

STATE OF ALASKA

SARAH PALIN, Governor

**ANILCA IMPLEMENTATION PROGRAM
Office of Project Management and Permitting**

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September 15, 2008

Will Runnoe, Glennallen Field Office Manager
Bureau of Land Management
Glenallen Field Office
P.O. Box 147
Glenallen, AK 99588

Dear Mr. Runnoe:

The State of Alaska reviewed the July 2008 scoping bulletin for the Delta River Management Plan. The following comments represent the consolidated views of the State's resource agencies.

The Delta River corridor offers outstanding scenic views, contains historic and cultural resources related to early occupation and settlement, and is a popular destination for fishing, hunting, and other recreational opportunities. Two major trails cross the Delta River providing access for hunting within and adjacent to the corridor. These same trails also provide access for mining on state-owned and selected lands west of the corridor.

We appreciate the Bureau of Land Management's (BLM) continuing commitment to work with the State in the development of the Delta River Management Plan. Among other authorities, the State is responsible for management of the Delta River and its underlying shorelands, as well as fish and wildlife on all lands in Alaska. It is, therefore, important to work cooperatively throughout this planning process to address issues of mutual interest, such as visitor use, surface transportation and land management under mixed ownership. In particular, we look forward to working with BLM on issues that affect access to state resources and uses on the river.

We hope to draw upon the successes of previous collaborative planning efforts, such as the Gulkana River Management Plan. We are aware of the effort already invested by BLM in pre-scoping work through the Benefits Based Management (BBM) process. We expect the information gathered through BBM stakeholder meetings will be valuable when moving forward.

We understand the East Alaska Resource Management Plan recommended addressing specific limitations in this planning process, including a request to the State to limit motorized powerboat use. We agree such considerations are more appropriately

addressed at this more detailed level of planning. Through a cooperative planning effort, we expect to identify and consider both the underlying issues and the full array of management actions available to address those concerns before determining an appropriate response.

Lastly, when formally identifying the Outstanding Remarkable Values for the Delta River during this planning process, we request the legislative history of the Alaska National Interest Lands Conservation Act guide the decision-making process. It is our understanding the legislative history identified scenic, cultural, and recreational values for the Delta River. While the river corridor certainly has other resources and attributes, we agree these stand out as values that qualify as “outstandingly remarkable.”

Thank you for this opportunity to comment. Please contact me at (907) 269-7529 if you have any questions.

Sincerely,

/ss/

Susan E. Magee
ANILCA Project Coordinator

cc: Sally Gibert, ANILCA Program Coordinator

Internal Review of the Revised Delta Wild and Scenic River Management Plan – Chapters 1 and 2
State of Alaska Informal Comments
June 25, 2009

Pursuant to your request, the “big picture” issues for the State are identified below. Some of these issues are illustrated or expanded upon as suggested changes to the proposed action, and in some cases the other alternatives, through revisions to Table 4 (which has been separated into 3 attachments).

Big Picture Issues:

Group Size Camp Limits:

While we understand large groups can negatively impact river corridor resources, we think it is premature to propose rigid group camp size limits without first attempting other ways to address user impacts. We are therefore proposing a new phased approach, which initially involves identifying large group campsites in areas that are more suited to, and capable of, sustaining use by larger groups (> 8 people). See Campsite section of Table 4 for detailed suggestions.

Implementation of Access Restrictions

The Delta WSR corridor is a conservation system unit subject to the provisions of ANILCA. Closures or restrictions to ANILCA-protected uses or modes of access must be implemented through the closure process identified in either the Department of Interior ANILCA Title XI regulations (43 CFR 36); or in the case of subsistence, a process similar to that adopted by the three other federal land management agencies in Alaska to implement ANILCA Section 811(b). Currently, the plan proposes restrictions to some forms of subsistence access and includes prohibitions of aircraft, airboat, personal watercraft, all power boating in one river segment, and motorboat horsepower limits – all implemented by special rule under national WSR regulations. Furthermore, navigability directly affects management actions proposed in the EA given provisions contained within ANILCA related to snowmobiles, airplanes, and motorboats. We need to have a more in-depth discussion regarding access restrictions irrespective of the BLM’s navigability determination.

DNR Special Use Designation

Based on current information and discussions within DNR it is unlikely the State would develop a Special Use Area (SUA) to restrict generally allowed uses on the Delta absent an identified need for public safety or protection of the natural resources. Furthermore, Alaska Statute 38.04.200 specifically prohibits DNR from limiting traditional means of access for aesthetic purposes unless certain conditions are met. Since BLM understands DNR’s situation, we presume this knowledge may have precipitated the current text, which does not reference the State’s management authorities over actions on State waters, e.g. boating restrictions on Tangle Lakes and other likely state waters. For the purposes of discussion, we have modified the table to show that BLM would “recommend” certain restrictions that affect uses on waterbodies, which could mean BLM recommends that State restrict these uses, or BLM recommends the public refrain from such uses.

Travel Management

State representatives are scheduled to meet with Randy Goodwin next week to discuss the ANILCA provisions (primarily Sections 1110(a) and 811(b)) that affect travel management planning in Alaska. These discussions will likely affect how ANILCA protected access is addressed in the Delta plan, including some of the issues described above. Follow-up discussions will undoubtedly be warranted.

Subsistence

Subsistence information will be addressed during future review of the Affected Environment. This is also a statewide travel management issue that will be discussed with Randy Goodwin.

Public Use Cabins

Section 1303 of ANILCA provides for the construction and use of cabins on federal lands within CSUs in Alaska. Rather than “prohibiting public use cabins,” we recommend instead indicating that “No public use cabins are proposed in this plan” or something similar.

Outstandingly Remarkable Values

Page 12 indicates “there’s a need to define these values and to associate them with specific management objectives.” Is this required by BLM policy? We still have reservations about some of the ORVs identified and would like a better understanding of current BLM policy and/or other guidance.

Other Issues Identified in Table 4 and the Text**Proposed Action and Alternatives Description**

We recommend clarifying in the document and Table 4, that the “No Action” alternative is current management. We are also concerned the names/descriptions for the alternatives are oversimplified and some readers may “choose” an alternative without fully understanding content. Therefore, we suggest the following edits on page 12. We also suggest removing the header descriptions from Alternatives 3 and 4 in Table 4.

“Alternative 3 manages the river for ~~allows visitor use to increase with fewer restrictions, offering slightly higher...~~”

“Alternative 4 manages the river for slightly ~~more primitive or~~ lower density...”

Actions Common to All Alternatives

We highly recommend litter, human waste, and fire rings be addressed as actions common to all alternatives for all zones, except for the Tangle Lakes Developed Zone (Zone 3), including having one standard and indicator that applies corridor-wide. It is unnecessary for recreational users to “accept” higher amounts of human waste and litter (whether in a fire ring or not) as depicted in the two other alternatives. Human waste, in particular, is a health and safety issue with specific State regulations regarding its proper disposal away from waterbodies. Human waste in Zone 3 would also not require the same management actions because of existing facilities at that location.

Clarifying the Effect of Management Actions

To help the public better understand how campsites will be affected under the various phases, we recommend adding a reference to the *number* of sites in addition to the percentages in discussions of standards and indicators in Table 4. In addition, for management actions where there are no appreciable differences between alternatives, we suggest replacing the repeated text with “Same as Alternative 2” or similar language. This makes it much easier for the public to “see” variations between alternatives.

Table 4: Comparison of Management Actions by Alternatives

	Alternative 1: (No Action/Current Management)	Alternative 2: (Proposed Action)	Alternative 3: Recreation Development Focus	Alternative 4: Primitive Focus
Management Actions for All Zones¹				
Litter				
Indicator	No indicator	Percentage of sites at which litter occurs.	Percentage of sites at which litter occurs.	Percentage of sites at which litter occurs.
Standard	No standard	<15% of sites with litter exceeded for over two consecutive years monitoring period	<30% of sites with litter exceeded for over two consecutive years monitoring period	<15% of sites with litter exceeded in over one year monitoring period
Phase I	Maintain existing litter cleanup patrols, increase educational efforts	Maintain existing patrols, increase education and partnerships	Maintain existing patrols, increase education and partnerships	Add one additional patrol, increase education and partnerships
Phase II		Add one additional patrol and continue education	Add one additional patrol and continue education	Dismantle fire rings and require fire pans
Phase III		Dismantle fire rings and require fire pans	Continue education, no firepan requirement	
Human Waste				
Indicator	No indicator	Percentage of sites that human waste (or toilet paper) is present.	Percentage of sites that human waste (or toilet paper) is present.	Percentage of sites that human waste (or toilet paper) is present.
Standard	No standard	<10% of sites with human waste/toilet paper exceeded for over two consecutive years monitoring period	<20% of sites with human waste/toilet paper exceeded for over two consecutive years monitoring period	<10% of sites with human waste/toilet paper exceeded in over one year monitoring period
Phase I	Maintain existing human waste cleanup patrols, increase educational efforts	Maintain existing patrols, increase education, LNT workshops, and partnerships. Require commercial guides to use portable toilets. Publicize state statutes regarding human waste disposal.	Maintain existing patrols, increase education, LNT workshops, and partnerships. Publicize state statutes regarding human waste disposal.	Add one additional patrol, increase education, LNT workshops, and partnerships. Require commercial guides to use portable toilets. Publicize state statutes regarding human waste disposal.
Phase II		Add one additional patrol and continue education.	Add one additional patrol and continue education. Add one pit toilet in Upper Tangles segment.	Require all users to use portable toilets. Remove pit toilet at Delta portage. Consider installation of boater dump station.

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Comment [State1]: Somewhere before or after this table it should be explained that monitoring will be conducted by river rangers or BLM clean-up crews by tallying the number of sites visited. Percentages for each trip will be averaged for the season. If the standard is exceeded for two consecutive years, then phased management actions will be implemented for the preferred alternative.

Comment [State2]: A facility is needed at Delta portage (milepost 212) or BLM must allow users to bury their human waste. It seems unrealistic to think that the users will load up and haul out their human waste without a pit toilet or clean out facility in place. Removal of the pit toilet without development of a clean out facility will likely create a bigger problem of users dumping their human waste on other lands or users not complying with the portable toilet requirements. The pit toilet is important at least until a clean out facility is developed. This language could also be modified to say: "Remove pit toilet at Delta portage when a clean out facility is developed." Togiak National Wildlife Refuge also recognizes this concern and human behavior and has left in place a pit toilet at least until a clean out facility could be developed.

¹ Standards do not include Tangle Lakes Developed Zone 3

	Alternative 1: (No Action/Current Management)	Alternative 2: (Proposed Action)	Alternative 3: Recreation Development Focus	Alternative 4: Primitive Focus
Phase III		Require all users to use portable toilets. Remove pit toilet at Delta portage. Consider installation of boater dump station.	Continue education. Users would be encouraged to pack out human wastes, but not required. Maintain pit toilet at Delta River portage. A boater dump station would not be considered.	
Fire Rings				
Indicator	No indicator	Number of fire rings per site	Number of fire rings per site	Number of fire rings per site
Standard	No standard	<20% of sites with more than one fire ring exceeded for over two consecutive years monitoring period	<40% of sites with more than one fire ring exceeded for over two consecutive years monitoring period	<20% of sites with more than one fire ring in over one year monitoring period
Phase I	Maintain existing cleanup patrols, increase educational efforts	Dismantle all but one fire ring per site, increase education, encourage the use of firepans. Prohibit the use of chainsaws and require the use of dead and down wood for campfires.	Dismantle all but one fire ring per site, increase education, encourage the use of firepans. Require the use of dead wood for campfires (cutting of standing dead and chainsaw use is permitted).	Dismantle all but one fire ring per site, increase education, encourage the use of firepans. Prohibit the use of chainsaws and require the use of dead and down wood for campfires.
Phase II		Dismantle all fire rings, require the use of firepans. Exception is the designated group camps where metal fire rings may be installed and fire pans would not then be	Install metal fire rings at heavy use sites and sites with multiple fire rings. Firepans would not be required.	Dismantle all fire rings, require the use of firepans.

Comment [State3]: See comment directly above for rationale for this change.

Comment [State4]: If require the use of firepans, the plan may wish to address how users should appropriately dispose of the ash.

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Comment [State5]: If require the use of firepans, the plan may wish to address how users should appropriately dispose of the ash.

Campsite Impacts				
Indicator	No indicator	Amount of increase in bare ground, social trails, and satellite sites. Sites have been inventoried and categorized as heavy, moderate, and light impact sites.	Amount of increase in bare ground, social trails, and satellite sites. Sites have been inventoried and categorized as heavy, moderate, and light impact sites.	Amount of increase in bare ground, social trails, and satellite sites. Sites have been inventoried and categorized as heavy, moderate, and light impact sites.
Standard	No standard	Change in one site categorization level or non-compliance with standards for each category	Change in one site categorization level or non-compliance with standards for each category	Change in one site categorization level or non-compliance with standards for each category
Phase I	Maintain existing campsite documentation efforts and rehabilitate dormant sites.	<p><u>Designate campsites within the corridor and require all users to camp at these sites. Designated campsites will be posted with a small unobtrusive placard. A map of the designated sites will be developed and made readily available for use by the public.</u></p> <p><u>Campsites capable of accommodating large groups (greater than 8 members) will be identified and indicated on the campsite map. Groups with greater than 8 members will be encouraged to use the large group sites. A reservation system will be established for the large group sites and will be made available for public review online and at the BLM Field Office in Glennallen. A group holding a registration for the use of a group camp will be given preference for the use of that site.</u></p> <p><u>Increase seasonal river management patrols on the Delta River from two to three patrols annually.</u></p> <p><u>BLM will increase education and awareness of low-impact camping by providing updated information at the Denali Highway boat launch kiosk, providing new or updated information on the website, and by providing information through personal or law enforcement contacts.</u></p> <p>Group size limit of 8 people per campsite, designate campsites and develop campsite map. Consider development of additional campsites in high use areas.</p> <p>Heavy Impact sites: close developing satellite sites and social trails using native materials to discourage use.</p> <p>Moderate Impact sites: use passive rehab to halt expansion of core area and block developing satellite sites and social trails.</p> <p>Light Impact sites: close site if not designated or currently documented using passive rehab methods. If documented, same as moderate impact sites.</p>	Maintain existing campsite documentation efforts and consider development of additional campsites in high use areas. Rehabilitate dormant sites.	<p>Group size limit of 8 people per campsite, designate campsites and develop campsite map. Additional campsites would not be developed.</p> <p>Heavy Impact sites: all heavy impact sites would be closed and rehabilitated using native materials to discourage use.</p> <p>Moderate Impact sites: use passive rehab to halt expansion of core area and block developing satellite sites and social trails.</p> <p>Light Impact sites: close site if not currently documented using passive rehab methods. If documented, same as moderate impact sites.</p>

Campsite Impacts				
Phase II		<p><u>Consider hardening, relocating, rehabilitating, or development of additional campsites in high use areas or in areas that are not capable of sustaining use without degrading the natural resources.</u></p> <p>Heavy Impact sites: close satellite sites and social trails using physical barriers and signage.</p> <p>Moderate Impact sites: Use passive rehab to halt expansion of core area, rest sites on alternating basis.</p> <p>Light Impact sites: passive rehab, rest and closure of sites on alternating basis.</p>	<p>Group size limit of 12 people per campsite, designate campsites and develop campsite map.</p> <p>Heavy Impact sites: close developing satellite sites and social trails using native materials to discourage use.</p> <p>Moderate Impact sites: use passive rehab to halt expansion of core area and block developing satellite sites and social trails.</p> <p>Light Impact sites: close site if not currently documented using</p>	<p>Heavy Impact sites: all heavy impact sites would be closed and rehabilitated using physical barriers and signage.</p> <p>Moderate Impact sites: Use passive rehab to halt expansion of core area, rest sites on alternating basis.</p> <p>Light Impact sites: passive rehab, rest and closure of sites on alternating basis.</p>
Private and Commercial Use Limitations				
Indicator	No indicator	Percent of nights camped within sight or sound of other campers, passing up occupied campsites, or camp sharing	Percent of nights camped within sight or sound of other campers, passing up occupied campsites, or camp sharing	Percent of nights camped within sight or sound of other campers, passing up occupied campsites, or camp sharing
Standard	No standard	<20% of nights camped within sight or sound of other campers, passing up occupied campsites, or camp sharing over two year period	<40% of nights camped within sight or sound of other campers, passing up occupied campsites, or camp sharing over two year period	<10% of nights camped within sight or sound of other campers, passing up occupied campsites, or camp sharing over two year period
Phase I	Commercial uses are limited through Special Recreation Permit stipulations. There are no other use limitations under current management strategy.	<p><u>Voluntary boat launch registration board for overnight trips for groups with 8 people or less on a first come/first served</u></p> <p><u>Mandatory registration required for all groups with greater than 8 people. These groups will be encouraged to use group campsites.</u></p> <p><u>Mandatory registration required two weeks prior to trip for groups with 15 people or more. BLM retains discretion to accept late registration if campsites capable of accommodating use by a large group are available. These groups will be encouraged to use group campsites.</u></p> <p>Voluntary boat launch registration board for overnight trips for groups with 8 people or less on a first come/first served</p>	<p><u>Prohibit recreational shooting. Develop additional campsites in high use areas. Prohibit recreational shooting. No limits on commercial guides.</u></p>	<p>Group size limit of 8 people per campsite, designate campsites and develop campsite map. Prohibit the use of chainsaws and recreational shooting. Limits on commercial guides.</p>

Phase II		Continue Phase 1 except groups with greater than 15 people will be required to obtain a permit two weeks prior to trip. Permitted groups will be required to stay at designated large group camps. Voluntary boat launch registration board for overnight trips, first come/first served	Group size limit of 12 people per campsite, designate campsites and develop campsite map. Voluntary boat launch registration board for overnight trips, first	Mandatory online registration system
Phase III		Require permits for all groups with over 8 people. Require permits for all groups with over 8 people.	Voluntary web based registration system.	Mandatory permit system
Phase IV		All groups will be restricted to not more than 8 people. All groups will be required to get a permit from BLM prior to trip. No more than 8 float starts will be authorized per day. Mandatory permit system	No formal permit system.	
Commercial Use Limitations				
Indicator	No indicator	Percent of nights camped within sight or sound of other campers, passing up occupied campsites, or camp sharing	Percent of nights camped within sight or sound of other campers, passing up occupied campsites, or camp sharing	Percent of nights camped within sight or sound of other campers, passing up occupied campsites, or camp sharing
Standard	No standard	<20% of nights camped within sight or sound of other campers, passing up occupied campsites, or camp sharing over two year period	<40% of nights camped within sight or sound of other campers, passing up occupied campsites, or camp sharing over two year period	<10% of nights camped within sight or sound of other campers, passing up occupied campsites, or camp sharing over two year period
Phase I	Commercial uses are limited through Special Recreation Permit stipulations. There are no other use limitations under current management strategy.	Mandatory registration required for all groups greater Commercial guides will be limited to XXXXX Mandatory registration required for all groups greater Commercial guides will be limited to XXXXX	Develop additional campsites in high use areas. Prohibit recreational shooting. No limits on commercial guides.	Group size limit of 8 people per campsite, designate campsites and develop campsite map. Prohibit the use of chainsaws and recreational shooting. Limits on commercial guides.
Phase II		Voluntary boat launch registration board for overnight trips, first come/first served	Group size limit of 12 people per campsite, designate campsites and develop campsite map. Voluntary boat launch registration board for overnight trips, first	Mandatory online registration system
Phase III		Voluntary web based registration system for overnight trips, progress to mandatory before Phase IV	Voluntary web based registration system.	Mandatory permit system
Phase IV		Mandatory permit system	No formal permit system.	

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- **Voluntary Registration:** Simple request for notification to provide education and information to users and to improve use data. No citation option.
- **Mandatory Registration:** Registration is required (unregistered parties could be cited). Would improve data gathering and information dissemination. Could also be used to encourage (but not require) certain behaviors, e.g. steer larger groups toward more durable sites.

- **Required permit:** May be used to attach stipulations, e.g. require use of designated large group campsites, pack out human waste, require firepans. Implementing regulation required.
- **Use limits:** General limits that apply to everyone – not just individual parties, e.g. across-the-board group size limits or limited float starts. Implementing regulation required.

Delta River SRMA and East Alaska Management Plan Amendment
Informal State of Alaska Comments
March 16, 2010

The State conducted a limited review of the Delta River Environmental Assessment (EA). Based on our understanding of the document to date, we anticipate the EA will not meet the standards of the Governor's Consistency Review in light of the following significant policy or regulatory issues:

- State disagrees with BLM's navigability determination.
- The plan provides insufficient justification for restrictions, including requiring permits, that affect access provided for in ANILCA Sections 1110(a) and 811.
- The plan inappropriately relies on national wild and scenic river regulations at 43 CFR 8351.2-1 for ANILCA access restrictions instead of DOI Title XI regulations at 43 CFR 36.11.
- The plan is not consistent with the Public Trust Doctrine or the State Constitution.

In addition, the issues identified above appear to be significant and/or controversial for purposes of NEPA – hence an EIS may be warranted. Also, similar to the recent Eastern Interior internal review draft RMP, this EA is unnecessarily complex and contains too many layers. Such unnecessary complexity in this planning document will hinder public understanding and review.

Navigability Determination

The State determined that the Delta River is navigable in fact from its confluence with the Tanana through Lower Tangle Lake (Navigability Report – Delta River, June 1994). We do not agree with BLM's recent navigability determination that the Delta River, with the exception of the stretch between Garrett Creek to Phelan Creek, is non-navigable. The State will assert its ownership by an action to quiet title.

It appears the EA intends for the “navigable” portion of the river, as determined by BLM, to coincide with Zone 5, where there are no restrictions in the waterway. However, the “navigable” portion of the river appears to overlap with Zone 4, which includes restrictions that apply to uses and modes of access in the waterway. If that is accurate, a zone boundary adjustment may be warranted. Also, even though we disagree with the outcome, plan maps should at least illustrate the portions of the river determined by BLM to be navigable and non-navigable.

Management of Public Trust Resources

Without adequate justification, the State cannot support, nor would we implement, the proposed limits to public access to state resources (water). Public use of natural resources, including the waters of the state, is protected in Article 8 of the Alaska State Constitution and in current statutes and regulations. Current public uses occurring on the Delta and Tangle Rivers and the Tangle Lakes are consistent with state statutes and regulations. Any impacts associated with such use on these waterbodies, at this time, are negligible and insignificant.

ANILCA 811 and 1110(a) Access Restrictions

ANILCA Section 811 states the Secretary *shall* ensure all rural residents engaging in subsistence activities *shall* have reasonable access to resources on public lands and *shall* permit [allow] snowmobiles, motorboats, and other means of surface transportation traditionally employed, subject to reasonable regulation. Similarly, ANILCA Section 1110(a) provides that the Secretary *shall* permit [allow] the use of snowmachines, motorboats, airplanes and non-motorized surface transportation on CSUs in Alaska, subject to *reasonable* regulation.

Uses protected under Section 1110(a) can only be restricted by reasonable regulation if the Secretary determines such use would be detrimental to the resource values of the unit or area. Applicable regulations at 43 CFR 36.11(h) include a process for implementing restrictions to these allowed uses. Current use levels do not warrant such restrictions. In addition, the EA proposes restrictions on allowed uses without a finding that these uses are detrimental to resources or other values.

Lastly, the EA indicates that users engaged in activities under either Section 811(b) or 1110(a) would be required, without explanation or justification, to obtain a permit. Such a broad-based permit requirement for activities specifically allowed by ANILCA represents an unreasonable restriction. Perhaps most importantly, the permit requirement fundamentally and inappropriately modifies ANILCA protected access from an *open until closed* default basis to an opposing *closed unless opened* system, which is clearly contrary to ANILCA's intent.

Page-Specific ANILCA comments

Page 4: This is an ANILCA CSU; therefore, DOI Title XI regulations at 43 CFR 36.11 must also be referenced in the second bullet.

Page 7, Section 1.7.3: Elements of this plan address or potentially affect subsistence access; therefore, Section 811(a) and (b) should also be referenced in this section.

Page 71, Section 3.2.10.5.2: Elements of this plan address or potentially affect subsistence motorboat access; therefore, ANILCA Section 811 (a) and (b) should also be referenced in this section.