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THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

STATE OF WASHINGTON, COMMONWEALTH OF MASSACHUSETTS, STATE OF CALIFORNIA, STATE OF CONNECTICUT, STATE OF DELAWARE, STATE OF ILLINOIS, STATE OF MAINE, STATE OF MARYLAND, THE PEOPLE OF	Case No. 3:20-CV-00224-JMK

THE STATE OF MICHIGAN, STATE OF MINNESOTA, STATE OF NEW JERSEY, STATE OF NEW YORK, STATE OF OREGON, STATE OF RHODE ISLAND, and STATE OF VERMONT,

Plaintiffs,

v.

DAVID BERNHARDT, in his official capacity as Secretary of the Interior, UNITED STATES DEPARTMENT OF THE INTERIOR, and BUREAU OF LAND MANAGEMENT,

Defendants.

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

(Administrative Procedure Act, 5 U.S.C. §§ 701–06; Alaska National Interest Lands Conservation Act, Pub. L. No. 96-487 §§ 303(2)(B), 304(a), (b), 94 Stat. 2371, 2390, 2393 (1980); National Environmental Policy Act, 42 U.S.C. §§ 4331, 4332; National Wildlife Refuge System Administration Act, 16 U.S.C. §§ 668dd–668ee; and Tax Cuts and Jobs Act of 2017, Pub. L. No. 115-97 tit. 2, § 20001, 131 Stat. 2054, 2235–37)

I. INTRODUCTION

1. The Secretary of the Interior, the Department of the Interior, and the Bureau of Land Management (BLM) (collectively Defendants) unlawfully authorized the Coastal Plain Oil and Gas Leasing Program (Leasing Program), opening the unspoiled Coastal Plain of the Arctic National Wildlife Refuge (Arctic Refuge) to expansive oil and gas exploration and development based on an inadequate environmental review and an unlawful Record of Decision. Defendants' actions violate the National Environmental Policy Act (NEPA), the National Wildlife Refuge System Administration Act (Refuge

Administration Act), the Alaska National Interest Lands Conservation Act (ANILCA), the Administrative Procedure Act (APA), and the Tax Cuts and Jobs Act of 2017 (Tax Act).

2. Our nation's largest and wildest refuge, the Arctic Refuge is often referred to as "America's Serengeti," and the Coastal Plain serves as the Refuge's center of vital wildlife activity.

3. The Coastal Plain is a 1.56 million-acre national treasure, unparalleled in its biological significance for hundreds of species, including caribou, threatened polar bears, and millions of birds that migrate to and from six continents and through all 50 states.

4. With the Arctic Ocean's Beaufort Sea to the north and the Mollie Beattie Wilderness to the south, the Coastal Plain's fragile ecosystem on the northeastern edge of the Arctic Refuge—an area sacred to the Gwich'in people—is particularly vulnerable to environmental stressors, including climate change, which has caused thinning sea ice and thawing of permafrost in the region.

5. In 1960, the Department of the Interior initially protected 8.9 million acres of the current Arctic Refuge, including the Coastal Plain. Twenty years later, recognizing the area's unrivaled and inestimable conservation value and its importance to all Americans including future generations, Congress passed legislation to solidify and expand those protections by creating the 19-million acre Arctic Refuge and prohibiting oil and gas development and production there.

6. In 2017, however, Congress abruptly ended the nearly 40-year ban on oil and gas development on the Coastal Plain through provisions in the Tax Act that direct the Secretary of the Interior, through BLM, to develop and administer an oil and gas leasing program in the Coastal Plain with specific limitations on the scope of the program. Congress did not otherwise waive or alter the framework of laws protecting the Arctic Refuge or exempt Defendants from conducting a complete, careful, and robust environmental review.

7. Defendants' insufficient environmental review and Record of Decision that opens the entire Coastal Plain to oil and gas leasing and development are unlawful. Defendants' actions severely underestimate the avoidable and irreparable damage to vital habitat and pristine waters, imperil wildlife already struggling to thrive in a rapidly changing ecosystem, and increase greenhouse gas emissions at a time when our nation and the world drastically need to reduce emissions to mitigate the most extreme harms of climate change.

8. Specifically, through the Record of Decision and Final Environmental Impact Statement (FEIS), Defendants: (1) failed to determine that the authorized leasing program is compatible with the purposes of the Arctic Refuge and unlawfully prioritized oil and gas development over the Refuge's conservation purposes, in violation of the Refuge Administration Act, ANILCA, and the APA; (2) failed to consider a reasonable range of program alternatives including an alternative that serves the conservation

purposes of the Arctic Refuge, in violation of NEPA and the APA; (3) failed to take a hard look at impacts on greenhouse gas emissions and climate change, in violation of NEPA and the APA; (4) failed to take a hard look at impacts on migratory birds, in violation of NEPA and the APA; and (5) adopted an unlawful interpretation of the Tax Act contrary to Congress's restrictions on development in the Arctic Refuge, in violation of that Act and the APA.

9. Accordingly, Plaintiffs seek a declaration that the Defendants violated the Refuge Administration Act, ANILCA, the APA, NEPA, and the Tax Act; and request that the Court vacate and set aside the Record of Decision and the FEIS and enjoin any further Leasing Program activities.

II. JURISDICTION AND VENUE

10. This Court has jurisdiction over Plaintiffs' claims pursuant to 28 U.S.C. § 1331 (action arising under the laws of the United States).

11. An actual controversy exists between the parties within the meaning of 28 U.S.C. § 2201(a), and the Court may grant declaratory and injunctive relief, including vacatur of illegal agency actions, under 28 U.S.C. §§ 2201–02 and 5 U.S.C. §§ 705–06.

12. The United States has waived sovereign immunity for claims arising under the APA. 5 U.S.C. § 702.

13. Plaintiffs are each a "person" within the meaning of 5 U.S.C. § 551(2), authorized to bring suit under the APA to challenge unlawful final agency action. 5 U.S.C. § 702.

14. Defendants' FEIS and Record of Decision are final agency actions subject to judicial review.

15. Plaintiffs have exhausted all available administrative remedies.

16. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(e) because the Arctic Refuge is located within this judicial district and a substantial part of the events or omissions giving rise to Plaintiffs' claims occurred within this judicial district.

III. PARTIES

A. Plaintiffs

17. Plaintiffs the State of Washington, by and through Attorney General Robert W. Ferguson; the Commonwealth of Massachusetts, by and through Attorney General Maura Healey; the State of California by and through Attorney General Xavier Becerra; the State of Connecticut by and through Attorney General William Tong; the State of Delaware by and through Attorney General Kathleen Jennings; the State of Illinois by and through Attorney General Kwame Raoul; the State of Maine by and through Attorney General Aaron M. Frey; the State of Maryland by and through Attorney General Brian E. Frosh; the People of the State of Michigan by and through Attorney General Dana Nessel; the State of Minnesota by and through Attorney General Keith Ellison; the

State of New Jersey by and through Attorney General Gurbir Grewal; the State of New York by and through Attorney General Letitia James; the State of Oregon by and through Attorney General Ellen Rosenblum; the State of Rhode Island, by and through Attorney General Peter F. Neronha; and the State of Vermont by and through Attorney General Thomas J. Donovan Jr. (collectively "State Plaintiffs") bring this action to challenge Defendants' Record of Decision published on August 17, 2020, and the associated FEIS published on September 25, 2019.

18. Plaintiff STATE OF WASHINGTON is a sovereign entity and brings this action to protect its sovereign and proprietary rights over its natural resources, including approximately three million acres of trust lands, 2.6 million acres of aquatic lands, and thousands of birds. Washington has proprietary rights for wildlife, fish, shellfish, and tidelands. Wash. Const. art. XVII, § 1; Wash. Rev. Code § 77.04.012. Washington also has statutory responsibility to conserve, enhance, and properly utilize the State's natural resources. Wash. Rev. Code §§ 77.110.030, 90.03.010, 90.58.020; *see also* Wash. Const. art. XVI, § 1. The Attorney General is the chief legal advisor to the State of Washington, and his powers and duties include acting in federal court on matters of public concern. This challenge is brought pursuant to the Attorney General's statutory and common law authority to bring suit and obtain relief on behalf of Washington.

19. Washington is a member of the Pacific Flyway Council, an administrative body consisting of public wildlife agencies that, among other things, sets migratory bird

policy and regulations and contributes to migratory bird research for the major migratory route that extends from Alaska to South America. Snow geese, long-tailed ducks, black brant, red-throated loons, Pacific loons, western sandpipers, and golden plovers migrate along the Pacific Flyway from the Coastal Plain to Washington. Washington has designated long-tailed ducks as a Species of Greatest Conservation Need, given its declining population in the state, and has expended efforts and resources to manage its population. Washington also expends efforts and resources to manage its population of snow geese, which are one of the most abundant species on the Coastal Plain.

20. Washington has a significant economic interest in its wildlife. In 2011, bird and other wildlife watchers expended $3.2 billion in Washington and generated an economic impact of about $5.5 billion, with migratory bird watching being an essential component of that economic impact. Washington grows 45% of the nation's clams, oysters, and mussels. The state's shellfish industry contributed $184 million to Washington's economy in 2010 and employed 2,710 workers.

21. Washington's five oil refineries were designed and constructed to refine Alaskan crude oil, which arrives to the state via vessel. Although production from the Alaska North Slope has decreased over the last decade, it continues to be the largest source of crude oil for Washington refineries. Washington reasonably expects to receive oil extracted from the Arctic Refuge and to bear the impact of the oil transiting via Washington waterways and tidelands, emitting pollutants into Washington air during the

refinery process, being distributed throughout and from the state as fuel, and contributing to the potential worker safety hazards associated with refinery operations.

22. By and through its chief legal officer, Attorney General Maura Healey, Plaintiff COMMONWEALTH OF MASSACHUSETTS brings this action on behalf of itself and its residents to protect the Commonwealth's sovereign and proprietary interest in the conservation and protection of its natural resources and the environment. *See* Mass. Const. amend. art. 97; Mass. Gen. Laws ch. 12, §§ 3 and 11D. Massachusetts has an interest in protecting migratory bird species and other wildlife in the Commonwealth from harm both within and outside of Massachusetts.

23. The Commonwealth has enacted and devotes significant resources to implementing numerous laws concerning the management, conservation, protection, restoration, and enhancement of the Commonwealth's wildlife resources, including migratory birds and other avifauna. *See, e.g.*, Mass. Gen. Laws ch. 131. As early as 1818, the Commonwealth recognized the public health, environmental, and economic benefits that certain migratory birds provided to Massachusetts and its citizens and became one of the first states in the country to protect them while they remained in the Commonwealth's territory. An Act to Prevent the Destruction of Certain Useful Birds at Unseasonable Times of the Year, 1817 Mass. Acts ch. 103.

24. Multiple migratory shorebird species stop to feed or rest in Massachusetts as they migrate to or from breeding grounds in the Coastal Plain, including the American

golden-plover, whimbrel, semipalmated sandpiper, and the blackpoll warbler. Massachusetts has substantial economic interest in the protection of wildlife, including birds that migrate from the Coastal Plain through Massachusetts. The Commonwealth is home to world-class birding destinations, including Cape Cod and the Great Meadows National Wildlife Refuge. In 2011 alone, birdwatchers and other wildlife watchers spent nearly $1.3 billion in Massachusetts, generating approximately $2.3 billion in economic impact.

25. Plaintiff STATE OF CALIFORNIA brings this action by and through Attorney General Xavier Becerra. The Attorney General is the chief law enforcement officer of the state and has the authority to file civil actions in order to protect public rights and interests, including actions to protect the natural resources of the state. Cal. Const. art. V, § 13; Cal. Gov't Code §§ 12600–12. This challenge is brought in part pursuant to the Attorney General's independent authority to represent the people's interests in protecting the environment and natural resources of California from pollution, impairment, or destruction. Cal. Const. art. V, § 13; Cal. Gov't Code §§ 12511, 12600–12; *D'Amico v. Bd. of Med. Exam'rs,* 520 P.2d 10, 14–15 (Cal. Sup. Ct. 1974).

26. The State of California has a sovereign interest in its natural resources and is the sovereign and proprietary owner of all the state's fish and wildlife resources, including migratory birds, which are state property held in trust by the state for the benefit of the people of the state. *People v. Truckee Lumber Co.*, 48 P. 374, 374 (Cal.

Sup. Ct. 1897); *Nat'l Audubon Soc'y v. Superior Ct.*, 658 P.2d 709, 727 (Cal. Sup. Ct. 1983); Cal. Water Code § 102; Cal. Fish & Game Code §§ 711.7(a), 1802. California, like other Pacific coastal states, is a member of the Pacific Flyway Council. Migratory birds in particular support a burgeoning birdwatching and hunting industry, which is important to California's people and economy.

27. California thus has a significant interest in preventing harm to migratory birds, including those that breed on the Coastal Plain and winter in California or pass through the state during migration. These species include snow geese, semipalmated plover, ruddy turnstone, long-billed dowitcher, black-bellied plover, sanderling, and dunlin, among others.

28. California also has a sovereign interest in preventing adverse health and environmental impacts from fossil fuel development. In 2019, California refineries processed more than 73 million barrels of Alaska crude oil, accounting for 11.9% of the refineries' total production. Exposure to pollutants produced by these refineries—which include carbon monoxide, benzene, formaldehyde, and arsenic—can cause cancer, birth defects, and asthma, among other health impacts, especially in environmental justice communities that are disproportionately affected by industrial pollution. Refineries also produce high levels of greenhouse gases, thus further contributing to the climate harms caused by oil and gas extraction.

29. Plaintiff STATE OF CONNECTICUT brings this action by and through Attorney General William Tong. The Attorney General of Connecticut is generally authorized to have supervision over all legal matters in which the State of Connecticut is a party. He is also statutorily authorized to appear for the state "in all suits and other civil proceedings, except upon criminal recognizances and bail bonds, in which the state is a party or is interested . . . in any court or other tribunal, as the duties of his office require; and all such suits shall be conducted by him or under his direction." Conn. Gen. Stat. § 3-125.

30. Pursuant to the Connecticut Endangered Species Act, Conn. Gen. Stat. § 26-303 *et seq.*, it is the position of the Connecticut General Assembly that those species of wildlife and plants that are endangered or threatened are of "ecological, scientific, educational, historical, economic, recreational and aesthetic value to the people of the state, and that the conservation, protection, and enhancement of such species and their habitats are of state-wide concern." Conn. Gen. Stat. § 26-303. As a consequence, "the General Assembly [of Connecticut] declares it is a policy of the state to conserve, protect, restore, and enhance any endangered or threatened species and essential habitat." *Id.* A large number of migratory bird species, including a number that are endangered or threatened, stop or overwinter in Connecticut during migration to and from the Coastal Plain. Whimbrels, horned grebes, American golden-plovers, tundra swans, semipalmated sandpipers, snow geese, and greater scaups are among the species that frequent the

Coastal Plain and have been documented to feed and rest in Connecticut while migrating further south.

31. Plaintiff STATE OF DELAWARE is a sovereign entity and brings this action on its own behalf and on behalf of its citizens and residents to protect its sovereign and proprietary rights. The Attorney General is the chief legal officer for the State of Delaware, whose powers include acting in federal court on matters of public concern. This challenge is brought pursuant to the Attorney General's independent constitutional, statutory, and common law authority to bring suit and obtain relief on behalf of Delaware.

32. Migratory bird species present in the Coastal Plain stop or overwinter in Delaware during migration, including tundra swans, snow geese, peregrine falcons, semipalmated sandpipers, American golden-plovers, and blackpoll warblers. Numerous locations in Delaware are key locations for migratory bird species, including Bombay Hook National Wildlife Refuge, Prime Hook National Wildlife Refuge, and an extensive state park system along Delaware's coastline and in the Delaware Bay and other inland water bodies. Horseshoe crab eggs in the Delaware Bay provide vital nutrition for migratory bird species including the semipalmated sandpiper and red knot.

33. Delaware has substantial economic interest in the protection of wildlife, including birds that migrate from the Coastal Plain. Data from 2011 indicates that at least 200,000 Delawareans identify as wildlife watchers and sought birds as part of their

wildlife viewing opportunities. In 2011, bird and other wildlife watching generated approximately $170 million in revenue in Delaware. The fishing, tourism, and recreation sectors and coast-related activities contribute almost $7 billion in economic production to the state, directly or indirectly support more than 60,000 jobs, and generate more than 10% of the state's total employment, taxes, and production value. Delaware has enacted and devotes significant resources to implementing laws concerning the management, conservation, protection, restoration, and enhancement of the state's protected lands and wildlife, including migratory birds. *See, e.g.*, Del. Code Ann. tit. 7 chs. 1, 2, 6, 7, 13, 45, 47, 66, 66A, 73, 75.

34. Plaintiff STATE OF ILLINOIS brings this action by and through Attorney General Kwame Raoul. The Attorney General is the chief legal officer of the State of Illinois, Ill. Const., art V, § 15, and "has the prerogative of conducting legal affairs for the State," *Envt'l Prot. Agency v. Pollution Control Bd.*, 372 N.E.2d 50, 51 (Ill. Sup. Ct. 1977). He has common law authority to represent the People of the State of Illinois and "an obligation to represent the interests of the People so as to ensure a healthful environment for all the citizens of the State." *People v. NL Indus.*, 103 604 N.E.2d 349, 358 (Ill. Sup. Ct. 1992).

35. Illinois has an interest in protecting migratory birds and other wildlife from harm. The state lies on the Mississippi Flyway, where millions of birds migrate every year. Under the Illinois Wildlife Code, Illinois has "ownership of and title to all wild

birds . . . within the jurisdiction of the State." 520 Ill. Comp. Stat. 5/2.1. Illinois protects numerous migratory bird species that nest in or migrate through the state. *Id.* at 5/2.2; *see also United Taxidermists Ass'n v. Ill. Dept. of Nat. Res.*, 436 Fed. Appx. 692, 695 (7th Cir. 2011). Furthermore, Illinois' laws protect endangered species and their habitat. *E.g.*, 520 Ill. Comp. Stat. 10, 20.

36. Plaintiff STATE OF MAINE, a sovereign state, brings this action by and through Attorney General Aaron M. Frey. The Attorney General of Maine is a constitutional officer with the authority to represent the State of Maine in all matters and serves as its chief legal officer with general charge, supervision, and direction of the state's legal business. Me. Const. art. IX, § 11; 5 M.R.S.A. §§ 191–205. The Attorney General's powers and duties include acting on behalf of the state and the people of Maine in the federal courts on matters of public interest. The Attorney General has the authority to file suit to challenge action by the federal government that threatens the public interest and welfare of Maine residents as a matter of constitutional, statutory, and common law authority.

37. Maine has an interest in protecting its natural resources, its wildlife, and its economy from the direct and indirect impacts of the Leasing Program. There is a direct connection between Maine wildlife and the Arctic Refuge, as certain species of birds use both Maine and the Coastal Plain of the Arctic Refuge as habitat. Migratory bird species rest and feed in Maine during their migration to and from the Coastal Plain and some

species spend the winter in Maine. Radio telemetry has confirmed individual whimbrels, least terns, and semi-palmated sandpipers traveling between the Coastal Plain of the Arctic Refuge and Maine in their annual migration. These migratory birds feed in Maine's blueberry barrens and use Maine's tidal flats for feeding, resting, and nesting. Maine's coastline contains over 22,000 acres of tidal marshes, providing rich feeding grounds for migratory and over-wintering birds from the Coastal Plain of the Arctic Refuge. There are between 3,000 and 4,000 islands and ledges off the coast of Maine that also host nesting and feeding migrating birds.

38. Maine has a substantial economic interest in protecting these species, as Maine is a renowned birding destination. Birding by residents and tourists, especially along the scenic coast and on coastal islands, infuses a significant amount of money into Maine's economy. The opportunity to view species that spend a portion of their lives on the Coastal Plain of the Arctic Refuge draws birders to the Maine Coast.

39. Plaintiff STATE OF MARYLAND brings this action by and through its Attorney General, Brian E. Frosh. The Attorney General of Maryland is the state's chief legal officer with general charge, supervision, and direction of the state's legal business. Under the Constitution of Maryland, and as directed by the Maryland General Assembly, the Attorney General has the authority to file suit to challenge action by the federal government that threatens the public interest and welfare of Maryland residents. Md. Const. art. V, § 3(a)(2); Md. Code Ann., State Gov't § 6-106.1.

40. Maryland's Chesapeake Bay provides important wintering habitat for species like tundra swans, semipalmated sandpipers, black-bellied and American golden-plovers, long-tailed ducks, and snow geese that breed along the Coastal Plain. The arrival of these long-distance migrants each winter draws visitors to places like Sandy Point State Park, Deal Island Wildlife Management Area, Jug Bay Wetlands Sanctuary, and Blackwater National Wildlife Refuge. Maryland's portion of the Chesapeake Bay is particularly important to tundra swans as roughly 30% of the entire eastern population winters within the state.

41. By and through Michigan State Attorney General Dana Nessel, Plaintiff PEOPLE OF THE STATE OF MICHIGAN bring this action to defend their sovereign and proprietary interests. Mich. Comp. Laws § 14.28. Conserving Michigan's natural resources is of "paramount public concern." Mich. Const. art. IV, § 52. The People of the State of Michigan seek to defend their interest in migratory birds that spend time in the Coastal Plain and Michigan. The people of the State of Michigan also seek to protect their interest against harm caused by climate change.

42. Michigan is located largely within the Mississippi Flyway and is also on the western edge of the Atlantic Flyway and the eastern edge of the Central Flyway. Because of this, and combined with Michigan's substantial bird habitat along the Great Lakes, inland lakes, and wetlands, many migrating birds stopover in Michigan during different times of the year, including eastern tundra swans and four species of ducks that nest in

the Coastal Plain and make long-distance migrations that include stopovers in Michigan. Tundra swans are of particular interest to recreational birdwatchers in the state, and Michigan regulates hunting for all four duck species.

43. Additional shorebirds that breed in the Coastal Plain and migrate through Michigan include American golden-plover, semipalmated sandpiper, black-bellied plover, pectoral sandpiper, Stilt sandpiper, Baird's sandpiper, long-billed dowitcher, semipalmated plover, dunlin, and red-necked phalarope.

44. Michigan receives significant income from waterfowl hunters and recreational birdwatchers. In 2012, waterfowl hunters spent $22.7 million on hunting trips in Michigan. In 2011, two million people observed birds in Michigan and 41% of those people took birdwatching trips. Wildlife watchers, approximately half a million of which specifically observe waterfowl, spent $1.2 billion on wildlife watching in Michigan in 2011.

45. By and through its chief legal officer, Attorney General Keith Ellison, Plaintiff MINNESOTA brings this action on behalf of itself and its residents to protect Minnesota's interest in its natural resources and the environment. The Minnesota Legislature, "recognizing the profound impact of human activity on the interrelations of all components of the natural environment, . . . [has] declare[d] that it is the continuing policy of the state government . . . to use all practicable means and measures . . . to create and maintain conditions under which human beings and nature can exist in productive

harmony, and fulfill the social, economic, and other requirements of present and future generations of the state's people." Minn. Stat. § 116D.02. Minnesota has enacted and devotes significant resources to implementing numerous laws concerning the management, conservation, protection, restoration, and enhancement of its wildlife resources, including migratory birds and other avifauna. *See, e.g.*, Minn. Stat. ch. 97A.

46. Dozens of migratory bird species fly over Minnesota during migration to and from the Coastal Plain. Greater white-fronted geese, snow geese, tundra swans, American wigeons, northern pintails, and red-breasted mergansers are among the species that use the Coastal Plain as a critical breeding ground and are also found in Minnesota. Plaintiff Minnesota has substantial economic interest in the protection of wildlife, including birds that migrate from the Coastal Plain through Minnesota. In 2006, approximately 52,000 waterfowl hunters spent more than $28 million on trip and equipment expenditures. The industry created 653 jobs and had a total economic impact of $43 million. Healthy waterfowl-breeding grounds, including those in the Coastal Plain area, are critical to support this industry.

47. Plaintiff STATE OF NEW JERSEY is a sovereign state of the United States of America and brings this action on behalf of itself and as a trustee, guardian, and representative of the residents and citizens of New Jersey. The New Jersey Legislature has declared that New Jersey's lands and waters constitute a unique and delicately balanced resource and that these resources should be protected and preserved to promote

the health, safety and welfare of the people of the state. N.J. Stat. Ann. § 58:10-23.11a. New Jersey holds wildlife in trust for the benefit of its people. It is the policy of the state to manage all forms of wildlife to insure continued participation in the ecosystem. N.J. Stat. Ann. § 23:2A-2.

48. New Jersey beaches and wetlands provide vital resting grounds for shorebirds migrating to their summer breeding grounds in the Arctic. The Delaware Bay is a critical stop for at least six arctic-nesting shorebirds. The Nature Conservancy's South Cape May Meadows, Gandy's Beach Preserve, and Sunray Beach Preserve are examples of important habitats in the Delaware Bay ecosystem upon which migratory shorebirds depend to refuel and rest. Migratory shorebirds are an integral part of the state's ecosystem and are a world-renowned bird-watching phenomenon.

49. Plaintiff STATE OF NEW YORK is a sovereign state of the United States of America and brings this action on behalf of itself and as trustee, guardian, and representative of all residents and citizens of New York to protect their interests, and in furtherance of the state's sovereign and proprietary interests in the conservation and protection of the state's natural resources and the environment, and particular, in the protection of migratory bird species and other wildlife in the state from harm both within and outside of its borders.

50. New York owns all wildlife in the state. N.Y. Envtl. Conserv. Law § 11-0105. This wildlife includes multiple bird species associated with the Coastal Plain,

which stop in New York on their migration routes. These include, among others, the semipalmated sandpiper, American golden-plover, whimbrel, and tundra swan. The semipalmated sandpiper, listed as a "Near Threatened Species" by the International Union for Conservation and Nature, has been observed at marshes and coastal areas of Long Island, while tundra swan populations have been observed in central and western parts of New York. From bird banding data, additional bird species such as the canvasback, greater scaup, and lesser scaup have been demonstrated to migrate from Alaska to New York.

51. The birdwatching industry is an important recreational activity and contributor to economic activity in New York, with many residents and visitors interested in catching glimpses of rare birds during their migration. According to the U.S. Fish and Wildlife Service, four million bird and wildlife watchers spent more than $4 billion in New York, ranking New York first among all states for these types of expenditures. Over one million people took trips away from home to view wild birds in New York.

52. Plaintiff STATE OF OREGON brings this suit by and through Attorney General Ellen Rosenblum. The Oregon Attorney General is the chief legal officer of the State of Oregon. The Attorney General's duties include acting in federal court on matters of public concern and upon request by any state officer when, in the discretion of the Attorney General, the action may be necessary or advisable to protect the interests of the state. Ore. Rev. Stat. § 180.060(1). The Oregon Department of Fish and Wildlife,

established as a state agency by the Oregon Legislature pursuant to Oregon Revised Statute section 496.080, has requested that the Attorney General bring this suit to protect Oregon's sovereign interest in preserving wildlife.

53. Plaintiff Oregon's interest in the Leasing Program's environmental impacts emanates in part from its sovereign and proprietary rights over its natural resources. Oregon owns over two million acres of land. In addition, under Oregon law, "Wildlife is the property of the state." Or. Rev. Stat. § 498.002. The Oregon Department of Fish and Wildlife manages wildlife to prevent serious depletion of any indigenous species and to provide recreational and aesthetic benefits for present and future generations of Oregonians. Or. Rev. Stat. § 496.012.

54. As Oregon is a Pacific coast state and part of the Pacific Flyway, migratory birds, many of which migrate between the Coastal Plain and Oregon, are a vital part of Oregon's landscape, history, and economy. For example, the Coastal Plain is one of the most important areas for black brant that winter in the Pacific Flyway. Marking of black brant has demonstrated that individual birds breeding in the Coastal Plain currently winter in Oregon's bays. Any land management which negatively impacts black brant on the Coast Plain is likely to have a negative impact to the overall population and to Oregon's wintering flock.

55. Plaintiff STATE OF RHODE ISLAND is a sovereign entity and brings this action to protect its sovereign and proprietary rights. The Attorney General is the chief

legal advisor to the State of Rhode Island, and his powers and duties include acting in federal court on matters of public concern. This challenge is brought pursuant to the Attorney General's statutory and common law authority to bring suit and obtain relief on behalf of the State of Rhode Island.

56. Rhode Island has sovereign and propriety interests in protecting its state resources through careful environmental review at both the state and federal levels. Rhode Island has a statutory responsibility to conserve, enhance, and properly utilize the State's natural resources. R.I. Gen. Laws § 10-20-1; *see also* R.I. Const. art. I, § 17.

57. Due to its coastal wetlands and woodlands, a high density of migratory bird species stop or overwinter in Rhode Island during migration to and from the Coastal Plain. Whimbrels, horned grebes, American golden-plovers, semipalmated sandpipers, and greater scaups are among the species that frequent the Coastal Plain and have been documented to feed and rest in Rhode Island while migrating further south. With 384 miles of shoreline and five national wildlife refuges in the state, Rhode Island is a popular birding destination. In 2011, 308,000 bird and wildlife watchers spent $200 million in Rhode Island undertaking this activity.

58. Plaintiff STATE OF VERMONT is a sovereign state in the United States of America. The State of Vermont brings this action through Attorney General Thomas J. Donovan, Jr. The Attorney General is authorized to represent the state in civil suits

involving the state's interests, when, in his judgment, the interests of the state so require. Vt. Stat. Ann. tit. 3 ch. 7.

59. Vermont has ownership, jurisdiction and control of all wildlife of the state as trustee for the state's citizens. Vt. Stat. Ann. tit. 10 § 4081(a)(1). Vermont has an interest in protecting wildlife, including birds that migrate through Vermont on their way to or from breeding grounds on the Coastal Plain, from harm both within and outside the state. Such migratory birds include the American golden-plover, snow bunting, and whimbrel. According to data for 2011, Vermont led the nation in the percentage of residents participating in bird watching (39%), and residents and visitors spent $289 million on birdwatching and other wildlife viewing in the state.

B. Defendants

60. Defendant David Bernhardt is Secretary of the Interior (Interior) and is sued in his official capacity. Secretary Bernhardt is responsible for implementing and fulfilling the duties of Interior, including managing all aspects of the Leasing Program; managing implementation of the Refuge Administration Act, relevant portions of ANILCA, and Section 20001 of the Tax Act; and bears responsibility, in whole or in part, for the acts complained of in this Complaint. Secretary Bernhardt signed the challenged Record of Decision.

61. Defendant Interior is a federal agency and oversees BLM and bears responsibility, in whole or in part, for the acts complained of in this Complaint.

62. Defendant BLM is a federal agency within Interior that bears responsibility, in whole or in part, for the acts complained of in this Complaint. Defendant BLM issued the challenged Record of Decision and FEIS.

IV. BACKGROUND

A. Protection of the Arctic National Wildlife Refuge

63. The federal government first protected the area now known as the Arctic National Wildlife Refuge in 1960 when the Secretary of the Interior established the Arctic National Wildlife Range. Public Land Order 2214, at 1 (Dec. 6, 1960) (PLO 2214).

64. Congress solidified and expanded these protections by passing ANILCA in 1980, which created the Arctic Refuge by adding 9.16 million acres of land to the existing 8.9 million-acre Arctic National Wildlife Range. ANILCA § 303(2)(A).

65. The Coastal Plain, which was a part of the original Range, is the most biologically productive part of the Arctic Refuge. The unique terrain of the Coastal Plain is comprised of mostly water or wetland and, due to the area's undisturbed nature, its wetland function and structure remain intact.

66. Along with caribou, polar bears, and other wildlife, more than 156 migratory bird species depend on the Coastal Plain's unique ecosystem. Birds migrate from the Arctic Refuge, particularly from the Coastal Plain, to six continents and through all 50 states.

67. Because of its undisturbed and unique ecosystem, the Arctic Refuge and its Coastal Plain have long-served as an important resource for scientific research, such as the study of migratory birds, within the National Wildlife Refuge System (Refuge System).

68. The Arctic Refuge also plays an important role in the United States' satisfaction of its international treaty obligations, including treaty obligations related to the protection of migratory birds.

69. Management of the Arctic Refuge is governed by ANILCA and the Refuge Administration Act.

70. The Refuge Administration Act applies to all national wildlife refuges and directs the Secretary of the Interior "to administer a national network of lands and waters for the conservation, management, and where appropriate, restoration of fish, wildlife, and plant resources and their habitats within the United States for the benefit of present and future generations of Americans." 16 U.S.C. § 668dd(a)(2).

71. The Refuge Administration Act directs the Secretary to, among other things:

> (A) provide for the conservation of fish, wildlife, and plants and their habitats within the [Refuge] System;
>
> (B) ensure that the biological integrity, diversity, and environmental health of the [Refuge] System are maintained for the benefit of present and future generations of Americans;
>
> (C) plan and direct the continued growth of the [Refuge] System in a manner that is best designed to accomplish the mission of the [Refuge] System, to contribute to the conservation of the ecosystems of the United States, [and] to complement efforts of States and other Federal agencies to conserve fish and wildlife and their habitats, . . .; [and]
>
> (D) ensure that the mission of the [Refuge] System . . . and the purposes of each refuge are carried out . . . .

16 U.S.C. § 668dd(a)(4); *see also* 50 C.F.R. § 25.11(b).

72. Under the Refuge Administration Act, "each refuge shall be managed to fulfill the mission of the System as well as the specific purpose for which that refuge was established." 16 U.S.C. § 668dd(a)(3)(A).

73. The "purposes of the refuge" include purposes "specified in or derived from" laws or public land orders that established, authorized, or expanded the refuge. 16 U.S.C. § 668ee(10).

74. ANILCA identifies four purposes for establishing the Arctic Refuge and guiding its management:

(i) "to conserve fish and wildlife populations and habitats in their natural diversity," including "snow geese, peregrine falcons, and other migratory birds";

(ii) "to fulfill the international treaty obligations of the United States with respect to fish and wildlife and their habitats";

(iii) to provide opportunities for continued subsistence use by local residents; and

(iv) to ensure water quality and necessary water quantity within the refuge.

ANILCA § 303(2)(B).

75. These four ANILCA purposes add to the three original management purposes of the Arctic National Wildlife Range: to preserve "unique wildlife, wilderness, and recreational values." PLO 2214. These three Range purposes "remain in force and effect" for the Coastal Plain. ANILCA § 305.

76. ANILCA contains special provisions concerning the Coastal Plain. ANILCA § 1002 (codified at 16 U.S.C. § 3142). Recognizing the potential interest in oil and gas exploration and development on the Coastal Plain, Section 1002 requires "a comprehensive and continuing inventory and assessment of the fish and wildlife

resources of the coastal plain," including migratory birds, and directs Interior to study the potential impacts of oil and gas development on wildlife and habitats. ANILCA § 1002(a), (c).

77. By requiring such information, Congress sought to ensure that any oil and gas activity authorized within the Coastal Plain "avoid[] significant adverse effects on the fish and wildlife and other resources" of the region. *Id.* at § 1002(a).

78. Notwithstanding Section 1002, Section 1003 of ANILCA prohibited production of oil and gas from the Arctic Refuge and provided that "no leasing or other development leading to production of oil and gas from the range shall be undertaken until authorized by an Act of Congress." *Id.* at § 1003 (codified at 16 U.S.C. § 3143).

B. Congressional Directive to Develop a Limited Oil and Gas Program on the Coastal Plain

79. In December 2017, President Trump signed into law the Tax Act. A rider to the Tax Act includes several provisions about the management of the Coastal Plain. First, the Tax Act amends ANILCA to include providing for a limited oil and gas program on the Coastal Plain. Tax Act § 20001. Second, the Tax Act excludes the Coastal Plain from ANILCA's prohibition on oil and gas production. *Id*. § 20001(b)(1). Third, the Tax Act directs the Secretary of the Interior, through BLM, to "establish and administer a competitive program for the leasing, development, production, and transportation of oil and gas in and from the Coastal Plain." *Id*. § 20001(b)(2).

80. The Tax Act places parameters on the leasing program, directing BLM to hold two lease sales offering 400,000 acres in each lease sale within four and seven years of the date of enactment and to limit surface development to 2,000 surface acres of federal land on the Coastal Plain. *Id*. § 20001(c).

81. The Tax Act does not otherwise alter the framework of protections for the Arctic Refuge. Rather, the legislative history accompanying the Tax Act demonstrates that Congress intended environmental protection to remain a priority of Coastal Plain management.

C. Fossil Fuels and Climate Change Impacts

82. Oil and gas production from the Coastal Plain, as contemplated by the Leasing Program, will contribute to greenhouse gas emissions that cause climate change.

83. In a 2018 report, the Intergovernmental Panel on Climate Change (IPCC), an international scientific body of the United Nations, emphasized that climate change already is causing devastating impacts, including more frequent and extreme severe weather events, rising sea levels, and diminishing Arctic sea ice. Fossil fuel combustion, including oil and gas emissions, is a key driver of climate change.

84. The 2018 IPCC Report determined with a high degree of scientific confidence that if the current pace of greenhouse gas emissions continues, warming will reach 1.5 degrees Celsius above pre-industrial levels between 2030 and 2052.

85. Defendant Interior and the dozen other federal agencies that comprise the U.S. Global Change Research Program warned in the November 2018, Fourth National Climate Assessment that without substantial and sustained efforts to reduce greenhouse gas emissions, climate change will increasingly disrupt ecosystems; threaten human health, safety, and quality of life; damage infrastructure; and hinder economic growth throughout the United States, including in Plaintiffs' states.

86. Multiple studies repeatedly have demonstrated that a substantial portion of the world's recoverable fossil fuel reserves, such as those located in the Coastal Plain, must remain unburned in order to avert the most catastrophic impacts of climate change.

87. Over the past ten years, these unburnable reserve estimates have steadily increased. The 2018 IPCC report warned that to have only a 50% chance of avoiding the most devastating consequences of climate change resulting from global warming above the 1.5-degree Celsius level, about 80% of recoverable fossil fuel reserves must remain unburned.

88. Heeding these warnings, State Plaintiffs, businesses, and individuals are working to decrease reliance on fossil fuels and transition to cleaner technology. These efforts notwithstanding, State Plaintiffs already are experiencing devastating and increasingly severe climate impacts.

89. Along the coasts of Plaintiffs Washington, Massachusetts, California, Connecticut, Delaware, Maine, Maryland, New York, New Jersey, Oregon, and Rhode

Island, ocean acidification through the ocean's absorption of excess carbon dioxide in the atmosphere and warming water temperatures threaten natural resources and vital fisheries, including oysters, cod, lobster, and other marine life that play vital roles in the states' economy and culture. For example, without greenhouse gas mitigation, ocean acidification along Washington's coast is expected to cause a 34% decline in shellfish survival by 2100.

90. The rise of sea levels from melting ice sheets and glaciers and thermal expansion has impacted coastal and marine waters along over 18,000 shoreline miles of Plaintiffs Washington, Massachusetts, California, Connecticut, Delaware, Maine, Maryland, New Jersey, New York, Oregon, and Rhode Island. Sea level rise has led to more frequent tidal inundation, and when combined with more intense coastal storms, storm surges and severe flooding that cause significant damage to state properties, tourism, public infrastructure, private homes, businesses, and wildlife habitat, and increasing demands for emergency services. Impacted areas include a diverse array of coastal ecosystems (*e.g.*, sandy beaches, islands, estuaries, and salt marshes) that offer immense recreational, cultural, and aesthetic value to the residents of and visitors to coastal State Plaintiffs, while also serving important ecological functions.

91. Rising sea levels, coupled with intensifying weather events, also threaten State Plaintiffs' migratory birds and their habitat. Coastal wetlands provide an important stopover for millions of migratory birds. With intensifying storms and rising sea levels,

tidal flats and marshes could become open water, jeopardizing the survival of the migratory birds that depend on the tidal flats and marshes to feed and nest.

92. Specific impacts from sea level rise to State Plaintiffs' resources include:

92.1 Boston, the largest city in Massachusetts, could experience cumulative damage to buildings, building contents, and associated emergency costs as high as $94 billion between 2000 and 2100, depending on the sea level rise scenario and the extent of adaptive and preventative actions in place.

92.2 Sea level rise in Delaware threatens property assessed at approximately $1.5 billion and will harm coastal ecosystems that offer recreational, cultural, ecological, and aesthetic value to the residents of and visitors to the state. Delaware's 2012 Sea Level Rise Vulnerability Assessment determined that 8 to 11% of the state's land area could be inundated by sea level rise of 0.5 to 1.5 meters.

92.3 Maryland is projected to experience between 2.1 and 5.7 feet of sea level rise over the next century, leading to shoreline erosion, coastal flooding, storm surges, inundation, and saltwater intrusion into groundwater supplies and adversely impacting tourism and the Port of Baltimore.

92.4 Sea level rise in New York will not only directly increase the risks to lives and property in the state from future storms, but also threaten coastal wetlands, which provide important species habitat and protect adjacent communities. Swiss Re, a reinsurance and insurance company, has estimated that expected annual economic losses

in New York City alone from rising sea levels and more intense storms may increase to $4.4 billion by the 2050s.

92.5 Rhode Island has experienced over ten inches of sea level rise since 1930, averaging over an inch per decade. The mean annual rate of sea level rise has increased in recent decades and will continue to rise significantly. According to the National Oceanic and Atmospheric Administration, Rhode Island could experience nine feet of seal level rise by 2100, along with substantial increase in the frequency of tidal flooding. Further, Rhode Island's topography, geography, and land use patterns make it particularly susceptible to injuries from seal level rise. Particularly, Rhode Island has substantial public assets in 21 coastal municipalities along its nearly 400 miles of coastline and 20 Rhode Island municipalities have acreage lying below the floodplain.

93. The rise in extreme weather events have caused drought, flooding, wildfires, and other catastrophic natural disasters leading to significant losses for State Plaintiffs, including:

93.1 Extreme weather on the East Coast includes hurricanes, coastal storms, heavy downpours, and extreme heat that are increasing in frequency and intensity. In Connecticut, where the annual mean temperature rose by approximately three degrees Fahrenheit since 1895, warmer weather is contributing to a rise in average annual precipitation that will increase the frequency of heavy downpours. In New York, Hurricane Sandy caused an estimated $32 billion in losses and over 50 deaths in the state.

Lake Ontario reached record high-water levels in 2017 and 2019 causing significant damage to properties in New York's lakefront communities. In New Jersey, Sandy's severe winds and coastal flooding cost the state an estimated $11.7 billion in lost domestic product, including $950 million in tourism losses. Hurricane Irene caused estimated damages of up to $1 billion in New York and then dumped approximately 11 inches of rain on Vermont, temporarily or permanently displacing more than 1,400 households and causing $733 million in damage, including damage to more than 500 miles of state highway and 480 bridges. Since 1960, average annual precipitation in Vermont has increased by 5.9 inches and increasingly frequent heavy rainstorms threaten to flood communities in Vermont's many narrow river valleys. Over the past 80 years, Rhode Island has experienced a doubling of the frequency of flooding, an increase in the magnitude of flood events and has had more extreme precipitation events between 2005 and 2014 than any prior decade in the state's history. In just Providence, Rhode Island, average annual precipitation has increased by 0.4 inches per decade since 1895 and intense rainfall events have increased 71% between 1958 and 2000.

93.2 Extreme weather in the Midwest includes flooding, drought, and whipsawing water levels on the Great Lakes. In 2011, 15 inches of rain fell in northwestern Illinois over just 12 hours, killing one person and damaging infrastructure. In spring 2019, flooding in Illinois delayed crop planting, causing the U.S. Department of Agriculture to declare an agricultural disaster in every county in Illinois. Predictions

indicate that warmer weather and altered rain patterns will reduce crop yield by 15% within two decades and up to 73% by the end of the century, making farming particularly vulnerable to extreme precipitation caused by climate change. Since 2004, Minnesota has experienced three 1,000-year floods and an increase in intense weather events including hailstorms, tornadoes and droughts. In 2007, several Minnesota counties received drought designation, while others experienced flood disasters—an occurrence that repeated itself in 2012 when 11 counties declared flood emergencies while 55 received drought designations. In 2019, Lake Michigan broke its 33-year-old high-water record; in 2013, it reached an all-time low. Rapidly swinging water levels harm commercial shipping, recreational boaters, and beach-goers—low water forces freighters to forgo cargo and high water erodes beaches.

93.3 In the West, extreme weather in Plaintiffs' states threaten to devastate wildlife populations and agricultural industries. For example, rising stream temperatures and lower summer stream flows from reduced snow pack continue to reduce the quality and quantity of salmon habitat in western states, particularly California, Oregon, and Washington. In 2015, Oregon experienced the warmest year since recordkeeping began in 1895. The heat resulted in record low snowpack across the state, a two-third reduction of normal irrigation water for farmers in eastern Oregon's Treasure Valley, and the loss of more than half of spring spawning salmon in the Columbia River.

94. Warmer temperatures also contribute to increased risks of disease and health impacts. Changes in vegetation and the rise in deer populations have contributed to an increased risk of West Nile Virus in Connecticut and the spread and prevalence of Lyme disease in Massachusetts, Connecticut, Minnesota, Rhode Island, and Vermont. Heat-related deaths in New York City have been projected to increase if actions are not taken to reduce greenhouse gas emissions and lessen temperature increases. In Michigan, heat-related illnesses, waterborne diseases, and vector-borne diseases are on the rise. In California, increased hospitalizations for multiple diseases, including cardiovascular disease, ischemic stroke, pneumonia, and heat stroke, are associated with increases in same-day temperature. California bears a substantial portion of the costs of these medical conditions as a result of its financial responsibility for Medi-Cal and Medicare payments. Increased forest fire activity in western states like California, Oregon, and Washington, leads to an increase in unhealthy air days, impacting public health.

95. Like State Plaintiffs, the Arctic ecosystem, including the Coastal Plain, is rapidly changing due to climate change. Accelerated melting of multiyear sea ice, increased boreal wildfires, reduction of terrestrial snow cover, and permafrost degradation are stark examples of the rapid Arctic-wide response to global warming.

96. Annual average near-surface air temperatures across Alaska and the Arctic have increased over the last 50 years at a rate more than twice as fast as the global

average temperature. Increased temperatures on Alaska's North Slope contribute to thawing permafrost that releases carbon dioxide and methane that amplifies warming.

97. Yet, despite the overwhelming and increasingly harmful impacts of climate change in the United States and around the world, Defendants asserted in the FEIS that "[T]here is not a climate crisis." FEIS S-686.

98. The 2018 IPCC Report gravely warns that an increase in global temperatures of 1.5 degrees Celsius above preindustrial levels will significantly increase risks for human health, food security, biodiversity, national security, and global economies. Yet, the Defendants summarily dismissed this conclusion as "rel[ying] on global climate models that have grossly overestimated the amount of warming (based on actual observations) from a given amount of GHG emissions . . . ." FEIS S-569.

99. Defendants further trivialized the importance of reducing U.S. emissions, stating, "Restricting GHG emissions, especially in just the [United States], which now represents a small and shrinking portion of global emissions, would not have a measurable effect on climate change globally or regionally in Alaska." FEIS S-581.

100. In fact, the United States remains the second-largest contributor of carbon emissions in the world. Recent reports affirm that immediate and substantial global greenhouse gas emission reductions are essential to limiting the most harmful impacts of climate change in the United States and across the globe.

D. The Leasing Program FEIS and Record of Decision

1. NEPA's Requirements

101. Before authorizing the Leasing Program, Defendants must comply with NEPA's environmental review requirements.

102. NEPA declares a national policy to "use all practicable means and measures" to "create and maintain conditions in which man and nature can exist in productive harmony." 42 U.S.C. § 4331(a).

103. The objectives of NEPA are realized through a set of "action-forcing" procedures that require that agencies take a "'hard look' at environmental consequences." *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 350 (1989).

104. A federal agency must ensure that its impacts analysis "inform[s] the public that it has indeed considered environmental concerns in its decisionmaking process." *Pit River Tribe v. U.S. Forest Serv.*, 469 F.3d 768, 781 (9th Cir. 2006) (quoting *Earth Island Inst. v. U.S. Forest Serv.,* 442 F.3d 1147, 1153–54 (9th Cir. 2006)).

105. The Council on Environmental Quality (CEQ) promulgated rules implementing NEPA, which apply to all federal agencies. 40 C.F.R. pt. 1500.[1] Interior also promulgated rules governing its NEPA implementation. 43 C.F.R. pt. 46.

[1] CEQ recently issued new regulations implementing NEPA that take effect September 14, 2020. Update to the Regulations Implementing the Procedural Provisions of the National Environmental Policy Act, 85 Fed. Reg. 43,304 (July 16, 2020) (to be codified at 40 C.F.R. pt. 1500). CEQ's prior regulations, promulgated in 1978 with minor amendments in 1986 and 2005, govern Defendants' Record of Decision and FEIS. All regulatory references in this complaint are to the 1978 regulations, as amended.

106. NEPA requires federal agencies to prepare an environmental impact statement (EIS) for all "major federal actions significantly affecting the quality of the human environment." 42 U.S.C. § 4332.

107. "Major federal actions" include "new and continuing activities" with "effects that may be major and which are potentially subject to Federal control and responsibility." 40 C.F.R. § 1508.18.

108. An EIS must "provide full and fair discussion of significant environmental impacts and shall inform decisionmakers and the public of the reasonable alternatives which would avoid or minimize adverse impacts or enhance the quality of the human environment." *Id.* § 1502.1.

109. An EIS must discuss, among other things: the environmental impact of the proposed federal action, any adverse and unavoidable environmental effects, alternatives to the proposed action, and any irreversible and irretrievable commitments of resources involved in the proposed action. 42 U.S.C. § 4332.

110. An EIS's analysis of reasonable alternatives "is the heart of the environmental impact statement." 40 C.F.R. § 1502.14.

111. Agencies must rigorously explore and objectively evaluate all reasonable alternatives, including the alternative of taking no action, and must discuss the reasons for eliminating any alternatives rejected from detailed study. *Id*.

112. An EIS must state how alternatives considered will achieve the requirements of NEPA and "other environmental laws and policies." *Id*. § 1502.2.

113. NEPA's regulations require agencies to analyze both the direct impacts that an action will have on the environment, as well as the action's "reasonably foreseeable" indirect and cumulative impacts. *Id.* § 1508.8.

114. Direct impacts are caused by the action and occur at the same time and place as the action. *Id*. § 1508.8(a).

115. Indirect impacts are "caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable." *Id*. § 1508.8(b).

116. Cumulative impacts are those impacts that result "from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions." *Id*. § 1508.7.

117. A legally adequate impact analysis requires the establishment of accurate baseline conditions to determine the effect the action will have on the environment. *Half Moon Bay Fisherman's Mktg. Ass'n v. Carlucci*, 857 F.2d 505, 510 (9th Cir. 1988).

118. If information that is essential for making a reasoned choice among alternatives is not available, an agency must obtain that information unless the costs of doing so would be exorbitant. 40 C.F.R. § 1502.22(a).

119. Agencies also have an obligation to consider in the EIS mitigation measures to avoid, minimize, rectify, reduce, eliminate, or compensate for environmental harms of agency action. *Id*. §§ 1502.16(h), 1508.20.

2. Defendants' FEIS and Record of Decision

120. On December 28, 2018, Defendants published a Notice of Availability of the Draft Environmental Impact Statement (DEIS). Interior, BLM, Notice of Availability of the Draft Environmental Impact Statement for the Coastal Plain Oil and Gas Leasing Program and Announcement of Public Subsistence-Related Hearings, 83 Fed. Reg. 67,337 (Dec. 28, 2018).

121. Nearly all State Plaintiffs submitted detailed comments on the DEIS, highlighting numerous inadequacies in Defendants' environmental review, including a deficient range of alternatives, a deficient analysis of greenhouse gas emissions and associated climate change impacts, and a deficient analysis of migratory bird impacts.

122. The vast majority of the more than one million public comments on the DEIS, including comments submitted by nearly all State Plaintiffs, opposed expansive leasing and development in the Coastal Plain.

123. Just six months after the comment period closed on the DEIS, Defendants noticed the availability of the FEIS in the Federal Register on September 25, 2019. Interior, BLM, Notice of Availability of the FEIS for the Coastal Plain Oil and Gas Leasing Program, Alaska, 84 Fed. Reg. 50,472 (Sept. 25, 2019).

124. Defendants issued the Record of Decision approving the Leasing Program on August 17, 2020.

125. The Record of Decision authorizes Alternative B, which will allow oil and gas leasing on the entire program area encompassing 1,563,500 acres of the Coastal Plain. As the Record of Decision notes, this expansive area will also be available for "future exploration, development, and transportation" resulting from the Leasing Program. Interior, BLM, Coastal Plain Oil and Gas Leasing Program Record of Decision 3 (August 2020) (ROD).

126. Alternative B has the most severe environmental impacts of all considered alternatives. It maximizes the acreage available for leasing, seismic exploration, development, and transportation and includes the fewest environmental protections. Alternative B has the greatest anticipated impacts on the delicate Coastal Plain ecosystem, including impacts to the area's wildlife (including migratory birds), habitat, subsistence values, and water resources.

127. The Record of Decision adopts the lease stipulations and required operating procedures considered in the FEIS. BLM may waive, exempt, or modify the lease stipulations and required operating procedures. Among other things, the lease stipulations and required operations procedures do not adequately protect the conservation purposes of the Arctic Refuge, including migratory birds.

128. Although the Record of Decision recognizes that the Tax Act "included a Coastal Plain oil and gas program as a refuge purpose on *equal footing* with the other refuge purposes," ROD 1 (emphasis added), the Record of Decision elevates the oil and gas program over the other refuge purposes stated in ANILCA.

129. The Record of Decision does not acknowledge the purposes identified in Public Land Order 2214.

130. The Record of Decision does not contain a determination that the Leasing Program authorized by Defendants is a compatible use of the Arctic Refuge or that the Leasing Program fulfills the eight refuge purposes. Instead, the Record of Decision states only that it took the ANILCA refuge purposes into account and that there will be some "potential impact" on those purposes. ROD 7–8.

131. The Record of Decision adopts an interpretation of the Tax Act's 2,000-acre surface development limit that is different than the FEIS's and allows for even greater disturbance of the Coastal Plain. Although the Record of Decision continues to interpret the surface acre limit as requiring Defendants to authorize 2,000 acres of surface development, Defendants assert for the first time in the Record of Decision that the surface development provision applies only to a narrow subset of facilities that are both "production and support" facilities. ROD 11–13. Under this new interpretation, many facilities (*e.g.*, airstrips, roads, and gravel mines) that BLM previously considered in the

FEIS to count toward the 2,000-acre surface disturbance limit may not count toward that limit under the authorized Leasing Program.

132. The Record of Decision further adopts an interpretation of the rights-of-way provision of the Tax Act that overrides the 2,000-acre surface development limit, stating that BLM must issue a right-of-way grant or necessary access authorizations.

133. The Record of Decision relies on the deficient FEIS, which, among other things, fails to consider an adequate range of alternatives, fails to assess adequately the greenhouse gas emissions and climate impacts of the Leasing Program, and fails to assess adequately migratory bird impacts of the Leasing Program.

a. Defendants' Deficient Range of Alternatives

134. The FEIS does not consider a reasonable range of alternatives.

135. The FEIS considers three action alternatives and a no-action alternative. Alternatives B and C authorize leases in the entire program area, covering 1,563,500 acres. Alternative D contains two sub-alternatives, D-1 and D-2. Alternative D-1 authorizes lease sales on 1,037,200 acres and Alternative D-2 authorizes lease sales on 800,000 acres.

136. In the purpose and need statement, Defendants stated that "[a]ll action alternatives were designed to meet Section 2001 of [the Tax Act] and to account for all purposes of the Arctic Refuge." FEIS ES-1. Defendants further stated that "[t]he alternatives analyze various terms and conditions (i.e., lease stipulations and required

operating procedures) to be applied to leases and associated oil and gas activities, to properly balance oil and gas development with protection of surface resources." *Id*.

137. Yet, instead of balancing development with surface resource protection, each action alternative unlawfully prioritizes oil and gas production above the conservation purposes of the Arctic Refuge.

138. Among other things, all of the action alternatives considered would allow 174 or more miles of gravel road construction *plus* extensive and harmful ice road construction, 212 or more miles of pipeline, nearly 300 acres of gravel pits and stockpiles, and seismic activity across much of the Coastal Plain. These action alternatives permit, and in fact exceed, the maximum surface infrastructure limits Congress set in the Tax Act.

139. Each action alternative threatens significant and long-lasting harm to the unique ecology, wildlife, wilderness, and recreational values of the Arctic Refuge, including to the migratory bird populations of great importance to State Plaintiffs and to the Arctic Refuge itself.

140. In addition, each action alternative threatens to worsen greenhouse gas emissions and associated climate impacts and to alter forever the hydrology and habitat of the Coastal Plain.

141. None of the action alternatives considered in the FEIS would restrict surface acre disturbance, limit ice road construction, delay or phase leasing, limit seismic

activity, mitigate greenhouse gas emissions, effectively protect migratory bird habitat, effectively minimize or mitigate adverse environmental impacts, or otherwise fulfill the conservation purposes of the Arctic Refuge to the extent consistent with the Tax Act.

142. An alternative that includes some or all of these components to better protect the Coastal Plain from significant environmental harm and advance the conservation purposes of the Arctic Refuge, to the extent consistent with the Tax Act, is a reasonable alternative consistent with the purpose and need of the proposed Leasing Program that Defendants should have considered in the FEIS.

143. Because Defendants did not consider this reasonable alternative, Defendants' lacked critical information about which areas within the Coastal Plain to make available for oil and gas leasing, which lease stipulations and required operating procedures to adopt, and how to avoid, minimize, and mitigate adverse impacts from the Leasing Program.

b. Defendants' Deficient Analysis of Greenhouse Gas Emissions and Climate Impacts

144. The FEIS analysis of greenhouse gas emissions and climate impacts from the Leasing Program violates NEPA's "hard look" mandate and undermines Defendants' ability to make reasoned decisions by both underestimating the potential greenhouse gas emissions from Coastal Plain development and failing to meaningfully analyze the climate impacts associated with such development.

(1) Defendants' Deficient Analysis of Greenhouse Gas Emissions

145. Although the FEIS acknowledges that Coastal Plain production will cause both direct and indirect greenhouse gas emissions, it drastically underestimates the Leasing Program's indirect greenhouse gas emissions.

146. The FEIS assumes that production from the Coastal Plain will be between 1.5 billion barrels of oil and zero cubic feet of natural gas at the low end and 10.6 billion barrels of oil plus 2.5 trillion cubic feet of natural gas at the high end.

147. The FEIS uses these production levels to evaluate indirect greenhouse gas emissions from the Leasing Program.

148. The FEIS also assumes that approximately 96% of Coastal Plain production will replace other domestic oil and gas production that would be developed in the absence of the Leasing Program, and, thus, the FEIS calculates that Coastal Plain production will increase U.S. demand by just 3.4 to 3.9%.

149. The FEIS recognizes that oil is a global commodity, but does not model energy source substitutions that would globally occur in the absence of Coastal Plain development. Instead, the FEIS models only domestic substitutions to determine the increase in demand resulting from Coastal Plain development.

150. Based on this limited analysis, and without considering oil and gas consumption globally, the FEIS projects that Coastal Plain development and production

will increase net annual U.S. greenhouse gas emissions by less than 0.10% and will increase net annual global emissions by a fraction of that amount.

151. The FEIS relies on these projected low percentage increases in U.S. and global emissions to dismiss concerns about potential climate change impacts from Coastal Plain production.

152. This analysis underestimates potential greenhouse gas emissions by not fully incorporating global effects from Coastal Plain production and unreasonably assuming that 96% of Coastal Plain oil and gas production will replace other U.S. fuels—mostly oil, natural gas, and coal—that would otherwise be developed.

153. Development of Coastal Plain oil and gas is particularly expensive because of its remote location, environmental conditions, and lack of existing pipelines, processing centers, and other infrastructure.

154. Even assuming that Defendants account for this, Defendants do not justify their assumption that Coastal Plain oil and gas once produced will compete with and ultimately displace oil and gas from cheaper domestic projects, let alone analyze how it will interact with global markets.

155. Given the high cost of Coastal Plain production, the FEIS likely overstates the potential for Coastal Plain oil and gas to displace production from more economical projects elsewhere within the United States. If Coastal Plain oil and gas production, even accounting for its relative high cost, significantly displaces U.S. consumption, it is

reasonable that such Coastal Plain production would also be consumed by global energy markets, thereby increasing greenhouse gas emissions beyond BLM's projections. However, BLM does not consider these impacts, even assuming that its other projections are reasonable, which they are not.

156. If Coastal Plain oil and gas is produced but does not displace production from these other domestic projects, then Coastal Plain production will contribute to greater supply and demand and greater greenhouse gas emissions in the U.S. and globally. As a result, contrary to the Record of Decision's assertions that the FEIS overstates environmental impacts, the FEIS likely understates the greenhouse gas emissions and climate change impacts of the Leasing Program in violation of NEPA.

157. The FEIS also does not reconcile or rationally justify its conflicting assumptions that Coastal Plain development will displace other domestic oil and gas production but also only add jobs (and not displace) in the United States. In other words, the FEIS assumes, without justification, that the jobs created by Coastal Plain development and production would not be offset by jobs lost through the displacement of development elsewhere in the United States.

(2) Defendants' Deficient Analysis of Emission Costs

158. The FEIS greenhouse gas emission analysis further violates NEPA because it quantifies the economic benefits of Coastal Plain development without quantifying the

costs of development, particularly costs from greenhouse gas emissions and associated climate change.

159. NEPA requires that where an agency quantifies the benefits of a proposed action, the agency must also quantify the costs, including the social costs associated with greenhouse gas emissions, to ensure that the agency accurately analyzes the environmental consequences of its proposed action.

160. The social cost of carbon is a federally developed tool to assist agencies in evaluating the social benefits of reducing carbon dioxide emissions when analyzing the costs and benefits of agency action.

161. Defendants could have applied the social cost of carbon or another available metric to calculate the cost of development in the FEIS but they failed to do so. As a result, their analysis is deficient under NEPA.

(3) Defendants' Deficient Methane Emissions Analysis

162. The FEIS also fails to meaningfully analyze climate change impacts from methane emissions.

163. Methane is a potent greenhouse gas that is over 30 times more powerful than carbon dioxide in its ability to trap heat in the atmosphere over a 100-year time frame, and 86 times more potent over a 20-year time frame.

164. Methane, thus, has significant short-term climate change impacts.

165. Yet, in the FEIS, Defendants improperly analyzed methane emissions and their climate impacts, further contributing to the deficient analysis of greenhouse gas emissions and climate impacts in the FEIS.

(4) Defendants' Deficient Cumulative Impacts Analysis

166. NEPA obligates Defendants to meaningfully consider in the FEIS the cumulative impacts of greenhouse gas emissions associated with the leases on climate change. *See* 42 U.S.C. § 4332; 40 C.F.R. § 1508.7.

167. Defendants failed to meet this NEPA obligation, devoting a mere paragraph to its analysis of the cumulative climate impacts of the proposed Leasing Program.

c. Defendants' Inadequate Analysis of Migratory Bird Impacts

168. The FEIS analysis of the Leasing Program's impact on migratory birds in the Coastal Plain violates NEPA's "hard look" mandate and undermines Defendants' ability to make reasoned decisions about programmatic measures, including but not limited to lease stipulations, required operating procedures, and pre-leasing seismic activities.

169. The FEIS analysis is incomplete, unsupported by current data or evidence, and cursory, thereby significantly impairing Defendants' ability to make reasoned decisions.

170. Following Congress' authorization of the Leasing Program, lead experts from BLM, FWS, and other agencies identified actions that would be necessary to implement successfully the Leasing Program, including conducting studies to obtain the

best available science and gathering baseline data necessary to assess potential impacts of development.

171. The FEIS irrationally dismisses its own experts' opinions about both the sufficiency of available information, the necessity to gather data as quickly as possible, and the necessity for the information to make programmatic leasing decisions.

172. Defendants cannot fulfill their duty to take a "hard look" at potential impacts of the Leasing Program without vital baseline data about migratory birds because there is no way to know what effect the Leasing Program will have on the birds without it.

173. The absence of such critical data precludes Defendants from making reasoned choices about impacts of pre-leasing seismic activity, which land to lease, and how to define conservation and management priorities, including what impacts to mitigate, whether mitigation proposed would be adequate to offset impacts, or why mitigation measures were not adopted. The contradiction and inconsistencies between expert reports, studies, and opinions and the FEIS and subsequent Record of Decision are arbitrary and irrational.

174. Without the necessary data to meaningfully analyze the Leasing Program's impact on migratory birds, Defendants' analysis relies on generic, broad, and unsupported statements.

175. When the FEIS does cite studies to support its conclusory statements, it improperly relies on stale data, some of which is more than 40 years old.

176. Updated geographic, population, and impact data are essential to make reasoned programmatic decisions for the Leasing Program, specifically those determining where and under what terms and conditions leasing will occur; those decisions cannot be remedied later with to-be-determined site-specific analysis.

177. Moreover, because the Record of Decision permits substantially more surface disturbance than the FEIS contemplates, the Record of Decision renders the FEIS's incomplete analysis of migratory birds impacts even more deficient.

178. In addition, the deficient analysis of impacts on migratory birds undermines Defendants' ability to comply with their legal obligations under ANILCA and the Refuge Administration Act to manage the Arctic Refuge consistent with all of its purposes.

V. THE LEASING PROGRAM WILL HARM STATE PLAINTIFFS

179. State Plaintiffs have concrete and particularized interests in preventing harm to their natural resources, including public lands, waterways, and migratory birds that State Plaintiffs own and hold in both proprietary and regulatory capacities and in trust by the states for the benefit of the people of each state. These interests include protecting migratory birds that frequent the Coastal Plain and State Plaintiffs and reducing climate change impacts from fossil fuel development.

180. State Plaintiffs suffer concrete and redressable injury to these interests as a consequence of Defendants' failure to develop a lawful and adequate Record of Decision and FEIS that satisfy NEPA, properly interpret the Tax Act, and act in a manner consistent with all purposes of the Arctic Refuge.

181. Defendants' actions harm State Plaintiffs' sovereign and proprietary interests. State Plaintiffs devote considerable resources and efforts to fulfill their trustee duties and protect their sovereign and proprietary interests in their natural resources. *See supra* III. Parties; IV.C. Fossil Fuels and Climate Change Impacts.

182. However, because nature does not recognize state borders, environmental harms often have cross-border impacts. As discussed above, climate change impacts resulting from accumulation of greenhouse gas emissions have harmed and are increasingly harming state sovereign lands and coastal areas, state natural resources, state infrastructure, and the health and safety of state residents. These impacts result in economic losses for State Plaintiffs and their residents and businesses. Intergovernmental bodies like the Flyway Councils recognize the reality of cross-border impacts in their efforts for coordinated migratory bird conservation. But whether State Plaintiffs act alone or in collaboration with public agencies, they cannot make informed and reasoned regulatory decisions to protect their natural resources if they do not have accurate or meaningful information about the environmental impacts of actions taken outside of their states.

183. Defendants acknowledged in the FEIS that the Leasing Program will impact climate change and migratory birds, and those impacts will reach State Plaintiffs. The Record of Decision also recognizes that the Leasing Program "will have transboundary impacts" on migratory birds and other wildlife. ROD 16. However, without an adequate Record of Decision and FEIS, State Plaintiffs can neither mitigate these environmental impacts through their independent regulatory authorities nor protect their sovereign and proprietary interests. This inability to prevent these harms is especially concerning because the environmental impacts of the Leasing Program may be particularly devastating and lasting due to the already harsh and rapidly changing climate of the Arctic Refuge. Moreover, accelerated climate change on the Coastal Plain directly impacts State Plaintiffs because atmospheric circulation patterns connect the climates of the Arctic and the contiguous United States.

184. State Plaintiffs have a particularly pronounced interest in the health of migratory birds on the Coastal Plain given the documented and staggering net population loss of nearly three billion birds in North America since 1970. Given the immense density (millions) and diversity (at least 156 species) of migratory birds on the Coastal Plain, the area's ecological importance cannot be overstated. The area is vital for conservation and population management of thousands of birds that fly 3,000 miles or more annually from breeding, molting, and resting areas in the Coastal Plain to lower-48 states, including Plaintiffs' states where the bird and wildlife watchers collectively spent

over $20 billion in 2011, generating an economic impact—including direct, indirect, and induced effects—of approximately $37 billion. The Leasing Program, including its authorization of expansive surface development, will forever alter the fragile landscape of the Coastal Plain, imperiling migratory birds and their habitat.

185. State Plaintiffs have also expended considerable resources and efforts to significantly reduce greenhouse gas emissions in their states through increased use of renewable energy sources and promoting electric vehicles. Any greenhouse gas emissions from the Leasing Program's will offset and undermine these efforts and will harm State Plaintiffs' sovereign and proprietary interests. *See also supra* IV.C. Fossil Fuel and Climate Change Impacts.

186. Defendants' actions also harm State Plaintiffs procedural interests. Nearly all State Plaintiffs participated in the administrative review process by submitting comments on the DEIS and expressed their interest in Defendants' legal compliance, including environmental review obligations under NEPA. Defendants' failure to comply with NEPA in developing the challenged FEIS and Record of Decision and Defendants' failure to reach a reasoned decision that complies with the framework of laws protecting the Arctic Refuge harms State Plaintiffs' procedural interests. Lease sales and authorizations for oil and gas activities, including pre-leasing seismic exploration that could occur across the entire leasing program area, will irreparably degrade the Arctic

Refuge, harm wildlife and their habitat, emit greenhouse gases, and harm State Plaintiffs' concrete sovereign and proprietary interests in the resources affected by these impacts.

187. A court judgment vacating the Record of Decision and the Final EIS will redress the harms to State Plaintiffs by requiring Defendants to comply with its statutory obligations under the Refuge Administration Act, ANILCA, the APA, NEPA, and the Tax Act.

VI. FIRST CAUSE OF ACTION
(Violation of Refuge Administration Act, ANILCA, and APA)

188. State Plaintiffs incorporate all preceding paragraphs by reference.

189. The APA, which establishes the requirements of agency decision making, applies to review of the Record of Decision, FEIS, and any other final agency action concerning the Arctic Refuge. 5 U.S.C. §§ 701–06.

190. Under the APA, a "reviewing court shall . . . hold unlawful and set aside" agency action found to be "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law," or "without observance of procedure required by law." 5 U.S.C. § 706.

191. Agency actions are "arbitrary and capricious if the agency has relied on factors which Congress has not intended it to consider, 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 Mfrs. Ass'n, Inc. v.*

State Farm Mut. Auto. Ins. Co., 463 U.S. 29, 43 (1983), *cited in Greater Yellowstone Coal., Inc. v. Servheen*, 665 F.3d 1015, 1023 (9th Cir. 2011).

192. The Refuge Administration Act and ANILCA govern administration of the Arctic Refuge.

193. Under ANILCA, the Secretary must administer the Arctic Refuge "in accordance with the laws governing the administration of units of the National Wildlife Refuge System, and this Act." ANILCA § 304(a). ANILCA, Public Land Order 2214, and the Tax Act identify the Arctic Refuge's purposes.

194. ANILCA identifies four conservation purposes for the Arctic Refuge: (1) conservation of wildlife and their habitat (including migratory birds); (2) fulfillment of international treaty obligations with respect to wildlife and their habitats; (3) protection of water quality and quantity; and (4) opportunity for continued subsistence uses by local residents. ANILCA § 303(2)(B).

195. The ANILCA purposes built on the original conservation purposes the Secretary identified for creating the Arctic Range to preserve unique wildlife, wilderness, and recreational values. PLO 2214.

196. The Tax Act added "to provide for an oil and gas program on the Coastal Plain" to the existing conservation purposes for the Arctic Refuge. Tax Act § 20001(b)(2)(B).

197. The Refuge Administration Act provides that "the Secretary shall not initiate or permit a new use of a refuge or expand, renew, or extend an existing use of a refuge, unless the Secretary has determined that the use is a compatible use." 16 U.S.C. § 668dd(d)(3)(A)(i).

198. ANILCA provides that oil and gas leasing is a "use" that requires compatibility with the Refuge purposes. ANILCA § 304(b); *see also* 50 C.F.R. § 25.12.

199. A use is a "compatible use" if it will not "materially interfere with or detract from the fulfillment of the mission of the [Refuge] System or the purposes of the refuge." 16 U.S.C. § 668ee(1).

200. Compatibility determinations must be in writing and based on "sound professional judgment." 50 C.F.R. § 25.12.

201. "Sound professional judgment" means a decision "that is consistent with principles of sound fish and wildlife management and administration, available science and resources, and adherence to the requirements of [the Refuge Administration] Act and other applicable laws." 16 U.S.C. § 668ee(3).

202. The Leasing Program is a new use of the Arctic Refuge that requires a compatibility determination. Defendant Bernhardt did not make such a determination in violation of the Refuge Administration Act. 16 U.S.C. §§ 668dd–68ee.

203. The Refuge Administration Act also requires that the Secretary manage each refuge "to fulfill the mission" of the Refuge System, "as well as the specific purposes for which that refuge was established." *Id*. § 668dd(a)(3)(A).

204. The Refuge Administration Act further directs the Secretary to, among other things, provide for the conservation of fish, wildlife, and their habitats, ensure the biological integrity and health of the Refuge System, contribute to the conservation of ecosystems in the United States, and ensure the mission of the Refuge System and the purposes of each refuge are carried out. *See id*. § 668dd(a)(4).

205. The Record of Decision authorizes a leasing program that materially interferes with or detracts from the fulfillment of the mission of the Refuge System and purposes of the Arctic Refuge because it unlawfully prioritizes oil and gas development above the conservation purposes of the Refuge System and the Arctic Refuge. The Secretary thus violated his obligations under the Refuge Administration Act, 16 U.S.C. §§ 668dd–668ee, and ANILCA, § 303(2)(B), as well as the rational decision making mandates of the APA, 5 U.S.C. § 706.

206. To the extent the Secretary made a compatibility determination or considered fulfillment of the Refuge System mission and the Arctic Refuge purposes, the Secretary failed to provide a rational explanation to support either a compatibility determination or a decision that the Leasing Program will fulfill the mission of the Refuge System or the Arctic Refuge purposes. The Secretary's authorization of the

Leasing Program is thus arbitrary, capricious, an abuse of discretion, and otherwise not in accordance with law in violation of the APA. 5 U.S.C. § 706.

VII. SECOND CAUSE OF ACTION
(Violation of NEPA and the APA: Failure to Consider a Reasonable Range of Alternatives)

207. State Plaintiffs incorporate all preceding paragraphs by reference.

208. Courts review claims challenging NEPA violations under the APA. *Pit River Tribe*, 469 F.3d at 778.

209. NEPA requires federal agencies to review the environmental impacts of major federal actions before the action occurs to ensure agencies make informed decisions based on sound science and public input. 42 U.S.C. § 4332.

210. As part of this environmental review, agencies must, "to the fullest extent possible," develop an EIS that rigorously explores and objectively evaluates all reasonable alternatives to the proposed action, including a no action alternative, and to discuss the reasons for eliminating any alternatives rejected from detailed study. 42 U.S.C. § 4332; 40 C.F.R. § 1502.14(a) and (d).

211. NEPA further requires that agencies state in the EIS how alternatives considered will achieve NEPA's requirements and the requirements of other environmental laws, including the Refuge Administration Act and ANILCA. 42 U.S.C. §§ 4331–32; 40 C.F.R. § 1502.2(d).

212. The Refuge Administration Act and ANILCA require the Secretary to manage the Arctic Refuge consistent with its seven conservation purposes and the oil and gas program purpose established in the Tax Act and to fulfill the mission of the Refuge System. 16 U.S.C. § 668dd(a)(3)(A), (4); ANILCA §§ 303(2)(B), 304–05; PLO 2214.

213. Contrary to these mandates, Defendants failed to analyze a reasonable alternative that adequately protects the Coastal Plain from significant environmental harm and is consistent with the conservation purposes of the Arctic Refuge. Instead, Defendants analyzed action alternatives that prioritize oil and gas development above those conservation purposes.

214. An alternative that minimizes environmental impact to the Coastal Plain would, among other things, place parameters on the Leasing Program that are consistent with the Tax Act; protect the integrity of the Coastal Plain and its wildlife (by restricting surface acre disturbance, limiting ice road construction, limiting seismic activity, delaying or phasing leasing, minimizing greenhouse gas emissions, protecting wildlife habitat, and minimizing other adverse environmental impacts); and otherwise be consistent with the conservation purposes of the Arctic Refuge. Such an alternative is a reasonable alternative under the purpose and need of the Leasing Program.

215. Defendants should have analyzed such an alternative in detail but did not do so.

216. Defendants' failure to analyze an alternative that would implement the Tax Act in a manner consistent with the conservation purposes of the Arctic Refuge renders the Record of Decision and the FEIS inadequate under NEPA.

217. Because Defendants failed to consider a reasonable range of alternatives, the Record of Decision and the FEIS on which it relies are arbitrary, capricious, an abuse of discretion, and otherwise not in accordance with law and without observance of procedure required by law contravening NEPA, 42 U.S.C. §§ 4331, 4332, its implementing regulations, and the APA, 5 U.S.C. §§ 701–06.

VIII. THIRD CAUSE OF ACTION
(Violation of NEPA and the APA: Inadequate Analysis of Greenhouse Gas Emissions and Climate Change Impacts)

218. State Plaintiffs incorporate all preceding paragraphs by reference.

219. Courts review claims challenging NEPA violations under the APA. *Pit River Tribe*, 469 F.3d at 778.

220. NEPA requires that federal agencies take a "hard look" at the significant impacts on the human environment of any proposed major federal action to foster informed decision making and informed public participation. *Methow Valley Citizens Council*, 490 U.S. at 350.

221. To fulfill this requirement, an EIS must carefully review the reasonably foreseeable direct, indirect, and cumulative environmental impacts of a proposed action and the significance of those impacts. 42 U.S.C § 4332; 40 C.F.R. §§ 1502.16, 1508.8.

222. An EIS must also discuss measures to mitigate adverse environmental consequences by avoiding, minimizing, rectifying, reducing, eliminating, or compensating for adverse impacts. 40 C.F.R. §§ 1502.14(f); 1502.16(h), 1508.20.

223. Defendants' FEIS inadequately and irrationally analyzes the direct, indirect, and cumulative impacts of greenhouse gas emissions and associated climate impacts from the proposed action.

224. The FEIS irrationally fails to analyze how Coastal Plain oil and gas development will impact global energy demand and emissions and irrationally concludes that 96% of Coastal Plain production will replace other U.S. production, likely underestimating program emissions; fails to consider the social cost of carbon or otherwise quantify the costs of carbon emissions; fails to analyze adequately methane emissions; and fails to analyze adequately the cumulative climate impacts of development and production.

225. For these reasons, Defendants failed to take a hard look at the greenhouse gas emission and climate change impacts of the Leasing Program and to consider measures to mitigate those impacts.

226. The Record of Decision and the FEIS on which it relies are thus arbitrary, capricious, an abuse of discretion, and otherwise not in accordance with law and without observance of procedure required by law, in violation of NEPA, 42 U.S.C. §§ 4331, 4332, and its implementing regulations, and the APA, 5 U.S.C. §§ 701–06.

IX. FOURTH CAUSE OF ACTION
(Violation of NEPA and the APA: Inadequate Analysis of Migratory Bird Impacts)

227. State Plaintiffs incorporate all preceding paragraphs by reference.

228. Courts review claims challenging NEPA violations under the APA. *Pit River Tribe*, 469 F.3d at 778.

229. In addition to NEPA's requirement that agencies take a "hard look" at significant environmental impacts and consider measures to mitigate those impacts, NEPA requires that agencies obtain information essential for making a reasoned choice among alternatives unless the costs of doing so would be "exorbitant." 40 C.F.R. § 1502.22.

230. The FEIS fails to adhere to these mandates by performing an inadequate analysis of impacts to migratory birds that in turn impairs Defendants' ability to consider the sufficiency of mitigation measures.

231. Specifically, the FEIS fails to include critical baseline data about migratory birds in the Coastal Plain. Instead, the FEIS relies on conclusory, unsupported statements and stale data and trivializes the significance of unknown data as inconsequential for the programmatic EIS. The FEIS improperly defers this data for site-specific impact statements. The FEIS further substantially understates the impact on migratory birds by predicating its incomplete analysis on surface disturbance acreage that is significantly

less than what is reasonably foreseeable under the Leasing Program as authorized in the Record of Decision.

232. The absence of essential data and failure to consider significant impacts precludes Defendants from making reasoned choices about programmatic parameters and potential mitigation measures, including but not limited to pre-leasing seismic activity, which tracts of land to lease, terms of lease stipulations, and sufficiency of required operating procedures.

233. In addition, Defendants' decision to defer analysis of migratory bird impacts violates NEPA's mandate that environmental analysis occur at the earliest possible time. 40 C.F.R. § 1501.2.

234. For these reasons, the Record of Decision and the FEIS on which it relies are arbitrary, capricious, an abuse of discretion, and otherwise not in accordance with law and without observance of procedure required by law, contravening NEPA, 42 U.S.C. §§ 4331, 4332, its implementing regulations, and the APA, 5 U.S.C. §§ 701–06.

X. FIFTH CAUSE OF ACTION
(Violation of Tax Act and APA)

235. State Plaintiffs incorporate all preceding paragraphs by reference.

236. The Tax Act contains a surface development provision that directs the Secretary, through BLM, to authorize up to 2,000 acres of federal land on the Coastal Plain "to be covered by production and support facilities (including airstrips and any

areas covered by gravel berms or piers for support of pipelines) during the term of the leases under the oil and gas program under this section." Tax Act § 20001(c)(3). This provision limits surface development to no more than 2,000 acres.

237. The Tax Act also contains a rights-of-way provision: "The Secretary shall issue any rights-of-way or easements across the Coastal Plain for the exploration, development, production, or transportation necessary to carry out this section." *Id*. § 20001(c)(2).

238. In the Record of Decision and the FEIS, Defendants unlawfully and irrationally interpreted the surface development provision as precluding an oil and gas leasing program that would allow less than 2,000 acres of surface disturbance, claiming such an alternative would be inconsistent with the Tax Act.

239. In the Record of Decision, Defendants also unlawfully and irrationally interpreted the 2,000-acre surface disturbance limit as applying only to facilities that are both production and support facilities. Under Defendants' interpretation, surface disturbance that does not fall within this narrow definition would not count towards the surface development cap, thereby allowing surface disturbance on the Coastal Plain to exceed the 2,000-acre limit Congress imposed.

240. Finally, Defendants unlawfully and irrationally interpreted the rights-of-way provision to override the 2,000-acre surface development limit by stating that BLM

must issue a right-of-way grant or necessary access authorization, providing Defendants another avenue to exceed the 2,000-acre surface development cap set by Congress.

241. Defendants' interpretation of the Tax Act violates the statute's plain language and contravenes Congressional intent. Thus, Defendants' adoption the Leasing Program based on these unlawful interpretations is contrary to the Tax Act and exceeds Defendants' statutory authority.

242. For these reasons, Defendants' interpretation of the Tax Act's surface acre development limit and the rights-of-way provision and adoption of the Leasing Program based on that interpretation is arbitrary, capricious, an abuse of discretion, and otherwise not in accordance with law, in violation of the Tax Act, § 20001, and the APA, 5 U.S.C. § 706.

XI. RELIEF REQUESTED

WHEREFORE, State Plaintiffs respectfully request that this Court:

A. Declare that Defendants have violated NEPA, the Refuge Administration Act, ANILCA, and the Tax Act, and further declare that Defendants abused their discretion and acted arbitrarily, capriciously, contrary to law, and in excess of their statutory jurisdiction and authority in authorizing the Leasing Program;

B. Vacate and set aside Defendants' Record of Decision, FEIS, and any other action taken by Defendants in reliance on either document;

C. Enter injunctive relief as necessary to prevent irreparable harm from

implementation of the Leasing Program based on the unlawful Record of Decision and FEIS;

D. Award State Plaintiffs all reasonable costs and fees as authorized by law; and

E. Award State Plaintiffs such other relief as the Court may deem just and proper.

DATED this 9th day of September, 2020.

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**motions for pro hac vice admission pending or forthcoming*