NICK BROWN
Attorney General of Washington
SARAH REYNEVELD
YURIY KOROL
Assistant Attorneys General
MAGGIE BAKER SMITH, *pro hac vice pending*
Special Assistant Attorney General
Washington Attorney General's Office
Environmental Protection Division
800 5th Ave Ste. 2000 TB-14
Seattle, Washington 98104-3188
(206) 233-3391
Sarah.Reyneveld@atg.wa.gov
Yuriy.Korol@atg.wa.gov
Maggie.Smith@atg.wa.gov

Attorneys for Amicus State of Washington

[additional counsel listed on signature page]

THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

GWICH'IN STEERING COMMITTEE, *et al.*,

Plaintiffs,

v.

DOUG BURGUM, in his official capacity as Secretary of the Interior, *et al.*,

Defendants,

and

NORTH SLOPE BOROUGH, *et al.*,

Intervenor-Defendants.

No. 3:20-cv-00204-SLG

TABLE OF CONTENTS

INTRODUCTION 1

IDENTITY AND INTEREST OF AMICI CURIAE 1

BACKGROUND 6

ARGUMENT 8

A. BLM Did Not Identify or Analyze Any Feasible Alternatives to its Preferred Alternative as required by NEPA. 8

B. BLM Was Required to Analyze an Environmentally Protective Alternative. 11

C. BLM Did Not Provide a Meaningful Opportunity for Public Comment. 13

D. The Secretary Failed to Comply with the Refuge Act. 14

CONCLUSION 16

TABLE OF AUTHORITIES

CASES

California v. Block,
690 F.2d 753 (9th Cir. 1982) 13

Cook Inletkeeper v. U.S. Dep't of the Interior,
740 F. Supp. 3d 767 (D. Alaska 2024) 12

Earth Island Inst. v. United States Forest Serv.,
87 F.4th 1054 (9th Cir. 2023) 13

Massachusetts v. EPA,
549 U.S. 497 (2007) 6

Robertson v. Methow Valley Citizens Council,
490 U.S. 332 (1989) 13

Seven Cnty. Infrastructure Coal. v. Eagle Cnty., Colo.,
605 U.S. 168 (2025) 9, 10, 11

United States v. Alaska,
521 U.S. 1 (1997) 2

Vt. Yankee Nuclear Power Corp. v. Nat. Res. Def. Council, Inc.,
435 U.S. 519 (1978) 9

W. Watersheds Project v. Abbey,
719 F.3d 1035 (9th Cir. 2013) 9

'Ilio'ulaokalani Coal. v. Rumsfeld,
464 F.3d 1083 (9th Cir. 2006) 12

STATUTES

16 U.S.C. § 668dd 2

16 U.S.C. § 668dd(a)(1) 16

16 U.S.C. § 668dd(a)(3)(A) 14, 15

16 U.S.C. § 668dd(d)(3)(A)(i) 14, 15

16 U.S.C. § 668dd(d)(3)(B) 15

Case 3:20-cv-00204-SLG Document 171-1 Filed 06/22/26 Page 3 of 26

16 U.S.C. § 668dd(d)(4)(B) 16

16 U.S.C. § 668ee(1) 15

16 U.S.C. § 1003 6

42 U.S.C. § 4332(C)(iii) 8, 11, 12

42 U.S.C. § 4332(F) 8, 12

42 U.S.C. § 4336a(c) 13

Alaska National Interest Lands Conservation Act,
Pub. L. No. 96-487, § 303(2), 94 Stat. 2731 (1980) 2, 15

Tax Cuts and Jobs Act of 2017,
Pub. L. No. 115-97, § 20001, 131 Stat. 2054 (2017) 6, 7

One Big Beautiful Bill Act,
Pub. L. No. 119-21, § 50104, 139 Stat. 72 (2025) 7

REGULATIONS

40 C.F.R. § 1502.14 8

50 C.F.R. § 26.41 15

OTHER AUTHORITIES

2022 Massachusetts Climate Change Assessment (Dec. 2022),
https://www.mass.gov/doc/2022-massachusetts-climate-change-assessment-december-2022-volume-ii-statewide-report/download 6

2024 Incident Archive, Cal. Dep't of Forestry and Fire Prot.,
https://www.fire.ca.gov/incidents/2024 (last visited June 18, 2026) 6

Birds and Pacific Flyway, Northern California Water, https://norcalwater.org/efficient-water-management/birds-and-pacific-flyway (last visited May 29, 2026) 4

James Caudill, *Wildlife Watching in the U.S.: The Economic Impacts on National and State Economies in 2011* (2014) 4

Mark A. Colwell, Chelsea Polevy & Hannah LeWinter, *Humboldt Bay, California, USA Hosts a Globally Important Shorebird Community Year-Round*, 127 Wader Study 228 (2020), https://www.waderstudygroup.org/wp-content/uploads/2020/12/1273-Colwell-et-al.pdf 4

Case 3:20-cv-00204-SLG Document 171-1 Filed 06/22/26 Page 4 of 26

Migratory Bird Program Administrative Flyways, U.S. Fish & Wildlife Service, https://www.fws.gov/partner/migratory-bird-program-administrative-flyways (last visited June 18, 2026). 3

Peter Banacos, *The Great Vermont Flood of 10-11 July 2023*, Nat'l Weather Serv. (Aug. 5, 2023, at 8:45 AM), https://www.weather.gov/btv/The-Great-Vermont-Flood-of-10-11-July-2023-Preliminary-Meteorological-Summary 6

Species, U.S. Fish & Wildlife Serv., https://www.fws.gov/refuge/sonny-bono-salton-sea/species (last visited May 29, 2026) 4

U.S. Dep't of the Interior & U.S. Dep't of Com., *2011 National Survey of Fishing, Hunting, and Wildlife-Associated Recreation: California,* FHW/11-CA (rev. Feb. 2014) 4

U.S. Fish and Wildlife Serv., *Economic Analysis of the Migratory Bird Hunting Regulations for the 2022-2023 Season* (2022), https://downloads.regulations.gov/FWS-HQ-MB-2021-0057-0029/content.pdf 4

INTRODUCTION

The States of Washington, California, Colorado, Connecticut, Delaware, Illinois, Maine, Maryland, Massachusetts, Michigan, Minnesota, Oregon, Rhode Island, and Vermont ("Amici States" or "States") submit this brief in support of Plaintiffs. The Bureau of Land Management's (BLM) 2025 Record of Decision (2025 ROD) opened the entire Coastal Plain of the Arctic National Wildlife Refuge (the Refuge) to oil and gas leasing and seismic exploration. Amici States agree with Plaintiffs that the 2025 ROD violates the law and should be vacated. In this brief, Amici States offer their unique perspective on how BLM's rushed review under the National Environmental Policy Act (NEPA) and the Secretary of the Interior's (Secretary) failure to comply with the National Wildlife Refuge System Administration Act (Refuge Act) harms the residents of their states.

IDENTITY AND INTEREST OF AMICI CURIAE

Amici States have a fundamental and unique interest in preventing harm to the Refuge's Coastal Plain. Our States are home to migratory birds that rely on the Coastal Plain as habitat for breeding, feeding and migration staging. Implementation of BLM's proposed 2025 ROD authorizing a Coastal Plain Oil and Gas Leasing Program (2025 Leasing Program) that offers the entire Coastal Plain for leasing and seismic exploration will harm the birds that migrate to our States. The 2025 leasing program will also increase greenhouse gas emissions that contribute to climate change in our states.

The importance of the Refuge's Coastal Plain as habitat for migratory birds that travel across the United States has been acknowledged since before Alaska's statehood

Case 3:20-cv-00204-SLG Document 171-1 Filed 06/22/26 Page 6 of 26

and was part of the original rationale for providing special protections for the area. In an application to establish the Refuge's predecessor, the Arctic National Wildlife Range, the Department of the Interior explained that "countless lakes, ponds, and marshes within the proposed Range are nesting grounds for large numbers of migratory waterfowl that spend about half of each year in the United States." *United States v. Alaska*, 521 U.S. 1, 51 (1997). Congress provided further protection for these lands by creating the Refuge as part of the Alaska National Interest Lands Conservation Act (ANILCA). 16 U.S.C. § 668dd. ANILCA specified that one purpose of the Refuge was the conservation of "snow geese" and "other migratory birds." Pub. L. No. 96-487, § 303(2), 94 Stat. 2731 (1980) (codified at 16 U.S.C. § 668dd note).

An astounding 157 bird species have been recorded in the Arctic Refuge. AR390468. Most of these species rely on the Refuge for critical life stages. AR390469; Docket No. 168 at 16. At least several hundred thousand birds use the Refuge during spring migration, summer breeding, and fall staging and migration. *Id*. For example, the entire western Arctic population of snow geese assembles for fall migration on the Coastal Plain and depends on this staging period to build energy reserves for their southward migration. AR390474. At least nineteen different species of shorebirds use a wide variety of tundra habitats on the Coastal Plain for nesting, and fourteen of those are considered shorebirds of conservation concern. AR390475; AR390972. The importance of the Refuge has only increased as other parts of the Coastal Plain have been disturbed. AR390469. Evidence suggests that the undisturbed habitat in the Refuge may compensate

for degraded migratory bird habitat in other areas of the North Slope that have been opened to oil and gas drilling. AR380398.

The Refuge serves as critical and necessary habitat for these species, but most bird species spend only a portion of the year in the Refuge. In the winter, the species disperse southward travelling upwards of 3,000 miles following "flyways" that carry them across the United States. AR61006. The Refuge occupies a singular location at the northern end of all North American flyways.[1] Because of this unique location, birds that fly from or through every state in the United States use the Refuge, making the Coastal Plain an important northern nursery for ground-nesting migratory birds to breed.[2] AR380397. For example, most geese and dabbling ducks migrate through the Pacific, Central, Atlantic, and Mississippi Flyways after leaving the Refuge to wintering areas across the contiguous United States, including Amici States. Tundra swans cross the continent to winter on the Atlantic coast, largely in Chesapeake Bay. AR390472. Brant, Pacific loons, and yellow-billed loons from the Refuge winter primarily along the Pacific coast of North America. AR390472.

Harm to these migratory bird species harms our States. For example, the Pacific Flyway States of Washington, Oregon, and California form an interconnected ecological and economic chain with the Refuge through shared migratory birds, such that disruption to the Refuge directly threatens the Pacific Flyway States' ecology and economies.

---

[1] *Migratory Bird Program Administrative Flyways*, U.S. Fish & Wildlife Service, https://www.fws.gov/partner/migratory-bird-program-administrative-flyways (last visited June 18, 2026).

[2] Amici States represent all four flyways. *Id.*

Pacific loons, western sandpipers, and golden plovers migrate along the Pacific Flyway from the Coastal Plain to Washington. AR61007. California's wetlands in the Central Valley are critical to migratory birds, supporting 44% of wintering waterfowl populations traveling the Pacific Flyway between the Arctic and California.[3] Similarly, along the coast, California's Humboldt Bay is among the most important places in the entire hemisphere for Pacific Flyway migratory shorebirds including species like snow geese, ruddy turnstone, long-billed dowitcher, black-bellied plover, sanderling, and dunlin, among others.[4] Hunting and wildlife watching contributes almost $2 billion dollars annually to Washington's economy, with migratory bird watching and hunting forming an essential part of that economic impact. *Id*. In California, nearly 5 million people go bird watching each year, with 2.3 million traveling to do so, contributing to $3.8 billion in economic impact from wildlife watching,[5] and migratory bird hunting generates "over $100 million in expenditures."[6]

---

[3] *Birds and Pacific Flyway*, Northern California Water, https://norcalwater.org/efficient-water-management/birds-and-pacific-flyway (last visited May 29, 2026).

[4] *See* Mark A. Colwell, Chelsea Polevy & Hannah LeWinter, *Humboldt Bay, California, USA Hosts a Globally Important Shorebird Community Year-Round*, 127 Wader Study 228, 228 (2020), https://www.waderstudygroup.org/wp-content/uploads/2020/12/1273-Colwell-et-al.pdf; *See also Species*, U.S. Fish & Wildlife Serv., https://www.fws.gov/refuge/sonny-bono-salton-sea/species (last visited May 29, 2026).

[5] U.S. Dep't of the Interior & U.S. Dep't of Com., *2011 National Survey of Fishing, Hunting, and Wildlife-Associated Recreation: California,* FHW/11-CA (rev. Feb. 2014); James Caudill, *Wildlife Watching in the U.S.: The Economic Impacts on National and State Economies in 2011* 6 (2014).

[6] U.S. Fish and Wildlife Serv., *Economic Analysis of the Migratory Bird Hunting Regulations for the 2022-2023 Season* 17 (2022), https://downloads.regulations.gov/FWS-HQ-MB-2021-0057-0029/content.pdf.

On the east coast, the Atlantic seaboard 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. AR61006-08. These birds form a valuable part of those States' ecosystems and are prized for birdwatching and hunting. *Id*. Maryland's portion of the Chesapeake Bay is particularly important to tundra swans. AR390472.

Implementation of the 2025 Leasing Program harms the birds that migrate to Amici States. The 2025 Leasing Program would offer the entire Coastal Plain for leasing. The 2025 Leasing Program does not contain any areas that are off limits from leasing, which could have protected certain habitat types and reduced habitat loss, disturbance, injury and mortality. AR389486. And while lease restrictions would apply, BLM predicted that infrastructure in the program area would be preferentially placed in moist tundra areas with better drainage and disproportionally impact bird species that rely on that habitat for nesting. AR389485. This disproportionate impact will affect thirty different species, including tundra swans, sandhill cranes, and several species of sandpiper. AR390972-73.

Additionally, BLM's adoption of an expansive 2025 Leasing Program that maximizes leasing and seismic exploration will result in significant greenhouse gas emissions and climate change harm to Amici States. AR389370 (disclosing that Alternative B has the highest annual CO2 emissions among the analyzed alternatives). Climate change already causes devasting impacts on our states, including rising sea levels, extreme weather events, and ocean acidification. For example, because of climate

change, States have experienced severe weather phenomena, including more frequent and intense storms, flooding, heat waves, droughts, and wildfires. *See Massachusetts v. EPA*, 549 U.S. 497, 521-23 (2007). These impacts have resulted in significant losses and damage to state property, infrastructure, fisheries, wildlife, and tourism. In 2024, for instance, California experienced over 8,100 wildfires, resulting in more than 1 million acres burned.[7] In Massachusetts, coastal property damage is expected to reach over $1 billion a year, on average, by the 2070s.[8] In 2023, severe flooding in Vermont caused two fatalities and extensive property damage.[9] Increased leasing and seismic exploration such as that contemplated in the 2025 Leasing Program will only worsen these impacts.

BACKGROUND[10]

For most of the Refuge's existence, Congress did not allow oil and gas leasing within its borders. 16 U.S.C. § 1003. In 2017, Congress lifted that prohibition and amended ANILCA to mandate two lease sales by the end of 2024. Tax Cuts and Jobs Act of 2017, Pub. L. No. 115-97, § 20001, 131 Stat. 2054, 2235-37 (2017) (Tax Act). The Tax Act also capped the associated surface development to 2,000 surface acres. *Id.* §

[7] *2024 Incident Archive,* Cal. Dep't of Forestry and Fire Prot., https://www.fire.ca.gov/incidents/2024 (last visited June 18, 2026).

[8] *2022 Massachusetts Climate Change Assessment* 72 (Dec. 2022), https://www.mass.gov/doc/2022-massachusetts-climate-change-assessment-december-2022-volume-ii-statewide-report/download.

[9] Peter Banacos, *The Great Vermont Flood of 10-11 July 2023*, Nat'l Weather Serv. (Aug. 5, 2023, at 8:45 AM), https://www.weather.gov/btv/The-Great-Vermont-Flood-of-10-11-July-2023-Preliminary-Meteorological-Summary.

[10] A complete background is set forth in Plaintiffs' opening brief. Docket No. 168 at 14-24. The brief background offered here highlights facts of particular relevance to the arguments made by Amici States.

20001(c)(3). In addition, Congress required that at least 400,000 acres be offered at each of the required sales of "areas that have the highest potential for the discovery of hydrocarbons." AR389285 (quoting Tax Act § 20001(c)(1)).

In 2019, to meet its obligations under NEPA, BLM drafted a Final Environmental Impact Statement (FEIS) that examined "which lands will be available for lease and the terms and conditions to be applied to leases and authorizations for oil and gas activities." AR389285. It selected Alternative B from the FEIS in a 2020 ROD. AR506983. However, that FEIS analyzed only a limited range of alternatives. AR90163. Recognizing this deficiency, BLM expanded its analysis through a Supplemental Environmental Impact Statement (SEIS). Development of alternatives under the SEIS contained three components: "[1] the lease stipulations and [Required Operating Procedures (ROPs)], [2] the interpretation and application of the 2,000-acre disturbance limit from PL 115-97, and [3] the areas open to seismic exploration activities." AR389293.

In July of 2025, Congress passed the One Big Beautiful Bill Act (OBBBA). Pub. L. No. 119-21, § 50104(b)(1)-(2), (b)(5), 139 Stat. 72, 142-43 (2025). OBBBA altered the legal landscape governing oil and gas leasing on the Refuge. First, Congress mandated four additional lease sales. *Id*. Second, it required that those lease sales "offer the same terms and conditions" described under the 2020 ROD. *Id*. Finally, it extended the Tax Act's 2,000-acre surface development limitation to leases issued under the new sales. *Id*. Despite these changes, BLM did not prepare a new NEPA analysis for its 2025 ROD. Instead, the agency prepared a "determination of NEPA adequacy" or "DNA" that relied on the analyses in the 2019 FEIS and 2024 SEIS as a basis for concluding that

BLM complied with NEPA. AR522061. But both the 2019 FEIS and 2024 SEIS predated OBBBA and analyzed only one alternative, Alternative B, that would comply with OBBBA's requirements. Alternative B made available the entire Coastal Plain for oil and gas leasing and seismic exploration activity, maximizing the surface area available for these activities while providing the fewest protections for biological and ecological resources. AR389294-97.

ARGUMENT

A. BLM Did Not Identify or Analyze Any Feasible Alternatives to its Preferred Alternative as required by NEPA.

NEPA sets forth a basic and fundamental requirement for an Environmental Impact Statement (EIS): it must include "a reasonable range of alternatives to the proposed agency action . . . that are *technically and economically feasible*, and meet the purpose and need of the proposal." 42 U.S.C. § 4332(C)(iii) (emphasis added). The statue instructs that agencies "shall" "study, develop, and describe *technically and economically feasible* alternatives." 42 U.S.C. § 4332(F) (emphasis added). The Council for Environmental Quality regulations described the analysis of alternatives to the proposed action as "the heart of the environmental impact statement." 40 C.F.R. § 1502.14 (withdrawn).

Since the passage of NEPA, the Supreme Court has emphasized the need for agencies to analyze feasible alternatives to the proposed action. The Court has explained that "[t]o make an impact statement something more than an exercise in frivolous boilerplate the concept of alternatives must be bounded by some notion of feasibility." *Vt.*

Yankee Nuclear Power Corp. v. Nat. Res. Def. Council, Inc., 435 U.S. 519, 551 (1978). The requirement to identify feasible alternatives is separate and distinct from the requirement to disclose the environmental effects of the proposed action. The Supreme Court recently reiterated this fundamental requirement: "NEPA requires federal agencies to prepare an environmental impact statement, or EIS, identifying significant environmental effects of the projects, *as well as* feasible alternatives." *Seven Cnty. Infrastructure Coal. v. Eagle Cnty., Colo.*, 605 U.S. 168, 177 (2025) (*Seven Cnty.*) (emphasis added).

BLM failed to meet this basic NEPA requirement. OBBBA altered BLM's discretion and therefore what constitutes a feasible alternative, both because it mandated adoption of the terms and conditions from the 2020 ROD and because it required four additional lease sales that would affect what areas could or must be leased. This altered the "legal landscape," and BLM "must consider this change in determining the reasonable range of alternatives that should be carefully analyzed." *W. Watersheds Project v. Abbey*, 719 F.3d 1035, 1053 (9th Cir. 2013). The alternatives analyzed in the existing NEPA documents all examined varying areas that would be open to leasing and seismic exploration, paired with distinct terms and conditions. See AR389294-97. These terms and conditions have significant consequences at the impact level when analyzing the effects of each alternative. Yet only Alternative B from the 2019 EIS analyzed the effects of the OBBBA-prescribed terms and conditions.

BLM might argue that it met its NEPA obligations because the existing range of alternatives discloses the environmental impacts from a range of alternatives and captures

all potential effects. But this argument misses the point. As the Supreme Court clearly articulated, NEPA does not just require a list of potential environmental impacts, it has a distinct requirement for agencies to identify feasible alternatives to their proposed actions. *Seven Cnty.*, 605 U.S. at 177. This gives the decision makers options for lessening the environmental impact of their actions and informs the public regarding the options available to the government. BLM has violated NEPA in failing to identify any such alternatives.

BLM's failure to meet NEPA's basic requirement results in a significant lack of transparency. The DNA does not contain any analysis of the impact of OBBBA on the feasible alternatives for the area to be developed, leaving the public uninformed regarding how BLM viewed the feasibility of the alternatives it claimed to be considering. The DNA states that "[t]he proposed action for this DNA is to adopt, in a new ROD, another alternative from the range of alternatives previously analyzed." AR522065. But this was not a real choice—in light of OBBBA, there was only one feasible alternative in the range of alternatives previously analyzed. The DNA's only acknowledgment of the effect of OBBBA on the alternatives is to state that the terms and conditions contained in the 2020 ROD "shall be brought forward for the purpose of this DNA analysis." AR522066. But there is no discussion of the impact this has on the alternatives or what remains amongst the alternatives for BLM to select.

In the 2025 ROD, BLM seems to agree that—in its view—certain alternatives analyzed in the 2024 SEIS are no longer viable. For example, BLM argues that there "is only a superficial argument that the severely constrained 400,000 acres made available

for leasing in the 2024 ROD is sufficient for a single lease sale of 400,000 acres consistent with [OBBBA].” AR522120. BLM also claimed that “[t]o the extent there was any question about how to balance the multiple statutory purposes of ANWR in the Coastal Plain, that question has been resolved by Congress in [the OBBBA] *as to the areas to be offered for lease* and the terms and conditions to apply to the leasing program.” AR522123 (emphasis added). Yet, when discussing the alternatives, BLM provided no analysis of how it thinks Congress resolved the question of the areas to be offered for lease and did not explain what alternatives (if any) were still feasible. AR522123-24. Instead, the public is left to guess at what options BLM believed were before it when it made its decision.

Issuing a ROD after considering only one feasible alternative is arbitrary and capricious. 42 U.S.C. § 4332(C)(iii) (requiring analysis of “a reasonable range of alternatives.”). Instead, “[t]he EIS *must* address the significant environmental effects of a proposed project *and* identify feasible alternatives that could mitigate those effects.” *Seven Cnty.*, 605 U.S. at 172 (emphasis added).

B. BLM Was Required to Analyze an Environmentally Protective Alternative.

Indeed, BLM did have discretion to adopt a more environmentally protective alternative and its failure to consider such an alternative was arbitrary and capricious. 42 U.S.C. § 4332(2)(C)(iii) & (F); *‘Ilio’ulaokalani Coal. v. Rumsfeld*, 464 F.3d 1083, 1095 (9th Cir. 2006) (“The existence of reasonable but unexamined alternatives renders an EIS inadequate.”). BLM had discretion to adopt a more protective alternative that

would better protect environmentally sensitive migratory bird habitat from leasing and seismic exploration while implementing the OBBBA-imposed terms and conditions. NEPA required that BLM identify and analyze an alternative that minimized impacts to the environment, including migratory birds, while still complying with the requirements of the OBBBA. *See Cook Inletkeeper v. U.S. Dep't of the Interior*, 740 F. Supp. 3d 767, 786 (D. Alaska 2024) (finding that the agency failed to consider a reasonable range of alternatives at the leasing stage because it failed to consider any alternative that would offer for lease a reduced number of blocks that would meaningfully reduce overall impacts).

Such an alternative should have included restrictions on the acreage leased that would protect important habitats. *See id*. Analyzing alternatives that varied the areas open to seismic exploration and leasing (while maintaining the required terms and conditions) would have helped to identify an alternative that would protect migratory bird habitat while still complying with BLM's legal obligations. For example, moist tundra habitats are preferred for infrastructure placement and are also important nesting habitat for large numbers of migratory bird species, many of whom travel to the Amici States. AR389484; AR390972-73. BLM could have developed an alternative that removed some portion of moist tundra habitats from availability for leasing while still maintaining sufficient lease offerings to comply with OBBBA. BLM's failure to develop and analyze an alternative that used its discretion to benefit environmental protection runs afoul of NEPA.

C. BLM Did Not Provide a Meaningful Opportunity for Public Comment.

In addition to the importance of identifying feasible alternatives, publication of an EIS is also meant to inform the public of potential environmental impacts and "provide[] a springboard for public comment." *Robertson v. Methow Valley Citizens Council,* 490 U.S. 332, 349 (1989). The "touchstone" for a court's inquiry into the adequacy of an EIS's alternatives "is whether an EIS's selection and discussion of alternatives fosters informed decision-making and informed public participation." *California v. Block*, 690 F.2d 753, 767 (9th Cir. 1982). In reviewing an EIS, the Court must "make a pragmatic judgment whether the EIS's form, content and preparation foster both informed decision-making and informed public participation." *Id.* at 761.

NEPA requires that agencies provide at least one meaningful opportunity for public comment on an EIS. 42 U.S.C. § 4336a(c) (requiring publication of a notice of intent to prepare an EIS that "shall include a request for public comment on alternatives or impacts and on relevant information, studies, or analyses with respect to the proposed agency action."). As explained by the Ninth Circuit, the Supreme Court requires that "in order to object to an agency's failure to address alternatives, a party must have submitted comments identifying, or otherwise urging, alternative(s) beyond those evaluated in the [NEPA document]." *Earth Island Inst. v. United States Forest Serv.*, 87 F.4th 1054, 1063 (9th Cir. 2023) (citing *Dep't of Transp. v. Pub. Citizen*, 541 U.S. 752, 765 (2004)). At every juncture, Amici States have participated in the comment processes to advocate for alternatives that would benefit their migratory birds, reduce climate impacts, and further other state interests. AR380379; AR60973. Many other commenters have shared these

concerns and used the mandatory public comment process to provide information to BLM about these concerns. As BLM noted in the SEIS, "[c]ommenters stated concerns about the impacts on fish and wildlife, including caribou and other large terrestrial mammals, marine mammals, migratory birds, and fish and other aquatic species." AR389288.

NEPA required BLM to provide an opportunity for the public to provide comments on potential alternatives after the passage of OBBBA, which changed the legal landscape. Amici States, and other interested parties, should have had an opportunity to submit comments on potential alternatives that met the requirements of OBBBA and provided better protection of environmentally sensitive areas, such as migratory bird nesting and feeding areas.

D. The Secretary Failed to Comply with the Refuge Act.

The Refuge Act ensures that "each refuge shall be managed to fulfill the mission of the System, as well as the specific purposes for which that refuge was established." 16 U.S.C. § 668dd(a)(3)(A). To meet this mandate, the Secretary is required to make a compatibility determination when initiating or permitting a new use of a Refuge such as expanding, renewing, or extending an existing use. *Id.* § 668dd(d)(3)(A)(i). A "compatible use" is a "wildlife-dependent recreational use or any other use of a refuge that, in the sound professional judgment of the Director, will not materially interfere with or distract from the fulfillment of the mission of the System or the purposes of the refuge." *Id.* § 668ee(1). The 2025 Leasing Program is a "new use" of the Refuge that triggered the Secretary's Refuge Act responsibilities. *Id*. § 668dd(d)(3)(A)(i). The

Secretary was required to conduct and issue a written compatibility determination with a mandatory public comment period before BLM issued its ROD and failed to do so. 16 U.S.C. § 668dd(d)(3)(B); 50 C.F.R. § 26.41.

Conducting a compatibility determination protects important interests that are vital to Amici States. As explained above, one purpose of the Refuge is the conservation of "snow geese" and "other migratory birds." ANILCA § 303(2)(B). The 2025 Leasing Program maximizes the surface area available for development, contains no provisions limiting seismic exploration or ice roads, and minimizes protections for wildlife and habitat. The Refuge Act requires that the Secretary analyze whether this formulation of the leasing program—one that opens far more of the Coastal Plain than the minimum required by Congress—is compatible with the other purposes of the Refuge, particularly the protection of migratory birds. The Refuge Act also provides for a mandatory public comment period. 16 U.S.C. § 668dd(d)(3)(B); 50 C.F.R. § 26.41. This opportunity for comment should have been available to Amici States, which would have given our States the chance to explain why the program selected in the 2025 ROD is not compatible with the Refuge's mandate to protect migratory birds.

In its response to comments on the SEIS, BLM argued that compatibility determinations only apply to the U.S. Fish and Wildlife Service (FWS)'s management of the refuges and that, because the Coastal Plain oil and gas program is managed by BLM under the Tax Act, the Refuge Act does not apply. AR390194. This argument is flawed. Nothing has altered FWS's or the Secretary's management authority under the Refuge Act. 16 U.S.C. § 668dd(a)(1). Congress specifically considered whether "activities

authorized, funded, or conducted by a Federal agency (other than the [FWS])" should be subject to the Act's requirement for a compatibility determination. *Id.* § 668dd(d)(4)(B). Congress determined that the requirement should apply, unless an agency other than the FWS has primary jurisdiction over a refuge *and* there is a memorandum of understanding between FWS and that agency. *Id*. (emphasis added). There is no evidence in the record of any memorandum of understanding between FWS and BLM. Neither has BLM asserted that it has primary jurisdiction over the Refuge. Because the 2025 Leasing Program is a new use in the Refuge and no exceptions apply, the Refuge Act requires the Secretary to issue a compatibility determination before BLM can issue its decision. BLM's adoption of the 2025 Leasing Program without a compatibility determination is arbitrary and capricious.

CONCLUSION

For the reasons set forth above, Amici States respectfully request that the Court issue a judgment in favor of the Plaintiffs.

DATED this 22nd day of June, 2026.

Respectfully Submitted,

/s/ Maggie Baker Smith
MAGGIE BAKER SMITH, *pro hac vice pending*
SARAH REYNEVELD
YURIY KOROL
Assistant Attorneys General
Washington Attorney General's Office
Environmental Protection Division
800 5th Ave Ste. 2000 TB-14
Seattle, Washington 98104-3188
(206) 233-3391
Sarah.Reyneveld@atg.wa.gov
Yuriy.Korol@atg.wa.gov

Maggie.Smith@atg.wa.gov

Attorneys for Amici State of Washington

For the STATE OF CALIFORNIA

ROB BONTA
Attorney General of California

*/s/ Elizabeth Rumsey*____
ELIZABETH RUMSEY
KEARI PLATT
Deputy Attorneys General
ROBERT SWANSON
Supervising Deputy Attorney General
DEBORAH M. SMITH
Acting Supervising Deputy Attorney General
1515 Clay Street, 20th Floor
Oakland, CA 94612
(510) 879-0860
liz.rumsey@doj.ca.gov

For the STATE OF COLORADO

PHILIP J. WEISER
Attorney General

*/s/ Carrie Noteboom*____
CARRIE NOTEBOOM
Assistant Deputy Attorney General
Ralph L. Carr Judicial Center
1300 Broadway, 10th Floor
Denver, CO 80203
(720) 508-6000
carrie.noteboom@coag.gov

For the STATE OF CONNECTICUT

WILLIAM TONG
Attorney General of Connecticut

/s/ Daniel M. Salton
DANIEL M. SALTON
Assistant Attorney General
Office of the Attorney General of Connecticut
165 Capitol Avenue
Hartford, CT 06106
(860) 808-5280
daniel.salton@ct.gov

For the STATE OF DELAWARE

KATHLEEN JENNINGS
Attorney General of Delaware

/s/ Vanessa Kassab
VANESSA KASSAB
Deputy Attorney General
IAN LISTON
RALPH K. DURSTEIN III
Deputy Attorneys General
Delaware Department of Justice
820 N. French Street
Wilmington, DE 19801
(302) 577-8600
ralph.durstein@delaware.gov
vanessa.kassab@delaware.gov

For the STATE OF ILLINOIS

KWAME RAOUL
Attorney General

/s/ Jason E. James
JASON E. JAMES
Assistant Attorney General
MATTHEW J. DUNN
Chief, Environmental Enforcement/
Asbestos Litigation Division
JOANNA BRINKMAN
Complex Litigation Counsel
Illinois Attorney General's Office
201 W. Pointe Drive, Suite 7
Belleville, IL 62226
Phone: (217) 843-0322
Email: jason.james@ilag.gov

For the STATE OF MAINE

AARON M. FREY
Attorney General

By: */s/ Caleb Elwell*
CALEB E. ELWELL
Assistant Attorney General
Office of the Maine Attorney General
6 State House Station
Augusta, Maine 04333
(207) 626-8545
Caleb.Elwell@Maine.gov

For the STATE OF MARYLAND

ANTHONY G. BROWN
Attorney General

/s/ *Steven J. Goldstein*
STEVEN J. GOLDSTEIN
Assistant Attorney General
Office of the Attorney General of
Maryland
200 Saint Paul Place, 20th Floor
Baltimore, Maryland 21202
410-576-6414
sgoldstein@oag.maryland.gov

COMMONWELATH OF
MASSACHUSETTS

By its attorneys,

ANDREA JOY CAMPBELL
Attorney General

/s/ *Ezra D. Geggel*
EZRA D. GEGGEL, BBO No. 691139
MICHELE HUNTON, BBO No. 667766
Assistant Attorneys General,
Environmental Protection Division
Office of the Attorney General
One Ashburton Place, 18th Floor
Boston, Massachusetts 02108
(617) 963-2428
ezra.geggel@mass.gov

For the PEOPLE OF THE STATE OF MICHIGAN

DANA NESSEL
Attorney General

By: /s/ *Echo Aloe*_____
ECHO ALOE
Assistant Attorney General
Environment, Natural Resources, and Agriculture Division
6th Floor G. Mennen Williams Building
525 W. Ottawa Street
P.O. Box 30755
Lansing, Michigan 48909
(517) 335-7664
AloeE1@Michigan.gov

For the STATE OF MINNESOTA

KEITH ELLISON
Attorney General

/s/ *Peter Surdo*_____
PETER SURDO
Special Assistant Attorney General
Minnesota Attorney General's Office
Environmental & Natural Resources Division
445 Minnesota Street, Suite 600
Saint Paul, MN 55101
(651) 300-6637

For the STATE OF RHODE ISLAND

PETER F. NERONHA
Attorney General of Rhode Island

By: /s/ *Nicholas Vaz*_____
NICHOLAS VAZ
Special Assistant Attorney General
Environment and Energy Unit Chief
Rhode Island Office of the Attorney General
150 South Main Street
Providence, RI 02903
Phone: (401) 274-4400 ext. 2297
Email: nvaz@riag.ri.gov

For the STATE OF OREGON

DAN RAYFIELD
Attorney General

/s/ *Paul Garrahan*____
PAUL GARRAHAN
Senior Assistant Attorney General
Oregon Department of Justice
1162 Court Street NE
Salem, Oregon 97301-4096
(503) 947-4540
Paul.Garrahan@doj.oregon.gov

For the STATE OF VERMONT

CHARITY R. CLARK
Attorney General

*/s/ Melanie Kehne*__________
MELANIE KEHNE
Assistant Attorney General
Vermont Attorney General's Office
Environmental Protection Unit
109 State Street
Montpelier, VT 05609
(802) 828-3186

CERTIFICATE OF COMPLIANCE WITH LOCAL CIVIL RULE 7.4

I certify that this motion contains 4,118 words, excluding items exempted by Local Civil Rule 7.4(a)(4) and complies with the word limits of Federal Rule of Appellate Procedure 29(a)(5).

s/ Maggie Baker Smith
MAGGIE BAKER SMITH