1022–23 (9th Cir. 2012) ("[U]nder the less stringent analysis requirements for an EA," the agency's consideration of only two alternatives was not arbitrary and capricious.); *Center for Environmental Law & Policy v. U.S. Bureau of Reclamation*, 655 F.3d 1000, 1012 (9th Cir. 2011) (reiterating that "there is no numerical floor on alternatives to be considered" (internal quotation marks omitted)); *North Idaho Community*, 545 F.3d at 1154 (holding that the agencies had "fulfilled their obligations under NEPA's alternatives provision when they considered and discussed only two alternatives in the . . . EA.").

To be sure, this Court has rejected alternatives analysis when "[t]here is no meaningful difference" between the alternatives because "each alternative considered would authorize the same underlying action." *Western Watersheds*, 719 F.3d at 1051–52; Opening Brief 47. But BLM's analysis does not suffer from that defect. Under the no-action

alternative, BLM would have disapproved the exploratory wells and denied permits allowing the construction of ice roads, snow trails, and ice pads. 3 E.R. 291. Unlike the EA at issue in *Western Watersheds*, BLM considered this no-action alternative in detail in the EA. 3 E.R. 294–04. Thus, the district court correctly upheld BLM's analysis of the proposed action alternative and the no-action alternative. 1 E.R. 62–70 & n.303.

2. BLM did not fail to examine other reasonable alternatives.

Plaintiffs next argue that BLM "refused to consider" an alternative that would have reduced the number of wells. Opening Brief 47–55; *cf.* *Western Watersheds*, 719 F.3d at 1050. But BLM did consider that alternative and reasonably eliminated it from detailed analysis. 3 E.R. 291. That is all that NEPA requires. 40 C.F.R. § 1502.14(a) (requiring that an agency "briefly discuss the reasons" for eliminating alternatives from detailed study). Although Plaintiffs may disagree with BLM, they have not shown that BLM's analysis was irrational.

To start, BLM rationally explained why the fewer-wells alternative conflicted with the project's purpose and need. *See Citizens Against Burlington, Inc. v. Busey*, 938 F.2d 190, 196–98 (D.C. Cir. 1991). According to BLM, the purpose of the project was to "provide reasonable access to and use of public lands" within the Petroleum Reserve so that ConocoPhillips could "explore and appraise oil and gas potential on [its Petroleum Reserve] leases." 3 E.R. 269. The agency determined that the

exploration activities were "designed to meet" those needs, including "[d]rilling up to six exploratory wells to acquire sufficient subsurface information to satisfy the applicant's economic and exploration performance criteria." 3 E.R. 269–70.

BLM made this decision after evaluating ConocoPhillips' applications and applying the agency's considerable expertise. 2 E.R. 223; 5 S.E.R. 1005–23, 1025–1193; *see Citizens Against Burlington*, 938 F.2d at 196 ("When an agency is asked to sanction a specific plan, the agency should take into account the needs and goals of the parties involved in the application." (citation omitted)). Its exercise of informed discretion is entitled to substantial deference. *Arizona Cattle*, 273 F.3d at 1236 (citing *Marsh v. Oregon Natural Resources Council*, 490 U.S. 360, 377 (1989)). Although Plaintiffs speculate that fewer wells would better fit the purpose and need, they point to nothing in the record supporting their contention, much less showing that BLM's expert decision was irrational. *See* 1 E.R. 66–67.

BLM rationally observed that some of the new wells were within the Bear Tooth Unit, 3 E.R. 281, and that BLM regulations required ConocoPhillips to drill in that unit to delineate the resources, 3 E.R. 291. Plaintiffs question that analysis because BLM cited the subpart of its regulations addressing participating areas and unit agreements, rather than a specific section or subsection. Opening Brief 50. But the agency's path is reasonably discerned. *National Ass'n of Home Builders v.*

Defenders of Wildlife, 551 U.S. 644, 658 (2007). Under BLM's regulations, once a unit like the Bear Tooth Unit meets certain criteria, the unit holder (here, ConocoPhillips) "must delineate" the resources in the participating areas. 43 C.F.R. §§ 3137.80(c), 3137.82. Resources are "delineated" by conducting exploratory drilling to determine where economically producible oil and gas is located. *See* 2 S.E.R. 418. In short, BLM determined that approving fewer exploratory wells would interfere with ConocoPhillips' obligations under BLM's own regulations. Plaintiffs have not shown that this conclusion, which was based on BLM's technical expertise, was irrational. *See Arizona Cattle*, 273 F.3d at 1236.

Plaintiffs similarly attack BLM's explanation that reducing the number of wells "would be contrary to the terms of [ConocoPhillips's] leases," which authorize the company to drill on the land after going through the agency's review process. 3 E.R. 291. Plaintiffs argue that BLM failed to provide a more thorough explanation of its reasoning, such as attaching the leases. Opening Brief 50. But all that is required in an EA is a "brief discussion" of the alternatives. 40 C.F.R. § 1508.9(b); *North Idaho Community*, 545 F.3d at 1153.

At bottom, Plaintiffs' argument stems from the incorrect premise that, after issuing leases, BLM may unreasonably restrict how many exploration wells may be drilled by a leaseholder. To be sure, BLM may impose reasonable conditions in exercise of its statutory mandate to protect surface resources to the extent consistent with exploration and

development of oil and gas. 1 S.E.R. 18, 22–23. But the leases grant ConocoPhillips the right to extract all the oil and gas within the leasehold, subject only to those reasonable conditions. 3 E.R. 291. As BLM explained, "[l]ocations of leases with oil and gas prospects limit the options for feasible drill site locations and access routes." *Id.* Further, restricting the number of wells here would have denied ConocoPhillips the ability to explore the full geographic scope of its leases. *See id.* In other words, BLM determined that reducing the number of approved wells here would be an unreasonable restriction. *See* 1 E.R. 66. That conclusion was not arbitrary or capricious, particularly when "there have been years in the past when multiple companies have proposed similar or greater numbers of wells than the proposed action." 3 E.R. 291.

Alternatively, Plaintiffs argue for the first time that BLM defined the "purpose and need" too narrowly to make the reduced-wells alternative unreasonable. Opening Brief 52–55. But even under the more stringent EIS alternatives requirement, this Court has consistently afforded agencies considerable discretion to define the purpose and need of a project. *See Westlands Water District v. U.S. Dep't of Interior*, 376 F.3d 853, 866 (9th Cir. 2004); *Friends of Southeast's Future v. Morrison*, 153 F.3d 1059, 1066 (9th Cir. 1998). Even so, Plaintiffs argue that the EA's purpose and need statement conflicted with BLM's management obligations under the Naval Petroleum Reserves Production Act. Opening Brief 52. Yet Plaintiffs cite no authority showing that a

reduction in the number of wells would have been a reasonable restriction on ConocoPhillips' activities, much less that BLM was required to impose such a restriction under the Act. *See supra* pp. 50–51. To the contrary, the Act requires BLM to undertake "an expeditious program of competitive leasing of oil and gas" in the Petroleum Reserve. 42 U.S.C. § 6506a(a).

In any event, "it makes little sense to fault an agency for failing to consider more environmentally sound alternatives to a project which it has properly determined, through its decision not to file an impact statement, will have no significant environmental effects anyway." *Earth Island*, 697 F.3d at 1023 (quoting *Sierra Club v. Espy*, 38 F.3d 792, 803 (5th Cir. 1994)). As explained above (pp. 32–45), BLM reasonably concluded that the exploration activities would "have no new significant impacts on the environment and will cause no undue or unnecessary degradation to the public lands." 3 E.R. 382. Thus, under the less stringent analysis requirements for an EA, BLM's consideration of alternatives was not arbitrary or capricious.

B. BLM complied with ANILCA.

BLM also complied with the mandate of Section 810 of ANILCA to evaluate "other alternatives which would reduce or eliminate the use, occupancy, or disposition of public lands needed for subsistence purposes." 16 U.S.C. § 3120(a); *see also Kunaknana v. Clark*, 742 F.2d 1145, 1150 (9th Cir. 1984) (holding that "[t]his provision must be read in

light of [42 U.S.C. § 6506a(a)] which requires the agency to grant some oil and gas leases in the NPR-A"). Under that mandate, BLM must consider "other alternatives which would reduce or eliminate the amount of land taken away from subsistence uses." *Kunaknana*, 742 F.2d at 1150. Contrary to the suggestions of Plaintiffs and the district court, Opening Brief 55–56; 1 E.R. 72–73, the statute does not require the agency to broadly consider all alternatives that would generally mitigate impacts on subsistence activities. Rather, the agency's duty under the plain language of the statute is narrower: BLM is required to evaluate only those alternatives that would "reduce or eliminate" the amount of land "use[d], occup[ied], or dispos[ed] of." 16 U.S.C. § 3120(a).

BLM must in some cases ensure that "reasonable steps will be taken to minimize adverse impacts upon subsistence uses and resources." 16 U.S.C. § 3120(a)(3)(C). But that requirement does not dictate the range of alternatives that the agency must consider. Moreover, it applies only if BLM determines that the activities would "significantly restrict subsistence uses." *Id.* § 3120(a); *see also Kunaknana*, 742 F.2d at 1151 (instructing that those determinations required under Section 810(a) are "necessary only if the agency first concludes that the contemplated action may significantly restrict subsistence uses"). BLM reasonably determined here that the exploration activities were "not anticipated to significantly restrict subsistence uses." 5 S.E.R. 1199; *see also supra* pp. 37–45.

In any event, the record shows that BLM satisfied the ANILCA alternatives requirement, even as interpreted by the district court. 1 E.R. 70–74. BLM prepared a Section 810 evaluation that examined the impacts of the exploration activities on subsistence uses and needs. 3 E.R. 304; 5 S.E.R. 1194–99. As required by Section 810(a), BLM considered alternatives that would "reduce or eliminate the use, occupancy, or disposition of public lands needed for subsistence purposes." 5 S.E.R. 1198. It determined that no other lands appropriate for the project's purpose were available. *Id.* And it concluded that the no-action alternative was "contrary to the current Administration's policy and [ConocoPhillips'] lease rights." *Id.* According to the agency, "[n]o reasonably foreseeable and significant decrease in the abundance of harvestable resources is expected to result from the [winter exploration activities], and no new significant impacts are anticipated." 3 E.R. 304.

Contrary to Plaintiffs' contention, BLM's ANILCA analysis was not inadequate for failing to consider in detail the reduced-wells alternative. Opening Brief 56. As explained above (pp. 48–53), BLM reasonably determined that such alternative would not promote the project's stated goals.

* * * * *

In sum, BLM's alternatives analysis was not arbitrary or capricious.

CONCLUSION

For these reasons, the appeal should be dismissed as moot or the judgment of the district court should be affirmed on the merits.

Respectfully submitted,

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October 16, 2020
DJ # 90-1-4-15658

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9th Cir. Case Number(s) 20-35224

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Date October 16, 2020

ADDENDUM

other fields as may be necessary, to supply gas at reasonable and equitable rates to the native village of Barrow, and other communities and installations at or near Point Barrow, Alaska, and to installations of the Department of Defense and other agencies of the United States located at or near Point Barrow, Alaska. After such transfer, the Secretary of the Interior shall take such actions as may be necessary to continue such service to such village, communities, installations, and agencies at reasonable and equitable rates."

EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98–366, §4(b), July 17, 1984, 98 Stat. 470, provided that the amendment made by that section is effective Oct. 1, 1984.

§ 6505. Executive department responsibility for studies to determine procedures used in development, production, transportation, and distribution of petroleum resources in reserve; reports to Congress by President; establishment of task force by Secretary of the Interior; purposes; membership; report and recommendations to Congress by Secretary; contents

(a) Omitted

(b)(1) The President shall direct such Executive departments and/or agencies as he may deem appropriate to conduct a study, in consultation with representatives of the State of Alaska, to determine the best overall procedures to be used in the development, production, transportation, and distribution of petroleum resources in the reserve. Such study shall include, but shall not be limited to, a consideration of—

(A) the alternative procedures for accomplishing the development, production, transportation, and distribution of the petroleum resources from the reserve, and

(B) the economic and environmental consequences of such alternative procedures.

(2) The President shall make semiannual progress reports on the implementation of this subsection to the Committees on Interior and Insular Affairs of the Senate and the House of Representatives beginning not later than six months after April 5, 1976, and shall, not later than one year after the transfer of jurisdiction of the reserve, and annually thereafter, report any findings or conclusions developed as a result of such study together with appropriate supporting data and such recommendations as he deems desirable. The study shall be completed and submitted to such committees, together with recommended procedures and any proposed legislation necessary to implement such procedures not later than January 1, 1980.

(c)(1) The Secretary of the Interior shall establish a task force to conduct a study to determine the values of, and best uses for, the lands contained in the reserve, taking into consideration (A) the natives who live or depend upon such lands, (B) the scenic, historical, recreational, fish and wildlife, and wilderness values, (C) mineral potential, and (D) other values of such lands.

(2) Such task force shall be composed of representatives from the government of Alaska, the Arctic slope native community, and such offices and bureaus of the Department of the Interior as the Secretary of the Interior deems appropriate, including, but not limited to, the Bureau of Land Management, the United States Fish and Wildlife Service, the United States Geological Survey, and the United States Bureau of Mines.

(3) The Secretary of the Interior shall submit a report, together with the concurring or dissenting views, if any, of any non-Federal representatives of the task force, of the results of such study to the Committees on Interior and Insular Affairs of the Senate and the House of Representatives within three years after April 5, 1976, and shall include in such report his recommendations with respect to the value, best use, and appropriate designation of the lands referred to in paragraph (1).

(Pub. L. 94–258, title I, §105, Apr. 5, 1976, 90 Stat. 305; Pub. L. 102–285, §10(b), May 18, 1992, 106 Stat. 172.)

CODIFICATION

Subsec. (a) of this section amended former section 6244 of this title.

CHANGE OF NAME

"United States Bureau of Mines" substituted for "Bureau of Mines" in subsec. (c)(2) pursuant to section 10(b) of Pub. L. 102–285, set out as a note under section 1 of Title 30, Mineral Lands and Mining. For provisions relating to closure and transfer of functions of the United States Bureau of Mines, see note set out under section 1 of Title 30, Mineral Lands and Mining.

Committee on Interior and Insular Affairs of Senate abolished and replaced by Committee on Energy and Natural Resources of Senate, effective Feb. 11, 1977. See Rule XXV of Standing Rules of Senate, as amended by Senate Resolution No. 4 (popularly cited as the "Committee System Reorganization Amendments of 1977"), approved Feb. 4, 1977.

Committee on Interior and Insular Affairs of the House of Representatives changed to Committee on Natural Resources of the House of Representatives on Jan. 5, 1993, by House Resolution No. 5, One Hundred Third Congress.

§ 6506. Applicability of antitrust provisions; plans and proposals submitted to Congress to contain report by Attorney General on impact of plans and proposals on competition

Unless otherwise provided by Act of Congress, whenever development leading to production of petroleum is authorized, the provisions of subsections (g), (h), and (i) of section 7430 of title 10 shall be deemed applicable to the Secretary of the Interior with respect to rules and regulations, plans of development and amendments thereto, and contracts and operating agreements. All plans and proposals submitted to the Congress under this chapter or pursuant to legislation authorizing development leading to production shall contain a report by the Attorney General of the United States on the anticipated effects upon competition of such plans and proposals.

(Pub. L. 94–258, title I, §106, Apr. 5, 1976, 90 Stat. 306.)

§ 6506a. Competitive leasing of oil and gas

(a) In general

The Secretary shall conduct an expeditious program of competitive leasing of oil and gas in the Reserve in accordance with this Act.

(b) Mitigation of adverse effects

Activities undertaken pursuant to this Act shall include or provide for such conditions, restrictions, and prohibitions as the Secretary deems necessary or appropriate to mitigate reasonably foreseeable and significantly adverse effects on the surface resources of the National Petroleum Reserve in Alaska.

(c) Land use planning; BLM wilderness study

The provisions of section 1712 and section 1782 of title 43 shall not be applicable to the Reserve.

(d) First lease sale

The;[1] first lease sale shall be conducted within twenty months of December 12, 1980: *Provided*, That the first lease sale shall be conducted only after publication of a final environmental impact statement if such is deemed necessary under the provisions of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(e) Withdrawals

The withdrawals established by section 6502 of this title are rescinded for the purposes of the oil and gas leasing program authorized under this section.

(f) Bidding systems

Bidding systems used in lease sales shall be based on bidding systems included in section 205(a)(1)(A) through (H)[2] of the Outer Continental Shelf Lands Act Amendments of 1978 (92 Stat. 629).

(g) Geological structures

Lease tracts may encompass identified geological structures.

(h) Size of lease tracts

The size of lease tracts may be up to sixty thousand acres, as determined by the Secretary.

(i) Terms

(1) In general

Each lease shall be issued for an initial period of not more than 10 years, and shall be extended for so long thereafter as oil or gas is produced from the lease in paying quantities, oil or gas is capable of being produced in paying quantities, or drilling or reworking operations, as approved by the Secretary, are conducted on the leased land.

(2) Renewal of leases with discoveries

At the end of the primary term of a lease the Secretary shall renew for an additional 10-year term a lease that does not meet the requirements of paragraph (1) if the lessee submits to the Secretary an application for renewal not later than 60 days before the expiration of the primary lease and the lessee certifies, and the Secretary agrees, that hydrocarbon resources were discovered on one or more wells drilled on the leased land in such quantities that a prudent operator would hold the lease for potential future development.

(3) Renewal of leases without discoveries

At the end of the primary term of a lease the Secretary shall renew for an additional 10-year term a lease that does not meet the requirements of paragraph (1) if the lessee submits to the Secretary an application for renewal not later than 60 days before the expiration of the primary lease and pays the Secretary a renewal fee of $100 per acre of leased land, and—

(A) the lessee provides evidence, and the Secretary agrees that, the lessee has diligently pursued exploration that warrants continuation with the intent of continued exploration or future potential development of the leased land; or

(B) all or part of the lease—

(i) is part of a unit agreement covering a lease described in subparagraph (A); and

(ii) has not been previously contracted out of the unit.

(4) Applicability

This subsection applies to a lease that is in effect on or after August 8, 2005.

(5) Expiration for failure to produce

Notwithstanding any other provision of this Act, if no oil or gas is produced from a lease within 30 years after the date of the issuance of the lease the lease shall expire.

(6) Termination

No lease issued under this section covering lands capable of producing oil or gas in paying quantities shall expire because the lessee fails to produce the same due to circumstances beyond the control of the lessee.

(j) Unit agreements

(1) In general

For the purpose of conservation of the natural resources of all or part of any oil or gas pool, field, reservoir, or like area, lessees (including representatives) of the pool, field, reservoir, or like area may unite with each other, or jointly or separately with others, in collectively adopting and operating under a unit agreement for all or part of the pool, field, reservoir, or like area (whether or not any other part of the oil or gas pool, field, reservoir, or like area is already subject to any cooperative or unit plan of development or operation), if the Secretary determines the action to be necessary or advisable in the public interest. In determining the public interest, the Secretary should consider, among other things, the extent to which the unit agreement will minimize the impact to surface resources of the leases and will facilitate consolidation of facilities.

(2) Consultation

In making a determination under paragraph (1), the Secretary shall consult with and provide opportunities for participation by the State of Alaska or a Regional Corporation (as defined in section 1602 of title 43) with respect to the creation or expansion of units that include acreage in which the State of Alaska or the Regional Corporation has an interest in the mineral estate.

(3) Production allocation methodology

(A) The Secretary may use a production allocation methodology for each participating area within a unit that includes solely Federal land in the Reserve.

[1] So in original.

[2] See References in Text note below.

except where compliance would be inconsistent with other statutory requirements. These regulations are issued pursuant to NEPA, the Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. 4371 *et seq.*) section 309 of the Clean Air Act, as amended (42 U.S.C. 7609) and Executive Order 11514, Protection and Enhancement of Environmental Quality (March 5, 1970, as amended by Executive Order 11991, May 24, 1977). These regulations, unlike the predecessor guidelines, are not confined to sec. 102(2)(C) (environmental impact statements). The regulations apply to the whole of section 102(2). The provisions of the Act and of these regulations must be read together as a whole in order to comply with the spirit and letter of the law. It is the Council's intention that judicial review of agency compliance with these regulations not occur before an agency has filed the final environmental impact statement, or has made a final finding of no significant impact (when such a finding will result in action affecting the environment), or takes action that will result in irreparable injury. Furthermore, it is the Council's intention that any trivial violation of these regulations not give rise to any independent cause of action.

§ 1500.4 Reducing paperwork.

Agencies shall reduce excessive paperwork by:

(a) Reducing the length of environmental impact statements (§ 1502.2(c)), by means such as setting appropriate page limits (§§ 1501.7(b)(1) and 1502.7).

(b) Preparing analytic rather than encyclopedic environmental impact statements (§ 1502.2(a)).

(c) Discussing only briefly issues other than significant ones (§ 1502.2(b)).

(d) Writing environmental impact statements in plain language (§ 1502.8).

(e) Following a clear format for environmental impact statements (§ 1502.10).

(f) Emphasizing the portions of the environmental impact statement that are useful to decisionmakers and the public (§§ 1502.14 and 1502.15) and reducing emphasis on background material (§ 1502.16).

(g) Using the scoping process, not only to identify significant environmental issues deserving of study, but also to deemphasize insignificant issues, narrowing the scope of the environmental impact statement process accordingly (§ 1501.7).

(h) Summarizing the environmental impact statement (§ 1502.12) and circulating the summary instead of the entire environmental impact statement if the latter is unusually long (§ 1502.19).

(i) Using program, policy, or plan environmental impact statements and tiering from statements of broad scope to those of narrower scope, to eliminate repetitive discussions of the same issues (§§ 1502.4 and 1502.20).

(j) Incorporating by reference (§ 1502.21).

(k) Integrating NEPA requirements with other environmental review and consultation requirements (§ 1502.25).

(l) Requiring comments to be as specific as possible (§ 1503.3).

(m) Attaching and circulating only changes to the draft environmental impact statement, rather than rewriting and circulating the entire statement when changes are minor (§ 1503.4(c)).

(n) Eliminating duplication with State and local procedures, by providing for joint preparation (§ 1506.2), and with other Federal procedures, by providing that an agency may adopt appropriate environmental documents prepared by another agency (§ 1506.3).

(o) Combining environmental documents with other documents (§ 1506.4).

(p) Using categorical exclusions to define categories of actions which do not individually or cumulatively have a significant effect on the human environment and which are therefore exempt from requirements to prepare an environmental impact statement (§ 1508.4).

(q) Using a finding of no significant impact when an action not otherwise excluded will not have a significant effect on the human environment and is therefore exempt from requirements to prepare an environmental impact statement (§ 1508.13).

[43 FR 55990, Nov. 29, 1978; 44 FR 873, Jan. 3, 1979]

§ 1500.5 Reducing delay.

Agencies shall reduce delay by:

§ 1501.2 Apply NEPA early in the process.

Agencies shall integrate the NEPA process with other planning at the earliest possible time to insure that planning and decisions reflect environmental values, to avoid delays later in the process, and to head off potential conflicts. Each agency shall:

(a) Comply with the mandate of section 102(2)(A) to ''utilize a systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts in planning and in decisionmaking which may have an impact on man's environment,'' as specified by § 1507.2.

(b) Identify environmental effects and values in adequate detail so they can be compared to economic and technical analyses. Environmental documents and appropriate analyses shall be circulated and reviewed at the same time as other planning documents.

(c) Study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources as provided by section 102(2)(E) of the Act.

(d) Provide for cases where actions are planned by private applicants or other non-Federal entities before Federal involvement so that:

(1) Policies or designated staff are available to advise potential applicants of studies or other information foreseeably required for later Federal action.

(2) The Federal agency consults early with appropriate State and local agencies and Indian tribes and with interested private persons and organizations when its own involvement is reasonably foreseeable.

(3) The Federal agency commences its NEPA process at the earliest possible time.

§ 1501.3 When to prepare an environmental assessment.

(a) Agencies shall prepare an environmental assessment (§ 1508.9) when necessary under the procedures adopted by individual agencies to supplement these regulations as described in § 1507.3. An assessment is not necessary if the agency has decided to prepare an environmental impact statement.

(b) Agencies may prepare an environmental assessment on any action at any time in order to assist agency planning and decisionmaking.

§ 1501.4 Whether to prepare an environmental impact statement.

In determining whether to prepare an environmental impact statement the Federal agency shall:

(a) Determine under its procedures supplementing these regulations (described in § 1507.3) whether the proposal is one which:

(1) Normally requires an environmental impact statement, or

(2) Normally does not require either an environmental impact statement or an environmental assessment (categorical exclusion).

(b) If the proposed action is not covered by paragraph (a) of this section, prepare an environmental assessment (§ 1508.9). The agency shall involve environmental agencies, applicants, and the public, to the extent practicable, in preparing assessments required by § 1508.9(a)(1).

(c) Based on the environmental assessment make its determination whether to prepare an environmental impact statement.

(d) Commence the scoping process (§ 1501.7), if the agency will prepare an environmental impact statement.

(e) Prepare a finding of no significant impact (§ 1508.13), if the agency determines on the basis of the environmental assessment not to prepare a statement.

(1) The agency shall make the finding of no significant impact available to the affected public as specified in § 1506.6.

(2) In certain limited circumstances, which the agency may cover in its procedures under § 1507.3, the agency shall make the finding of no significant impact available for public review (including State and areawide clearinghouses) for 30 days before the agency makes its final determination whether to prepare an environmental impact statement and before the action may begin. The circumstances are:

(i) The proposed action is, or is closely similar to, one which normally requires the preparation of an environmental impact statement under the procedures adopted by the agency pursuant to § 1507.3, or

(ii) The nature of the proposed action is one without precedent.

§ 1501.5 Lead agencies.

(a) A lead agency shall supervise the preparation of an environmental impact statement if more than one Federal agency either:

(1) Proposes or is involved in the same action; or

(2) Is involved in a group of actions directly related to each other because of their functional interdependence or geographical proximity.

(b) Federal, State, or local agencies, including at least one Federal agency, may act as joint lead agencies to prepare an environmental impact statement (§ 1506.2).

(c) If an action falls within the provisions of paragraph (a) of this section the potential lead agencies shall determine by letter or memorandum which agency shall be the lead agency and which shall be cooperating agencies. The agencies shall resolve the lead agency question so as not to cause delay. If there is disagreement among the agencies, the following factors (which are listed in order of descending importance) shall determine lead agency designation:

(1) Magnitude of agency's involvement.

(2) Project approval/disapproval authority.

(3) Expertise concerning the action's environmental effects.

(4) Duration of agency's involvement.

(5) Sequence of agency's involvement.

(d) Any Federal agency, or any State or local agency or private person substantially affected by the absence of lead agency designation, may make a written request to the potential lead agencies that a lead agency be designated.

(e) If Federal agencies are unable to agree on which agency will be the lead agency or if the procedure described in paragraph (c) of this section has not resulted within 45 days in a lead agency designation, any of the agencies or persons concerned may file a request with the Council asking it to determine which Federal agency shall be the lead agency.

A copy of the request shall be transmitted to each potential lead agency. The request shall consist of:

(1) A precise description of the nature and extent of the proposed action.

(2) A detailed statement of why each potential lead agency should or should not be the lead agency under the criteria specified in paragraph (c) of this section.

(f) A response may be filed by any potential lead agency concerned within 20 days after a request is filed with the Council. The Council shall determine as soon as possible but not later than 20 days after receiving the request and all responses to it which Federal agency shall be the lead agency and which other Federal agencies shall be cooperating agencies.

[43 FR 55992, Nov. 29, 1978; 44 FR 873, Jan. 3, 1979]

§ 1501.6 Cooperating agencies.

The purpose of this section is to emphasize agency cooperation early in the NEPA process. Upon request of the lead agency, any other Federal agency which has jurisdiction by law shall be a cooperating agency. In addition any other Federal agency which has special expertise with respect to any environmental issue, which should be addressed in the statement may be a cooperating agency upon request of the lead agency. An agency may request the lead agency to designate it a cooperating agency.

(a) The lead agency shall:

(1) Request the participation of each cooperating agency in the NEPA process at the earliest possible time.

(2) Use the environmental analysis and proposals of cooperating agencies with jurisdiction by law or special expertise, to the maximum extent possible consistent with its responsibility as lead agency.

(3) Meet with a cooperating agency at the latter's request.

(b) Each cooperating agency shall:

(1) Participate in the NEPA process at the earliest possible time.

among alternatives). The summary will normally not exceed 15 pages.

§ 1502.13 Purpose and need.

The statement shall briefly specify the underlying purpose and need to which the agency is responding in proposing the alternatives including the proposed action.

§ 1502.14 Alternatives including the proposed action.

This section is the heart of the environmental impact statement. Based on the information and analysis presented in the sections on the Affected Environment (§ 1502.15) and the Environmental Consequences (§ 1502.16), it should present the environmental impacts of the proposal and the alternatives in comparative form, thus sharply defining the issues and providing a clear basis for choice among options by the decisionmaker and the public. In this section agencies shall:

(a) Rigorously explore and objectively evaluate all reasonable alternatives, and for alternatives which were eliminated from detailed study, briefly discuss the reasons for their having been eliminated.

(b) Devote substantial treatment to each alternative considered in detail including the proposed action so that reviewers may evaluate their comparative merits.

(c) Include reasonable alternatives not within the jurisdiction of the lead agency.

(d) Include the alternative of no action.

(e) Identify the agency's preferred alternative or alternatives, if one or more exists, in the draft statement and identify such alternative in the final statement unless another law prohibits the expression of such a preference.

(f) Include appropriate mitigation measures not already included in the proposed action or alternatives.

§ 1502.15 Affected environment.

The environmental impact statement shall succinctly describe the environment of the area(s) to be affected or created by the alternatives under consideration. The descriptions shall be no longer than is necessary to understand the effects of the alternatives. Data and analyses in a statement shall be commensurate with the importance of the impact, with less important material summarized, consolidated, or simply referenced. Agencies shall avoid useless bulk in statements and shall concentrate effort and attention on important issues. Verbose descriptions of the affected environment are themselves no measure of the adequacy of an environmental impact statement.

§ 1502.16 Environmental consequences.

This section forms the scientific and analytic basis for the comparisons under § 1502.14. It shall consolidate the discussions of those elements required by sections 102(2)(C)(i), (ii), (iv), and (v) of NEPA which are within the scope of the statement and as much of section 102(2)(C)(iii) as is necessary to support the comparisons. The discussion will include the environmental impacts of the alternatives including the proposed action, any adverse environmental effects which cannot be avoided should the proposal be implemented, the relationship between short-term uses of man's environment and the maintenance and enhancement of long-term productivity, and any irreversible or irretrievable commitments of resources which would be involved in the proposal should it be implemented. This section should not duplicate discussions in § 1502.14. It shall include discussions of:

(a) Direct effects and their significance (§ 1508.8).

(b) Indirect effects and their significance (§ 1508.8).

(c) Possible conflicts between the proposed action and the objectives of Federal, regional, State, and local (and in the case of a reservation, Indian tribe) land use plans, policies and controls for the area concerned. (See § 1506.2(d).)

(d) The environmental effects of alternatives including the proposed action. The comparisons under § 1502.14 will be based on this discussion.

(e) Energy requirements and conservation potential of various alternatives and mitigation measures.

(f) Natural or depletable resource requirements and conservation potential of various alternatives and mitigation measures.

(g) Urban quality, historic and cultural resources, and the design of the built environment, including the reuse and conservation potential of various alternatives and mitigation measures.

(h) Means to mitigate adverse environmental impacts (if not fully covered under §1502.14(f)).

[43 FR 55994, Nov. 29, 1978; 44 FR 873, Jan. 3, 1979]

§1502.17 List of preparers.

The environmental impact statement shall list the names, together with their qualifications (expertise, experience, professional disciplines), of the persons who were primarily responsible for preparing the environmental impact statement or significant background papers, including basic components of the statement (§§1502.6 and 1502.8). Where possible the persons who are responsible for a particular analysis, including analyses in background papers, shall be identified. Normally the list will not exceed two pages.

§1502.18 Appendix.

If an agency prepares an appendix to an environmental impact statement the appendix shall:

(a) Consist of material prepared in connection with an environmental impact statement (as distinct from material which is not so prepared and which is incorporated by reference (§1502.21)).

(b) Normally consist of material which substantiates any analysis fundamental to the impact statement.

(c) Normally be analytic and relevant to the decision to be made.

(d) Be circulated with the environmental impact statement or be readily available on request.

§1502.19 Circulation of the environmental impact statement.

Agencies shall circulate the entire draft and final environmental impact statements except for certain appendices as provided in §1502.18(d) and unchanged statements as provided in §1503.4(c). However, if the statement is unusually long, the agency may circulate the summary instead, except that the entire statement shall be furnished to:

(a) Any Federal agency which has jurisdiction by law or special expertise with respect to any environmental impact involved and any appropriate Federal, State or local agency authorized to develop and enforce environmental standards.

(b) The applicant, if any.

(c) Any person, organization, or agency requesting the entire environmental impact statement.

(d) In the case of a final environmental impact statement any person, organization, or agency which submitted substantive comments on the draft.

If the agency circulates the summary and thereafter receives a timely request for the entire statement and for additional time to comment, the time for that requestor only shall be extended by at least 15 days beyond the minimum period.

§1502.20 Tiering.

Agencies are encouraged to tier their environmental impact statements to eliminate repetitive discussions of the same issues and to focus on the actual issues ripe for decision at each level of environmental review (§1508.28). Whenever a broad environmental impact statement has been prepared (such as a program or policy statement) and a subsequent statement or environmental assessment is then prepared on an action included within the entire program or policy (such as a site specific action) the subsequent statement or environmental assessment need only summarize the issues discussed in the broader statement and incorporate discussions from the broader statement by reference and shall concentrate on the issues specific to the subsequent action. The subsequent document shall state where the earlier document is available. Tiering may also be appropriate for different stages of actions. (Section 1508.28).

§1502.21 Incorporation by reference.

Agencies shall incorporate material into an environmental impact statement by reference when the effect will be to cut down on bulk without impeding agency and public review of the action. The incorporated material shall be cited in the statement and its content briefly described. No material

may be incorporated by reference unless it is reasonably available for inspection by potentially interested persons within the time allowed for comment. Material based on proprietary data which is itself not available for review and comment shall not be incorporated by reference.

§ 1502.22 Incomplete or unavailable information.

When an agency is evaluating reasonably foreseeable significant adverse effects on the human environment in an environmental impact statement and there is incomplete or unavailable information, the agency shall always make clear that such information is lacking.

(a) If the incomplete information relevant to reasonably foreseeable significant adverse impacts is essential to a reasoned choice among alternatives and the overall costs of obtaining it are not exorbitant, the agency shall include the information in the environmental impact statement.

(b) If the information relevant to reasonably foreseeable significant adverse impacts cannot be obtained because the overall costs of obtaining it are exorbitant or the means to obtain it are not known, the agency shall include within the environmental impact statement:

(1) A statement that such information is incomplete or unavailable; (2) a statement of the relevance of the incomplete or unavailable information to evaluating reasonably foreseeable significant adverse impacts on the human environment; (3) a summary of existing credible scientific evidence which is relevant to evaluating the reasonably foreseeable significant adverse impacts on the human environment, and (4) the agency's evaluation of such impacts based upon theoretical approaches or research methods generally accepted in the scientific community. For the purposes of this section, ''reasonably foreseeable'' includes impacts which have catastrophic consequences, even if their probability of occurrence is low, provided that the analysis of the impacts is supported by credible scientific evidence, is not based on pure conjecture, and is within the rule of reason.

(c) The amended regulation will be applicable to all environmental impact statements for which a Notice of Intent (40 CFR 1508.22) is published in the FEDERAL REGISTER on or after May 27, 1986. For environmental impact statements in progress, agencies may choose to comply with the requirements of either the original or amended regulation.

[51 FR 15625, Apr. 25, 1986]

§ 1502.23 Cost-benefit analysis.

If a cost-benefit analysis relevant to the choice among environmentally different alternatives is being considered for the proposed action, it shall be incorporated by reference or appended to the statement as an aid in evaluating the environmental consequences. To assess the adequacy of compliance with section 102(2)(B) of the Act the statement shall, when a cost-benefit analysis is prepared, discuss the relationship between that analysis and any analyses of unquantified environmental impacts, values, and amenities. For purposes of complying with the Act, the weighing of the merits and drawbacks of the various alternatives need not be displayed in a monetary cost-benefit analysis and should not be when there are important qualitative considerations. In any event, an environmental impact statement should at least indicate those considerations, including factors not related to environmental quality, which are likely to be relevant and important to a decision.

§ 1502.24 Methodology and scientific accuracy.

Agencies shall insure the professional integrity, including scientific integrity, of the discussions and analyses in environmental impact statements. They shall identify any methodologies used and shall make explicit reference by footnote to the scientific and other sources relied upon for conclusions in the statement. An agency may place discussion of methodology in an appendix.

§ 1508.6 Council.

Council means the Council on Environmental Quality established by title II of the Act.

§ 1508.7 Cumulative impact.

Cumulative impact is 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. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time.

§ 1508.8 Effects.

Effects include:

(a) Direct effects, which are caused by the action and occur at the same time and place.

(b) Indirect effects, which are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable. Indirect effects may include growth inducing effects and other effects related to induced changes in the pattern of land use, population density or growth rate, and related effects on air and water and other natural systems, including ecosystems.

Effects and impacts as used in these regulations are synonymous. Effects includes ecological (such as the effects on natural resources and on the components, structures, and functioning of affected ecosystems), aesthetic, historic, cultural, economic, social, or health, whether direct, indirect, or cumulative. Effects may also include those resulting from actions which may have both beneficial and detrimental effects, even if on balance the agency believes that the effect will be beneficial.

§ 1508.9 Environmental assessment.

Environmental assessment:

(a) Means a concise public document for which a Federal agency is responsible that serves to:

(1) Briefly provide sufficient evidence and analysis for determining whether to prepare an environmental impact statement or a finding of no significant impact.

(2) Aid an agency's compliance with the Act when no environmental impact statement is necessary.

(3) Facilitate preparation of a statement when one is necessary.

(b) Shall include brief discussions of the need for the proposal, of alternatives as required by section 102(2)(E), of the environmental impacts of the proposed action and alternatives, and a listing of agencies and persons consulted.

§ 1508.10 Environmental document.

Environmental document includes the documents specified in § 1508.9 (environmental assessment), § 1508.11 (environmental impact statement), § 1508.13 (finding of no significant impact), and § 1508.22 (notice of intent).

§ 1508.11 Environmental impact statement.

Environmental impact statement means a detailed written statement as required by section 102(2)(C) of the Act.

§ 1508.12 Federal agency.

Federal agency means all agencies of the Federal Government. It does not mean the Congress, the Judiciary, or the President, including the performance of staff functions for the President in his Executive Office. It also includes for purposes of these regulations States and units of general local government and Indian tribes assuming NEPA responsibilities under section 104(h) of the Housing and Community Development Act of 1974.

§ 1508.13 Finding of no significant impact.

Finding of no significant impact means a document by a Federal agency briefly presenting the reasons why an action, not otherwise excluded (§ 1508.4), will not have a significant effect on the human environment and for which an environmental impact statement therefore will not be prepared. It shall include the environmental assessment or a summary of it and shall note any other environmental documents related to it (§ 1501.7(a)(5)). If the assessment is included, the finding need not

(d) The Responsible Official must ensure that its bureau's public involvement requirements have been met before it adopts another agency's environmental assessment.

§ 46.325 Conclusion of the environmental assessment process.

Upon review of the environmental assessment by the Responsible Official, the environmental assessment process concludes with one of the following:

(1) A notice of intent to prepare an environmental impact statement;

(2) A finding of no significant impact; or

(3) A result that no further action is taken on the proposal.

Subpart E—Environmental Impact Statements

§ 46.400 Timing of environmental impact statement development.

The bureau must prepare an environmental impact statement for each proposed major Federal action significantly affecting the quality of the human environment before making a decision on whether to proceed with the proposed action.

§ 46.405 Remaining within page limits.

To the extent possible, bureaus should use techniques such as incorporation of referenced documents into NEPA analysis (46.135) and tiering (46.140) in an effort to remain within the normal page limits stated in 40 CFR 1502.7.

§ 46.415 Environmental impact statement content, alternatives, circulation and filing requirements.

The Responsible Official may use any environmental impact statement format and design as long as the statement is in accordance with 40 CFR 1502.10.

(a) *Contents.* The environmental impact statement shall disclose:

(1) A statement of the purpose and need for the action;

(2) A description of the proposed action;

(3) The environmental impact of the proposed action;

(4) A brief description of the affected environment;

(5) Any adverse environmental effects which cannot be avoided should the proposal be implemented;

(6) Alternatives to the proposed action;

(7) The relationship between local short-term uses of the human environment and the maintenance and enhancement of long-term productivity;

(8) Any irreversible or irretrievable commitments of resources which would be involved in the proposed action should it be implemented; and

(9) The process used to coordinate with other Federal agencies, State, tribal and local governments, and persons or organizations who may be interested or affected, and the results thereof.

(b) *Alternatives.* The environmental impact statement shall document the examination of the range of alternatives (paragraph 46.420(c)). The range of alternatives includes those reasonable alternatives (paragraph 46.420(b)) that meet the purpose and need of the proposed action, and address one or more significant issues (40 CFR 1501.7(a)(2–3)) related to the proposed action. Since an alternative may be developed to address more than one significant issue, no specific number of alternatives is required or prescribed. In addition to the requirements in 40 CFR 1502.14, the Responsible Official has an option to use the following procedures to develop and analyze alternatives.

(1) The analysis of the effects of the no-action alternative may be documented by contrasting the current condition and expected future condition should the proposed action not be undertaken with the impacts of the proposed action and any reasonable alternatives.

(2) The Responsible Official may collaborate with those persons or organization that may be interested or affected to modify a proposed action and alternative(s) under consideration prior to issuing a draft environmental impact statement. In such cases the Responsible Official may consider these modifications as alternatives considered. Before engaging in any collaborative processes, the Responsible Official must consider the Federal Advisory Committee Act (FACA) implications of such processes.

§ 3130.6–2 Land descriptions.

(a) All tracts shall be composed of entire sections either surveyed or protracted, whichever is applicable, except that if the tracts are adjacent to upland navigable water areas, they may be adjusted on the basis of subdivisional parts of the sections.

(b) Leased lands shall be described according to section, township and range in accordance with the official survey or protraction diagrams.

Subpart 3131—Leasing Program

§ 3131.1 Receipt and consideration of nominations; public notice and participation.

During preparation of a proposed leasing schedule, the Secretary shall invite and consider suggestions and relevant information for such program from the Governor of Alaska, local governments, Native corporations, industry, other Federal agencies, including the Attorney General and all interested parties, including the general public. This request for information shall be issued as a notice in the FEDERAL REGISTER.

§ 3131.2 Tentative tract selection.

(a) The State Director Alaska, Bureau of Land Management, shall issue calls for Nominations and Comments on tracts for leasing for oil and gas in specified areas. The call for Nominations and Comments shall be published in the FEDERAL REGISTER and may be published in other publications as desired by the State Director. Nominations and Comments on tracts shall be addressed to the State Director Alaska, Bureau of Land Management. The State Director shall also request comments on tracts which should receive special concern and analysis.

(b) The State Director, after completion of the required environmental analysis (see 40 CFR 1500–1508), shall select tracts to be offered for sale. In making the selection, the State Director shall consider available environmental information, multiple-use conflicts, resource potential, industry interest, information from appropriate Federal agencies and other available information. The State Director shall develop measures to mitigate adverse impacts, including lease stipulations and information to lessees. These mitigating measures shall be made public in the notice of sale.

[46 FR 55497, Nov. 9, 1981, as amended at 53 FR 17358, May 16, 1988]

§ 3131.3 Special stipulations.

Special stipulations shall be developed to the extent the authorized officer deems necessary and appropriate for mitigating reasonably foreseeable and significant adverse impacts on the surface resources. Special Areas stipulations for exploration or production shall be developed in accordance with section 104 of the Naval Petroleum Reserves Production Act of 1976. Any special stipulations and conditions shall be set forth in the notice of sale and shall be attached to and made a part of the lease, if issued. Additional stipulations needed to protect surface resources and special areas may be imposed at the time the surface use plan and permit to drill are approved.

§ 3131.4 Lease sales.

§ 3131.4–1 Notice of sale.

(a) The State Director Alaska, Bureau of Land Management, shall publish the notice of sale in the FEDERAL REGISTER, and may publish the notice in other publications if he/she deems it appropriate. The publication in the FEDERAL REGISTER shall be at least 30 days prior to the date of the sale. The notice shall state the place and time at which bids are to be filed, and the place, date and hour at which bids are to be opened.

(b) Tracts shall be offered for lease by competitive sealed bidding under conditions specified in the notice of lease sale and in accordance with all applicable laws and regulations. Bidding systems used in sales shall be based on bidding systems included in section (205)(a)(1)(A) through (H) of the Outer Continental Shelf Lands Act Amendments of 1978 (43 U.S.C. 1801 *et seq.*).

(c) A detailed statement of the sale, including a description of the areas to be offered for lease, the lease terms, conditions and special stipulations and how and where to submit bids shall be

§ 3137.75 May I perform additional development outside established participating areas to fulfill continuing development obligations?

You may perform additional development either within or outside a participating area, depending on the terms of the unit agreement.

§ 3137.76 What happens if I do not meet a continuing development obligation?

(a) After you establish a participating area, if you do not meet a continuing development obligation and BLM has not granted you an extension of time to meet the obligation, the unit contracts. This means that—

(1) All areas within the unit that do not have participating areas established are eliminated from the unit. Any eliminated areas are subject to their original lease terms; and

(2) Only established participating areas, whether they are actually producing or not, remain in the unit.

(b) Units contract effective the first day of the month after the date on which the unit agreement required the continuing development obligations to begin.

(c) If you do not meet a continuing development obligation before you establish a participating area, the unit terminates (*see* §3137.132 of this subpart).

PARTICIPATING AREAS

§ 3137.80 What are participating areas and how do they relate to the unit agreement?

(a) Participating areas are those committed tracts or portions of those committed tracts within the unit area that are proven to be productive by a well meeting the productivity criteria specified in the unit agreement.

(b) You must include a description of the anticipated participating area(s) size in the unit agreement for planning purposes to aid in the mitigation of reasonably foreseeable and significantly adverse effects on NPR–A surface resources. The unit agreement must define the proposed participating areas. Your proposed participating area may be limited to separate producible intervals or areas.

(c) At the time you meet the productivity criteria discussed in §3137.82 of this subpart, you must delineate those participating areas.

[67 FR 17886, Apr. 11, 2002, as amended at 73 FR 6444, Feb. 4, 2008]

§ 3137.81 What is the function of a participating area?

(a) The function of a participating area is to allocate production to each committed tract within a participating area. The BLM will allocate production for royalty purposes to each committed tract within the participating area using the allocation methodology agreed to in the unit agreement (see §3137.23(g) of this subpart).

(b) For exploratory and primary recovery operations, BLM will consider gas cycling and pressure maintenance wells when establishing participating area boundaries.

(c) For secondary and tertiary recovery operations, BLM will consider all wells that contribute to production when establishing participating area boundaries.

[67 FR 17886, Apr. 11, 2002, as amended at 73 FR 6444, Feb. 4, 2008]

§ 3137.82 What are productivity criteria?

(a) Productivity criteria are characteristics of a unit well that warrant including a defined area surrounding the well in a participating area. The unit agreement must define these criteria for each separate producible interval. You must be able to determine whether you meet the criteria when the well is drilled and you complete well testing, after a reasonable period of time to analyze new data.

(b) To meet the productivity criteria, the well must indicate future production potential sufficient to pay for the costs of drilling, completing, and operating the well on a unit basis.

(c) BLM will consider wells that contribute to unit production (*e.g.*, pressure maintenance, gas cycling) when setting the participating area boundaries as provided in §3137.81(b) and (c) of this subpart.

(c) The draining well stops producing; or

(d) You relinquish your interest in the Federal or Indian lease.

[66 FR 1894, Jan. 10, 2001]

§ 3162.2–13 If I acquire an interest in a lease that is being drained, will the Department assess me for compensatory royalty?

If you acquire an interest in a Federal or Indian lease through an assignment of record title or transfer of operating rights under this part, you are liable for all drainage obligations accruing on and after the date we approve the assignment or transfer.

[66 FR 1894, Jan. 10, 2001]

§ 3162.2–14 May I appeal BLM's decision to require drainage protective measures?

You may appeal any BLM decision requiring you take drainage protective measures. You may request BLM State Director review under 43 CFR 3165.3 and/or appeal to the Interior Board of Land Appeals under 43 CFR part 4 and subpart 1840.

[66 FR 1894, Jan. 10, 2001]

§ 3162.2–15 Who has the burden of proof if I appeal BLM's drainage determination?

BLM has the burden of establishing a *prima facie* case that drainage is occurring and that you knew of such drainage. Then the burden of proof shifts to you to refute the existence of drainage or to prove there was not sufficient information to put you on notice of the need for drainage protection. You also have the burden of proving that drilling and producing from a protective well would not be economically feasible.

[66 FR 1894, Jan. 10, 2001]

§ 3162.3 Conduct of operations.

(a) Whenever a change in operator occurs, the authorized officer shall be notified promptly in writing, and the new operator shall furnish evidence of sufficient bond coverage in accordance with § 3106.6 and subpart 3104 of this title.

(b) A contractor on a leasehold shall be considered the agent of the operator for such operations with full responsibility for acting on behalf of the operator for purposes of complying with applicable laws, regulations, the lease terms, NTL's, Onshore Oil and Gas Orders, and other orders and instructions of the authorized officer.

[53 FR 17363, May 16, 1988; 53 FR 31959, Aug. 22, 1988]

§ 3162.3–1 Drilling applications and plans.

(a) Each well shall be drilled in conformity with an acceptable well-spacing program at a surveyed well location approved or prescribed by the authorized officer after appropriate environmental and technical reviews (see § 3162.5–1 of this title). An acceptable well-spacing program may be either (1) one which conforms with a spacing order or field rule issued by a State Commission or Board and accepted by the authorized officer, or (2) one which is located on a lease committed to a communitized or unitized tract at a location approved by the authorized officer, or (3) any other program established by the authorized officer.

(b) Any well drilled on restricted Indian land shall be subject to the location restrictions specified in the lease and/or Title 25 of the CFR.

(c) The operator shall submit to the authorized officer for approval an Application for Permit to Drill for each well. No drilling operations, nor surface disturbance preliminary thereto, may be commenced prior to the authorized officer's approval of the permit.

(d) The Application for Permit to Drill process shall be initiated at least 30 days before commencement of operations is desired. Prior to approval, the application shall be administratively and technically complete. A complete application consists of Form 3160–3 and the following attachments:

(1) A drilling plan, which may already be on file, containing information required by paragraph (e) of this section and appropriate orders and notices.

(2) A surface use plan of operations containing information required by paragraph (f) of this section and appropriate orders and notices.

(3) Evidence of bond coverage as required by the Department of the Interior regulations, and

(4) Such other information as may be required by applicable orders and notices.

(e) Each drilling plan shall contain the information specified in applicable notices or orders, including a description of the drilling program, the surface and projected completion zone location, pertinent geologic data, expected hazards, and proposed mitigation measures to address such hazards. A drilling plan may be submitted for a single well or for several wells proposed to be drilled to the same zone within a field or area of geological and environmental similarity. A drilling plan may be modified from time to time as circumstances may warrant, with the approval of the authorized officer.

(f) The surface use plan of operations shall contain information specified in applicable orders or notices, including the road and drillpad location, details of pad construction, methods for containment and disposal of waste material, plans for reclamation of the surface, and other pertinent data as the authorized officer may require. A surface use plan of operations may be submitted for a single well or for several wells proposed to be drilled in an area of environmental similarity.

(g) For Federal lands, upon receipt of the Application for Permit to Drill or Notice of Staking, the authorized officer shall post the following information for public inspection at least 30 days before action to approve the Application for Permit to Drill: the company/operator name; the well name/number; the well location described to the nearest quarter-quarter section (40 acres), or similar land description in the case of lands described by metes and bounds, or maps showing the affected lands and the location of all tracts to be leased and of all leases already issued in the general area; and any substantial modifications to the lease terms. Where the inclusion of maps in such posting is not practicable, maps of the affected lands shall be made available to the public for review. This information also shall be provided promptly by the authorized officer to the appropriate office of the Federal surface management agency, for lands the surface of which is not under Bureau jurisdiction, requesting such agency to post the proposed action for public inspection for at least 30 days. The posting shall be in the office of the authorized officer and in the appropriate surface managing agency if other than the Bureau. The posting of an Application for Permit to Drill is for information purposes only and is not an appealable decision.

(h) Upon initiation of the Application for Permit to Drill process, the authorized officer shall consult with the appropriate Federal surface management agency and with other interested parties as appropriate and shall take one of the following actions as soon as practical, but in no event later than 5 working days after the conclusion of the 30-day notice period for Federal lands, or within 30 days from receipt of the application for Indian lands:

(1) Approve the application as submitted or with appropriate modifications or conditions;

(2) Return the application and advise the applicant of the reasons for disapproval; or

(3) Advise the applicant, either in writing or orally with subsequent written confirmation, of the reasons why final action will be delayed along with the date such final action can be expected.

The surface use plan of operations for National Forest System lands shall be approved by the Secretary of Agriculture or his/her representative prior to approval of the Application for Permit to Drill by the authorized officer. Appeals from the denial of approval of such surface use plan of operations shall be submitted to the Secretary of Agriculture.

(i) Approval of the Application for Permit to Drill does not warrant or certify that the applicant holds legal or equitable title to the subject lease(s)

which would entitle the applicant to conduct drilling operations.

[47 FR 47765, Oct. 27, 1982. Redesignated and amended at 48 FR 36583, Aug. 12, 1983, further amended at 52 FR 5391, Feb. 20, 1987; 53 FR 17363, May 16, 1988; 53 FR 22846, June 17, 1988; 53 FR 31958, Aug. 22, 1988; 81 FR 83078, Nov. 18, 2016; 82 FR 58072, Dec. 8, 2017; 83 FR 49211, Sept. 28, 2018]

§ 3162.3–2 Subsequent well operations.

(a) A proposal for further well operations shall be submitted by the operator on Form 3160–5 for approval by the authorized officer prior to commencing operations to redrill, deepen, perform casing repairs, plug-back, alter casing, recomplete in a different interval, perform water shut off, commingling production between intervals and/or conversion to injection. If there is additional surface disturbance, the proposal shall include a surface use plan of operations. A subsequent report on these operations also will be filed on Form 3160–5. The authorized officer may prescribe that each proposal contain all or a portion of the information set forth in § 3162.3–1 of this title.

(b) Unless additional surface disturbance is involved and if the operations conform to the standard of prudent operating practice, prior approval is not required for routine fracturing or acidizing jobs, or recompletion in the same interval; however, a subsequent report on these operations must be filed on Form 3160–5.

(c) No prior approval or a subsequent report is required for well cleanout work, routine well maintenance, or bottom hole pressure surveys.

(d) For details on how to apply for approval of a facility measurement point; approval for surface or subsurface commingling from different leases, unit participating areas and communitized areas; or approval for off-lease measurement, see 43 CFR 3173.12, 3173.15, and 3173.23, respectively.

[47 FR 47765, Oct. 27, 1982. Redesignated and amended at 48 FR 36583, Aug. 12, 1983, further amended at 52 FR 5391, Feb. 20, 1987; 53 FR 17363, May 16, 1988; 53 FR 22847, June 17, 1988; 80 FR 16218, Mar. 26, 2015; 81 FR 81419, Nov. 17, 2016; 82 FR 61949, Dec. 29, 2017]

§ 3162.3–3 Other lease operations.

Prior to commencing any operation on the leasehold which will result in additional surface disturbance, other than those authorized under § 3162.3–1 or § 3162.3–2, the operator shall submit a proposal on Form 3160–5 to the authorized officer for approval. The proposal shall include a surface use plan of operations.

[82 FR 61949, Dec. 29, 2017]

§ 3162.3–4 Well abandonment.

(a) The operator shall promptly plug and abandon, in accordance with a plan first approved in writing or prescribed by the authorized officer, each newly completed or recompleted well in which oil or gas is not encountered in paying quantities or which, after being completed as a producing well, is demonstrated to the satisfaction of the authorized officer to be no longer capable of producing oil or gas in paying quantities, unless the authorized officer shall approve the use of the well as a service well for injection to recover additional oil or gas or for subsurface disposal of produced water. In the case of a newly drilled or recompleted well, the approval to abandon may be written or oral with written confirmation.

(b) Completion of a well as plugged and abandoned may also include conditioning the well as water supply source for lease operations or for use by the surface owner or appropriate Government Agency, when authorized by the authorized officer. All costs over and above the normal plugging and abandonment expense will be paid by the party accepting the water well.

(c) No well may be temporarily abandoned for more than 30 days without the prior approval of the authorized officer. The authorized officer may authorize a delay in the permanent abandonment of a well for a period of 12 months. When justified by the operator, the authorized officer may authorize additional delays, no one of which may exceed an additional 12 months. Upon the removal of drilling or producing equipment from the site of a well which is to be permanently abandoned, the surface of the lands disturbed in connection with the conduct

Public Comment Availability

Written comments, including names, street addresses of respondents, will be available for public review at the location listed under the **ADDRESSES** section of this notice, during regular business hours, 8 a.m. to 4:30 p.m., Monday through Friday, except Federal holidays. Before including your address, telephone number, email address, or other personal identifying information in your comment, be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifiable information from public view, we cannot guarantee that we will be able to do so.

Tara Sweeney,

Assistant Secretary—Indian Affairs.

[FR Doc. 2020–13819 Filed 6–25–20; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[20X.LLAK9 30000.L13100000.DP0000.LXSSL0550000]

Notice of Availability of the National Petroleum Reserve in Alaska Integrated Activity Plan Final Environmental Impact Statement

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: In accordance with the National Environmental Policy Act of 1969, as amended, and the Naval Petroleum Reserves Production Act of 1976 (NPRPA), as amended, the Bureau of Land Management (BLM), Alaska State Office, has prepared the Final Environmental Impact Statement (EIS) for the Integrated Activity Plan (IAP) for the National Petroleum Reserve in Alaska (NPR–A) and by this notice is announcing its publication.

DATES: The BLM will issue a Record of Decision for the project no earlier than 30 days from the date of the Final EIS Notice of Availability published by the Environmental Protection Agency.

ADDRESSES: *To access the Final EIS or to request an electronic or paper copy, please reach out to:*

- *website: http://www.blm.gov/alaska.*
- *Email: srice@blm.gov.*
- *Mail: BLM Alaska State Office, 222 West 7th Avenue #13, Anchorage, Alaska 99513.*

FOR FURTHER INFORMATION CONTACT: Stephanie Rice, NPR–A IAP Project Manager, 907–271–3202; address: 222 West 7th Avenue, #13, Anchorage, AK 99513. People who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The IAP/EIS analyzes management of all BLM managed lands in the NPR–A in a manner consistent with existing statutory direction and Secretarial Order 3352. Secretarial Order 3352 directed the development of a schedule to ''effectuate the lawful review and development of an IAP for the NPR–A that strikes an appropriate balance of promoting development while protecting surface resources.'' The NPRPA, as amended, and its implementing regulations require oil and gas leasing in the NPR–A and the protection of surface values consistent with exploration, development and transportation of oil and gas. The IAP/EIS will serve to inform BLM's management of the NPR–A for all permissible uses.

Specifically, the IAP/EIS considers and analyzes the environmental impact of various management alternatives, including the areas to offer for oil and gas leasing, and the impacts that could result based on consideration of a hypothetical development scenario. The alternatives analyze various terms and conditions (*i.e.,* lease stipulations and required operating procedures) to require of permittees in the NPR–A, to properly balance oil and gas development and other activities with protection of surface resources and other uses, including subsistence use. The lands comprising the NPR–A are approximately 23 million acres.

Public comments on the draft EIS alternatives drove significant changes to required operating procedures and lease stipulations that were used to develop a new and Preferred Alternative (Alternative E). The Preferred Alternative would make the most land open to leasing (approximately 18.6 million acres, or 82 percent of NPR–A's subsurface estate).

The BLM has worked with interested parties to identify the management decisions best suited to local, regional, and national needs and concerns, as well as to develop a range of alternatives that examines how best to balance development with protecting surface resources and other uses. Future on-the-ground actions requiring BLM approval, including potential exploration and development proposals, would require further NEPA analysis based on the site-specific proposal. Potential applicants would be subject to the terms of the new IAP/EIS Record of Decision; however, the BLM Authorized Officer may require additional site-specific terms and conditions before authorizing any oil and gas activity based on the project level NEPA analysis.

(Authority: 40 CFR 1506.6(b))

Chad B. Padgett,

State Director, Alaska.

[FR Doc. 2020–13733 Filed 6–25–20; 8:45 am]

BILLING CODE 4310–JA–P

INTERNATIONAL TRADE COMMISSION

[Section 337 Investigations]

Notice of Commission Determination To Extend Postponement of All In-Person Section 337 Hearings, Effective June 19, 2020 and Continuing Until Phase Three of the Commission's Three-Phase Plan To Re-Establish On-Site Building Operations

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to extend postponement of all in-person hearings under section 337 of the Tariff Act of 1930, as amended, effective June 19, 2020 and continue until such time as the agency enters Phase Three of the Commission's three-phase plan to re-establish on-site business operations.

FOR FURTHER INFORMATION CONTACT: Lisa R. Barton, Secretary to the Commission, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its internet server at United States International Trade Commission (USITC) at *https://www.usitc.gov.* The public record for section 337 investigations may be viewed on the Commission's Electronic Document Information System (EDIS) at *https://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

comments did not result in the addition of substantive revisions to the Draft EIS and RMP Amendment that was published in August 2019. Responses to all comments are in Appendix H of the Final EIS.

On April 10, 2020, an NOA of the Final EIS and Proposed RMP Amendment for the Project published in the **Federal Register** (84 FR 71455), which initiated a 30-day public protest period and a 60-day Governor's consistency review. The BLM received six (6) protest letters; the BLM considered each protest letter in its decision. The Protest Resolution Report was completed on July 21, 2020 and is available for public inspection at the addresses listed above. On May 14, 2020, the BLM received a written response from the Governor's office with no inconsistencies identified. After environmental analysis, consideration of public comments, and application of pertinent Federal laws, it is the decision of the Department of the Interior to authorize the Project in Catron County, New Mexico, and amend the 2010 Socorro Field Office RMP by selecting Alternative 2A, which was a modification of the agency's Preferred Alternative. Approval of these decisions constitutes the final decision of the Department of the Interior and, in accordance with the regulations at 43 CFR 4.410(a)(3), is not subject to appeal under Departmental regulations at 43 CFR part 4. Any challenge to these decisions, including the BLM Authorized Officer's issuance of the right-of-way as approved by this decision, must be brought to the Federal district court.

Authority: 40 CFR 1506.6, 40 CFR 1506.10.

Timothy R. Spisak,

New Mexico State Director.

[FR Doc. 2020–17431 Filed 8–13–20; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[20X.LLAK930100 L510100000.ER0000]

Notice of Availability of the Willow Master Development Plan Final Environmental Impact Statement, Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: In accordance with the National Environmental Policy Act of 1969, as amended, the Bureau of Land Management (BLM) has prepared a Final Environmental Impact Statement (EIS) for the Willow Master Development Plan, and by this notice is announcing its publication.

DATES: The BLM will issue a Record of Decision for the project no earlier than 30 days from the date of the Final EIS Notice of Availability published by the Environmental Protection Agency.

ADDRESSES: To access the Final EIS or to request an electronic or paper copy, please reach out to:

- *Website: http://www.blm.gov/alaska/WillowEIS.*
- *Email: rajones@blm.gov.*
- *Mail:* Willow FEIS Comments, BLM Alaska State Office, 222 W 7th Ave. #13, Anchorage AK 99513.

FOR FURTHER INFORMATION CONTACT: Racheal Jones, Willow EIS Project Manager, telephone: 907–290–0307; address: 222 West 7th Avenue, #13, Anchorage, Alaska 99513. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The Willow Master Development Plan Final EIS analyzes an oil and gas development project proposed by ConocoPhillips Alaska, Inc. on federal oil and gas leases it holds in the northeast region of the National Petroleum Reserve in Alaska (NPR–A), as well as alternatives to the proposed project and measures to avoid and mitigate impacts to surface resources and other uses including subsistence use. The BLM has identified Alternative B and Module Delivery Option 3 as its preferred alternative. If the Willow Master Development Plan is approved, ConocoPhillips Alaska, Inc. may submit applications to build up to five drill sites, a central processing facility, an operations center pad, gravel roads, ice roads and ice pads, 1 or 2 airstrips (varies by alternative), a freshwater reservoir, an ice bridge across the Colville River to transfer facility modules into the NPR–A, pipelines, and a gravel mine site. The project would have a peak production in excess of 160,000 barrels of oil per day (with a processing capacity of 200,000 barrels of oil per day) over its approximately 30-year life, producing up to approximately 590 million total barrels of oil. The project would help offset declines in production from the North Slope oil fields and contribute to the local, state, and national economies.

Authority: 40 CFR 1506.6(b).

Chad B. Padgett,

State Director, Alaska.

[FR Doc. 2020–17722 Filed 8–13–20; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NRNHL–DTS#–30714; PPWOCRADI0, PCU00RP14.R50000]

National Register of Historic Places; Notification of Pending Nominations and Related Actions

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The National Park Service is soliciting electronic comments on the significance of properties nominated before August 1, 2020, for listing or related actions in the National Register of Historic Places.

DATES: Comments should be submitted electronically by August 31, 2020.

ADDRESSES: Comments are encouraged to be submitted electronically to *National_Register_Submissions@nps.gov* with the subject line ''Public Comment on <property or proposed district name, (County) State>.'' If you have no access to email you may send them via U.S. Postal Service and all other carriers to the National Register of Historic Places, National Park Service, 1849 C Street NW, MS 7228, Washington, DC 20240.

SUPPLEMENTARY INFORMATION: The properties listed in this notice are being considered for listing or related actions in the National Register of Historic Places. Nominations for their consideration were received by the National Park Service before August 1, 2020. Pursuant to Section 60.13 of 36 CFR part 60, comments are being accepted concerning the significance of the nominated properties under the National Register criteria for evaluation.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Nominations submitted by State or Tribal Historic Preservation Officers: