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**BEFORE THE ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.**

In re:)
) OCS Appeal Nos. 08-01, 08-02, & 08-03
)
Shell Offshore, Inc.) **PETITIONERS' JOINT OPPOSITION TO**
Kulluk Drilling Unit (Kulluk)) **EPA'S MOTION TO HOLD IN ABEYANCE**
)
Permit No. R10OCS-AK-07-01 (Revised))
_____)

Petitioners in OCS Appeal Nos. 08-02 and 08-03 hereby submit the following

opposition to the EPA Region 10's "Unopposed Motion to Hold Case in Abeyance."¹

EPA's request for an indefinite abeyance is inappropriate and unnecessary in this case.

On November 20, 2008, the Ninth Circuit Court of Appeals vacated MMS's approval of SOI's Exploration Plan and remanded for MMS to "prepare a revised EA or, as necessary, an EIS." *Alaska Wilderness League et al v. Kempthorne et al.*, No 07-71457, Slip Op. at 15589 (9th Cir., November 20, 2008) ("AWL"). The Board has ordered EPA and SOI to show cause why the permit should not be remanded to EPA in light of the Ninth Circuit decision and the resulting uncertainty it creates regarding the timing and the contents of the permit. EPA has already received one extension to respond to the Board's order without opposition from the Petitioners. The Board should reject, however, EPA's request for an indefinite abeyance of the proceedings.² The decision of the Ninth Circuit has been issued, and the EPA has the capacity to interpret the decision and provide a response to the order to show cause. There is no need for EPA to wait an indefinite period of time before providing the Board with its position on the impact of the Ninth Circuit's opinion. The Board has requested that information within a reasonable time frame, and EPA should respond accordingly.

EPA argues that the decision of the Ninth Circuit could change because the mandate has not yet issued. In the unlikely event that this occurs, EPA can determine on remand whether and how to proceed with the permit.

As permitted by the Board's initial order, Petitioners intend to submit a response

¹ EPA has mistakenly referred to its motion as "unopposed." Counsel for EPA requested consent to EPA's motion to hold in abeyance via email communication. Counsel for Petitioners stated that their clients had not taken a position at the time that they responded to that email request. At no time did they state that the motion was unopposed.

² Petitioners note in this regard that the Interior Board of Land Appeals dismissed pending administrative appeals of MMS's approval of the Exploration Plan as moot on November 26, 2008 without asking for any additional briefing from the parties. Ex. 1.

to the order to show cause and will do so in accordance with any order from the Board on EPA's motion for abeyance.

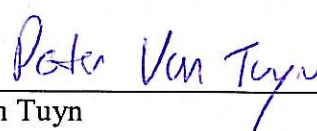
DATED this 12th day of December, 2008

Respectfully submitted,



Christopher Winter
Crag Law Center

Attorneys for Petitioners in No. 08-02

For 

Peter Van Tuyn
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Attorney for Petitioners in No. 08-03

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing **PETITIONERS' JOINT OPPOSITION TO EPA'S MOTION TO HOLD IN ABEYANCE** was filed via overnight delivery with the Environmental Appeals Board and sent via first class mail on the 12th day of December, 2008 to the following:

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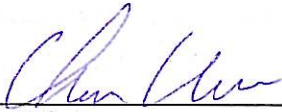
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Dated this 12th day of December, 2008



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United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS

Interior Board of Land Appeals

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November 26, 2008

IBLA 2007-152)	OCS EIS/EA MMS 2007-009
IBLA 2007-157)	
)	
CENTER FOR BIOLOGICAL)	
DIVERSITY, <i>ET AL.</i>)	Outer Continental Shelf
)	
NORTH SLOPE BOROUGH, <i>ET AL.</i>)	
)	
)	Appeals Dismissed as Moot

ORDER

On May 4, 2007, this Board issued an order in the above-styled appeals taking motions to dismiss and petitions for stay under advisement and suspending proceedings in the appeals pending the outcome of *Alaska Wilderness League v. Kempthorne*, No. 07-71457 (9th Cir. filed Apr. 16, 2007).¹

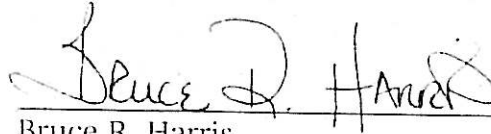
On November 24, 2008, counsel for the Minerals Management Service (MMS) provided the Board with notice and a copy of the court's decision issued on November 20, 2008, vacating and remanding the MMS decision that was the subject of the appeals, i.e., the February 15, 2007, decision of the Regional Supervisor, Field Operations, Alaska Outer Continental Region, MMS, approving the "Shell Offshore Inc. Beaufort Sea Exploration Plan." The court's decision renders those appeals moot.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the appeals are dismissed as moot.

¹ The Center for Biological Diversity, Sierra Club, and Resisting Environmental Destruction on Indigenous Lands (REDOIL) (a program of the Indigenous Environmental Network) filed the appeal docketed as IBLA 2007-152. North Slope Borough, Inupiat Community of the Arctic Slope, and Alaska Eskimo Whaling Commission filed the appeal docketed as IBLA 2007-157. On May 17, 2007, North Slope Borough and Alaska Whaling Commission filed a Notice of Voluntary Dismissal of their interest in IBLA 2007-157.

IBLA 2007-152

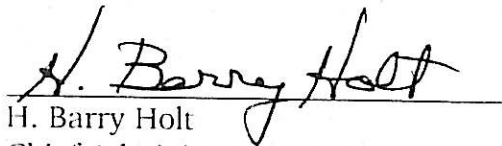
IBLA 2007-157



Bruce R. Harris

Deputy Chief Administrative Judge

I concur:



H. Barry Holt

Chief Administrative Judge

APPEARANCES:

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IBLA 2007-152
IBLA 2007-157

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