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George R. Lyle

Adam D. Harki

Traci N. Bunkers
tbunkers@guessrudd.com

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ALASKA

George R. Lyle, Adam D. Harki, and Traci N. Bunkers[1]

I. LEGISLATION

The First Regular Session of the thirty-first Alaska Legislature began on January 15, 2019, and ended on May 15, 2019. A First Special Session was held from May 16, 2019, through June 13, 2019, with a Second Special Session following from July 8, 2019, through August 6, 2019.

The 2019 legislative session resulted in virtually no oil and gas legislation being passed, as the Alaska Legislature focused primarily on legislation regarding the State budget and the funding of the Permanent Fund Dividend. Despite the uncharacteristic lack of oil and gas legislation, the Legislature addressed the prevalent issue of oil and gas leasing in the Arctic National Wildlife Refuge ("ANWR") through the passage of Senate Joint Resolution No. 7.

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1. George R. Lyle is a shareholder of Guess & Rudd, P.C. and concentrates his practice in the areas of oil and gas, natural resources, and environmental law. Adam D. Harki is a shareholder of Guess & Rudd, P.C. and focuses primarily on oil and gas, litigation defense, banking, and business and commercial law. Traci N. Bunkers is an associate of Guess & Rudd, P.C., whose practice focuses primarily on civil litigation, as well as oil and gas and natural resources matters.

A. Senate Joint Resolution No. 7 ("SJR 7")

In passing SJR 7, the Legislature resolved to request that the United States Department of the Interior, Bureau of Land Management ("BLM") implement an oil and gas leasing program in the coastal plain of the ANWR.

The Resolution provides that 16 U.S.C. 3143 (sec. 1003 of the Alaska National Interest Lands Conservation Act ("ANILCA")) and 16 U.S.C. 3142 (sec. 1002 of ANILCA) authorize both oil and gas development and production and nondrilling exploratory activity within the coastal plain of the ANWR.[2] In passing the SJR 7, the Legislature noted that the coastal plain of ANWR contains an estimated 7.687 billion barrels of recoverable oil and 7 trillion cubic feet of natural gas,[3] which could generate over $104 billion in government revenue from petroleum development.[4] SJR 7 further notes that exploration, development, and production of ANWR is predicted to generate 1,430 direct and 6,350 indirect jobs annually, with 2,480 direct and 10,100 indirect jobs at peak employment.[5]

The Resolution closes with the Legislature's request that the BLM take into consideration "the long history of safe and responsible oil and gas development on Alaska's North Slope, the enormous benefits development of oil and gas resources in the coastal plain of the ANWR would bring to the state and the nation, the advances in oilfield technology that continue to shrink the impact area of oil and gas activities, and the support of residents from the North Slope Borough and across the North Slope of Alaska for oil and gas development in a portion of the coastal plain."[6]

II. Case Law

A. Cases of the Supreme Court of Alaska

i. *All American Oilfield, LLC v. Cook Inlet Energy, LLC*[7]

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2. SJR 7, p.1.
3. *Id*., p. 2.
4. *Id*.
5. *Id*.
6. *Id*., p. 3.
7. *All Am. Oilfield, LLC v. Cook Inlet Energy, LLC*, 446 P.3d 767 (Alaska 2019).

In 1910, the United States Congress passed Alaska's first mineral dump lien statute, which grants laborers a lien against a "dump or mass" of hard-rock minerals for their work creating the dump. Alaska's territorial legislature amended the dump lien statute in 1933 to include oil and gas development. This amendment has created the framework for technological advances in Alaska's oil and gas industries that has remained largely unchanged.

In *All American Oilfield LLC*, the Alaska Supreme Court accepted certified questions from both the United States District Court and the United States Bankruptcy Court[8] regarding the breadth of the mineral dump lien statute as it applies to natural gas development:

1. Can a "dump lien" under Alaska Statute ("AS") 34.35.125 *et seq*. apply to gas stored in its natural reservoir?;
2. Is a mineral "dump" created under AS 34.35.140 and AS 34.35.170(a)(1) each time that natural gas is released from the natural reservoir in which the gas was formed and transported through a pipeline to the point of sale?
3. Must a dump lien claimant under AS 34.35.140 prove, in order to have a valid dump lien, that the produced gas was, in whole or in part, the product of her labor?[9]

a) Un-Extracted Natural Gas Remaining In Its Natural Reservoir Cannot Constitute A "Dump"

With respect to the first question, the Supreme Court held that the statutory definition of "dump or mass" reflects that a mineral dump lien may extend only to gas extracted from its natural reservoir.[10] Under the relevant statutory framework, there must be a

8. The certified questions stem from an adversary proceeding filed by All American in case of *In re Cook Inlet Energy LLC*, 2017 WL 1082217 (Bankr. D. Alaska Mar. 21, 2017), in which All American asked the bankruptcy court to determine the validity and priority of its secured claims against Cook Inlet, as well as a district court case in which the trustee for Cook Inlet's liquidation trust sued Carol Inman, d/b/a Starichkof Enterprises for payments that Cook Inlet made to her prior to filing for bankruptcy. *See All Am. Oilfield, LLC*, 446 P.3d at 770.

9. *All Am. Oilfield, LLC*, 446 P.3d at 771.

10. *Id*., at 773.

"dump" to which the lien can attach for a claimant to obtain a dump lien.[11]

The Court found that the existence of a dump is a condition precedent to obtaining a dump lien. Under the statute's plain meaning, un-extracted gas cannot constitute a dump because it was never "extracted, hoisted, and raised" as the statutory definition requires.[12]

The Supreme Court further found that neither the legislative history nor the relevant case law interpreting the dump lien statute extends the statutory definition of "dump" to include any un-extracted gas remaining in its natural reservoir.[13] Further, affording the statute its plain meaning does not lead to glaringly absurd results.[14]

b) Natural Gas in a Pipeline May Constitute a "Dump"

In ruling on the second certified question, the Supreme Court found that, because gas in a pipeline has been "extracted, hoisted, and raised" and is "in mass," it may constitute a dump if it is located "adjacent" to the mine or mining claim. However, whether gas is adjacent to a mine or mining claim must be decided on a case-by-case basis.[15]

The Court rejected Cook Inlet's arguments that gas in a pipeline cannot qualify as a "dump." Instead, the Court determined that gas in a pipeline has been "extracted, hoisted, and raised"

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11. *See* AS 34.35.140(a).
12. *All Am. Oilfield, LLC*, 446 P.3d at 773. *See* AS 34.35.170(a)(1).
13. *All Am. Oilfield, LLC*, 446 P.3d at 774, *examining* Act of June 25, 1910, ch. 422, (creating miner's labor lien in Alaska territory); 45 Cong. Rec. 4,905 (1910); *Donaldson v. Henning*, 4 Alaska 642 (D. Alaska 1913); *Nordstrom v. Sivertsen-Johnsen Mining & Dredging Co.*, 5 Alaska 204 (D. Alaska 1914); Ch. 79, SLA 1913; Ch. 13, SLA 1915; Ch. 113, SLA 1933.
14. *All Am. Oilfield, LLC*, 446 P.3d at 776. In ruling "no" to the first certified question, the Supreme Court held that All American could not qualify for a dump lien under AS 34.35.140 because the gas for which All American drilled wells was not "extracted, hoisted, and raised" from the mine. However, the Court noted that All American may still obtain a non-preferred mine lien under AS 34.35.125, as the definition of "mine" or "mining claim" includes "all valuable mineral deposits, including coal, oil, gas, or other fluid, and all loads, veins, or rock in place containing minerals." *See* AS 34.35.170(a)(3).
15. *All Am. Oilfield, LLC*, 446 P.3d at 777.

because it has been "extracted from the soil and brought to the surface," and, thus, ceases to be a mineral deposit.[16]

Alaska Statute 34.35.170(a)(1) also requires gas to be "in mass" to constitute a dump. The statute provides that a dump is "in mass . . . whether it is deposited in dumps or piles, or placed in hoppers, tanks, or reservoirs, or in sluice boxes or bunkers or other receptacles."[17] Adopting the interpretation that the "whether" clause of the statute limits the ways that a dump can be "in mass" to the enumerated examples,[18] the Court noted that the only way for natural gas to be "in mass" would be for it either to be "deposited in dumps or piles" or "placed in hoppers, tanks, or reservoirs, or in sluice boxes or bunkers or other receptacles."[19] However, because gas cannot be deposited into a dump or pile, the determination rests on whether natural gas pumped out of its natural reservoir into a pipeline on its way to another destination is "placed" into a "receptacle" for the statute's purposes.[20]

The Court examined the definitions of receptacle, tank, and hopper, and concluded that pipelines constitute "receptacles." Even though the primary purpose of a pipeline is transport, the statute's inclusion of "sluice box" indicates that a "receptacle" under the statute need not only or primarily hold its contents.[21] Thus, "[i]n the process of conveying a gas, pipelines do hold or contain it for a brief period of time, as a receptacle would."[22] However, whether gas in a pipeline is "adjacent" to a mine or mining claim, in order to constitute a dump, requires a "fact-specific inquiry to determine if

16. *Id*., at 778, citing 38 Am. Jur. 2d *Gas and Oil* § 4 (2017) ("Gas and oil when unsevered are a part of the land and after gas and oil are extracted from the soil and brought to the surface, they are deemed personal property." (Internal citations omitted)); *see Cont'l Res. of Ill., Inc. v. Ill. Methane, LLC*, 847 N.E.2d 897, 901 (Ill. App. 2006) ("Oil and gas in place are minerals, but because of their fugacious qualities, they are incapable of ownership distinct from the soil. . . . Oil and gas are incapable of ownership until actually found and produced.").

17. *All Am. Oilfield, LLC*, 446 P.3d at 778, citing AS 34.35.170(a)(1).

18. *All Am. Oilfield, LLC*, 446 P.3d at 778, citing *Studdert v. Tanana Valley Gold Dredging Co.*, 8 Alaska 267, 271 (D. Alaska 1931) ("Clearly, in my judgment, the Legislature intended, by the use of this language, to refer only to sands, earth, ore, rock, and minerals which were either deposited in dumps or piles, placed in hoppers or tanks or in sluice boxes or bunkers, or other receptacles, located in the same place.")

19. *All Am. Oilfield, LLC*, 446 P.3d at 778.

20. *Id*.

21. *All Am. Oilfield, LLC*, 446 P.3d at 779.

22. *Id*.

the off-mine portions are close enough to be considered ‘adjacent’ to the mine.”[23]

c) Produced Gas Must be the Product of the Lienor’s Labor

The Supreme Court answered the final question, whether dump lien claimants must prove that produced gas is the product of their labor, in the affirmative. Unlike AS 34.25.125, AS 34.35.140(a) plainly requires that lien claimants make this showing, providing that the dump lien is “to secure the amount due the laborer in the production of the minerals.”[24] The Supreme Court found that a laborer may claim and enforce a dump lien by performing any of the kinds of work mentioned in the dump and mine lien statutes;[25] however, whether a particular claimant’s labor meets these requirements is case-specific and must be left to the trier of fact.[26]

ii. *Kenai Landing, Inc. v. Cook Inlet Natural Gas Storage Alaska, LLC*[27]

In *Kenai Landing, Inc.*, the Supreme Court affirmed the Superior Court’s ruling regarding compensation for producible native gas remaining in a reservoir at the time of a taking, as well as its valuation of gas storage rights.

23. *Id*. at 780. The Supreme Court made no rulings with respect to whether the gas in the pipelines was “adjacent” with respect to All American’s and Inman’s claims, as neither the bankruptcy court nor the district court made findings about the exact location and size of the pipelines at issue in those cases. *Id*.

24. AS 34.35.140(a).

25. *See* AS 34.35.140(a) (a claimant may be entitled to a dump lien by performing “any of the kinds of work mentioned in AS 34.35.125” or “any other kind of work in the production, piling up, or storing of a dump or mass of mineral.”) *See also* AS 34.35.12 (identifying the following work entitling a claimant to a mine lien: opening up, developing, sinking, drilling, drifting, stoping, mucking, stripping, shoveling, mining, hoisting, firing, cooking, teaming, or perform[ing] any other class or kind of work necessary or convenient to the development, operation, working, or mining of the claim or well; . . . perform[ing] work tending to or assisting in the developing, extraction, separation, or reduction to a commercial value of the minerals; . . . perform[ing] work on a water right, ditch, flume, pipe line, tramway, tram, road, or trail, used in connection with the opening up, or to facilitate the opening up, operation, or development of the claim or well, or the extraction of the minerals.)

26. *All Am. Oilfield, LLC*, 446 P.3d at 781.

27. 441 P.3d 954 (Alaska 2019).

a) Background

The appellee, Cook Inlet Natural Gas Storage Alaska, LLC ("CINGSA"), is a private company that was building a natural gas facility for storage of natural gas collected from various sites. The gas is stored by injecting it into a rock formation, known as the Sterling C Reservoir.[28] To facilitate efficient gas extraction, there must be a minimum amount of pressurization, which requires a minimum amount of gas in storage, also known as "base" or "cushion" gas.[29] Within the Sterling C Reservoir, some of the base gas consisted of gas left in the Reservoir when it was acquired by CINGSA.[30]

The appellant, Kenai Landing, Inc., owns a parcel of land overlying the Sterling C Reservoir that was acquired subject to the Wards Cove Lease (the "Lease"). The Lease is committed to the Cannery Loop Unit and exists so long as gas is being produced anywhere in the unit.[31]

To operate its storage facility, CINGSA filed a condemnation action to obtain necessary property rights. At the time of filing the action, the royalty rights under the Lease were held by Wards Cove, and the production rights were held by Marathon Alaska Production Company.[32] CINGSA negotiated separate agreements with both Wards Cove and Marathon to obtain their rights as lessor and lessee, respectively, under the Lease. The Department of Natural Resources subsequently agreed to sever the Sterling C Reservoir from the Cannery Loop Unit so that it could be used for storage purposes.[33] After CINGSA commenced its condemnation proceeding, it discovered a "pocket of gas," which ultimately increased the amount of native gas in the Reservoir, including the gas underneath Kenai Landing's property.[34]

b) Procedural History

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28. *Kenai Landing, LLC*, 441 P.3d at 957.
29. *Id*.
30. Gas left in the ground is known as "native gas."
31. *Kenai Landing, LLC*, 441 P.3d at 957-58.
32. *Id*. at 958.
33. *Id*.
34. *Id*.

CINGSA subsequently filed a complaint against Kenai Landing to condemn certain rights to the Sterling C Reservoir that it had not already acquired, including: (1) an easement for gas storage, including any underground formations in the Reservoir, as well as an adjoining geological zone for use as a "buffer;" and (2) an easement in the mineral interests, allowing CINGSA the use of "all gas, oil, or other minerals . . . located within the Sterling C Pool and the correlative buffer geological formation, including the use of native gas as base gas for the storage facility."[35]

CINGSA subsequently moved for partial summary judgment on the grounds that Kenai Landing had no right to compensation for any of the native gas in the Reservoir because CINGSA owned this gas as assignee of the Lease. Finding that the Lease was still in effect, the superior court found that Kenai Landing was not entitled to compensation for native gas and granted summary judgment in CINGSA's favor.[36]

Because the parties agreed that Kenai Landing was entitled to compensation for the use of its property for underground gas storage, the superior court held a hearing to value the storage rights and corresponding valuation. Kenai Landing disputed the superior court's valuation and subsequently filed an appeal, in which it: (1) challenged the superior court's refusal to compensate it for CINGSA's use of native gas; (2) argued that it was entitled to compensation for the "new" gas discovered by CINGSA after the taking; and (3) disputed the valuation of its storage rights.[37]

c) Kenai Landing Was Not Entitled to Compensation for Native Gas

The Supreme Court agreed with the lower court that Kenai Landing was owed no compensation for the producible native gas remaining in the Sterling C Reservoir at the time of the taking. Analyzing the principles of just compensation, the Court determined that Kenai Landing lost nothing by virtue of CINGSA's condemnation of an easement.[38] Specifically, because CINGSA holds both production rights and a royalty interest by virtue of its assignment under the Wards Cove Lease, Kenai Landing does not

35. *Id*.
36. *Kenai Landing, LLC*, 441 P.3d at 958.
37. *Id*. at 959.
38. *Id*. at 960.

have the right to produce or receive royalties so long as the Lease exists.[39] CINGSA, "by condemning the easement, gained the use of the native gas as base gas, but Kenai Landing did not lose anything it already had."[40]

The Supreme Court characterized Kenai Landing's right to the gas as reversionary because it had no right to extract native gas, block its production, or use the native gas for any purpose. As such, Kenai Landing was not entitled to compensation for any producible native gas that remained in the Reservoir at the time of the taking.[41]

d) Kenai Landing Was Not Entitled to Compensation for New Gas

Kenai Landing's second argument, that it was entitled to compensation for newly discovered gas, was rendered moot by the Supreme Court's ruling that Kenai Landing was not entitled to compensation for native gas.[42]

The Court also rejected Kenai Landing's argument against the lower court's use of the "scope of the project" rule, "which holds that enhancements to the condemned property's value, arising after it becomes likely that the property will be condemned, do not benefit the condemnee."[43] The Court noted that the new gas was not present until CINGSA accidentally discovered it while working on the project, and, the scope of the project rule precludes compensation for the new gas because it was not part of Kenai Landing's property when condemnation proceedings began.[44]

e) The Superior Court Did Not Err in Valuing Kenai Landing's Pore Space Rights

Kenai Landing's remaining arguments on appeal involved the superior court's valuation of its storage rights. Kenai Landing argued that the superior court undervalued these rights by failing to consider the "highest and best use" of the storage space.[45] Instead,

39. *Id*. at 960-61.
40. *Id*. at 961.
41. *Id*.
42. *Id*.
43. *Id*. at 962, citing *City of Valdez v. 18.99 Acres*, 686 P.2d 682, 689 (Alaska 1984).
44. *Kenai Landing, LLC*, 441 P.3d at 962.
45. *Id*.

Kenai Landing sought the application of the "fullest extent rule," "which presumes that the appropriator will exercise [the rights acquired] and use and enjoy the property taken to the full extent."[46] However, the Supreme Court found that application of the fullest extent rule undermines Alaska law on just compensation.

The Court looked to *Martens v. State*,[47] where the Supreme Court previously held that, when there is "a reasonable probability of a change in the near future in the zoning ordinance or other restriction, then the effect of such probability upon the minds of purchasers generally may be taken into consideration in fixing present market value."[48] Because the evidence in the record established that no change in the storage capacity was "reasonably probable" in the near future, the lower court properly declined to apply the fullest extent rule as urged by Kenai Landing.[49]

Kenai Landing also argued that the lower court erred by including the buffer area in valuing the condemned property. Specifically, Kenai Landing argued that by assigning equal value to the buffer area, the superior court diluted the value assigned to the actual pore space and "punishes [Kenai Landing] based on CINGSA's arbitrary determination as to how much non-pore buffer area to include within its proposed 'storage boundary.'"[50] However, the Supreme Court found that the superior court included the buffer area in its valuation as a matter of industry practice after three of CINGSA's experts testified that a buffer zone is "required for prudent operation" of a gas storage field.[51] The experts also testified that a buffer zone is "important to the integrity of a gas field," and that "in the industry no difference is made in the leasing rates applicable to surface land over the reservoir area versus land located over the buffer area."[52] The Supreme Court likewise upheld the lower court's reliance on one of CINGSA's expert's with respect to the actual value of the storage space.[53]

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46. *Id*. at 963, citing *Coos Bay Logging Co. v. Barclay*, 159 Ore. 272, 79 P.2d 672, 677 (Or. 1938).
47. 554 P.2d 407, 409 (Alaska 1976).
48. *Id*.
49. *Kenai Landing, LLC*, 441 P.3d at 963-64.
50. *Id*. at 964.
51. *Id*.
52. *Id*.
53. *Kenai Landing, LLC*, 441 P.3d at 965.

B. Cases of the United States District Court for the District of Alaska

i. *League of Conservation Voters v. Trump*[54]

In *League of Conservation Voters*, the United States Court for the District of Alaska considered the scope of a President's authority under Section 12(a) of the Outer Continental Shelf Lands Act ("OCSLA"), finding that Section 12(a) does not endow the President with the authority to revoke withdrawals of unleased land from the Outer Continental Shelf ("OCS").[55]

a) Background

OCSLA was enacted in 1953 with two purposes: (1) "[t]o provide for the jurisdiction of the United States over" OCS lands;[56] and (2) "to authorize the Secretary of the Interior to lease such lands for certain purposes."[57] Section 12(a) of the OCSLA provides: "The President of the United States may, from time to time, withdraw from disposition any of the unleased lands of the outer Continental Shelf."[58]

Plaintiffs[59] sued the federal defendants[60] for an alleged violation of the Constitution's Property Clause, as well as an alleged violation of the statutory authority endowed by Section 12(a) of OCSLA, after President Trump issued Executive Order 13795,[61] intended to revoke three memoranda and one executive order issued by President Obama in 2015 and 2016 withdrawing certain areas of

54. 363 F. Supp. 3d 1013 (D. Alaska 2019).
55. *League of Conservation Voters*, 363 F. Supp. 3d at 1030-1031.
56. Pub. L. No. 83-212, 67 Stat. 462, 462 (1953).
57. *Id*.
58. Pub. L. No. 83-212, § 12(a), 67 Stat. 462, 469 (1953) (codified at 43 U.S.C. § 1341(a)).
59. Plaintiffs included the League of Conservation Voters, Natural Resources Defense Council, Sierra Club, Alaska Wilderness League, Defenders of Wildlife, Northern Alaska Environmental Center, Resisting Environmental Destruction on Indigenous Lands, Center for Biological Diversity, Greenpeace, Inc., and The Wilderness Society.
60. The federal defendants included Donald J. Trump, in his official capacity as President of the United States, Ryan Zinke, in his official capacity as Secretary of the Interior, Wilbur Ross in his official capacity as Secretary of Commerce, American Petroleum Institute, Intervenor Defendant, and State of Alaska, Intervenor Defendant. Guess and Rudd, P.C. represented Intervenor Defendant, American Petroleum Institute.
61. *See* Exec. Order 13795, 82 Fed. Reg. 20815, §§ 4(c), 5 (Apr. 28, 2017).

the Outer Continental Shelf from leasing.[62]

b) The Statutory Text of Section 12(a)

On the plaintiffs' motion for summary judgment, the Court examined both the plain text of Section 12(a) and the context in which it was enacted.[63] In examining the plain language of Section 12(a), the Court noted that, while the text of Section 12(a) expressly grants the President the authority to withdraw unleased lands from the OCS, it does not expressly grant to the President the authority to revoke prior withdrawals.

However, the statute's inclusion of the phrase "from time to time" created ambiguity.[64] Specifically, the phrase could be interpreted in two ways: (1) "to make clear the President's authority to make withdrawals at any time and for discrete periods of time, as well as make withdrawals that extend indefinitely into the future unless and until revoked by Congress;" or (2) "to accord to each President the authority to revoke or modify any prior withdrawal."[65] In light of the ambiguity created by the language of Section 12(a), the Court examined context of Section 12(a) in order to discern Congress's intent.[66]

c) The Context of Section 12(a)

In considering the context of Section 12(a), the Court analyzed the structure of OCSLA, OCLSA's legislative history and prior statutes, the purposes of OCSLA, and OCSLA's subsequent legislative history.

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62. *See* Memorandum on Withdrawal of Certain Areas of the United States Outer Continental Shelf Offshore Alaska From Leasing Disposition, DCPD201500059 (Jan. 27, 2015); Exec. Order 13754, 81 Fed. Reg. 90669, § 3 (Dec. 9, 2016); Memorandum on Withdrawal of Certain Portions of the United States Arctic Outer Continental Shelf From Mineral Leasing, DCPD201600860 (Dec. 20, 2016); Memorandum on Withdrawal of Certain Areas off the Atlantic Coast on the Outer Continental Shelf From Mineral Leasing, DCPD201600861 (Dec. 20, 2016).

63. *League of Conservation Voters*, 363 F. Supp. 3d at 1018.

64. *Id*. at 1024.

65. *Id.*

66. *Id*.

1. The Structure of OCSLA

With respect to structure, the Court compared Section 12(a) with Section 8. Section 8 of OCSLA, titled "Leasing of Outer Continental Shelf," authorizes the Secretary of the Interior to lease OCS lands "[i]n order to meet the urgent need for further exploration and development of the oil and gas deposits" beneath the OCS.[67] Section 12 of the Act, as enacted in 1953, was titled "Reservations." Most of the provisions of that section address restrictions on the private use of OCS lands, and no subsection expands private sector use of these lands.[68] Contrasting the two sections, the Court found that Section 8 was intended to promote leasing, while Section 12(a) is "entirely protective,"[69] stating, "Interpreting OCSLA to promote expeditious leasing in Section 8, but according to the President authority to prohibit leasing in specified areas in Section 12(a), gives effect to all of OCSLA's provisions, so that no part will be inoperative or superfluous, void or insignificant."[70] Accordingly, OCSLA's structure promotes the view that Section 12(a) did not grant revocation authority to the President."[71]

2. The Legislative History of OCSLA

In evaluating the legislative history of Section 12(a), the Court rejected the federal defendants' assertion that, because the President has the authority to revoke withdrawals on uplands, Section 12(a) similarly vests the President with the authority to revoke withdrawals of unleased lands on the OCS. The defendants relied on Senate Report No. 83-4, in which the Committee on Interior and Consular Affairs stated that "it was vesting withdrawal authority 'comparable to that which is vested in [the President] with respect to federally owned lands on the uplands.'"[72] The Court

67. Pub. L. No. 83-212, § 8(a), 67 Stat. 462, 468 (1953) (current version at 43 U.S.C. § 1337).
68. Pub. L. No. 83-212, § 12(a)-(f), 67 Stat. 462, 469-70 (1953) (codified at 43 U.S.C. § 1341).
69. *League of Conservation Voters*, 363 F. Supp. 3d at 1025.
70. *Id*. at 1026 (internal citations omitted).
71. *Id*.
72. *League of Conservation Voters*, 363 F. Supp. 3d at 1025, citing S. Rep. No. 83-411, at 26 (1953).

ultimately held that "Congress's silence in Section 12(a) as to according the President revocation authority was likely purposeful; had Congress intended to grant the President revocation authority, it could have done so explicitly, as it had previously done in several (but not all) of its previously enacted uplands laws.[73] The Court also held that Attorney General opinions further establish that Congress intended to authorize the President only to withdraw OCS lands from leasing in Section 12(a).[74] The Court further rejected the argument that the deletion of a provision limiting withdrawal authority from a prior version of Section 12(a) signaled authority to revoke withdrawals, asserting that the deletion afforded the President more discretion in making withdrawals but did not endow the President with the authority to revoke any of those withdrawals.[75]

3. The Purposes of OCSLA

Turning to the purposes of OCSLA, the Court focused on the second purpose of OCSLA—"to authorize the Secretary of the Interior to lease [OCS] lands for certain purposes."[76] The Court noted that, while Congress "clearly sought more leasing," it did not seek "unbridled leasing," given that OCSLA was to "be construed in such manner that the character as high seas of the waters above the outer Continental Shelf and the right to navigation and fishing therein shall not be affected."[77] The Court also noted that Congress's inclusion of Section 12—"Reservations"—was also intended to limit leasing activity:

> The fact that Congress expressly granted the President the authority to withdraw OCS lands from leasing, but did not expressly grant the President the authority to revoke such withdrawals, is not inconsistent with the second purpose of OCSLA as enacted in 1953, particularly as Congress itself retained the

73. *Id*. at 1027.
74. *Id*.
75. *Id*. at 1028.
76. Pub. L. No. 83-212, 67 Stat. 462, 462 (1953).
77. *League of Conservation Voters*, 363 F. Supp. 3d at 1028, citing Pub. L. No. 83-212, Section 3(b), 67 Stat. 462, 462 (1953).

> authority to revoke prior presidential withdrawals pursuant to the Property Clause of the U.S. Constitution.[78]

The Court rejected the federal defendants' contention such an interpretation would allow a President to permanently withdraw the entire OCS from exploration and development, absent intervention from Congress. Looking to prior Attorney General opinions, the Court found that, "Congress has previously authorized the President to tie future Presidents' hands."[79] While Section 12(a) technically allows a President to permanently withdraw all unleased lands on the OCS, the Court noted that Congress could reverse such an action by either revoking the withdrawal itself or amending Section 12(a) to expressly allow a President to revoke a prior presidential withdrawal.[80]

4. The Subsequent History of OCSLA

Finally, in considering OCSLA's subsequent history, the Court held that Congress's decisions not to challenge prior revocations did not meet the "high bar required to constitute acquiescence."[81] In addition, Congress's lack of action regarding Section 12(a) did not allow the Court to draw any appropriate inference that would "override" the Court's interpretation of Section 12(a) based on the section's language and legislative history prior to its enactment.[82]

Based on the context in which Section 12(a) was enacted, the Court granted plaintiffs' motion for summary judgment, declaring the revocation of Executive Order 13795 invalid and unlawful and vacating Section 5 of the Order.[83] The defendants have since filed

78. *League of Conservation Voters*, 363 F. Supp. 3d at 1029.
79. *Id*. at 1029.
80. *Id*.
81. *Id*. at 1030, citing *United States v. Midwest Oil Co.*, 236 U.S. 459, 469-71 (1915) (holding that presidential withdrawal of public lands was lawful because Congress had "uniformly and repeatedly acquiesced" to the President's creation of roughly 250 reservations).
82. *Id*. (internal citations omitted).
83. *Id*. at 1030-31.

notices of appeal with respect to the Court's ruling.[84]

84. See Notice of Appeal by Wilbur Ross, Donald J. Trump, Ryan Zinke, League of Conservation Voters et al v. Trump et al, No. 3:17-cv-00101-SLG (D. Alaska May 28, 2019); Notice of Appeal by American Petroleum Institute, League of Conservation Voters et al v. Trump et al, No. 3:17-cv-00101-SLG (D. Alaska May 28, 2019); Notice of Appeal by State of Alaska, League of Conservation Voters et al v. Trump et al, No. 3:17-cv-00101-SLG (D. Alaska May 28, 2019).