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June 9, 2021

Tim LaMarr, Central Yukon Field Manager
Bureau of Land Management
Fairbanks District Office
222 University Avenue
Fairbanks, AK 99709-3844

Dear Mr. LaMarr:

The State of Alaska reviewed the Draft Central Yukon Resource Management Plan and Environmental Impact Statement (Draft CYRMP/EIS). As a cooperating agency, the State participated in all phases of the planning process, to date. In addition to the following consolidated state agency comments, all previously submitted internal and public state agency comments are incorporated herein by reference.

As a result of the conveyances and designations made pursuant to the Alaska Statehood Act, the Alaska Native Claims Settlement Act (ANCSA), and the Alaska National Interest Lands Conservation Act (ANILCA), the State of Alaska is comprised of a unique patchwork of land ownership unlike any other state in the nation. Congress was keenly aware that it was interspersing over 100 million acres of conservation designations under ANILCA (including designated wilderness) with similarly extensive State-owned lands and waters, and private Alaska Native Corporation lands. One need only look at the various provisions that Congress included in ANILCA to see that it not only provided conservation designations but also amended ANCSA and the Statehood Act to ensure the conservation designations would not interfere with the fulfillment of State and Alaska Native Corporation's land entitlement or the ability to have access to and use of those lands for a variety of purposes, including addressing rural communities' access and infrastructure needs, and opportunities for resource development. As such, Congress declared in ANILCA Section 101(d) that it had balanced all those competing interests, stating:

> This Act provides sufficient protection for the national interest in the scenic, natural, cultural and environmental values on the public lands in Alaska, and at the same time provides adequate opportunity for satisfaction of the economic and social needs of the State of Alaska and its people; accordingly, **the designation and disposition of the public lands in Alaska pursuant to this Act are found to represent a proper balance between the reservation of national conservation system units and those public lands necessary and appropriate for more intensive use and disposition** (emphasis added), and thus Congress believes that the need for future legislation designating new conservation system units, new national conservation areas, or new national recreation areas, has been obviated thereby.

As part of that balance, Congress was also aware that federal lands not designated for conservation purposes in ANILCA would be managed by the Bureau of Land Management (BLM) for multiple use under the Federal Land Management and Policy Act (FLPMA) and would be further subject to the on-

going selection and conveyance of lands pursuant to the Alaska Statehood Act and ANCSA, resulting in less BLM managed acreage over time.

This same patchwork of land ownership exists within the CYRMP planning area (see draft RMP/EIS, Table 1-1, page 1-2, and map 1-1). Table 1-1 indicates forty-six percent of the planning area is comprised of state lands (25,956,000 acres), approximately thirteen percent is owned by Native corporations (7,053,000 acres patented or interim conveyed); approximately thirteen percent (7,400,000 acres) is comprised of conservation system units (CSUs) managed by the U.S. Fish and Wildlife Service (USFWS)[1]; and approximately twenty-four percent (13,302,000 acres) is managed by BLM, which includes state-selected and top-filed lands. Not included in the table but outlined in grey on Map 1-1 (Draft RMP/EIS, Volume 2) are numerous CSUs that immediately surround the planning area, including the Arctic National Wildlife Refuge, Yukon Flats National Wildlife Refuge, Selawik National Wildlife Refuge, Selawik Wild and Scenic River, and Innoko National Wildlife Refuge, also managed by the USFWS, and Gates of the Arctic National Park and Preserve and Denali National Park and Preserve managed by the National Park Service (19,301,000 acres combined). All total, the acreage of federal CSUs within and immediately surrounding the planning area is approximately 26,600,000 acres.

The relatively limited amount of BLM-managed multiple-use lands in the planning area is a critical component of the balance Congress intended for Alaska, including the Utility Corridor, which was withdrawn specifically to allow for the construction of the Trans Alaska Pipeline (TAPS) and now houses the Dalton Highway, a critical transportation link to Alaska's North Slope. These multiple-use lands cannot be managed as CSU buffers, extensions of the existing CSUs, or *de facto* CSUs, as appears to be proposed in some sections of the draft plan (*e.g.*, Boreal Ecosystem Analysis for Conservation Networks (BEACONs) benchmark areas and connectivity corridors that connect CSUs both within and outside the planning area). Many aspects of the plan have a myopic reliance on the conservation components of ANILCA and, as a result, conflict with the Congressional intent of ANILCA to balance conservation and active use. This bias is not recognized in this planning effort.

The draft CYRMP is complex and challenging to review and comment on because even though the plan identifies a preferred alternative (C-2), as demonstrated with previous BLM RMPs and reinforced by BLM at recent public meetings, we expect that BLM will create a new hybrid alternative in the final plan that is comprised of elements from all alternatives (including, as specifically noted by BLM at public meetings, Alternative A - the no-action alternative). The plan also provides little justification for proposed decisions that add layers of resource protections (primarily under Alternative B), the majority of which are unnecessary considering the existing federal and state laws and regulatory authorities that are currently in place and apply to all future proposed development projects (*e.g.*, the National Environmental Policy Act, the Clean Water Act, Title 16 of the Alaska Statutes). And, because requests during the planning process for BLM to consult with the State as the primary manager of fish and wildlife on proposed protections for fish and wildlife were largely ignored, the State still does not have a full understanding of BLM's underlying rationale for many proposed fish and wildlife protection-oriented decisions.

[1] ANILCA designated CSUs within the planning area include Kanuti National Wildlife Refuge, Koyukuk National Wildlife Refuge, Innoko National Wildlife Refuge, Nowitna National Wildlife Refuge, the Nowitna Wild and Scenic River, and the Iditarod National Historic Trail.

The State has therefore not limited its review to the preferred alternative and has instead commented on various decisions proposed across all alternatives. As a result, it may appear that the State's support for some proposed decisions, *e.g.*, the proposal to lift Public Land Order (PLO) 5150,[2] which would allow for the State to receive title to its priority top-filed selections, may appear inconsistent with support for other decisions that would apply only as long as BLM continues to be the land manager. That is not the case and should not be interpreted as such by BLM. The concepts supported by the State, *e.g.*, protections for Dall sheep habitat located on lands within the Utility Corridor, would apply regardless of federal or State management. To clarify, the State supports protections that could be provided by BLM or that would shift to the State when PLO 5150 is lifted. If it is deemed necessary, the State will initiate appropriate land use planning (including amending existing area plans) to address management of the newly acquired lands should PLO 5150 be revoked. It is not appropriate, however, for proposed management decisions in the CYRMP to preempt or frustrate furthering the State's land entitlement granted under the Alaska Statehood Act.

With the above caveat, we provide these and additional comments on the Draft CYRMP/EIS in a separate attachment, which address a wide range issues, including but not limited to:

- Lifting Public Land Order 5150 and ANCSA Section 17(d)(1) withdrawals will advance fulfillment of statehood land entitlement, ANCSA land selections by Alaska Native Corporations, and increases land available for selection by Alaskan Native Vietnam era Veterans under the Dingell Act.
- ANILCA amended the Statehood Act to allow for top-filings and prevents BLM's interference with State and Alaska Native Corporations' land entitlement.
- The draft RMP/EIS fails to accurately describe and recognize subsistence opportunities under federal and state systems and on state lands.
- Wild and Scenic River Study, Lands with Wilderness Character, broad application of Right-of-Way (ROW) Exclusion and Avoidance Areas, and the CY adaptive management strategy directly conflict with ANILCA.
- The draft RMP/EIS fails to recognize the State's title to navigable waters and RS 2477 ROWs, clouding the State's title.
- FLPMA and ANILCA require Congressional oversight and approval when eliminating primary uses and/or imposing withdrawals greater than 5,000 acres in the aggregate.
- Interim travel management restrictions interfere with access to State lands and opportunities for recreational and subsistence uses and should not be implemented until a full trail inventory and analysis is completed in a step-down management plan.
- Proposed management actions in the Utility Corridor will interfere with the State's maintenance of the Dalton Highway.
- The draft RMP/EIS fails to recognize the State manages fish and wildlife on all lands, regardless of land ownership.

[2] This plan was initiated following completion of the East Alaska RMP and a commitment from then Secretary of Interior, Ken Salazar, to continue working cooperatively with the State of Alaska to consider further modifications to Public Land Order 5150, which overlays lands within the Utility Corridor north of the Yukon River. He further declared that the fulfillment of the State's land entitlement to be a top priority and urged the State to fully engage in the CYRMP planning process to assist BLM with that evaluation process. See enclosed June 27, 2012 letter from Secretary Ken Salazar to Governor Sean Parnell.

- BLM must meaningfully consult with the State on any proposed management involving fish and wildlife, including Areas of Critical Environmental Concern (ACEC) and wildlife habitat designations, connectivity corridors, etc., before any plan is finalized.
- Any ACECs carried forward need to be consistent with BLM policy, apply to smaller, discrete areas with targeted special management that is not already provided under existing federal and state laws and regulations, and not unnecessarily block access to resources or limit uses.

Thank you for this opportunity to comment. As a cooperating agency, we look forward to working with BLM on addressing these issues and determining the appropriate elements of a final plan that take the balance Congress identified for Alaska into consideration, including the management of BLM lands under FLPMA as multiple-use lands.

Sincerely,

Susan Magee
State ANILCA Program Coordinator

Enclosures:

06-27-12 Letter from Secretary Salazar to Governor Parnell
1986 IBLA Dinyea Appeal Decision
Alaska Land Use Council Wild and Scenic River Guidance
11-01-26 SOA Comments on BLM Wild Lands
List of RS 2477s within Central Yukon Planning Area
Statewide RS 2477 Map
List of State Navigable in fact Waterbodies within Central Yukon Planning Area

cc: Corri Feige, Commissioner, Alaska Department of Natural Resources
Doug Vincent Lang, Commissioner, Alaska Department of Fish and Game
John McKinnon, Commissioner, Alaska Department of Transportation and Public Facilities
Kip Knudson, Director of State and Federal Relations, Office of the Governor

State of Alaska
Comments on the draft Central Yukon RMP/EIS
June 9, 2021

I. State Land Entitlement Under the Alaska Statehood Act.

1. Lifting Public Land Order (PLO) 5150

- **Issue:** The State supports the plan's recommendation to fully lift PLO 5150 under Alternatives C-2 and D; however, the plan fails to frame lifting the PLO as a land entitlement issue subject to ANILCA Section 810(c) or provide critical context that supports lifting the PLO.

- **Resolution:** Plan needs to: 1) recognize that ANILCA Section 810(c) explicitly states that the 810 analysis is not to be construed to prohibit or impair the ability of the State to make land selections and receive land conveyances pursuant to the Alaska Statehood Act; 2) provide appropriate context for the lifting of PLO 5150 and advancing completion of Alaska's remaining statehood land entitlement; and 3) provide correct subsistence information and context.

- **Discussion:**

More than 60 years following statehood, Alaska has yet to receive its full land entitlement granted under the 1958 Alaska Statehood Act to provide for resource development and allow for a self-sufficient resource and economic base. Key to the State's ability to finalize its land selections is the lifting of PLO 5150, over which the State's highest priority selections are top-filed pursuant to ANILCA Section 906(e). We support the lifting of PLO 5150 in its entirety as depicted in the preferred alternative (C2), which will allow the State to satisfy a large portion of its outstanding statehood land entitlement.

In June 2006, BLM recommended a partial revocation of PLO 5150 in the East Alaska RMP Record of Decision. In 2008, the Department of Interior (DOI) filed PLO 7692, revoking PLO 5150 on 82,000 acres in the utility corridor, allowing for some the State's top-filings within the East Alaska planning area to become valid selections. In a June 27, 2012 letter to Governor Sean Parnell, Secretary of Interior, Ken Salazar, stated "BLM is committed to working with the State to consider further modifications of PLO 5150" and further indicated BLM's Alaska State Office would initiate the CYRMP planning process to evaluate the public lands within the utility corridor located north of the Yukon River. He also stated, "I consider fulfillment of the State of Alaska's land entitlement a top priority." However, despite this strong commitment from the Secretary and the State's good faith participation in the planning process, we are concerned that the draft RMP/EIS lacks critical context for lifting PLO 5150 and an accurate, objective, analysis of subsistence issues, without which the plan inappropriately impairs the State's ability to receive its highest priority land selections.

To properly frame lifting PLO 5150 as a land entitlement issue, the CYRMP needs to recognize the following important context:

- Lands within this corridor are strategically and economically essential to the State for current and future transportation and utility projects.
- The utility corridor links remote and isolated communities and connects the North Slope to people, goods, services, and resources along the roaded and rail-belt areas.
- As a result of these lands being held in top-filed status for decades, a significant portion of the Trans-Alaska Pipeline System (TAPS) right-of-way (ROW) now consists of a patchwork of State and federal lands.
- The current dual management scheme is cumbersome, hinders economic development, and is both economically and logistically inefficient.
- Existing critical state infrastructure already within the lands encompassed by PLO 5150 include the TAPS and the Dalton Highway (managed by the Alaska Department of Transportation and Public Facilities (ADOT&PF)).
- The primary purpose of the inner Utility Corridor is energy transportation (BLM 1991 Utility Corridor RMP).
- The State has a vested interest and an existing institutional and regulatory framework to ensure the inner corridor will continue to be managed for that primary purpose.
- The State already manages a large portfolio of pipelines located on state land, including a significant portion of TAPS.
- Potential future projects that are all or partially located in the corridor include the Alaska Stand Alone Pipeline Project (ASAP), Alaska LNG, Ambler Road Corridor, and the Ray Mountains mineralized area access road.
- Conveyance to the State will allow thoughtfully managed access points to be constructed consistent with ADOT&PF's mission and key objective "to Keep Alaska Moving through Service and Infrastructure."

The plan's current, narrow focus disproportionately emphasizes the loss of the priority afforded federally qualified rural residents for the consumptive use of fish and wildlife in Title VIII of ANILCA should federal lands transfer to the State when PLO 5150 is lifted, even though Section 810(c) of ANILCA ensures the subsistence impact analysis will not be construed to prohibit or impair the ability of the State **to make land selections and receive land conveyances (**emphasis added). ANILCA Section 906(e) allows the State to select (referred to as top-filings) previously unavailable lands (subject to valid existing rights and Alaska Native selection rights under ANCSA), making top-filings part of the selection process referenced in ANILCA Section 810(c). BLM acknowledged that ANILCA Section 810(c) applied to top-filings in the 1989 Proposed Utility Corridor RMP when it referenced the 1986 denial of an appeal by Dinyea Corporation to the Interior Board of Land Appeals (IBLA) (Chapter 4, page 4-20).[3] A similar provision in ANILCA Section 1001(f) was included by Congress to ensure the wilderness component of the required study of federal land on the North Slope (*i.e.*, the Central Arctic Management Area (CAMA) would not be "…construed as impeding, delaying, or otherwise affecting the selection and conveyance of land to the State pursuant to the Alaska Statehood Act, or any other Federal law referred to in section 102(3)(A) of this Act, and to the Natives pursuant to the Alaska Native

[3] "Nothing herein shall be construed to prohibit or impair the ability of the State . . . to make land selections and receive land conveyances pursuant to the Alaska Statehood Act." (ANILCA Section 810(c)); "This statutory provision ([ANILCA 810(c)] clearly demonstrates Congressional intent to provide for unimpeded selection of land pursuant to the Alaska Statehood Act." (Dinyea Corp., 90 IBLA 163 (1986)).

Claims Settlement Act and this Act." Congress was clearly aware that certain provisions in the Act could be used to inappropriately interfere with State and Alaska Native Corporation land selections and conveyances if not directly qualified and restricted.[4]

In addition, findings under ANILCA Section 810(a)(1)-(3) in the current analysis lack a fundamental understanding of subsistence data, practices, and the mixed cash-subsistence sectors at play in rural economies, fail to consider the existence and benefits of State subsistence management, and fail to address outstanding land entitlement under the Statehood Act. The analysis also disregards the coexistence of the State and federal subsistence systems and fails to recognize the subsistence opportunities that will continue to be available to rural residents on state-selected and conveyed lands after PLO 5150 is lifted, making the analysis fundamentally flawed (see additional comments on the plan's subsistence analysis in Section II below). Further, should the PLO be lifted, the lands ultimately conveyed to the State will generally be comprised of a subset of the lands selected and will primarily align with the inner corridor as identified in the plan in Appendix A (Maps 2.29 and 2.30), leaving vast acreages of federal lands both within and adjacent to the planning area still available for the priority afforded qualified rural residents under Title VIII of ANILCA for the subsistence use of fish and wildlife when "…necessary to restrict taking in order to assure the continued viability of a fish or wildlife population or the continuation of subsistence uses of such population" (ANILCA Section 802(2)).

Concerns expressed during the planning process about possible expansion of off-highway vehicle (OHV) use for hunter access in the corridor and beyond should lands be conveyed to the State would be more appropriately addressed if the plan recognized that the existing State statutes and regulations that apply OHV access restrictions within the corridor (AS 19.40.210) and method and means of game harvest through the ADF&G Dalton Highway Corridor Management Area (DHCMA) will still be in place. Instead, the plan primarily emphasizes that Title 19 restrictions are a hindrance to federally qualified subsistence users who have been granted allowances by the FSB to use OHVs and firearms in the corridor that override the restrictions in the State's Statute.

Due to the importance of the corridor in the State land entitlement process, until the PLO is lifted, the State cannot take any further action to request large acreages of selected lands be conveyed in other areas of the State. This also has a limiting impact on lands available for selection by Alaska Native Vietnam era veterans who qualify for a land allotment under the John D. Dingell, Jr. Conservation, Management, and Recreation Act (Dingell Act), potentially interfering with BLM's goal in Table 2-19 to comply with the Dingell Act (page 2-49).

2. ANCSA 17(d)(1) Withdrawals

- **Issues:**
    - ANCSA 17(d)(1) withdrawals, which were put in place to allow for selection by Alaska Native regional and village corporations and for study and classification,

[4] The American Rivers v. Babbitt Settlement Agreement explicitly recognizes this provision in ANILCA as it relates to management of proposed wilderness in the Central Arctic Management Area. Memo dated November 10, 1993 from Deputy Regional Solicitor, Alaska Region, re settlement of Case No. J91-023CI.

have fulfilled their intended purpose and are no longer necessary, as BLM noted in its Report to Congress.
    - Outdated PLOs prevent some of the State's high priority top-filings from attaching, preventing Alaska from making final entitlement decisions.

- **Resolution:**
    - Full revocation of 17(d)(1) withdrawals throughout the planning area to allow ANILCA top-filed selections to attach for eventual conveyance to fulfill the State's land entitlement.

- **Discussion:**

In a 2006 Report to Congress required in the Alaska Land Transfer Acceleration Act (ALTAA), BLM recognized withdrawals put in place under ANCSA 17(d)(1) in the early 1970's had served their intended purpose, which was to temporarily withdraw lands for evaluation and classification. BLM also recognized that Congress had also passed significant legislation that provides environmental protections that were not in place in the 1960's. This includes, but is not limited to, the passage of the National Environmental Policy Act of 1970 (NEPA), the Clean Water Act of 1972, FLPMA in 1976 and ANILCA in 1980, which designated over 100 million acres of conservation system units (CSUs), including designated wilderness, across Alaska (as noted above, over 26 million acres of ANILCA designated CSUs are currently located within and immediately adjacent to the Central Yukon planning area). BLM also acknowledged in its 2006 report that it now had rigorous regulations that protect the environment during the orderly development of its multiple-use lands.

> In the early 1970s when the lands were withdrawn under Section 17(d)(1) and (d)(2) of the ANCSA, there were few regulations to oversee the development of the public lands and protect important natural resources. Since then, Congress has passed significant legislation for the orderly development of the public lands and to protect the environment from adverse impacts. The BLM has 1) developed extensive oil and gas lease stipulations, required operating procedures (ROPs), and surface management regulations for miners, which are now in place and sufficient to assess and protect the resources in most situations…" (BLM, Sec. 207 Alaska Land Transfer Acceleration Act: A Review of D-1 Withdrawals, Report to Congress (June 2006), at 5, 6)

The State supports the revocation and lifting of all ANCSA 17(d)(1) withdrawals in the Central Yukon planning area, as provided in Alternatives B, C1, C2, and D, shown on Table 2-1 (Page 2-10, Lands & Realty). As recognized by BLM in the ALTAA Report, the lifting of the ANCSA 17(d)(1) withdrawals does not, in any way, jeopardize or negate protections afforded BLM lands and resources existing under federal and state laws and regulatory authorities. These revocations will allow the State's top-filed selections made under ANILCA 906(e) to attach, making the lands available for conveyance to the State as part of its land entitlement. The legislative history of ANILCA confirms that these withdrawals were not intended to frustrate State or Alaska

Native Corporation selections.[5] As noted above, lifting these withdrawals will also make more lands available for selection by Alaska Native Vietnam era veterans who qualify for a land allotment under the Dingell Act.

II. Federal and State Subsistence Opportunities for Alaskans

1. Subsistence Concerns

- **Issues:**
  - The draft RMP/DEIS does not clearly explain the federal and state subsistence systems.
  - The draft RMP/DEIS does not make clear distinctions between federal and state subsistence systems/users.
  - The draft RMP/DEIS uses incorrect terminology and presents incorrect statements related to subsistence.
  - The draft RMP/DEIS inaccurately portrays subsistence spatial data from the Alaska Department of Fish and Game (ADF&G).

- **Resolution:**
  - Provide a clear, complete, and contextual explanation of both the federal and state subsistence systems.
  - Explicitly identify both the federal subsistence system as well as the state subsistence systems and associated users throughout the document.
  - Remove the use of "federal priority subsistence" and other terminology as identified as well as correct noted errors throughout the RMP/DEIS related to subsistence discussions.
  - Correct language and analysis related to inaccurate portrayal of subsistence spatial data.

- **Discussion:**

ANILCA provisions reinforce the authorities granted by the State Constitution that the State of Alaska is the primary wildlife manager on all lands (see ANILCA Sec. 1314). The taking on public lands, as defined by ANILCA, of fish and wildlife for non-wasteful subsistence uses shall be accorded priority over the taking on such lands of fish and wildlife for other purposes (see ANILCA Title VIII). These federally qualified rural residents can choose to hunt either under the federal subsistence hunting regulations, which tend to be more liberal than the state regulations, or under the state regulations, which sometimes provide different opportunities than the federal regulations. As we note throughout, subsistence hunting encompasses more than hunting under the federal subsistence hunting regulations. The State also implements a priority for subsistence:

[5] "[303] Senator Stevens. There was no intent that [Section (d)(1) of ANCSA] would be used to frustrate state or native selection; [303] Chairman Jackson. No." (Alaska National Interest Lands: Hearing before the Senate Energy and Natural Resources, 95 Cong. 2 (1978) (Statement of Theodore F. Stevens).

> Alaska state law directs the Board of Game and Board of Fisheries to provide a reasonable opportunity for subsistence uses first, before providing for other uses of any harvestable surplus of a fish or game population [AS 16.05.258 (b)]. This is often referred to as the "subsistence preference" or sometimes the "subsistence priority" (see: https://www.adfg.alaska.gov/index.cfm?adfg=subsistenceregulations.main).

The State of Alaska met with BLM planning staff and the consultants preparing the draft RMP/EIS on several occasions to help mentor and educate them in state and federal subsistence, as well as the use of ADF&G subsistence data, and to provide detailed feedback on the subsistence portions of the draft RMP/EIS. We appreciate the additional effort all staff dedicated to attempting to improve the planning document. Working relationships at the staff level represented meaningful and productive collaborative engagement. Unfortunately, the bureaucratic time constraints the planning process placed on all involved preempted the ability of the draft RMP/EIS planning staff and writers to produce a draft RMP/EIS that demonstrated a full understanding of the state and federal subsistence nexus, its relationship to the planning area, and potential impacts of possible land status changes.

With few exceptions, throughout the draft RMP/EIS there is a lack of understanding of both the federal and state subsistence systems; generally, the existence of the state subsistence system is summarily ignored except brief references in the Social & Economic Resource Use section. However, when referenced, it is often referenced incorrectly, providing further confusion throughout the draft RMP/EIS. Case in point, for purposes of **State subsistence regulation**, it is the Joint Board of Fisheries and Game (Joint Board) that shall identify **nonsubsistence areas**, which are defined as areas where dependence upon subsistence (customary and traditional uses of fish and wildlife) is not a principal characteristic of the economy, culture, and way of life (AS 16.05.258(c)). This is only for State subsistence purposes. Whereas, for purposes of **Federal subsistence regulation**, it is the FSB that "define[s] which communities or areas of Alaska are **nonrural** [emphasis added] (all other communities and areas would, therefore, be **rural** [emphasis added])" (see 80 FR 68249). Areas are identified as rural in federal regulation and as non-subsistence in state regulation.

The Draft Environmental Impact Statement (DEIS) incorrectly states on page S-1:

> As described in the analysis of management situation (AMS), the planning area contains non-subsistence use communities and subsistence use rural communities as defined by the Joint Board of Fisheries and Game.

The Joint Board does not determine rural communities for federal subsistence purposes. The AMS published in 2016 also failed to describe the rural areas as defined by the FSB. It only notes the non-subsistence area as determined by the Joint Board but then omits the key point that non-subsistence areas as defined by the Joint Board pertain to state subsistence regulations not federal:

> Joint Board of Fisheries and Game has designated the area immediately around Fairbanks as a nonsubsistence area; this includes the planning area communities of Fairbanks, Ester,

> North Pole, Healy, McKinley Park, Big Delta, and Delta Junction (Analysis of Management Situation, BLM 2016, p 203).

Continuing the confusion, the draft RMP/EIS then inexplicitly discusses subsistence with a general assumption of federal subsistence throughout. The use of language such as "non-subsistence use communities" and "subsistence use rural communities" is undefined terminology that only adds to the confusion. The draft RMP/EIS adds yet an additional layer of confusion and misguidance for the reader by relying on State of Alaska Division of Subsistence data with no explanation that this data does not differentiate between federal and state subsistence use of resources. All in all, the discussions relating to subsistence throughout the draft RMP/EIS are a milieu of incorrect and unclear information wholly unhelpful to the public. Such insufficient analyses will also make the RMP vulnerable to legal challenge.

Federal and state subsistence systems need to be explicitly identified throughout the document. To present information properly in context, the federal subsistence system should not be discussed in absence of the state subsistence system; the reader should be reminded throughout the document of the existence of both systems as appropriate. In various locations throughout the chapters the federal system is presented in a manner that implies it is the only subsistence system. Also, it should be explicitly noted when "federally qualified subsistence user(s)" is intended versus "state subsistence user(s)" (*i.e.*, a subsistence user as defined under the state system). It is very likely public readers will skim the document and will need the explicit language to properly follow the discussions. These issues need to be explicitly clarified in relation to land status and the alternatives that include the revocation of PLO 5150.

Additionally, the use of "federal priority subsistence" is incorrect. ANILCA Section 804 is titled "Preference for Subsistence Uses" and makes no reference to "federal priority subsistence." Rather, the section states:

> Except as otherwise provided in this Act and other Federal laws, the taking on public lands of fish and wildlife for nonwasteful subsistence uses **shall be accorded priority over the taking on such lands of fish and wildlife for other purposes** [emphasis added]. Whenever it is necessary to restrict the taking of populations of fish and wildlife on such lands for subsistence uses in order to protect the continued viability of such populations, or to continue such uses, such priority shall be implemented through appropriate limitations based on the application of the following criteria:
>
> 1. customary and direct dependence upon the populations as the mainstay of livelihood;
> 2. local residency; and
> 3. the availability of alternative resources.

Federal subsistence management on public lands is only intended for times of shortage when take must be restricted under Section 804 and is not intended as a replacement for the state system. If the FSB determines it is necessary to implement the priority in ANILCA, rural residents will still have priority over non-rural Alaska residents taking fish and wildlife under state regulation. While allocation decisions by the FSB are an important part of wildlife management in times of shortage, they fit within the larger system of state wildlife management

which manages populations across land ownership boundaries using the benefit of the department's store of professional expertise, research, and scientific data.

Section 804 states a priority shall be accorded **in times when it is necessary** to restrict the taking of fish and wildlife; this shall be implemented based on three criteria, one of which is local residency. Section 804 does not state that there is an all-encompassing "federal priority subsistence" use on all public lands at all times as insinuated throughout the draft RMP/EIS. Choice of language is important. Language conveys meaning which can be interpreted and provide understanding; or conversely misused, misinterpreted, and misunderstood. The incorrect language choices surrounding subsistence made throughout the document do not provide the framework for the audience to have an accurate understanding of the interplay between the management actions proposed and federal and state subsistence opportunities. This coupled with the public CYRMP meetings where BLM staff referred to a "federal [subsistence] privilege" further confuses the situation introducing yet another concept not referenced in ANILCA or Congressional intent.

The use of "federal priority subsistence" conveys an implied blanket superiority for federal subsistence use and the right to an absolute priority which is incorrect and misleading. This is issue is clearly noted in *Ninilchik Traditional Council v. U.S.*, 227 F.3d 1186, 1191 (9th Cir. 2000).

> The Federal Subsistence Board reads this provision [ANILCA Sec. 804] to require that priority be given to subsistence uses in the form of a **meaningful preference** [emphasis added] over other uses. NTC [Ninilchik Traditional Council], contesting this interpretation, argues that the Board must accord an **absolute priority** [emphasis added] to the subsistence use of fish and wildlife and is therefore required to eliminate all nonsubsistence uses of such resources before restricting subsistence uses in any way.

On this matter the 9th Circuit Court held:

> …that the Federal Subsistence Board's reading of the term "priority" within the meaning of § 3114 [ANILCA Sec. 804] as allowing it to **balance** the **competing aims of subsistence use, conservation, and recreation**, [emphasis added] while at the same time providing subsistence hunters with a meaningful use preference, is reasonable (*Ninilchik,* 227 F.3d at 1193).

The draft RMP/EIS attempts to better explain the ANILCA 804 priority for subsistence use for federally qualified subsistence users but falls short with an explanation that, again, uses the misleading language of "federal priority subsistence" and incorrect facts indicating the subsistence priority under state regulations applies to "all users" instead of Alaska residents.

> The State of Alaska does manage for subsistence for all users, and conveyance of these lands would allow for broader subsistence use under State of Alaska subsistence management, including these communities; however, the provisions for federal priority subsistence promulgated under 50 CFR 100.26 for access and harvest would not be in effect where these lands are selected or conveyed (page 3-185).

The above issues are further exemplified in the following:

- Misleading statement on page Q-49 of the DEIS that states: "Management actions could change the number of acres directly managed by the BLM in the planning area. Lands that are disposed of would no longer be subject to BLM management, removing federal management of those resources [emphasis added]."

In the context of a discussion of subsistence resource use it is unclear to the reader if this statement when noting "those resources" is referring to the disposed lands rather than the subsistence resources being discussed throughout this entire appendix. It should be revised as follows:

> Management actions could change the number of acres directly managed by the BLM in the planning area. Lands that are disposed of would no longer be subject to BLM management, removing federal management of those ~~resources~~ lands.

- Reference to BLM management of fish and wildlife in Table Q-2 Summary of Potential Impacts on Subsistence from Resource Management Actions, Management Actions column is titled: "Water, **wildlife, fish** [emphasis added], riparian vegetation, and soils."

Once again, BLM does not manage fish and wildlife. The State of Alaska manages fish and wildlife across all lands throughout the state as mandated by the State's Constitution. BLM manages habitat. This should be revised as follows:

> Water, fish and wildlife~~, fish~~ habitat, riparian vegetation, and soils.

As we also note in our comments on the 810 Analysis (below), it is inappropriate to put boundaries, define "community subsistence use areas," or assume that subsistence use maps are comprehensive and static. Use areas have only been documented for particular years for a portion of users and use areas, and the number of users change over time based on a variety of factors, including species migration and abundance, environmental conditions, economics, and technology, and a myriad of other reasons. BLM attempted to implement our suggestion from the cooperator review by now incorporating the concept of **overlap** between management and subsistence use on a spatial level. However, the key point to our prior comment that **subsistence use area data is not comprehensive, defined, or static** was lost. The overlap suggestion has been misapplied and the plan continues to imply that subsistence areas are delineated. They are not. This could be revised to describe an estimate of how much land within a given management action overlaps with areas that have been documented as being used by subsistence users with careful notation for the reader that the one-time documentation in no way implies comprehensiveness and does not reflect the dynamic character of the spatial data referenced and used for the estimates. This comment is a fundamental flaw in describing and evaluating subsistence throughout the whole of the draft RMP/DEIS and applies to all effects analyses that describe community subsistence use areas. This issue permeates throughout the effects analysis.

Additionally, the following information is inappropriately attributed to the ADF&G Division of Subsistence and needs to be corrected. This information was attributed to personal

communication with a community member in the cooperator review draft of the RMP in July 2020. The Division of Subsistence did not provide the personal communication from the community member nor did they publish this information:

- DEIS, page S-4, citation correction needed (see bold):

    - Contrary to data provided in the AMS from the Alaska Department of Labor Statistics, information accrued in the preparation of this environmental analysis suggests that employment in gravel mining for residents of Wiseman and Coldfoot is not a steady source of employment. This means mineral material sales may currently have a limited effect on household incomes for communities located along the Dalton Highway. These data also suggest that trapping provides between 15 to 60 percent of household income depending on the year **(ADFG Division of Subsistence 2019)** [emphasis added]. This suggests that for residents living along the Dalton Highway, access to subsistence use areas, which is afforded through their subsistence priority status, indirectly affects economic opportunities for these communities.

- DEIS, page S-35, citation correction needed (see bold):

    - Contrary to data provided by the Alaska Department of Labor Statistics identified in the AMS, information gathered from residents of Coldfoot and Wiseman suggests there are few residents who receive a regular income from mineral material sales; rather, work in mineral materials offers irregular employment **(ADFG Division of Subsistence 2019)** [emphasis added].

To properly cite personal communication, the name of the BLM staff contact and the name of the local contact need to be identified as well as the date of contact and the mode of communication. The Division of Subsistence includes systematically collected Traditional Ecological Knowledge and Local Traditional Knowledge in their reports, including those cited in the draft RMP/EIS. It is inappropriate to solicit direct feedback and critique from a single community member on the use area maps created by numerous project respondents. Doing so is undermining to those local participants and is a biased approach to gathering data.

The table titled "Q-1 Central Yukon Subsistence Communities, Estimated Pounds of Resources Harvested by Household" (see 2021 DEIS, p. Q-4) should have a reference to ADF&G Division of Subsistence Community Subsistence Information System: https://www.adfg.alaska.gov/sb/CSIS/.

2. ANILCA 810 Analysis

- **Issues:**
    - Does not provide the relevant information on and definition of public lands.
    - Fails to recognize that in addition to the 810 analysis, there is an existing regulatory framework in place to protect subsistence resources.

- Provides inaccurate or misleading findings because of potentially exaggerated acreages by failing to clarify "public lands," as defined in ANILCA, do not include "land selections of the State of Alaska which have been tentatively approved or validly selected under the Alaska Statehood Act…"
- Fails to recognize subsistence opportunities under state regulations.
- Inaccurately portrays subsistence spatial data from ADF&G.

- **Resolution:**
  - Provide the relevant definition of public lands as defined by ANILCA Section 102(3).
  - Recognize existing regulatory framework in place to protect subsistence resources including, *e.g.*, the Clean Water Act, the Clean Air Act, other agency authorities such as ADF&G Title 16 Fish Habitat Permitting Authority.
  - Clarify what acreages are affected given the ANILCA definition of public lands.
  - Factor opportunities afforded by state subsistence regulations into the analysis.
  - Correct language and analysis related to inaccurate portrayal of subsistence spatial data.

- **Discussion:**

The State understands the importance of subsistence to local rural residents who live in remote communities across the state. ANILCA Section 810 requires that federal agencies conduct an analysis of impacts to subsistence resources, use, and access when determining whether to "withdraw, reserve, lease, or otherwise permit the use, occupancy, or disposition of public lands." Management plans, such as CYRMP, therefore evaluate potential impacts associated with proposed management direction. The analyses are necessarily broad and speculative. Therefore, we appreciate BLM explicitly recognizing that subsequent 810 analyses will also be conducted on a project-specific basis to ensure that impacts to subsistence will continue to be addressed in detail whenever development is proposed in the planning area with potential to restrict subsistence abundance, availability, or access to resources.

The 810 Analysis refers to public lands throughout, yet does not provide the relevant definition of public lands as defined by ANILCA Section 102(3), nor a clarification that indicates that public lands do not include lands selected but not conveyed to the State of Alaska or Native Corporations and villages. ANILCA Section 102 defines public lands in Alaska to specifically exclude lands selected by the State of Alaska and Alaska Native Corporations. This is a critical concept for the reader to understand the information presented in the proper context. It is insufficient for the draft RMP/EIS to merely direct the reader to look up the definition for themselves on pages E-1, M-98, M-114 and 2-55 for a concept so critical to understanding the draft RMP/EIS. Only once, on page 3-155 is it noted that "[s]elected lands are not considered public lands for the purposes of federally qualified subsistence."

It is also important for the analysis to recognize that in addition to the 810 analysis, there is an existing regulatory framework in place to protect subsistence resources which includes the Clean Water Act, the Clean Air Act, other agency authorities such as ADF&G Title 16 Fish Habitat Permitting Authority. Further, the planning area includes several expansive federal CSUs, which

are subject to the same regulatory framework and ANILCA Title VIII, including the requirement to conduct an 810 analysis for any future development proposals.

The State also provides for subsistence on state-owned lands and, under most development scenarios involving state land, the same regulatory framework would apply to development proposals because of the extensive wetlands in rural Alaska which trigger permitting requirements under the Clean Water Act and other authorities. This regulatory framework and the requirement to conduct an 810 analysis still apply absent any of the proposed planning direction in the draft RMP/EIS.

The above-described regulatory framework which, although mentioned for BLM land actions, as presented, does not indicate to the reader through presentation of analysis or description to have been equally factored into the analysis for future potential State of Alaska lands. Case in point, the DEIS notes (pages R-13 and R-16):

> On lands conveyed to the State of Alaska after the revocation of PLO 5150, locatable and mineral material exploration and development would not have to **adhere** [emphasis added] to BLM policy or Desired Conditions and Objectives in Appendix H; however, on these lands, they would be **expected** [emphasis added] to comply with State and federal laws and regulations.

The DEIS uses the concept of **adherence** related to requirements for activities on BLM lands—a requirement that shall be met and merely notes an **expectation** of compliance when referencing State and federal laws and regulations. Without evidence of a reason for an expectation of non-compliance nor comparative data noting plausible implications resulting from a change in land status, the Analysis falsely leads the reader to assume there are fewer protections in place from the regulatory framework on lands owned and managed by the State of Alaska. Although this appears to be a simple choice of language easily rectified, the issue is larger than this single example. It is the selective presentation of data rather than language choice that must be corrected. This pervasive issue of the plan continuously casting doubt and providing the reader with uncertainty as to the protections in place under State management by omitting key facts is a thematic issue that is an egregious error. We request the analysis be corrected and this theme of selective data presentation be stricken from the plan by providing a thorough analysis that includes all data rather than selective data points depicting only a partial analysis. As written, the plan does not present a robust comprehensive analysis to the public.

We disagree with the direction in BLM's 810 Analysis guidance (IM-AK-2011-008), which directs BLM to evaluate all land use actions on BLM lands, including state-selected lands. As acknowledged in the guidance, doing so is not legally required in ANILCA (see: II. Applicability of Section 810 to BLM Actions, page 2) and is also misleading. ANILCA Section 810 applies to public lands, and "public lands" as defined in ANILCA, do not include "land selections of the State of Alaska which have been tentatively approved or validly selected under the Alaska Statehood Act…" For the purposes of land planning, BLM can write management intent for state-selected lands under the premise that these selected lands may remain in Federal ownership during the lifetime of the RMP but the draft RMP/EIS specifically states that may likely not be

the case for PLO 5150. Hence, including these lands without qualification in the 810 Analysis provides inaccurate or misleading findings because of the potentially exaggerated acreages.

Overall, the 810 Analysis appears to disproportionately emphasize the loss of the federal priority afforded rural residents for the consumptive use of fish and wildlife in Title VIII of ANILCA should federal lands transfer to the state when PLO 5150 is lifted. It disregards the coexistence of the state and federal subsistence systems and fails to recognize the subsistence opportunities that will continue to be available to rural residents on state selected and conveyed lands after PLO 5150 is lifted. This is evidenced in large part by the language used and perspective portrayed surrounding current BLM lands that could become State of Alaska lands. Disclosure of each State selection's priority ranking would provide a more accurate long-term forecast of land ownership once PLO 5150 is lifted.

As noted previously, section 810(c) of ANILCA specifically states that "[n]othing herein shall be construed to prohibit or impair the ability of the State or any Alaska Native Corporation to make land selections **and receive land conveyances** [emphasis added] pursuant to the Alaska Statehood Act or the Alaska Native Claims Settlement Act." The DEIS fails to indicate this to the reader throughout the 810 Analysis thus presenting the conveyance of lands to the State of Alaska as a valid consideration in the 810 Analysis. Further exacerbating this presentation of the reach of the analysis is the lack of data presented within the 810 Analysis on the State subsistence opportunities available when lands are conveyed to the State. Overall, the analysis does not equally present the impacts to and opportunities for subsistence, nor does it provide the reader with an applied understanding of the implications to subsistence resources, use, and access.

An additional failure of the 810 analysis is the lack of consideration of non-federally qualified subsistence users who conduct subsistence practices under state regulations as a traditional activity. Emigration from rural communities to hubs and cities is projected to increase as climate change and economic shifts threaten the infrastructure and social makeup of many Alaska communities. Emigration eliminates federally qualified status for many former rural residents and their families. However, accommodation by the State's subsistence regulations allows former residents to return to traditional hunting and fishing areas to engage in and maintain their traditional subsistence culture and obtain foods they prefer to eat or desire to provide for friends and family that remain in the community but cannot hunt for themselves. This is vital to many communities across the state where elders often rely on younger members of their extended family to harvest and provide subsistence foods. These are significant effects on the subsistence harvest of fish and wildlife, and the costs to conduct these uses that are not considered in the draft RMP/EIS. For example, what are the realized costs of having to purchase food if a non-federally qualified subsistence hunter may no longer practice subsistence activities with family members or rely on family members. This flaw in the analysis, coupled with the flawed understanding of subsistence and subsistence spatial data, provide ample cause to reject the conclusions of the document. The 810 Analysis should include analysis of opportunities for non-federally qualified family members, or former area residents that have left their village, often for education, work or family medical issues, and return to help harvest subsistence resources and participate in subsistence activities with their federally qualified relatives and conduct some of these practices under state regulations as a traditional activity.

As noted previously in our cooperator reviews, the statement in the Analysis that community "core subsistence use areas …**would not** [emphasis added] be impacted" (Appendix R, p R-7) as a result of the revocation of PLO 5150 conflicts with much of the information presented and is problematic. There is no documentation of what a "core" activity is let alone a reliable method for determining where "core" activities happen. The concept of "core" subsistence activities is not documented nor supported through presentation of data anywhere in the draft RMP/EIS. This statement has no citation to provide clarification. The Division of Subsistence has not published density maps; this conclusion is currently unfounded and misleading especially when considered with the Analysis as a whole.

Also as noted above and in previous cooperator reviews, estimating a specific percent of subsistence use area is misleading. This is a recurring issue throughout the Analysis and specifically as it relates to estimating overlap with the outer corridor of PLO 5150. The RMP/DEIS should clearly note that subsistence spatial data used in the analysis was collected in a single year and that use areas change every year depending on a variety of factors, such as abundance and environmental conditions. Language, such as "core moose hunting area" that follows below, has no applied or theoretical meaning, and is not supported by ADF&G data and the RMP/DEIS offers no substantiation of such a concept. The State disagrees with the use of such incorrect, unvalidated, and misleading language; we request it be removed from the DEIS.

> Less than 55 percent of the moose subsistence use area overlaps the outer corridor, and the core moose hunting area, as well as river-accessible areas, would not be impacted by revocation of PLO 5150 in the outer corridor. (Appendix R, page R-7)

Additionally, there is no magnitude of impact provided in the 810 Analysis to accurately depict or describe how many acres of land on which the federal priority, when needed, would apply with and without PLO 5150 being revoked. The acreage of federal lands in the corridor needs to be tallied and presented in the 810 Analysis as it relates to the federal subsistence priority as defined in ANILCA Section 804, rather than left to the reader to figure out separately or from unrelated maps. The BLM needs to better communicate science and land management to the public.

III. Plan Components that Conflict with the Alaska National Interest Lands Conservation Act (ANILCA)

1. Wild and Scenic River Study

- **Issue:**
  - The Wild and Scenic River study conducted by BLM violates ANILCA Section 1326(b) because the study was not authorized in ANILCA or by an act of Congress, post-ANILCA.
  - Wild and scenic river designations in the Utility Corridor would interfere with Dalton Highway road maintenance activities that draw millions of gallons of water (summer and winter).
  - Notwithstanding ANILCA's prohibition, the wild and scenic river study was not conducted consistent with BLM policy direction.

- **Resolution:**
  - Rescind the flawed study findings for the eligible and suitable rivers identified under Alternatives A and B, remove all intent to apply interim protections "until Congress acts" (*i.e.*, Goals and Objectives, Table 2-9).
  - Do not recommend any wild and scenic river designations in the final plan.

- **Discussion:**

The State maintains its objection to the Wild and Scenic River study the plan purports to have conducted in compliance with BLM policy (*i.e.*, BLM Manual 6400, 2012) to determine the eligibility and suitability of rivers within the planning area for potential recommendation to Congress as Wild and Scenic Rivers (WSR). The study and BLM's national policy direction are both inconsistent with Section 1326(b) of ANILCA, which prohibits wild and scenic river studies in Alaska unless authorized in ANILCA or an act of Congress, post-ANILCA (WSRs are defined in ANILCA as CSUs).

> No further studies of Federal lands in the State of Alaska **for the single purpose of considering the establishment of a conservation system unit, national recreation area, national conservation area, or for related or similar purpose** (emphasis added) shall be conducted unless authorized by this Act or further Act of Congress. (ANILCA Section 1326(b))

ANILCA added twenty-six rivers in Alaska to the Wild and Scenic River System and mandated twelve additional rivers be studied for potential designation. The reports required in ANILCA Section 604 for rivers designated for study have long been completed. Two of the Congressionally designated study rivers were located within the Central Yukon planning area, the Melozitna and the Yukon-Ramparts segment, neither of which were recommended for designation (BLM AMS, page 183). The intent of Congress in ANILCA was not to allow an endless cycle of studies but to provide finality to the lengthy studies and deliberations that led up to ANILCA. In addition to the prohibition in ANILCA Section 1326(b), that intent is also clearly stated in ANILCA Section 101(d):

> This Act provides sufficient protection for the national interest in the scenic, natural, cultural and environmental values on the public lands in Alaska, and at the same time provides adequate opportunity for satisfaction of the economic and social needs of the State of Alaska and its people; accordingly, the designation and disposition of the public lands in Alaska pursuant to this Act are found to represent a proper balance between the reservation of national conservation system units and those public lands necessary and appropriate for more intensive use and disposition, and thus **Congress believes that the need for future legislation designating new conservation system units, new national conservation areas, or new national recreation areas, has been obviated thereby** [Emphasis added].

Further, BLM's Wild and Scenic River policy (IM 91-127, 12/14/90) was modified pursuant to a Settlement Agreement for the *American Rivers v. Babbitt* lawsuit to remove Alaska's exemption from conducting wild and scenic river studies in RMPs (the removal of the exemption did not apply to activity planning). However, a BLM News Release issued 12/14/93 clearly states BLM's purpose for settling the lawsuit had nothing to do with a legal interpretation of ANILCA Section 1326(b). The news release states, "This settlement reflects the BLM's desire to resolve disputes rather than engage in gridlock," Director Baca said "it establishes the proper study of valuable resources while eliminating a costly, lengthy court battle." At the same time, however, BLM policy retained recognition that ANILCA Section 1326(b) still applied to Alaska, emphasizing that it applied to studies that were conducted for the "single" purpose of considering eligibility for wild and scenic river designation.

> Pursuant to section 1326(b)…no study shall be conducted for the <u>single</u> purpose of considering eligibility for wild and scenic river designation in Alaska. (BLM.AK.1417, 11/10/93, Memorandum, page 2-3).

This recognition of ANILCA 1326(b) was not carried forward in subsequent revisions to BLM's WSR Policy guidance (BLM Manual 8351.06F), and BLM WSR studies conducted in conjunction with RMPs (and BLM Integrated Activity Plans for the National Petroleum Reserve-Alaska) since then have had no other purpose than to consider whether rivers within a planning area should be recommended to Congress for designation. WSRs are defined as CSUs under ANILCA Section 102 and a WSR study does nothing more than consider the establishment of new CSUs. The "single" purpose of the WSR study conducted for the CYRMP has been clearly stated from the beginning of the planning process. The April 2012 CYRMP Preparation Plan states "Potential additions to the National Wild and Scenic Rivers system will be considered during this land use planning effort" (page 15); and "This RMP/EIS will decide on the suitability or non-suitability of rivers as additions to the national wild and scenic rivers system." (page 16) The intent of this study effort is a clear violation of ANILCA 1326(b).

Additionally, it is unclear if the rivers identified as eligible and suitable in Table 2-9 were ever evaluated as required in BLM Manual 6400 (page 3-1, Chapter 3. Evaluation of Study Rivers) because no supporting documentation is provided in the plan or on BLM's e-planning website. Section 3.4.2 in the draft plan refers to the April 2016 CYRMP Analysis of the Management Situation (AMS) for additional information. The extent of the analysis in the AMS can be summed up in the first sentence of the Current Condition section (page 183) "**All** of the waterways in the planning area **are free flowing** and **many likely** (emphasis added) have attributes that qualify as outstandingly remarkable values…" The State's scoping comments dated January 17, 2013 pointed out that the September 2012 CYRMP Preparation Plan (page 12) indicated BLM was relying on input from the public and advocacy groups for supporting information and that that approach was inconsistent with BLM Manual 6400, including the Interagency Wild and Scenic Rivers Coordinating Council guidance referenced in BLM's manual. A mere listing of rivers and their related attributes without data and other information documenting BLM's determinations on river classification and outstandingly remarkable values (ORVs) does

not constitute a substantive study necessary to support the eligibility and suitability determinations under Alternatives A and B.

The Wild and Scenic River designations (and interim protections) in the Utility Corridor (*i.e.*, proposed suitability findings apply to the Sagavanirktok River, Dietrich River, Mathews River, Jim River and Kanuti River), will interfere with activities currently conducted by the State to maintain the Dalton Highway. For example, road maintenance activities include drawing millions of gallons of water in both summer and winter. At a minimum, this existing use should have been recognized in the study, and by itself, may have disqualified these rivers from being found suitable and carried forward under Alternative B.

The overarching goal for the Wild and Scenic River section of the plan (Table 2-9) inappropriately states that free flowing nature and ORVs will be maintained, implying the goal applies regardless of the final decision in the plan's Record of Decision. If BLM does not recommend rivers to Congress for designation and/or Congress does not subsequently designate the rivers, the objective to maintain WSR related attributes is no longer relevant and should be removed from the plan. In addition, the objective for Alternative A in Table 2-9 inaccurately states that eligible rivers will be managed to protect the free-flowing nature, water quality, ORVs, and preliminary classification, pending Congressional action. Eligible rivers have not been recommended to Congress; therefore, there is nothing for Congress to act upon. BLM policy only provides for protection of eligible rivers pending the agency's suitability finding. According to Alternative B in Table 2-9, BLM's suitability determinations are complete.

Further, when considering river eligibility and suitability, the ownership of the submerged lands must also be taken into consideration (BLM Manual 6400, page 3-1, Section 3.1).[6] The State was granted ownership of all navigable waters in Alaska at Statehood in 1959; however, BLM has not identified the navigability status for the vast number of rivers in the CYRMP planning area, including the rivers found eligible and suitable in Table 2-9. ANILCA Section 606 amended the Wild and Scenic Rivers Act and excludes State and private lands from the boundaries of designated rivers in Alaska. WSR Guidance issued by the Alaska Land Use Council (ALUC) in November 1982 (enclosed) also recognizes that non-federal lands, including the beds of navigable streams are excluded from the boundaries of designated WSRs (page 6, Section 15).[7] Notably absent

[6] "In order to determine eligibility and assign a tentative classification (see chapter 3.3), it may be necessary to divide a study river into segments. In defining segment termini, consider (1) obvious changes in land status or ownership." (page 3-1, 3.1, A. Segments); "Jurisdictional and management constraints are not considered when determining a river's eligibility for designation as a WSR. These types of issues are addressed in the suitability phase of WSR studies." (page 3-1, 3.1 Eligibility); "The following factors will be considered and, as appropriate, documented in the suitability analysis as a basis for the suitability determination of each river….2. The current state of land ownership and use in the area." (page 3-6, A. Basis for Suitability)

[7] Section 1201 of ANILCA established the Alaska Land Use Council (ALUC) as an advisory body. Functions of the ALUC are outlined in Section 1201 and include making recommendations regarding the implementation of ANILCA.

is inclusion of any guidance in this same document pertaining to agency directed WSR studies pursuant to Section 5(d)(1) of the Wild and Scenic Rivers Act, which BLM claims as its authority for conducting WSR studies in Alaska, even when there is no authorization from Congress as ANILCA requires (BLM Manual 6400, page 2-1). ANILCA is the later and more specific statute and therefore prevails. In 2019, the Supreme Court also affirmed in *Sturgeon v. Frost* that submerged lands owned by the State that are located within the boundaries of a CSU cannot be regulated as part of the CSU.[8] Additionally, the selection and conveyance process for State and Native Corporation lands is not yet complete and the potential ownership pattern of lands surrounding these rivers must also be taken into consideration. Highly fragmented land ownership does not lend itself to wild and scenic river corridor management. The study and draft plan both lack this analysis.

The so-called WSR study referenced in the draft plan is inconsistent with BLM's WSR Manual 6400 that calls for a rigorous, well documented study process. Therefore, both the eligibility and suitability findings in the CYRMP are flawed and cannot be relied upon to support WSR recommendations or intent to apply WSR related protections as noted in the goals and objectives in Table 2-9. Moreover, policy direction cannot override the statutory direction in ANILCA Section 1326(b). As such, the State reiterates its objections to the WSR study, does not support BLM recommending any of the suitable rivers identified in Table 2-9 under Alternative B, and requests the overarching goals and objectives in Table 2-9 and intent to apply protections to rivers found eligible and/or suitable be removed in the final plan.

2. Lands with Wilderness Characteristics

- **Issue:** LWC Policy implementation conflicts with ANILCA and should not be implemented in the CYRMP or Alaska.

- **Resolution:** Do not carry forward LWC related decisions in Alternatives B and C-1 into the final plan.

- **Discussion:**

The State has been on-record since Secretary Salazar first issued Secretarial Order 3310 on December 23, 2010 that the "Wild Lands" Policy (now being implemented as Lands with Wilderness Characteristics (LWC) – see Table 2-8, page 2-32) will have a devastating effect on Alaska's people, economy, and land use and access, and that it conflicts with both ANILCA and FLPMA.[9] On April 14, 2011, the United States Congress passed the Department of Defense and Full-Year Continuing Appropriations Act, 2011 (Pub. L. 112-10) (2011 CR), which included a provision (Section 1769) that prohibits the use of appropriated funds to implement, administer, or enforce Secretarial Order 3310 in Fiscal Year 2011. As a result, Secretary Salazar issued a Wilderness Policy

[8] *Sturgeon*, 139 S. Ct. at 1081

[9] See enclosed January 26, 2011 letter (with attachment) from Governor Sean Parnell to Secretary Salazar.

Memorandum dated June 1, 2011 to confirm that pursuant to the 2011 CR, the BLM will not designate any lands as "Wild Lands" but will instead maintain inventories of lands, including those with wilderness characteristics, and will consider LWC during land use planning and when making project-level decisions. The memorandum specifically directs the Deputy Secretary to work with BLM and interested parties to develop recommendations regarding the management of BLM lands with wilderness characteristics. On January 19, 2021 Secretary Bernhardt issued Secretarial Order 3393, rescinding Order 3310; however, since this planning process was begun when Order 3310 was still in place, the plan contains proposed LWC management direction that the State has objected to since the beginning of the Central Yukon planning process. We, therefore, reiterate the reasons for our objections to implementing LWC related policy direction in Alaska generally, and in the CYRMP as proposed in Alternatives B-D.

The 2012 Central Yukon Preparation Plan estimated that more than 90% of BLM lands in the planning area will be classified as LWCs. The 2016 Central Yukon AMS states that "almost all of [BLM lands within] the planning area meets the criteria for lands with wilderness characteristics…" Given that the majority of federal lands in Alaska contain wilderness characteristics as described in BLM Manual 6301 dated 2/25/11 (*e.g.*, 99% of the Eastern Interior planning area also qualified as LWCs), implementing restrictive measures to protect LWCs could result in a continual erosion of available multiple-use lands and potentially lead to wholesale limits on uses and activities in vast areas of the State. This threatens the balance Congress achieved for the designation of public lands through ANILCA, as stated in Section 101(d). Over 100 million acres of land in Alaska was designated in 1980 by ANILCA as CSUs and other conservation designations. Of that, fifty-seven million acres was designated as wilderness. Over half of the nation's Wilderness Preservation System is in Alaska. A significant portion of that acreage is located on national wildlife refuge and national park lands within and immediately adjacent to the planning area.

In addition, while ANILCA Section 1320 grants BLM authority to conduct wilderness reviews "from time to time," it also specifically exempts BLM lands in Alaska from FLPMA Section 603. As a result, BLM is not allowed to manage lands recommended for wilderness designation to the non-impairment standard and is instead directed to manage in accordance with applicable land use plans.

> *Notwithstanding any other provision of law,* ***section 603 of the Federal Land Policy and Management Act of 1976 shall not apply to any lands in Alaska*** *(emphasis added).* ***However,*** *in carrying out his duties under section 201 and 202 of such Act and other applicable laws, the Secretary may identify areas in Alaska which he determines are suitable as wilderness and may, from time to time, make recommendations to the Congress for inclusion of any such areas in the National Wilderness Preservation System, pursuant to the provisions of the Wilderness Act. In the absence of congressional action relating to any such recommendation of the Secretary, the Bureau of Land Management shall manage all such areas which are within its jurisdiction* ***in accordance with the applicable land use***

plans and applicable provisions of law *(emphasis added)*. (ANILCA Section 1320)

In lieu of conducting wilderness reviews, which carry this specific limitation in Alaska, BLM is implementing portions of Secretary Salazar's 2011 Secretarial Order 3310 as represented in BLM Manual 6302 – Consideration of Lands with Wilderness Characteristics in the Land Use Planning Process (Public) to administratively protect LWCs. While BLM does not call the action a wilderness review, the basis for the policy is the Wilderness Act, and, by protecting LWCs through the land use planning process, the policy is circumventing Congressional direction in ANILCA Section 1320 to continue multiple-use management on recommended lands pending any action from Congress. LWCs are not recommended wilderness; therefore, they should not be managed more restrictively than Congress allows for recommended wilderness.

BLM must therefore not apply management prescriptions to LWCs that equate with the non-impairment standard in FLPMA Section 603, and as such, conflict with ANILCA Section 1320. Also, BLM cannot apply management prescriptions that result in lands being managed more restrictively than ANILCA CSUs. This includes but is not limited to proposed withdrawals, or any actions that would effectively result in a land withdrawal, greater than 5,000 acres in the aggregate, which without subsequent Congressional approval would violate ANILCA Section 1326(a). ROW Exclusion and Avoidance Area designations conflict with Congressional intent in ANILCA Title XI, which requires federal agencies to fully consider applications for proposed transportation and utility systems affecting CSUs, including designated wilderness. While the Objective in Table 2-8 identifies some of the allowances in ANILCA that BLM pre-determined are compatible with LWCs, it is not a complete list (*e.g.*, it does not include the rights of access granted in ANILCA Section 1110(b) or existing and new navigation aids and other facilities authorized in ANILCA Section 1310) nor does it carry the weight of the statute or embody all of the requirements in the statute and subsequent implementing regulations, such as the requirement for a finding, and notice and hearing in the vicinity of the affected unit or area prior to restricting or prohibiting ANILCA Section 1110(a) protected methods of access (*see also* ANILCA Title XI implementing regulations at 43 CFR 36).

Given all the exceptions in ANILCA that apply to Congressionally designated wilderness and wilderness study areas in Alaska, it is highly unlikely that BLM could implement the LWC policy direction without running afoul of this statutory direction and intent. With or without a wilderness review, BLM is obligated to manage inventoried LWC for multiple-use. In the case of recommended wilderness, multiple-use management is to continue until Congress acts upon a recommendation submitted by the Secretary and the President. To do otherwise is circumventing direction from Congress in ANILCA Section 1320. We, therefore, reiterate our request for BLM to refrain from applying the LWC policy direction in Alaska generally, and implementing any of the management direction in the CYRMP that prioritizes protecting LWC over other multiple uses or applies management prescriptions to reduce impacts to LWC, as represented in Alternatives B and C-1.

3. **Adaptive Management Strategy: Boreal Ecosystem Analysis for Conservation Networks (BEACONs) Benchmarks and Landscape Connectivity**

- **Issues:**
    - Proposed adaptive management strategy conflicts with the Congressional intent of ANILCA and disregards the provisions of ANILCA that provide for active use and development activities and rather focuses solely on ANILCA's provisions for conservation.
    - BEACONs is a speculative and theoretical planning concept focused on obtaining an international landscape of connected functioning ecosystems that neglects the compromises Congress recognized for public lands in Alaska.
    - The connectivity corridor planning effort provides a one-sided perspective of landscape connectivity corridor planning. It conflicts with the overall intent of much of the baseline literature referenced by the Draft RMP/EIS by omitting key portions of the methodologies, such as the necessity for broad stakeholder engagement and partnership and the necessity of allowing for a breadth of use to ensure successful proactive connectivity planning efforts.
    - The State of Alaska and, specifically, ADF&G—a key stakeholder—was not adequately and fully engaged with on this aspect of the planning effort. Concepts were explained but we were not consulted in their development nor were our comments ever discussed with us.
    - The draft RMP lacks necessary detailed information on what, why, and how BLM developed this management framework.
    - The draft RMP/EIS modeling for connectivity corridors and benchmark selection fails to include an animal component or explain the relevance of the priority species identified yet not incorporated into modeling efforts and also failed to coordinate either aspect with ADF&G.
    - The adaptive management strategy is scattered throughout the document and there are conflicts between sections. This makes it difficult for the public to find all the necessary components of the proposed management.
    - Standard Operating Procedures (SOPs) provide specific management intent for benchmarks and connectivity corridors that have the potential to significantly restrict use and access which conflicts with ANILCA.
    - All terminology is not clearly defined.
    - According to the cited literature a key functional component of corridors is to ensure the viability of **local species** populations adaptation to climate change, but the draft RMP indicates that the corridors are not being developed with a focus on wildlife movement. No data is included to demonstrate how potential species may use the corridors for migration as climate changes nor does the plan identify current and future wildlife migration concerns critical to the methodology cited.
    - Consultation/coordination with non-BLM landowners and CSU managers is mandated in Appendices F and G of the draft RMP/EIS, yet the planned consults appear to be with CSU managers only. No reference is made to coordinating/consulting with the State, ADF&G, or other critical stakeholders.

- **Resolution:**

- Recognize the full spectrum of provisions in ANILCA relevant to this planning effort including provisions for conservation **and** active land use and the prohibitions against creating de facto CSU lands without Congressional approval (*e.g.*, ANILCA sections 101(d) and 1326, and Title XI).
- Include coordination/consultation with the State in the adaptive management strategy and, due to the improper assumptions of the theoretical modeling employed and potential misapplication of the unverified results of the modeling exercise, remove BEACONs components of connectivity corridors and benchmarks (and associated SOPs) as the foundation of the adaptive management strategy for the CY planning area; replace with a coordinated program developed in collaboration with ADF&G and other stakeholders for wildlife management and conservation in accordance with BLM Manuals 6500, 6600, 6720.
- Remove Magness et al. (2018) theoretical research modeling as the primary foundational structure for directing management policy and instead provide peer-reviewed best practices for applied research methods for connectivity corridor science.

- **Discussion:**

We remain concerned that BLM in the CYRMP, as in the recently completed Bering Sea-Western Interior (BSWI) RMP, is implementing unofficial policy through their proposed adaptive management strategy, which is comprised of connectivity corridors and vast benchmark areas that are inappropriate for Alaska and also inconsistent with ANILCA.

ANILCA established 100 million acres of CSUs of unprecedented size across Alaska and at the same time included unprecedented provisions to provide for the State and its citizen's social and economic interests. The remaining State, Alaska Native Corporation and other private lands, and BLM multiple-use lands, are part of this balance Congress achieved for Alaska (*see* ANILCA Section 101(d)). The application of the benchmarks and connectivity corridors in the CYRMP planning area not only threaten this balance without oversight from Congress, it frustrates the Congressional intent in ANILCA. For example, ANILCA Title XI, in which Congress found Alaska's transportation and utility infrastructure largely undeveloped, established a process to ensure the designation of the vast CSUs would not interfere with or prevent federal land management agencies from appropriately considering future proposed projects in all areas of the state. The language in ANILCA demonstrates Congress did not intend for access to be restricted in such a manner outside of CSUs on BLM multiple-use lands. Yet the entire framework proposed for the plan's adaptive management component, which includes connectivity corridors to link existing CSUs and large benchmark areas conflicts with the clear Congressional intent in ANILCA by assigning SOPs that potentially cease authorization of discretionary land uses on BLM managed lands and watersheds.

In the Draft RMP/EIS, the BEACONs project is one of two primary sources cited in Appendix G for the strategies applied in the planning area to achieve the proposed adaptive management goals. These concepts were developed by the Northwest Boreal Landscape Conservation Cooperative (NWB-LCC). "The NWB-LCC is comprised of over 30 federal and state/provincial

agencies, non-governmental organizations, Tribes and First Nations, and research institutions."[10] BLM and the USFWS are both part of the NWB-LCC and appear to have worked closely with them in adopting these concepts as adaptive management for the CYRMP. Yet, despite cooperating agency status, the State of Alaska (the States referenced in the article **are Canadian not American states**), has not been party to these efforts to promote and apply these concepts as a planning tool. In fact, while the LCC's website includes many references to its involvement with the CYRMP, the RMP includes no mention of the organization and its overall goal of "working toward an international landscape that sustains functioning, resilient boreal ecosystems."[11] BLM is not tasked with providing an "international landscape." Rather than working with and engaging with the State and other local stakeholders to determine appropriate adaptive management strategies in the CY planning area, BLM cooperation efforts relied on international non-profit groups (*i.e.*, the interconnected NWB-LCC, Northwest Boreal Partnership, and the Northwest Latitudes Partnership) [12] and the BEACONs modeling, whose focus was on developing/linking a swath of conservation lands stretching from the Rocky Mountains, through Canada, and across Alaska,[13] rather than on CYRMP needs. Whatever interests BLM staff may have in these concepts, they must be developed under applicable law.

The draft RMP/EIS explains in Section G.2, Connectivity Corridors, that "[t]he use of corridors to connect core conservation areas is generally found in developed areas with highly fragmented ecosystems; **however, there are also application examples in areas where opportunities exist for proactively conserving largely intact systems**" (Emphasis added) (Bennett and Mulongoy, 2006, p G-8).

A review of the Bennett and Mulongoy, 2006 article also includes the following foundational premise for the application of the methodology:

> Corridors — in the sense of functional linkages between sites — are essentially devices to maintain or restore a degree of coherence in fragmented ecosystems. In principal, linking isolated patches of habitat can help increase the viability of local species populations in several ways (p 6).[14]

The article then continues to state:

> the ecological network is also being applied in order to retain the coherence of large ecosystems or ecoregions which are still relatively intact but are coming under increasing pressure — often through a combination of development and underdevelopment (ibid. p 88)

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[10] Series: Alaska Park Science - Volume 17, Issue 1. Migration: On the Move in Alaska,
"Bridging the Boreal: Landscape Linkages Connecting the Federal Conservation Estate in Alaska. Accessed at: https://www.nps.gov/articles/aps-17-1-12.htm"

[11] https://www.lccnetwork.org/lcc/northwest-boreal

[12] https://www.lccnetwork.org/lcc/northwest-boreal, NORTHWEST BOREAL PARTNERSHIP - Northwest Boreal Partnership, Northern Latitudes Partnerships – Resilience Across Borders) and Land Use Planning Projects | Northwest Boreal LCC - NORTHWEST BOREAL PARTNERSHIP

[13] NWB-LCC-Strategic-Plan-V1.pdf (nwblcc.org)

[14] https://www.cbd.int/doc/publications/cbd-ts-23.pdf

Bennett and Mulongoy (2006) then list the following as examples of how corridors can serve to increase the viability of local species populations: access to new habitats, seasonal migration, opportunity for genetic exchanges, and opportunities to move to new locations, by securing the integrity of physical environmental process vital to the species. Once again identifying the importance of the species component to connectivity corridor planning.

The draft RMP/EIS also conveniently omits the premise that the intact ecosystems addressed in the literature it cites are under pressure and the fact that the articles also emphasize the necessity of engaging all stakeholders and providing for diverse active as well as conservation uses of the lands intended as corridors. The draft RMP/EIS not only fails to adhere to the balance Congress applied in ANILCA, it also fails to achieve the balanced approach identified in much of the referenced literature.

We are supportive of the concept of landscape connectivity and avoiding habitat fragmentation, but the draft RMP/EIS fails to provide support for the presupposition that federal CSUs are the most important points of origin or points of destination. This flaw could specifically lead to deflecting attention away from the areas of true concern for a given population. The identification of wildlife movement corridors should be based on biologically identified populations and not on political boundaries. The draft RMP/EIS also does not identify what actions are foreseen as threats to the current state of intactness, pristine water quality, and free movement of animals, considering the lack of human use and presence over the majority of the planning area acreage.

ADF&G is cognizant of the effect climate change will have on key habitats and its potential to impact the sustainability of Alaska's fish and wildlife resources and their uses. It is in ADF&G's interest to assess the likely impacts of climate change on fish and wildlife and to develop adaptation strategies to mitigate those impacts to meet its management responsibilities. ADF&G requested throughout the planning process to be more involved in BLM's planning effort and has requested that BLM avoid broad-scale designations and restrictions as they often diminish the ability to address site specific problems in the planning area. ADF&G (2010) laid out specific monitoring and research efforts it determined necessary to plan for future impacts to fish and wildlife species caused by changing climate regimes. These efforts include better monitoring of changes in water temperature, water volumes, water courses, currents, instream flows and water quality for fish needs, distribution and duration of winter ice, increased efforts to prevent/control invasive species, changes to terrestrial conditions and species distribution and behavior, new population survey and monitoring techniques, and studies on the effect of climate change on wildfires. [15]

As noted, the concept of connectivity can be appropriate when applied according to scientific principles under applicable circumstances. We question the application of connectivity corridor theory as laid out in the plan. Given BLM's statutory direction to "manage on the basis of multiple use and sustained yield," (FLPMA Section 102(7)) a mitigation management approach that responds when species or resources demonstrate stress or impacts to viability yet supports responsible resource use is more appropriate. The draft RMP/EIS also fails to explain how

[15] Clark, R., A. Ott, M. Rabe, D. Vincent-Lang, and D. Woodby, 2010. The Effects of a Changing Climate on Key Habitats in Alaska. Alaska Department of Fish and Game.

connectivity corridors and benchmarks will be measurable resource values and how the sustained yield principal applies to landscape resilience, connectivity, and adaptability (see page G-3).

Connectivity corridors are currently a focal point in conservation planning, including at the national level. While BLM has no specific guidance laying out management practices for implementing connectivity corridors, the Secretary of the Interior signed Secretarial Order (SO) 3362 "Improving Habitat Quality in Western Big Game Winter Range and Mitigation Corridors" in 2018. Alaska is not included as a participating state (participating states include Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming). However, the State of Alaska is involved with the Western Association of Fish and Wildlife Agencies (WAFWA) working group on migration/telemetry issues that resulted from SO 3362. DOI's August 2020 Implementation Progress Report for SO 3362 **stresses the importance of DOI agencies developing collective partnerships with states and recognizing state authority to manage wildlife**, further illustrating that ADF&G should have been an active participant in the development of the proposed adaptive management strategy (the lack of inclusion also violates ADF&G's Master Memorandum of Understanding (MMOU) with BLM).

We also question whether using theoretical and yet unproven methodologies across a vast landscape, *i.e.*, those employed by Magness et al. and BEACONs, is prudent.[16] It appears BLM has reached a pre-decisional determination regarding the need for connectivity corridors in the draft RMP/EIS as BLM incorporates them into every proposed alternative. Implementing corridors to link CSUs is not a valid reason to implement connectivity corridors. At every review opportunity during the planning process we expressed concerns that the model used to determine connectivity corridors does not incorporate an animal component. Connectivity corridors, at some level, must have an animal component and BLM does not provide that level of supporting information in the draft RMP/EIS.

The usefulness of a model that does not incorporate an actual animal input has not been empirically established. Generic model generated probabilities are being allowed to overrule on-the-ground observational data on the premise that the corridors based on geographic features are being developed in a generic fashion to allow for ecosystems supportive of corridors and ecoregion changes over time which will inevitably allow for wildlife movement over time with no supporting evidence this will be the case. Using a model that only connects similar enduring geographic features/land facets that, in general, track river corridors and as such do not impede wildlife movement, the BEACONs/Magness, *et. al.* model fails to consider important wildlife behaviors, such as the tendency of caribou to move to higher elevations in pursuit of lichen as opposed to moving along river corridors, or that moose meander across the landscape and do not have a typical migratory pattern. Until an animal component has been added to the modeling, it is too early to designate corridors.

Additionally, BLM considered the amount of priority wildlife species habitat as one of three ranking criteria (fundamental benchmark properties and resilience to climate change are the others) for selecting benchmarks in the planning area but failed to identify what criteria was used in identifying the priority species, what habitat is important for them, what increasing pressures

[16] Magness, D.R., A.L. Sesser, and T. Hammond. 2018. Using topographic geodiversity to connect conservation lands in the Central Yukon, Alaska. Landscape Ecology, 33: 547–56.

they are facing, how their viability is threatened, and how the connectivity corridors address their current and future habitat needs in the planning area. BLM also failed to consult with ADF&G on the appropriateness of the selected species. Inappropriate species selection for impact assessment could artificially maximize the possible application of corridor designations throughout the CY planning area. This is also contrary to Secretary Salazar's stated commitment to work with the State to consider further modification of PLO 5150 and his position that the fulfillment of the State of Alaska's land entitlement was a top priority.

Again, we question why the State's wildlife management agency was left out of cooperation opportunities related to adaptive management strategies impacting our ability to effectively meet our fish and wildlife management mandate when time for coordination and cooperation was clearly provided to the USFWS, as well as a non-governmental organization, NWB-LCC.

> *The BEACONs [i.e., NWB-LCC and USFWS] team has been working iteratively for months with BLM CY planners and staff to tailor the products to the needs of the agency. The data are complete and are available, therefore we are not requesting the BLM undertake a new analysis.*[17]

The effects analysis in the draft plan/EIS also does not discuss the social and economic impacts that the designation of connectivity corridors and benchmarks (on BLM lands) and related restrictions will have on the State of Alaska. The effects analysis also fails to include a discussion of the effects these concepts will have on the ADF&G's ability to manage fish and wildlife resources.

Further, the plan's discussion of the proposed adaptive management strategies is poorly laid out and confusing at best. The plan spreads the description of the adaptive management concepts, the involved acreages, and the associated maps throughout different sections of the plan, making it difficult for even experienced agency staff familiar with the planning area and the issues, let alone the general public, to locate related information and subsequently provide meaningful comments. The general description of adaptive management makes overarching reference to these concepts in Chapter 1 (page 1-7). The concepts are then referenced separately in the description of the alternatives in Chapter 2 (pages 2-2 through 2-4). There is then no reference to these areas or affected acreage information in the Quantitative Summary of Alternatives (Table 2-1, page 2-5) or any of the tables that describe proposed management (Tables 2-2 through 2-27). Similarly, the maps of these areas and corridors are not located in the map section of the plan (Appendix A) but instead are found in Appendix G (Maps G-1 through G-3).
The management direction that applies to these vast areas is also not found in the body of the document but rather an appendix (Appendix F).

The adaptive management strategy proposed in the draft RMP/EIS indicates in Alternatives B and C1 that benchmarks are required to establish quantitative planning objectives, to monitor the effectiveness of management decisions, and to inform adaptive management strategies. Despite this, Appendix G causes confusion to the reader by indicating that connectivity corridor and benchmark components proposed for adaptive management are both necessary for implementation of the adaptive management strategy and yet also simultaneously indicates each

[17] Preliminary Alternatives Concept Public Comment Summary Report (BLM 2017)

can function independently of one another by the omission of benchmarks from Alternatives C2 and D. Little information is provided to support either application.

Adaptive management should serve as a flexible tool to aid in informing BLM's management decisions over time under changing conditions. If BLM moves forward with some form of adaptive management, it is critical that BLM follow existing DOI guidance[18] and identify what specific goal(s) it hopes to obtain from the adaptive management as well as outline what monitoring procedures will be used to detect changes in the planning area.

The Standard Operating Procedures (SOPs) that apply to Connectivity Corridors and Ecological Benchmarks (Appendix F, F.2.15 and F.2.16, pages F-14 and F-15) provide specific management intent for these areas and have the potential to significantly restrict use and access even though consideration in the impact analysis is limited to perceived positive impacts of the implementation of these concepts, such as BLM being adaptable to climate change impacts and protections afforded wildlife. For example, Connectivity Corridors include a stipulation (i.e., SOP Landscape – 1) that discretionary activities will **only** be authorized in the corridor when "no other feasible alternative exists." These linear restricted use corridors bisect the only multiple-use lands between the CSUs; thereby expanding the CSUs and rendering the lands non-multiple use lands by restricting available resource uses and potentially eliminating the possibility of a linear ROW through these areas, including within the Utility Corridor.

The SOPs for Benchmark – 1 (Alternatives B and C1, page F-15) states discretionary land uses may not be authorized for various reasons, including any that "**temporarily** (emphasis added) or permanently disrupt hydrologic connectivity in any watershed such that the next higher or lower order watersheds are disconnected from each other because of the proposed action" and those that "**temporarily** (emphasis added) or permanently reduce intactness below 85 percent in any watershed that contributes to the makeup of a benchmark area." Adding to the confusion are conflicting SOPs, such as those in Appendix F, which indicate ecological benchmarks for intactness of 85% for watersheds, and Appendix G, which states intactness benchmarks in general are a system at 80% intactness. BLM has also not provided definitions for the terms "disrupt" and "intactness." A 15% reduction in watershed "intactness" is meaningless if the term is not defined.

SOP Benchmark – 3 requires BLM to consult with managers of non-BLM-managed lands in the benchmark when determining whether to authorize discretionary actions. BLM has not defined the range of discretionary actions to provide context on what this is addressing. The conservation purposes of the Benchmark areas and Connectivity Corridors, as well as language on page G-5, causes us to come to the logical conclusion that, similar to the consultation that occurred during the development of these adaptive management concepts, BLM intends to only consult with CSU-managers, despite the direction in department policies and FLPMA to consult with all stakeholders, including states, as well as much of the science supporting the methodologies used in the plan. A form of consultation would typically occur during the permitting process when a proposed project is near the legal boundaries of a CSU; this SOP extends the reach and influence of CSU managers well beyond the legal recorded CSU boundaries onto BLM multiple-use lands. Additionally, the Benchmark SOPs apply to considerable acreage - under Alternative B, this

[18] "Adaptive Management; The U.S. Department of Interior Technical Guide. 2009 edition."

requirement applies to 5.5 million acres of BLM multiple use land; under Alternative C1, the affected acreage is 2.2 million. While also applying to significant acreage as shown on Map G-3 (page G-9), no acreage is provided in the draft plan for the connectivity corridors.

The State consistently questioned the basis for these management concepts throughout the planning process and requested BLM not implement unofficial policy that conflicts with ANILCA. Any adaptive management strategy selected for the Central Yukon planning area must recognize that Congress already preserved 100 million acres of large intact ecosystems across the state when it passed ANILCA and BLM lands located between those CSUs should remain available for multiple-use to support the State's social and economic development needs. It is further problematic that the primary foundational premise of these management directives is based on theoretical assumptions and presuppositions based on the connectivity concept being used to direct management in the CYRMP and generate after-the-fact justifications for management implementation.

We reiterate our request to remove both concepts from the plan and require much closer coordination on this subject matter between BLM and ADF&G. The State formally requests BLM establish a working group to engage in dialogue to fully understand the management proposed by BLM and the possible impacts to the management of fish & wildlife. We propose the working group be comprised of ADF&G and other stakeholders, with its purpose being to replace the Beacons modeling, benchmarks, and connectivity corridors in the planning area with a coordinated program of collaboration with ADF&G that can collect valuable monitoring information regarding climate change impacts as well as for a wildlife management program in accordance with BLM Manuals 6500, 6600, and 6720, which emphasize working with State managers and other cooperators on fish, wildlife, and habitat planning and monitoring issues, in a manner to "maintain the fish and wildlife resources at such levels that provide an enjoyable experience for the people who use the Nation's fish and wildlife" (BM 6500.07E).

4. ROW Avoidance and Exclusion Area Designations

- **Issues:**
  - ROW exclusion and avoidance area designations are inappropriate on public lands in Alaska because they interfere with opportunities to develop roads and infrastructure in a remote planning area that includes a Utility Corridor and access needs to and between remote communities.
  - ROW exclusion and avoidance areas between CSUs frustrates Congress' finding and intent in ANILCA Section 1101 to establish the Title XI process.
  - No analysis of potential social, economic, or access impacts these restrictions could cause across the planning area is included.
  - No consideration of impacts to State asserted RS 2477 ROWs or associated public use.

- **Resolution:**
  - Do not apply ROW exclusion areas in the planning area.
  - Apply ROW avoidance areas judiciously and provide sound reasoning; consider impacts holistically and in association with adjoining land ownerships by clarifying

that impacts to fish and wildlife and their habitats will be considered on adjacent State and private lands to ensure the least important habitat is selected for the ROW among the ownerships present.
    - Include analyses of potential negative impacts ROW restrictions to local residents, industry, and the State.

- **Discussion**

We support the intent in the Lands and Realty Table (2-19, page 2-49) that recognizes the need for ROWs throughout the planning area, and particularly in the Utility Corridor. However, in contrast to that management intent, the ROW exclusion and avoidance designations comprise most of the BLM lands adjacent to the Dalton Highway and are two of the most commonly used blanket restrictions associated with ACECs. ROW exclusion and avoidance areas are also prescribed for the following additional resources, many of which have not been identified in the field -- sensitive soils, floodplains, hot springs, lentic areas, back country areas, WSR segments and areas with alpine vegetation. In the draft RMP/EIS, all but five of the ACECs in Alternative B propose either ROW exclusion or avoidance areas as a special management action to protect resources labeled as "relevant and important," yet the resources are not identified in more than generalities. This management action is proposed for ACECs that are often made up of hundreds of thousands of acres, in a remote, primarily roadless (except for the area around the Dalton Highway Corridor) planning area that has fewer than 100 communities. There is also no consideration of these proposed designations on existing State-owned RS 2477 ROWs, including the State's legal interests and existing public uses (*see also* RS 2477 comment below – Subsection IV, Issue #1).

We request BLM avoid the designation of ROW exclusion or avoidance areas in the CYRMP as depicted in Maps 2.36-2.38. Alaska is a relatively young state with limited infrastructure and a resource-based economy, which Congress explicitly recognized in ANILCA Section 1101 when it established the Title XI transportation and utility system (TUS) process. Designating ROW exclusion and avoidance areas establishes the same scenario that Congress rejected when it determined the State could not predetermine its future access needs.[19] As an alternative to

[19] "Therefore, the committee believes that Alaska National Interest Lands legislation cannot designate at this time the routes of transportation corridors. The location, timing, type and magnitude of resource development is unknown, market designations for the produced resources are unknown, and due to the forces of technological change, both the product form and appropriate transport mode cannot be anticipated with any degree of certainty. These same unknowns suggest as well, that it would be fruitless to attempt to draw boundaries of conservation systems units to leave open transportation corridors.

The prime motivating factor for a consolidated process of transportation for Alaska's conservation unit was the uncertainty with which transportation needs can be determined. Alaska has few roads and no statewide transportation network. Presently, the bulk of Alaska, particularly where the majority of the areas established by the committee are located, is accessible only by air or water. Future surface transportation needs cannot be addressed by the designation of a system of corridors.

Instead, the committee devised a process to provide for access across conservation systems units when the resource development activities are to begin and when the mode of transportation and destinations of the resource to be extracted are known." (Page 106, Senate Report 96-413, 11/14/79)

designating ROW corridors across the state, the Title XI TUS process (including the modified Title XI process that applies to ANILCA 1110(b) rights of access for inholdings) was intended to ensure that the vast CSUs designated across the state would not preclude the development of roads and other infrastructure needed by the State, local communities and others, including newly formed Alaska Native corporations, for resource development and for access to and between rural and urban communities. BLM-managed multiple-use lands play a critical role in allowing for development between CSUs and other state and private lands. Applying ROW exclusion or avoidance area designations could unnecessarily preclude future access and utility needs, particularly limiting opportunities for rural communities and precluding access in areas where there are few roads.

For the CYRMP, ROW exclusion and avoidance areas generally conflict with the overarching energy transportation purpose of the utility corridor and should not be applied in the Utility Corridor under any of the alternatives. Considering the limited infrastructure in the area, the overapplication of ROW avoidance areas limits opportunities for growth in an economically challenged region of the state, which is also lacking critical communication infrastructure. This lack of communication infrastructure came up repeatedly as an issue of concern during BLM's virtual public meetings for this planning effort. More specifically, the ROW exclusion area proposed in the corridor in Alternative B (Map 2.36) overlaps with the proposed Ambler Road 5-file Corridor on map 2.33 (Alternatives B an C1) and map 2.34 (Alternatives C2 and D). Moreover, BLM has already issued the ROW for the Ambler Road Project and the ROW EIS process overlapped for several years with the CYRMP planning process; therefore, the proposed exclusion area designation should not have been contemplated by BLM, nor presented in the draft plan as a viable management action. Doing so creates unnecessary confusion for the public (as evidenced by questions raised by the public at the plan's recent public meetings) and raises concern regarding a potential conflict of interest.

ROW exclusion and avoidance area designations are found throughout different sections of the plan; therefore, BLM needs to carefully consider the implications of these restrictions, such as those that are associated with the management of high value watersheds (HVW). Under Alternative B, 100-year floodplains of HVWs and lands managed to protect wilderness characteristics as a priority, and many ACECs, are ROW exclusion areas (See Appendix J, J.5 Right-of-Way Allocations). The ROW avoidance area designation applies to all other areas within HVWs, including steep slopes and sensitive soils, as well as 100-year floodplains in non-high-value watersheds, wetlands, lands managed to maintain wilderness characteristics, additional ACECs, etc. Under Alternative C1, the area designated as Dall Sheep Habitat Area is also a ROW exclusion area, a designation ADF&G believes is unnecessary for protecting Dall sheep habitat in the area. We question whether these management prescriptions are necessary or appropriate given protections already afforded under other statutory protections, such as the Clean Water Act.

As we discuss more in the ACEC comments below, we are also concerned that this blanket approach, which is a management prescription applied to most if not all ACECs, could inadvertently lead to the situation where infrastructure development is unnecessarily displaced to discrete high value habitat outside of an ACEC from low value habitat that happens to be within

the borders of a large ACEC. Applying ROW exclusion or avoidance area designations can also unnecessarily preclude future hunting, fishing, and trapping access needs.

Finally, the plan should note that the proposal to manage the CAMA Wilderness Study Area (WSA) as a ROW exclusion area is only temporary until Congress acts on the long-standing wilderness recommendation, as the mandatory ANILCA Title XI process is also applicable to designated wilderness.

5. Congressional Oversight Required Under FLPMA and ANILCA

- **Issue:** The draft plan does not acknowledge that Congressional oversight is required under FLPMA and ANILCA if decisions eliminate principal uses on one hundred thousand acres or impose withdrawals on more than five thousand acres in the aggregate.

- **Resolution:** Recognize and follow requirements in FLPMA and ANILCA.

- **Discussion:**

Particularly under Alternative B, the draft RMP includes numerous proposed restrictions and withdrawals that apply to ACECs and other designations that would require approval by Congress pursuant to either or both FLPMA and ANILCA, specifically, FLPMA 202(e)(2) and ANILCA Section 1326(a). The draft RMP does not currently recognize these requirements.

FLPMA 202(e)(2) requires BLM to report any management decision or action that excludes one or more of the principal or major uses (*e.g.*, ROW Exclusion Area Designation) for two or more years on one hundred thousand acres to Congress, which terminates, if not adopted as follows:

> Any management decision or action pursuant to a management decision that excludes (that is, totally eliminates) one or more of the principal or major uses for two or more years with respect to a tract of land of one hundred thousand acres or more shall be reported by the Secretary to the House of Representatives and the Senate. If within ninety days from the giving of such notice (exclusive of days on which either House has adjourned for more than three consecutive days), the Congress adopts a concurrent resolution of non-approval of the management decision or action, then the management decision or action shall be promptly terminated by the Secretary.

Section 1326(a) of ANILCA requires that any withdrawal of more than 5,000 acres in the aggregate in Alaska be noticed in the Federal Register as well as to both houses of Congress. The withdrawal(s) will terminate one year from the date notice was submitted unless Congress passes a joint resolution of approval.

> No future executive branch action which withdraws more than five thousand acres, in the aggregate, of public lands within the State of Alaska shall be effective except by compliance with this subsection. To the extent authorized by existing law, the President or the Secretary may withdraw public lands in the State of Alaska exceeding five thousand acres in the aggregate, which withdrawal shall not become effective until notice is provided in the Federal Register and to both Houses of Congress. Such withdrawal

shall terminate unless Congress passes a joint resolution of approval within one year after the notice of such withdrawal has been submitted to Congress.

BLM needs to recognize and follow these requirements if decisions in the final proposed RMP meet or exceed these thresholds.

IV. Management of RS 2477 Rights-of-Way and State Lands and Waters

1. RS 2477 Rights of Way (ROWs)

- **Issue:** The plan does not appropriately recognize or map State RS 2477 ROWs in the planning area and applies management intent contrary to state management, thereby placing a cloud the State's title.

- **Proposed Resolution:** Recognize the legal status of RS 2477s, map state-owned RS 2477s, and defer to state management in the ROWs.

- **Discussion:**

Throughout the planning area, the State owns numerous RS 2477 ROWs. *See* enclosed listing and map of the major RS 2477 ROWs that are state-owned. These state-owned property interests are not "federal lands" or "public lands" pursuant to the Alaska National Interest Lands Conservation Act (ANILCA), *16 U.S.C § 3101 et seq*. *See Sturgeon v. Frost, 139 S. Ct. 1066, 1081 (2019).* Consequently, all such state-owned RS 2477 ROWs (*identified on the attached list*) should be identified as State property in the federal plan, and sole State ownership, management, and control must be clearly indicated. These State lands, like any other general domain State lands, are managed consistent with existing State statutes and regulations.[20] Any federal management decision that restricts usage on state-owned RS 2477 ROWs in any manner that is more restrictive or otherwise contrary to State management, prescribed in its generally allowable uses and otherwise, is contrary to law and places an unlawful cloud on State title that is actionable pursuant to the Federal Quiet Title Act, *28 U.S.C. 2409a et seq.* To the extent that BLM disputes State ownership of identified RS 2477 ROWs within the planning area, IBLA precedent requires BLM to issue interim administrative determinations of such ROWs as an aspect of its duty to provide a rational basis for its decisions. *See Homer Meeds*, 26 IBLA 281 (1985); *City of San Bernardino*, 181 IBLA 1 (2011); *Heath,* 181 IBLA 114, 126-29 (2011); *Kane County v. Kempthorne*, 495 F. Supp. 2d 1143, 1145 (D. Utah 2007), *aff"d sub nom. Kane Cty. Utah v. Salazar*, 562 F.3d 1077 (10th Cir. 2009). Failure to follow this process outlined in these authorities represents a fundamental flaw in the CYRMP that will result in needless administrative appeal and federal judicial review.

Table 2-20 (Travel and Transportation Management, page 2-55) and Section 3.3.5 (Travel Management, page 3-153) in the draft plan do not reference state-owned RS 2477s at all, despite repeated comments from the State requesting the BLM acknowledge and map these routes in the plan. We therefore assume BLM will maintain the same position it held for the numerous RS 2477s located in Bering Sea-Western Interior (BSWI) RMP planning area, that travel

[20] Primarily Title 38 of the Alaska Statutes and Title 11 of the Alaska Administrative Code

management decisions will be based on a purpose and need independent of the status of state-owned RS 2477s and that once an RS 2477 has been adjudicated, BLM will adjust its travel routes accordingly. However, like the BSWI RMP, the CYRMP includes numerous proposed actions (*i.e.*, seasonal OHV restrictions in Alternatives B, C1 and C2) that could modify, restrict use, realign or eliminate state-owned RS 2477 ROWs long before the adjudication process is complete. In addition, even though RS 2477s are identified in the map legends and numerous trails are mapped, no RS 2477s have been identified on any of the maps that would make the public aware of how these proposed actions affect existing RS 2477 trails and routes, including the Coldfoot Chandalar trail, which has already been settled.[21] These routes benefit the public and the plan needs to recognize the State's rights and intentions to manage its RS 2477 ROWs. The routes should also be identified both on the plan maps and on the ground with appropriate signage, particularly for constructed routes.

In prior land planning processes within the State of Alaska, BLM has repeatedly stated that: (1) Resource Management Plans (RMPs) are not the "appropriate" forum to adjudicate the validity of RS 2477 ROWs and (2) BLM will only recognize RS 2477 ROWs within the relevant planning area that have been fully and finally adjudicated by the federal courts. It is anticipated that BLM will respond similarly in this planning process. Anticipating these claims, the State responds as follows:

- IBLA precedent and cases from the United States Courts of Appeal make plain that RMPs are exactly the forums in which BLM must make determinations for planning purposes on what state-owned RS 2477 ROWs exist within the planning area; that those RS 2477 ROWs represent areas of non-federal ownership; and that such RS 2477 ROWs are solely within the management authority of the state. By willfully ignoring IBLA and federal judicial precedent, BLM will be acting arbitrarily, capriciously and in wanton disregard to state property interests and management authority. Such unlawful planning decisions may also represent an unlawful "taking" pursuant to federal law.

  Nowhere within the federal statute creating RS 2477 ROWs is there a requirement of federal court adjudication to "perfect" or "validate" state interests in an accepted RS 2477 ROW. *See 43 U.S.C. § 932 (1938).* The relevant federal statute creates a "self-effectuating" land grant for a public highway whenever the grant is "accepted" by the state. Acceptance is through public use or through governmental action—nothing more. Nowhere within the RS 2477 statute is any requirement that the State of Alaska must sue pursuant to the Federal Quiet Title Act to perfect or validate its property interest in a RS 2477 public highway. By imposing its own onerous requirements for administrative recognition of state-owned RS 2477 ROWs within federal planning areas upon Alaska that are far beyond those required by Congress, BLM is usurping the power of Congress and clearly exceeding its administrative authority. Such action, by definition, is arbitrary, capricious; represents wanton indifference to legal state property interests; and may constitute an unlawful "taking" pursuant to federal law.

[21] Alaska v. United States, Case No. 3:05-cv-00073-RRB (D. Alaska Jan. 8, 2007) (Coldfoot-to-Caro and Coldfoot-to-Chandalar RS 2477 rights-of-way).

2. Navigable Waters and Submerged Land

- **Issue:** The plan has not identified state-owned navigable rivers granted to Alaska at Statehood. All management intent applicable to waters without regard for ownership of the submerged lands and waters clouds the State's title.

- **Resolution:** Recognize the legal status of state-owned navigable waters in the planning area, map the rivers identified in the enclosed list and defer to state management of these waterbodies.

- **Discussion:**

The Equal Footing Doctrine of the United States Constitution, *U.S. Const. art. IV, § 3, cl. 1*, the Federal Submerged Lands Act, *43 U.S.C. § 1301 et seq.*, and the Alaska Statehood Act, *72 Stat. 339, Pub. Law 85-508 (1958)*, expressly provide (among other things) that the State of Alaska owns the submerged lands beneath each and every navigable-in-fact river or other waterway and beneath each and every navigable-in-fact lake or other waterbody that are located within its borders. State ownership of these submerged lands is indeed only defeated by valid pre-statehood federal withdrawals, and the vast amount of federal lands in Alaska represent post-statehood withdrawals pursuant to ANILCA, which do not defeat state title to the submerged lands that fully vested in 1959. A listing of major navigable-in-fact rivers and lakes within the planning area is enclosed.[22] None of these listed rivers or lakes is subject to a valid pre-statehood withdrawal that would defeat state title. None are recognized in the plan as state-navigable rivers, including in BLM's wild and scenic river study conducted for the Central Yukon planning area (*see also* Wild and Scenic River Study comments).

Pursuant to the unequivocal and unanimous decision of the United States Supreme Court, none of the submerged lands under these listed rivers and lakes constitute "federal lands" or "public lands" pursuant to ANILCA. *See Sturgeon v. Frost, 139 S. Ct. 1066, 1081 (2019).* These submerged lands rather represent the sole property of the State of Alaska and are subject to its sole management authority. Indeed, these submerged lands are managed by the State under Title 16, 27, 38, and 46 of the Alaska Statutes and Title 11 of the Alaska Administrative Code among others. It is therefore incumbent upon BLM to indicate state ownership of the submerged lands underneath the listed navigable-in-fact rivers and lakes within the planning area, and it is incumbent upon BLM to recognize and affirm in the RMP that Alaska has sole management authority and control over these navigable-in-fact rivers and lakes. A failure to do so is contrary to law; places an unlawful cloud on state title; results in a RMP that is fundamentally flawed; and will inevitably require appellate review—administratively and judicially.

We anticipate that BLM will respond to the foregoing by reiterating that until BLM completes its navigability determinations on Alaskan rivers and lakes (*BLM has only*

[22] The enclosed list is not exhaustive, and the State reserves its right to assert ownership of all navigable-in-fact waters regardless of their presence or absence on this list.

completed relatively few navigability determinations in the past sixty years and does not prioritize areas within federal planning areas), all rivers and lakes within the planning area should be "presumed" non-navigable and managed as non-navigable waters. *See Testimony from Eastern Interior Subsistence RAC (Alaska) Meeting at pp. 265-74 (Oct. 16, 2019).* This disregard of state property interests is wholly contrary to federal law, *see, e.g., Alaska v. United States 201 F.3d. 1154 (9th Cir. 1959)*; constitutes an unlawful cloud on state title pursuant to the Federal Quiet Title Act, *28 U.S.C. 2409a*; represents bad faith as defined by law, *see, e.g.*, *Alaska v. United States, Case No. 3:12-cv-00114-SLG (D. Alaska May 3, 2016)*; and will undoubtedly result in administrative and judicial challenges.

3. High-Value Watersheds (HVW)

- **Issues:**
  - Insufficient supporting data for HVW designation justification; level of justification in the draft RMP/EIS is not commensurate with the immense geographic scale of the HVWs designations in the planning area.
  - RS 2477 GIS data is being used inappropriately to quantify the value and conditions associated with aquatic resources in order to place protections on watersheds that could preclude public use of trails.

- **Resolution:** Remove HVW designation from the final RMP/EIS

- **Discussion:**

Existing State and federal laws and regulatory authorities already exist to protect the fishery and watershed resources within the planning area. In addition, GIS data for State RS 2477s is being used to quantify the value and condition of associated aquatic resources to place protections on watersheds that would preclude public use of trails (*e.g.*, ROW exclusion and avoidance designations within 100-year floodplains of HVWs – Alternatives B and C1). It is inappropriate for BLM to use GIS data for RS 2477s to apply management that clouds the State's title and not use the same information to identify RS 2477s in the plan for the public's benefit. In the absence of sufficient supporting information, the State opposes applying restrictions to HVWs and requests that BLM remove them from the final RMP/EIS. See also above comments on ROW Avoidance and Exclusion Area Designations (Issue III, #4), where they are liberally applied to HVWs as associated management.

V. Compatibility with State Plans, Policies, and Programs

Section 202(c)(9) of FLPMA requires BLM to "…coordinate the land use inventory, planning, and management activities…" on federal public lands "…with the land use planning and management programs… of the States and local governments within which the lands are located." This section further provides that the "Secretary shall, to the extent [he or she] finds practical… assure that consideration is given to those State, local, and tribal plans…" and "…assist in resolving, to the extent practical, inconsistencies between Federal and non-Federal Government plans."

1. State Area Plans

- **Issues:**
  - The draft plan imposes proposed access related decisions (*e.g.*, ROW exclusion and avoidance designations and seasonal travel management restrictions) without detailed inventory and analysis of existing use and access, which are premature and potentially interfere with access to and across land ownerships, and state land use objectives.
  - The draft plan fails to include standard conditions consistent with State Generally Allowed Uses (GAUs).

- **Resolution:**
  - Defer all travel management decisions to step down plans.
  - Only apply interim travel management restrictions that are consistent with State GAUs.
  - Do not apply ROW avoidance and exclusion area designations that would interfere with the access needs of the public and the State and other landowners in the planning area.
  - Provide access consistent with the State's GAUs, as well as the conditions for GAUs found in 11 AAC 96.025.

- **Discussion:**

The Alaska Department of Natural Resources (DNR) assessed the State's land base, including state selected BLM lands, and provided management intent and recommendations for certain lands within the State land use and corridor plans (listed below) that encompass the CYRMP planning area. Even though all the Central Yukon planning area is not specifically addressed in these plans, BLM can assume state management generally would be consistent with multiple-use management (as discussed below). For selected and top-filed lands, once conveyed, the State would initiate planning for the newly acquired lands, which includes an assessment of lands and resource values and a public process to ensure the public input is received on the proposed management direction.

- North Slope Area Plan – March 2021
- Eastern Tanana Area Plan - August 2015
- Yukon Tanana Area Plan – January 2014
- Northwest Area Plan – October 2008
- Dalton Highway Master Plan – March 1998

The CYRMP proposed management decisions, primarily found in alternative B, are not consistent with management policies and recommendations contained in the state land use plans or with the State's GAUs on state land. These inconsistencies exist even though the statutory direction of FLPMA and the later adopted state statutes as they relate to overarching state

policies and the planning requirements are substantially similar.[23] Like BLM-managed public lands in Alaska, state lands are managed under the multiple use mandate and are similarly managed as open unless closed. Further, as noted previously, ANILCA Section 101(d) recognizes that the non-CSU public lands in Alaska are part of the balance achieved by Congress and are to be managed as "… necessary and appropriate for more intensive use and disposition."[24]

Several of the plan decisions place large acreages of public lands into a *de facto* preservation status or exclude access through the public lands, rendering existing state lands or selected lands isolated, including proposed withdrawals, travel management interim restrictions, and the application of ROW avoidance and exclusion areas. State lands were often selected based on their mineral, hydrocarbon, or other natural resource development potential. Proposed management that restricts access for exploration or development of those resources, even when applied only to BLM lands, could significantly hinder, or preclude the State's land use objectives when the BLM-managed lands in question surround or are located adjacent to state lands (*e.g.*, Map 2.36 ROW Avoidance and Exclusion). The restrictions also preclude general access for recreation, including hunting and fishing (*see also* related travel management comments below and in Subsection VI, Issue #9).

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[23] FLPMA requires that BLM seek to protect the quality of resources, preserve and protect certain lands to provide for use by the public and fish and wildlife resources while at the same time recognize the national need for domestic production of renewable and nonrenewable resources.

The State constitution, statues, and regulations direct the state to manage its resources for multiple use and sustained yield, AS 38.04.015 (1)-(3). FLPMA Sec 102 (8) and implementing regulations at 43 CFR 1701(a) similarly direct BLM to manage resources on a multiple use basis by providing for outdoor recreation and human occupancy and use.

FLPMA Section 202(c)(9) states that the criteria for development and revision plans includes the direction that BLM land use plans "shall be consistent with State and local plans to the maximum extent [the Secretary] finds consistent with Federal law and the purposes of this Act."

[24] ANILCA 101(d) provides: "This Act provides sufficient protection for the national interest in the scenic, natural, cultural and environmental values on the public lands in Alaska, and at the same time provides adequate opportunity for satisfaction of the economic and social needs of the State of Alaska and its people; accordingly, the designation and disposition of the public lands in Alaska pursuant to this Act are found to represent a proper balance between the reservation of national conservation system units and those public lands necessary and appropriate for more intensive use and disposition, and thus Congress believes that the need for future legislation designating new conservation system units, new national conservation areas, or new national recreation areas, has been obviated thereby."

ANILCA 102 (3) defines public lands as follows: "The term "public lands" means land situated in Alaska which, after the date of enactment of this Act, are Federal lands, except— (A) land selections of the State of Alaska which have been tentatively approved or validly selected under the Alaska Statehood Act and lands which have been confirmed to, validly selected by, or granted to the Territory of Alaska or the State under any other provision of Federal law; (B) land selections of a Native Corporation made under the Alaska Native Claims Settlement Act which have not been conveyed to a Native Corporation, unless any such selection is determined to be invalid or is relinquished; and (C) lands referred to in section 19(b) of the Alaska Native Claims Settlement Act."

The State recently adopted the North Slope Area Plan (NSAP) for its lands in the North Slope region. The State's NSAP provides state management intent and policies for lands in the northern portion of the Central Yukon planning area. **Specifically, the NSAP recommends that PLO 5150 be lifted "…to allow the state top file selections on the highest priority lands to attach for eventual conveyance, and fulfillment of the State's entitlement."** Lifting PLO 5150 would allow many of the above-mentioned inconsistencies to be mitigated. Conveyance of the inner corridor of the Dalton highway would allow for the state management and control of access to State lands, and resources.

As an additional example, the Ray Mountains lie within one of the more heavily mineralized areas of the planning area and contain several critical and strategic minerals, including Rare Earth Elements, which are essential for industry and defense purposes; 65% of the lands in the Ray Mountains are state-selected. It is not entirely clear in the draft RMP but it appears Alternative B proposes designating over one million acres in this area as the Totzina ACEC to protect caribou habitat, soil, water, and fish habitat (despite lack of support from ADF&G), closing it to all forms of mineral resource development (Page J-13). This area of the State does not have a current management plan; however, BLM should not propose management that would preclude opportunities for mining in heavily mineralized areas. This would be inconsistent with how the State would manage the lands once conveyed.

State Generally Allowed Uses (GAUs)

As noted in state comments on other planning efforts and prior comment opportunities for the CYRMP, to be consistent with State plans, policies, and programs, the RMP should not impose travel management restrictions that are more restrictive than the State's GAUs, including the conditions for GAUs found in 11 AAC 96.025. This will have a profound effect on the public's ability to travel throughout the planning area, as they could be subject to criminal charges if they inadvertently cross from State land onto BLM land. Similarly, restrictions placed on "unnavigable" portions of rivers create undetermined boundaries that the public could unknowingly cross with a watercraft, which again, would result in criminal charges.

Until travel management step down plans are completed that include a complete inventory and fully consider (including public input) the existing uses and resource conditions, it is premature to apply restrictions that could interfere with public use and access across the planning area. The public would benefit from a step-down plan that accurately describes existing easements and trails, inventory the status and the current condition of all easements and trails, and efforts to ensure that easements are continuous. Further, doing so will reduce trespass issues and assist the public in gaining legal access to mining claims and public use areas.

2. Northwest Alaska Transportation Plan

- **Issues:**
  - Communities desire connections to the state road system for the economic benefits.
  - The Dalton Highway is a crucial transportation corridor that provides access to the North Slope, adjacent CSUs, and recreational opportunities within the pipeline corridor.

- Materials are needed for maintaining the Dalton Highway.
- Climate change may make re-alignment of roads and airports necessary.

- **Resolution:**
  - Recognize and plan for these important needs in the RMP and avoid less-flexible restrictive management in the corridor and beyond.

- **Discussion:**

The Alaska Department of Transportation and Public Facilities (DOT&PF) has just completed a draft of its Northwest Alaska Transportation Plan (NWATP), covering an area the size of California. This plan constitutes a step-down plan from the federally required Statewide Long Range Transportation plan, and addresses transportation issues, needs, gaps, and trends throughout the northwest portion of Alaska. The NWATP is currently in the final stages of revision. It should be included in Appendix D, section D.3.3 of the CYRMP. We request the CYRMP/EIS recognize and address the following:

- Community connections are desired by communities throughout the planning area. One important issue identified by members of communities throughout the planning area was a strong interest in connections to the state road system, or at least to have opportunities to pursue connections, for the sake of lowering the cost of living and ability to continue living in traditional rural areas. Many observed the recent overland connection constructed from the Tofty Road to the south bank of the Yukon River at Tanana, and the significant cost savings Tanana residents are able to enjoy regarding freight and fuel through its use. One anecdote mentioned the cost of an interior door, that would have been over $600 to ship to Tanana, only costing $150 via the overland route. Because access is such a critical economic issue to Alaskans, the CYRMP needs to include information about RS 2477 ROWs and other forms of access easements (*e.g.*, 17(b) easements, access rights reserved from land conveyances) in the plan area that may be of use in the future as access routes. Making the public aware of these important access corridors is important to their continued use. We suggest signing known RS 2477s and 17(b) easements within the corridor, so the public is aware of the potential to use them.

- The Dalton Highway corridor is a crucial economic, freight, recreational and tourist corridor within the state, offering the only means of year-round access to several key CSUs, including the Arctic National Wildlife Refuge, Yukon Flats National Wildlife Refuge, Gates of the Arctic National Park and Preserve, and the National Petroleum Reserve-Alaska, as well as BLM managed recreational lands within the pipeline corridor area. Without this link operated and maintained in good condition, the ability of federal managers to manage these lands would be diminished. This should be emphasized in the CYRMP.

- Material needed for Haul Road maintenance - DOT&PF requires access to materials sites, especially on the Dalton Highway corridor, to maintain public infrastructure in the Plan area. Appendix M, page 42 of the CYRMP discusses gravel sources and states that many potential gravel sites are in uplands, indicating that upland sources would be

preferable to lowland sources due to a perceived decrease in impact on water quality. However, the quality of material from lowland sources is necessary for use in building and maintaining infrastructure critical to the state's economy. According to the DOT&PF's Dalton District Maintenance and Operations Superintendent, upland materials sources along the Dalton corridor are generally poor quality and not suitable for DOT&PF's maintenance activities.

- The NWATP addresses a changing climate and the need for resiliency in transportation infrastructure. For the DOT&PF, protecting infrastructure can require realigning or relocating roads and airports, and the construction of evacuation routes. The more restrictive alternatives in the CYRMP (B, C1) appear to prevent or disrupt the ability to maintain transportation infrastructure in the planning area. A less restrictive alternative would allow the BLM and DOT&PF to fulfill their responsibilities efficiently and without undue disruption. The NWATP also discusses the RS 2477 ROWs within the boundaries of the CYRMP. The NWATP anticipates that road use/traffic will increase in most of the plan area over the life of the plan. More infrastructure, and more robust infrastructure, will be needed.

3. Arctic Strategic Transportation and Resources (ASTAR) Planning Initiative

- **Issue:** The RMP inaccurately describes and analyzes the Arctic Strategic Transportation and Resources Plan as the ASTAR transportation network. It is instead a planning initiative conducted in cooperation with the North Slope Borough.

- **Resolution:**
  - Accurately describe ASTAR and revise analyses that inaccurately identifies it as a transportation network.
  - Include a commitment in the plan that recognizes and authorizes the future infrastructure needs of communities in the planning area and the North Slope Region.

- **Discussion:**

Throughout Chapter 3 and in Appendix N, the draft CYRMP continues to inaccurately refer to and analyze the Arctic Strategic Transportation and Resources (ASTAR) plan as transportation network. For example, the "Reasonably Foreseeable Development" scenario describes ASTAR as follows:

> The Arctic Strategic Transportation and Resources (ASTAR) network is a **proposed transportation network** that would provide road access to towns and villages across the North Slope. It is still in the conceptual stage, and no firm mileage estimates have been published. (Appendix N, page N-13))

References to ASTAR as a transportation network are also found on pages 3-14, 3-19, 3-157, and 3-206. We advised BLM numerous times during the RMP planning process that this is an inaccurate description. ASTAR is *not* a transportation network. It is a collaborative *planning*

effort conducted by DNR in partnership with the North Slope Borough, which attempts to identify and evaluate opportunities that enhance the quality of life and economic opportunities in North Slope communities through responsible infrastructure development. The goal of ASTAR is to identify, evaluate, and advance community infrastructure and regional connectivity projects that offer the greatest cumulative benefits to the North Slope region. ASTAR will identify data gaps for these projects and may attempt to fill data gaps.

Further, infrastructure does not only equate with roads. Other projects identified include school upgrades, washeterias, playgrounds, snow fencing, housing repairs, senior and teen centers, emergency response and many more. We request all references in the CYRMP to ASTAR as a transportation network, including references in any associated appendices, be removed.

During the development of the NPR-A Integrated Activity Plan (IAP)/EIS, North Slope stakeholders including the North Slope Borough, NPR-A communities, and the ASTAR team worked with staff at BLM to develop language for the NPR-A IAP that allowed for community needs/infrastructure even if that community need/project had not been identified at the time of planning. That language reads as follows:

> *2.2.1 Features Common to Multiple Alternatives*
>
> Under all action alternatives, community infrastructure projects may be permitted, with appropriate mitigation measures, in areas closed to new infrastructure. A community infrastructure project is defined as an infrastructure project that responds to community needs, such as roads, power lines, fuel pipelines, and communications systems, and is owned and maintained by or on behalf of the North Slope Borough (NSB), city government, the State of Alaska, a tribe, or an ANCSA corporation. This exception applies across the NPR-A under all action alternatives unless otherwise noted in Table 2-3. (NPR-A IAP Final EIS, page 2-4)

We request BLM consider a similar approach in the CYRMP to ensure that this plan does not unnecessarily restrict uses and opportunities for rural communities in the North Slope region and the Central Yukon planning area as a whole.

Additional information about the ASTAR collaborative planning effort and the cumulative benefits of community projects/infrastructure is available on the following website: https://storymaps.arcgis.com/collections/b014760f7395481092afa454ab020d1c?item=1.

VI. Fish and Wildlife Management and Hunting, Trapping, and Fishing Issues

1. ADF&G Fish and Wildlife Management Authority

- **Issues:**
  - Need for recognition of the State's role in fish and wildlife management, as well as a commitment by BLM to cooperate with ADF&G on matters related to fish and wildlife resources and uses.

- Failure to recognize both the interplay between federal and state management authorities as well as the nexus between the management of habitat and people in support of fish and game and the management of the fish and game itself.
- Draft RMP/EIS indicates BLM has species management objectives (pg. 2-22); ADF&G manages fish and wildlife species on all lands in the State of Alaska.

- **Resolution:**
  - Final RMP should recognize existing State fish and wildlife management is currently in effect and will continue, particularly regarding the Dalton Highway Corridor and PLO 5150 lands.
  - Proposed final RMP should reflect that wildlife habitat are managed to contribute to State species management objectives.
  - Final proposed RMP should recognize BLM commitments with ADF&G per their MMOU and clearly identify how BLM will coordinate management activities with ADF&G.
  - Final proposed RMP should clearly identify that BLM will avoid engagement in wildlife allocation issues.

- **Discussion:**

The BLM, as the manager of the planning area's public lands, has a broad responsibility to the public to maintain or improve habitat for fisheries and wildlife. The responsibility for managing fisheries and wildlife itself, as compared to habitat, traditionally rests with individual States. In Alaska, this responsibility was so integral in its desire for statehood, that management responsibility was enshrined in the State Constitution. ADF&G is the primary agency responsible for management of fish and wildlife on all lands in Alaska regardless of ownership. While a few exceptions to this management responsibility exist, *e.g.*, marine mammals, migratory birds, and the federally listed threatened and endangered (T/E) species that are controlled by specific federal laws, there are no marine mammals nor T/E species on BLM-managed lands in the CY planning area.

ADF&G also manages certain habitat matters through the Habitat Section; manages the State subsistence program through the Divisions of Subsistence, Wildlife, and Commercial Fisheries; and manages a USFWS approved raptor program. BLM committed to recognizing the above areas of responsibilities in the MMOU it has with ADF&G:

> ADF&G is responsible for the management of all game populations…ADF&G management is based on the sustained yield concept and while the effects of random events such as severe winters cannot be discounted, ADF&G management, through the Boards of Fish and Game would continue to manage to ensure sufficient game is available for resident hunts.

Despite the MMOU agreement having been in place since 1983, Section 1.5 of the draft RMP/EIS titled "Collaboration and Coordination" fails to clearly recognize ADF&G as the primary manager of fish and game populations on all lands throughout the state in the manner outlined in the MMOU. For example, despite acknowledgement by the MMOU, the draft RMP/EIS still notes under bullet 4 of Section 1.1.5 that "BLM will **consider** [emphasis added]

ADF&G objectives in decisions related to wildlife management." rather than **adhere** to them. Appendix M also does not include the ADF&G statute or regulations in their listing of resource-specific legal and regulatory constraints for wildlife, even though the ADF&G statute and regulation apply on federal lands.

Statements in the draft RMP/EIS continue to erroneously imply BLM manages wildlife and fisheries populations, *e.g.*, on page 2-22, Table 2-4 "Wildlife," BLM has listed goals to:

- "Meet **BLM** and Alaska Department of Fish and Game **species** management **objectives** [emphasis added]."

This BLM goal directly addresses wildlife management despite the direction found in various agency guidance documents including BLM Manual 6500.07(C) which clarifies BLM's role as the habitat manager and the State's role as the wildlife manager, except in the aforementioned special cases (*e.g.,* endangered species).

The use of the term "distribution" as noted in the following goal is not found in any BLM authorities, policy or guidance documents:

- "Manage wildlife habitat to ensure self-sustaining populations and a natural abundance, **distribution** [emphasis added], and diversity of wildlife."

This term can easily imply population management rather than habitat management. We caution BLM to be clear in their dialogue for the public that their role, as it relates to wildlife (i.e., in general, excluding marine mammals, migratory birds, and the federally listed threatened and endangered (T/E) species), is limited to habitat management. The final proposed RMP/EIS needs to explicitly explain in the body of the final proposed RMP/EIS - not in the response to comments - how the intended use of this term does not refer to wildlife or fisheries management as that term is not included in any BLM regulations or guidance outlining the reasons for which habitat is managed. As stated on BLM's Fish and Wildlife Program page: "BLM's Wildlife Program manages wildlife to help ensure self-sustaining, abundant and diverse populations of wildlife on public lands.[25]

In Appendix G, the draft RMP/EIS states: "One aspect of managing for adaptability is allowing for range-wide adaptations of species, which may include redistribution on the landscape as ecosystems change" (page G-3).

The above noted goals listed in Table 2-4 and text elsewhere that speaks to determining fish and wildlife distribution, should read:

> *Meet ~~BLM and~~ ADF&G species management objectives, unless such provisions are not consistent with multiple use management principles established by FLPMA, ANILCA, and other federal laws. In these cases, BLM will notify ADF&G of the management inconsistences.*

[25] https://www.blm.gov/programs/fish-and-wildlife/wildlife

BLM Manual 6500 limits BLM's role in setting species objectives to marine mammals, migratory birds, and federally listed threatened and endangered species.

The draft RMP makes reference to concerns regarding "resource abundance and availability of game populations" (page 3-192) and speaks of "future changes in demand and unpredictable fluctuations in populations or distribution of subsistence resources" (*ibid*), without any reference to the State management nexus. ADF&G is responsible for the management of all fish and game populations and manages, through the Boards of Fish and Game, on a sustained-yield basis to ensure sufficient resources are available for all user groups.

BLM also lists "Poaching" as a type of activity in Table M-1, titled "Past, Present, and Reasonably Foreseeable Future Actions that Comprise the Cumulative Impact Scenario" (Appendix M). Issues related to poaching are the purview of the State. Alaska Wildlife Troopers oversee enforcement of State fish and wildlife laws. In the event issues of concern related to poaching arise, they are addressed through proposals to either the Board of Fish (BOF) or Board of Game (BOG) as appropriate.

The final RMP/EIS needs to include accurate descriptions of BLM's land management responsibilities for ensuring habitats support healthy, productive, and diverse animal and plant populations and how ADF&G's fish and wildlife management responsibilities underly as well as overlay BLM's habitat management responsibilities.

The implication throughout the draft RMP/EIS that the revocation of PLO 5150 will result in no protections for fish and wildlife is blatantly incorrect and misleads the public. It is in direct contrast to the recognition in the MMOU of ADF&G's on-going responsibility for "management, protection, maintenance, enhancement, rehabilitation, and extension of the fish and wildlife resources of the State on the sustained yield principle, subject to preferences among beneficial uses." ADF&G's management of fish and wildlife and Alaska Wildlife Troopers enforcement of wildlife laws and regulations will continue on all lands. BLM's often stated premise that revocation of PLO 5150 will substantially change hunting pressure in the corridor is completely false. The State firearm restriction is not dependent upon PLO 5150. Having the land under State management and regulations will provide for less complex management and enforcement of fish and wildlife laws.

The State is well versed in resource management. As an example, one of the common management actions BLM proposes in the draft RMP/EIS is the prohibition or allowance for commercial forestry. The State, on the lands it manages, seeks to provide a range of forest commodities and other ecosystems services, including wildlife protection and recreation. BLM can look to the Forest Resource Practices Act (FRPA) (Alaska Statute 41.17), as well as the DNR management document "Managing Boreal Forest for Timber and Wildlife in the Tanana Valley of Eastern Interior Alaska (Thomas F. Paragi, Julie C. Hagelin, and Scott M. Brainerd, ADF&G, 2020)." Each of these sources provide substantial guidance on managing for multiple uses while also conserving fish and wildlife habitat and water quality.

DOI explicitly recognizes the State's authority for managing wildlife across all lands and jurisdictional boundaries and as it relates to public use; this RMP/EIS needs to do the same:

> The States' fundamental responsibility for fish and wildlife management includes responsibility for appropriate regulation of public use and enjoyment of fish and wildlife species. The Department recognizes States as the first-line authorities for fish and wildlife management and hereby expresses its commitment to defer to the States in this regard except as otherwise required by Federal law (Department of Interior directive memorandum: State Fish and Wildlife Management Authority on Department of the Interior Lands and Waters, September 10, 2018).

In conclusion, the Draft RMP/EIS fails to recognize both the interplay between federal and state management authorities as well as the nexus between the management of habitat and people in support of fish and game and the management of the fish and game itself. The application of the Plan's habitat and recreation management decisions extend de facto negative impacts to the State's authority for wildlife management. The draft RMP/EIS fails to abide by the numerous tenets of 43 CFR Part 24 that "…reaffirm the basic role of the States in fish and resident wildlife management, especially where States have primary authority and responsibility, and to foster improved conservation of fish and wildlife." It fails to incorporate the State's "broad trustee and police powers as stewards of the Nation's fish and wildlife species on public lands and waters under the jurisdiction of the Department [of Interior] …" as recognized in the September 10, 2018 Secretarial Memorandum issued to the BLM from the Secretary of the Interior. The draft RMP/EIS also fails to advance DOI's priorities for increasing recreational access on BLM lands and waters, improve collaboration with partners, and better align Federal and State regulations as noted by Executive Order 13443 "Coordination with State, Tribes, and Territories" and SO 3047 "Conservation Stewardship and Outdoor Recreation."

2. Meaningful Cooperation, Coordination, and Consultation

- **Issue:**
  - The draft RMP/EIS fails to meet the intent of statute and policy direction regarding cooperating, coordinating, and consulting with the State fish and game agency, including a failure to properly describe the appropriate roll of ADF&G in future travel management actions regarding Dall sheep and caribou.

- **Resolution:**
  - Clearly recognize both ADF&G and BLM roles in the planning area in accordance with the joint agency MMOU.
  - BLM staff should work in close coordination with ADF&G staff to define planning area management needs, in accordance with BLM's Desk Guide to Cooperating Agency Relationships (2012)
  - Engage in two-way dialogue with ADF&G to discuss cooperating review agency comments to cooperatively resolve concerns and improve planning area decisions (*e.g.*, see the subsistence comment herein for an example of a worthy attempt which ultimately failed for the reasons noted).
  - Provide procedures for meaningful and engaged future coordination, cooperation, and consultation with the State on fish and wildlife resource issues in the planning area.

- Engage ADF&G as a cooperating agency in advance of any future step-down plans associated with this draft RMP/EIS (*e.g.*, travel management planning).

- **Discussion:**

ADF&G values its role as a cooperating agency in the planning process and looks forward to engaging in the cooperative relationship with BLM recognized formally by the MMOU. In the MMOU, BLM committed to recognizing ADF&G's role as the:

- primary agency responsible for management of all uses of fish and wildlife on State and Bureau lands;
- primary agency responsible for the management of use and conservation of fish and wildlife resources on Bureau lands; and
- primary agency responsible for policy development and management direction relating to uses of fish and wildlife resources on State and Bureau lands.

The MOU also agrees to:

- incorporate the Department's fish and wildlife management objectives and guidelines in Bureau land use plans unless such provisions are not consistent with multiple use management principles established by FLMPA, ANILCA, and applicable Federal law.

As stated in BLM Land Use Planning Handbook H-1601-1:

> Cooperation goes beyond the coordination requirement of FLPMA. It is the process by which another governmental entity…works with the BLM to develop a land use draft RMP/EIS and NEPA analysis.
>
> In principle, a cooperating agency shares the responsibility with the lead agency for organizing the planning process...including developing information and analysis for which the agency has particular expertise (page 7).

Throughout the CY planning process ADF&G requested the RMP clearly recognize the respective roles of both ADF&G in fish and wildlife management and BLM in ensuring the fundamental physical and biological attributes that define land health in the planning area. We recognize that, to meet its responsibility to ensure the habitat needs of fish and wildlife resources, BLM requires information on fish and wildlife population goals to ensure associated habitat needs are identified to maintain or enhance such populations.[26] For this reason, it is critical for BLM, as outlined in BLM Policy Handbook H1601-1 E. Fish and Wildlife, to work "in close coordination" with ADF&G staff on defining the management needs for the planning area.

Despite BLM's portrayals in public meetings, ADF&G had little meaningful involvement or impact on the preparation of this document. BLM has proposed substantial management actions

[26] See BLM Alaska's IM-AK-2004-023, Alaska Land Health Standards and Guidelines, which provides guidelines for achieving objectives and fulfilling the fundamental physical and biological attributes that define land health.

regarding Dall sheep, caribou, and fisheries, yet our staff received no opportunities to engage with BLM staff besides commenting on prepared documents. Collaboration on the subsistence portions of the draft planning document was an exception. Although just as constrained by unreasonable deadlines, staff from both ADF&G and BLM worked cooperatively to attempt to improve the subsistence aspects of the draft RMP/EIS. Unfortunately, BLM's efforts still fell short from producing adequate subsistence portions of the planning document (see Issue II, Federal and State Subsistence Opportunities for Alaskans). It is disingenuous for BLM, at an agency level, to engage in a public planning process that is so constrained that there is no time for meaningful engagement among BLM staff, cooperating entities, and the public.

BLM's own document [A] Desk Guide to Cooperating Agency Relationships (2012) indicates that the expectation is that BLM will work collaboratively with cooperating agencies to identify and resolve issues during the planning process. In regard to the previous cooperator review comments we provided, we did not receive feedback, nor did we see little change to the document occurring as a result of our comments. The fact that BLM ran a concurrent large scale RMP planning process [BSWI RMP] at the same time, further hindered our ability as an agency to engage in the planning process. As with the BSWI Planning process, we disagree with the decision to not reflect our agency's management efforts in the proposed actions, and we request their inclusion in the final RMP/EIS as they relate to fish and wildlife.

As we have done for other BLM planning efforts, we again provided input to inform the RMP process through internal and public review comments and by supplying resource information, to better inform components of the RMP/EIS such as ACECs, landscape connectivity, and HVWs, management designations of which BLM had not supported with adequate data. We also identified early on the potential issues with the RMP actions which appeared to be fish and wildlife allocative decisions related to subsistence and non-subsistence use and competition—decisions which are appropriately made through the Alaska BOG and BOF, and the FSB, not an RMP. Given ADF&G's fish and wildlife management authority and expertise, we are disappointed with the lack of deference and the absence of meaningful back-and-forth resolution of issues during the RMP development process.

In accordance with BLM Manual 6500.06, the proposed final RMP needs to describe how BLM "will ensure a level of communication and coordination necessary to provide effective cooperation between BLM, private groups, and local, State and Federal agencies concerned with the management of the wildlife and fish…." The final planning document needs to also reference the objective described in BLM Manual 6521 "to obtain maximum cooperation with State agencies whose activities affect aquatic and terrestrial wildlife habitat management…" so it explains the complex relationship among management agencies and strives for a partnership approach with State wildlife agencies. Furthermore, it must abide by the numerous tenets of 43 CFR Part 24 that espouse "…the effective stewardship of fish and wildlife requires the cooperation of the several States and the Federal Government."

3. Priority Species

- **Issues:**
  - No analysis provided to demonstrate how or why certain priority species were identified for the Central Yukon Planning Area.

- No desired outcomes for these priority species are identified in the draft RMP/EIS.
- BLM failed to coordinate with ADF&G while designating these species as priority species, in determining what specific management measures are needed for their habitat, or what the desired outcomes are for these species.
- ADF&G staff are unaware of concerns regarding moose habitat in the narrow band of BLM-managed lands extending toward Venetie, including any concerns that necessitate the creation of ROW avoidance areas.
- No discussion as to how the priority species are related to the proposed adaptive management plan.

- **Resolution:**
  - Work with ADF&G prior to the release of the proposed final RMP/EIS to determine appropriateness of these priority species designations and identify desired outcomes.

- **Discussion:**

BLM identifies Golden eagle, moose, caribou, Dall sheep, and beaver as priority species for impact assessment in the planning area. No discussion is provided in the draft RMP/EIS or earlier planning documents to indicate how these species were determined as priority species in the planning area.

BLM Handbook 1601 states that BLM can "[d]esignate priority species and habitats, in addition to special status species for fish or wildlife species recognized as significant for at least one factor, such as density, diversity, size, public interest, remnant character, or age." If designated, Handbook 1601 also states, the draft RMP/EIS should "identify desired outcomes using BLM strategic plans, state agency strategic plans, and other similar sources." The draft RMP/EIS does not detail desired outcomes for the priority species or provide information about any attempts by BLM to provide consistency with state management. To provide the best outcome for the species, the designations need to be done "working in close coordination with state wildlife agencies and drawing on state comprehensive wildlife conservation strategies" (Handbook 1601). Specific measures designed to manage habitat for special status species should also be done in coordination with state wildlife agencies. We are not aware of this having occurred prior to the release of this draft RMP/EIS.

The draft RMP/EIS also fails to identify the interplay between the identification of priority species and their relationship to BLM's proposed adaptive management strategy.

4. Areas of Critical Environmental Concern (ACEC)

A. ACEC Designations

- **Issues:**
  - The State supports the intent of the following ACECs to protect Dall sheep and caribou habitat: West Fork Atigun, Toolik Lake, Galbraith Lake, Snowden Mountain, Sukakpak Mountain, Nugget Creek, Poss Mountain, and the Galena Mountain ACECs. For those ACECs partially or wholly within the boundaries of PLO 5150,

State management will continue to be in place after PLO 5150 is lifted to protect these resources.

- ANILCA context must be taken into consideration when evaluating the need for ACECs.
- Existing environmental laws and federal and state regulatory authorities must be considered in ACEC effects analyses and when determining the need for special management.
- Proposed ACECs are not located or discretely sized to target the resource/value identified as needing protection.
- How the ACECs meet the designation criteria is not clearly spelled out in the draft RMP.
- Failure to coordinate/consult with the State, specifically ADF&G, on the identification, designation, and special management for ACECs designated for fish and wildlife values violates the MMOU between ADF&G and BLM, as well as the regulations found in 43 CFR Part 24 Department of the Interior Fish and Wildlife Policy: State and Federal Coordination, especially 43 CFR 24.4(c).
- Inconsistencies exist between ACEC sizes, designation values, and special management between text in Chapters 2 and 3 and Appendices J and T.

- **Resolution:**
  - Configure the following ACECs in the proposed final RMP to identify discrete targeted areas to address specific wildlife needs, sized in accordance with **Alternative A**: West Fork Atigun, Toolik Lake, Galbraith Lake, Snowden Mountain, Sukakpak Mountain, Nugget Creek, Poss Mountain, and Galena Mountain ACEC.
  - Remove proposed special management actions and replace with one requirement to coordinate and consult with ADF&G.
  - Provide additional supporting information consistent with BLM ACEC Manual direction on how these ACECs meet ACEC designation criteria.
  - Resolve inconsistencies in final document.
  - If BLM considers moving forward with ACECs other than for those areas identified by ADF&G as warranting additional management attention, the ACECs must be appropriately justified and sized as follows:
    - Appropriate discrete sizing of ACECs to protect the relevant and important values identified for the designation, determined in cooperation with ADF&G.
    - Include a thorough analysis of the use and associated issues and concerns for any limitations proposed on BLM lands through the planning process (*e.g.*, limits on OHV use).
    - Provide a timeframe in the proposed final RMP/DEIS for completion of additional work for subsequent planning or inventory activities needed to support proposed limitations (*e.g.*, travel management planning).
    - Consult and coordinate with ADF&G on management actions to manage ACECs for fisheries and wildlife values consistent with the MMOU between BLM and ADF&G.
    - Review complete RMP for consistency prior to release of the proposed final RMP/EIS.

- **Discussion:**

We are supportive of the following existing ACECs and recommend the same special management action for each of them (identified below in subsection B to coordinate and consult with ADF&G)—West Fork Atigun, Toolik Lake, Galbraith Lake, Snowden Mountain, Sukakpak Mountain, Nugget Creek, Poss Mountain, and Galena Mountain. We believe that these ACECs, as they exist now under Alternative A, are appropriately sized and located, and if consultation with ADF&G occurs when proposed projects in the area are under consideration, the important habitat can be adequately protected with appropriate mitigation measures determined on a case by case basis.

It is important to consider all BLM lands and resources, including designation and management of ACECs, in the context of BLM's multiple use directive. FLPMA Section 103(c) defines multiple use as including "a combination of diverse resource uses that takes into account the long-term needs of future generations for renewable and non-renewable resources." While FLPMA Section 102(11) also identifies the potential need for ACECs, millions of acres of federal public land within and adjacent to the planning are already designated CSUs; therefore, in Alaska, it is critical that BLM recognize this context and the role its lands play in ensuring Congressional intent in Section 101(d) of ANILCA is met.[27]

We are aware that local communities in the planning area have expressed concerns at the public meetings about potential effects to resources in the planning area and therefore view ACECs as needed for additional protections, particularly for fish and wildlife resources used for subsistence purposes. However, BLM policy requires specific criteria be met for ACEC designation. Designating an ACEC involves determining if the proposed ACEC meets the relevance and importance criteria. They should also be appropriately sized to target the resource identified as needing protection. As discussed below, the majority of ACECs do not meet these criteria.

<u>Fisheries ACECs</u>
We recognize the importance of clean water both as habitat for fishery resources, which serve an essential role in meeting the subsistence needs of area residents, as well as a source for community drinking water. However, based on the information presented, we do not believe the ACECs proposed for fisheries values in the draft CYRMP/EIS meet all the necessary criteria for designation. When appropriate, fisheries ACECs should be applied only to those areas necessary to protect the fisheries resource and reasoning should be provided if a single ACEC is covering portions of different watersheds.

BLM regulations and policy require an ACEC to meet specific criteria to be designated. Fish resources are abundant across Alaska; therefore, the presence of fish alone is not enough to qualify an area for an ACEC designation. The resource must also meet the "importance criterion" (43 CFR 1610.7-2(a)(2)).

[27] Section 101(d). …This Act provides sufficient protection for the national interest in the scenic, natural, cultural and environmental values on the public lands in Alaska, and at the same time provides adequate opportunity for satisfaction of the economic and social needs of the State of Alaska and its people…

> *Importance. The above-described value, resource, system, process, or hazard shall have substantial significance and values. This generally requires* ***qualities of more than local significance*** [emphasis added] *and special worth, consequence, meaning, distinctiveness, or cause for concern…*

While we agree that fisheries are an extremely important resource, the generalized resource concerns identified for many of the proposed fisheries ACECs do not indicate they are more than locally significant. The justification provided for the proposed ACECs with Fish/Riparian values relies on the logic that because riparian resources only constitute 3% of the BLM managed lands in the planning area, this makes them rare at a regional scale and as such, meets the ACEC importance criterion. This logic is flawed because these same fishery values are found throughout the State of Alaska, as well as on adjacent federal, State, and private lands within the planning area. Fishery related ACECs should only be proposed when they have substantial significance and values when compared to typical conditions (water quality, fisheries, productivity, escapement, etc.). Information needed to make that determination include escapement data for relevant fish species as well as comparisons with fisheries in other river systems regarding species composition/diversity or escapement. Such a comparison is crucial in justifying the fisheries resource as unique, important, and/or more then locally significant. We also disagree with the rationale provided that deems Fish/Riparian values important because riparian resources perform a disproportionate number of biological and physical functions. Using this logic provides for virtually any riparian resource meeting the importance criteria, which defeats the logic of the areas being unique and places the logic in conflict with the intent of the BLM regulations.

Overall, little information is provided to support the importance of the proposed fishery ACECs. Most of them use the same rationale to support their inclusion, often also noting that while values would be considered unique on a national scale, it is not unique in the planning area or region. This statement emphasizes yet again that the proposed ACECs do not merit designation. For example, the Hogatza River ACEC under Alternative A covers 5,000 acres to protect chum salmon spawning habitat in Clear and Caribou Creeks. Clear Creek chum salmon spawning habitat is on BLM's special status species watch list. During the 1986 CYRMP planning process, we were supportive of the ACEC and as a signatory agency, involved in the preparation of a Habitat Management Plan (HMP) for the ACEC in 1994. However, the bulk of the Hogatza River ACEC lands are no longer under BLM management and the HAP was never implemented. No discussion was included in the RMP of the relevance and importance of the remaining 5,000 acres as spawning habitat. Management intent in the HAP was to obtain large scale aerial photography of the streams within the ACEC, collect channel geometry from representative reaches of Clear, Caribou, Bear and Aloha Creeks, and conduct annual compliance inspections of surface disturbing land-use activities occurring with the ACEC to ensure protection of the aquatic resources, to document the quantity and quality of existing habitat, and provide a basis for instream flow evaluations. Despite the intent of the HMP to monitor this ACEC, BLM's AMS (page 18) states that "Water quality can only be discussed in general terms."

The original Hogatza River ACEC implemented in 1986 covered 42,512 acres but approximately 37,000 acres of those lands have since transferred to the State and Doyon Ltd.[28] In the 2015

[28] BLM, April 2016, Analysis of the Management Situation, page 168

Areas of Critical Environmental Concern Report on the Application of the Relevance and Importance Criteria (ACEC Repot), as well as the 2016 AMS, BLM recommended adding 11,000 acres of BLM-managed land in the combined watersheds of Clear and Caribou Creeks, 2,700 acres of BLM-managed land in the adjoining High Creek watershed, and 37,900 acres in the sub-watershed area of the main stem Hogatza River for a total acreage 62,000 acres. However, the ACEC Report fails to provide any rationale for the additional acreage, nor does it describe what makes it unique and of more than local significance beyond the statement that because "… high value salmon habitat [is] found within the combined drainages of Clear, Caribou, and High Creeks it is recommended the current boundary of the Hogatza ACEC be adjusted…" (ibid, page 172). Yet, Alternative B in the draft RMP/EIS proposes an ACEC of 221,000 acres, indicating the entire 221,000 acres has been identified as LWC and that it will be managed to reduce impacts to wilderness character while allowing for other uses as the supporting rationale, even though BLM's own policy in LWC Manual 1613.06 states: "*An ACEC designation will not be used as a substitute for wilderness suitability recommendations.*" While LWCs are not technically recommended wilderness, relying on a fishery based ACEC to protect wilderness character is inconsistent with the manual's intent (*see also* LWC general comments). Similarly, Alternatives A and C2 both indicate that 41,000 acres within the "undesignated acres" overlap with WSRs, which will protect crucial spawning habitat and riparian vegetation with the Hogatza River tributaries, though none of the alternatives recognize existing State and federal regulatory protections under the Clean Water Act and both AS 16.05.871 "Anadromous Fish Act" and AS 16.05.841 "Fishway Act." Any development projects that involve work below ordinary high water or result in potential infringement on resident fish passage will require a permit from the ADF&G Habitat Division, in addition to going through an additional review under other applicable authorities and associated NEPA requirements. The "need" for special management must be a consideration when existing federal and state regulatory authorities adequately protect these fishery resources.

Wildlife ACECs

As stated in our previous cooperator review comments on the Central Yukon Preliminary Alternative Concepts, we recommend BLM maintain the existing Galena Mountain ACEC (Alternative A). The Galena Mountain ACEC is already appropriately sized covering 19,000 acres that correctly prioritizes the calving grounds of the Galena Mountain Caribou Herd. Upon review of the draft RMP/EIS, we also support maintaining the following existing ACECs under Alternative A for the protection of Dall sheep, mineral licks, and caribou calving/migration areas: Galbraith Lake, Poss Mountain, Nugget Creek, Snowden Mountain, Sukapak Mountain, Toolik Lake, and the West Fork Atigun.

We do not support the designation of the expanded Tozitna ACEC or the Tozitna (north/south) ACEC for caribou calving at this time and request BLM instead work with ADF&G to collect data defining calving grounds to determine if an ACEC is needed in this area for caribou. In addition, we do not support the expansion of the aforementioned ACECs, as proposed under Alternatives B and C1, as that action could dilute BLM's ability to prioritize protections for the most important habitat.

ACEC Size

We also have concerns with the overall size of many of the ACECs carried forward in the draft RMP/EIS, some of which encompass hundreds of thousands of acres. ACEC size should relate directly to the protections needed for the designated values. BLM Manual 1613.22B2 specifies that "The size of a proposed ACEC shall be as necessary to protect life and safety or the also important and relevant values within the context of the set of management prescriptions for the public lands." For example, ACECs designated for fisheries values should be narrow and follow river corridors, allowing BLM to focus protections on the most important habitat areas. ACECs designated for wildlife should prioritize calving grounds and migration areas. Any ACECs carried forward to the final RMP must be appropriately sized in accordance with direction in BLM Manual 1613.22B2.

Inconsistent Information

Reviewing the ACEC portion of the draft RMP/EIS is complicated by the inconsistencies presented between the discussions in Chapter 2, Chapter 3, Appendix J and Appendix T. These inconsistencies range between differing acreage for the same alternatives (*e.g.*, Galbraith Lake identifies the acreage as 52,000 acres in Appendix T, but 53,000 acres in Chapter 2, Table 2-1), different values identified for the same ACEC (*e.g.*, the Sukakpak/Snowden Mountain ACEC is designated for Dall sheep habitat under Alternative B and for Scenic and Geologic Values in Alternative C1), and different special management actions for the same alternative (*e.g.*, Galena Mountain is identified as a ROW exclusion area in Chapter 2 but a ROW Avoidance area in Appendix J.) The pervasive inconsistencies are found throughout the document and are too numerous to list in their entirety. They should be evaluated and reconciled before issuing the proposed final RMP.

B. ACEC Special Management Actions

- **Issues:**
  - ACEC effects analysis does not take into consideration existing federal and state laws and regulatory authorities that protect fish and wildlife habitat, thereby rendering the analyses meaningless.
  - Draft RMP/EIS fails to outline how special management is unique to each ACEC and only able to be prescribed through ACEC designation.
  - Draft RMP/EIS does not include data to support need for unique special management actions for individual ACECs.
  - Special management for fish and wildlife habitat was not determined in cooperation with ADF&G biologists.
  - Special management via blanket limitations is inappropriate.
  - Proposed OHV restrictions within the Dalton Highway Corridor are redundant with existing State statutes and regulations.
  - Proposed general OHV restrictions in remote areas are unnecessary for resource protections as the areas are so remote they are self-limiting.
  - Proposed OHV restrictions in remote areas primarily affect subsistence users and conflict with ANILCA Section 811(a) and (b), which requires BLM to provide reasonable access to subsistence resources and allow methods of access traditionally employed.
  - ACEC special management actions can lead to situations where development is displaced to adjacent State or private lands of higher habitat value.

- Inconsistencies exist regarding special management between Chapters 2 and 3, and Appendices J and T, as well as between information found in Alternative A and the original RMPs

- **Resolution:**
  - Eliminate proposed special management actions and replace with one special management action for the wildlife ACECs identified above that requires consultation and cooperation with ADF&G.
  - Verify that special management in Alternative A matches what is in the current RMPs.
  - Fix inconsistencies found in draft RMP/EIS in the final RMP/EIS.

- **Discussion**

Perhaps the most important aspect of the ACECs is the requirement that they must need special management to protect and prevent irreparable damage to the important values or resources that have met the relevance and importance criteria.

For many of the ACECs proposed in the draft CYRMP/EIS we question the need for special management, even if the relevant and important criteria is met, when existing federal and state laws and regulatory authorities are in place to protect fish and wildlife habitat. Additionally, as we stated in previous cooperator review comments, many of the proposed ACECs are in areas so remote, the area itself is self-regulating and would not need nor benefit from special management. The remote and rugged nature of the planning area precludes both recreational and commercial activities from occurring without substantial planning and forethought. This is evidenced by the low number of BLM-permitted activities that exist over much of the planning area under current management. For example, the Spooky Valley RNA is designated to protect, depending on Alternative, geological, physiographic, vegetation, scenic values, and/or caribou habitat, yet the patterns of public use in the area are very low. Hunters may be the only users in the area and their use and harvest is self-limited due to the limited aircraft landing sites. There is no data provided to indicate the use of the area by the four small non-migratory caribou herds is significant enough to warrant access restrictions based on wildlife resource use or potential habitat damage concerns. The effects analysis in Appendix T for Alternative C1 affirms this: "Currently, there are no threats to the R&I values" (page T-39). It is unclear to the reader how some individual ACEC alternatives can require special management to protect and prevent irreparable damage in an ACEC, when other alternatives for the same ACEC state "there are no threats."

Other proposed ACECs where the draft RMP/EIS indicates no threats to relevant and important (R&I) values have been identified include: Huslia River Tributaries, Indian River, Klikhtentotzna Creek, McQuesten Creek RNA, Mentanontli River/Lake Todatonten, South Todatonten, Spooky Valley RNA, Upper Teedriinjik (Chandalar) River, and Wheeler Creek, as noted in Appendix T.

In general, because of the suite of existing federal and state laws and regulatory authorities, as well as the remote locations of many of proposed ACEC areas, the areas identified for ACEC designation do not have existing or imminent critical issues identified as needing protection, nor

is supporting data presented identifying specific problems requiring immediate action. The draft RMP/EIS theorizes future potential impacts but presents little to no data to support the proposals. For the wildlife ACECs we support (*i.e.*, Galena Mountain, Galbraith Lake, Poss Mountain, Nugget Creek, Snowden Mountain, Sukapak Mountain, Toolik Lake, and the West Fork Atigun), we do not support continuation of the existing special management proposed under Alternative A. Instead, we propose the following new special management for each of these ACECs.

> For any development activities in [fill in specific ACEC from above list], a case-by case mitigation assessment on impacts to Dall Sheep, caribou calving/migration areas, and known mineral licks will be prepared by BLM **in meaningful consultation and coordination with ADF&G.**

This management action will ensure meaningful consultation and coordination occurs with ADF&G, the agency responsible for the management of wildlife on BLM lands, for all activities that could potentially impact wildlife in designated ACECs (the same request applies to fishery ACECs if any are moved forward). It will also ensure timely, appropriate, and site-specific management decisions are made to protect the ever-moving caribou, as well as the Dall sheep, and their use of mineral licks and is the best way to ensure wildlife habitat is protected without unnecessarily restricting other uses.

This specific management action will also meet the directives in both BLM and DOI regulations and guidance (see H-1601-1, Appendix C, "Implementation Decisions" as well as 43 CFR 24.1) intended to ensure effective stewardship of fish and wildlife through meaningful cooperation between state and federal agencies, as well as the direction in BLM ACEC policy manual 1613.12 to consult and coordinate with experts having interest or expertise in the affected values.

<u>Special Management via Blanket Limitations</u>

Special management proposed for ACECs in Appendix J, under Alternatives A, B, and C1 (particularly Alternative B), employs excessive blanket limitations on surface-disturbing activities applied across vast areas (*e.g.*, ROW exclusion and avoidance areas). For example, in the Hogatza River ACEC, proposed special management under Alternative B includes the following banket restrictions; FLPMA withdrawals, closing the entire ACEC to mineral materials disposal, mineral leasing and development; mineral extraction or collection (*i.e.*, casual use and prospecting); prohibiting commercial timber development; and designating the entire area ROW Avoidance. While beneficial to fish habitat in discrete areas, the restrictions are unnecessary across 221,000 acres. These waterways also have sufficient protections under the Clean Water Act and State Statutes "AS 16.05.871 the "Anadromous Fish Act" and AS 16.05.874 the "Fishway Act." The plan does not contain data and only provides generalized rationale with no detail to support the proposed special management action, (*e.g.*, *The management prescriptions identified in Chapter 2 would help protect R&I values within this designated ACEC and reduce threats to R&I values* (T.7 Alatna River, Alt. B and C1, page T-8), nor does BLM identify how these special management actions will directly serve to provide protection for targeted resource(s).

<u>Travel Restrictions</u>

Despite our objections in previous cooperator review comments, OHV restrictions remain included as blanket limitations. Most of the OHV restrictions in the plan are located in ACECs within the Dalton Highway Corridor where OHV restrictions already exist or in remote areas where access is self-regulated due to relative inaccessibility.

The additional layered limitations in the Utility Corridor, where State statutes and hunting regulations already limit the use of motorized vehicles, are redundant and only serve to create additional confusion in the area for the public, rather than provide for resource protection. BLM provides little to no justification for these proposed management actions and in Appendix M, "Approach and Summary to the Environmental Analysis" (page M-25) states that …. *(OHV) use [is] not anticipated to occur at a large scale in the planning area and will not be included in the analysis*. We request the impact analysis in the proposed final RMP/DEIS compare the status quo with the proposed restrictions so as not to overstate the impacts of the proposed restrictions.

The primary OHV users in the planning area are subsistence users. ANILCA authorizes access for subsistence activities (*i.e.*, ANILCA Section 811 Access) on all federal public land (not limited to CSUs), so it applies to both BLM general lands and designated management areas, such as ACECs. It is important to recognize that, while allowed in CSUs under ANILCA Section 811, subsistence use of OHV's is generally not recognized by managers of CSUS as a method of access "traditionally employed" and is therefore generally not an allowed use on federal lands within nearby CSUs (e.g., Gates of the Artic National Park and Preserve, and Kanuti and Arctic National Wildlife Refuges). BLM multiple use lands are therefore, primarily, the only federal lands in the planning area where subsistence users can use OHVs. As noted in the RMP's ANILCA access discussion in the Travel Management Table (Table 2-20), restrictions on ANILCA protected access cannot be imposed and are not enforceable until they are evaluated through a subsequent public process.

The draft plan indicates seasonal limitations apply to airplane landings authorized under BLM permit (with an exception for emergency or scientific purposes) under Alternative A in the Nugget Creek, Poss Mountain, Snowden Mountain and West Fork Atigun ACECs. (Table 2-21, page 2-59). Under Alternative B, C1 and C2 (and they vary between sections of the draft RMP) aircraft landings authorized under BLM permit are restricted on 1,856,000 acres (14 percent of the planning area) within the Galena Mountains, Jim River, Tozitna, Sulukna, and Kanuti River ACECs (per Table 2-21 page 2-59, Appendix J, pages J-11, -14, 16 and Appendix Q, page Q-59, -60, -81). ANILCA Section 1110(a) protects the public's use of aircraft for traditional activities (*e.g.*, hunting and fishing) within CSUs, including designated Wilderness, Wilderness Study Areas, and Wild and Scenic Rivers, and it is often the only feasible means of access in areas without roads or trails. The same need holds true for the majority of multiple-use lands managed by BLM in the planning area. To restrict this important method of access on almost 2 million acres of BLM non-CSU lands when it is allowed by statute (subject to reasonable regulation) within CSUs for the public is illogical and contrary to the intent in ANILCA. Based on the limited use of the planning area for aircraft landings and lack of need for restrictions evidenced by data in the draft RMP/EIS, we oppose restrictions on aircraft landings. We request BLM consult with ADF&G staff regarding the perceived need for proposed restrictions in fish and wildlife ACECs.

5. Dall Sheep and Caribou Habitat Management

A. Dall Sheep

- **Issue:**
  - Inadequate information to support 160-acre non-use areas around known mineral licks.
  - Inadequate information to support aircraft landing and flight ceiling restrictions.
  - Appendix I indicates BLM is safeguarding the highest priority Dall sheep habitat with this management plan to expand hunting opportunities in accordance with Secretarial Order No. 3362, ADF&G biologists disagree with the approach outlined in Appendix I.
  - Inadequate information to support proposed intent, designated management areas and proposed management actions.
  - Inadequate consultation with ADF&G.

- **Resolution:**
  - Adopt ADF&G recommended ACECs designated to protect discrete areas of Dall sheep habitat with targeted special management for collaborative case-by-case review by BLM and ADF&G of development proposals within the ACECs.
  - Remove 160-acre non-use areas around mineral licks from selected alternative.
  - Remove limits on aircraft landings and flight ceiling restrictions from selected alternative.
  - Provide information on how the proposed Dall sheep and caribou management expands hunting opportunities.
  - Exclude hunters from any restrictions on "human disturbances."
  - Remove motorized noise limits.
  - Carry out consultation with ADF&G in accordance with MMOU.

- **Discussion:**

<u>Mineral Licks</u>
Appendix I states that BLM will, in an effort to expand big-game hunting by improving priority habitats, protect the known naturally occurring mineral sources (licks) for Dall sheep. We do not support the proposed blanket 160-acre non-use area around known mineral licks. As the wildlife manager, it is our determination that there is not adequate information to establish core lambing areas relative to the larger Brooks Range populations.

<u>Aircraft Restrictions</u>
We do not support the proposed aircraft landing or flight ceiling restrictions; we have not identified any areas where that aircraft restrictions are needed to protect Dall sheep populations. In addition, as airplane use is a method of access allowed by Congress within CSUs, it is incongruous for BLM to restrict airplane landings on similarly vast, roadless areas managed for multiple use.

<u>Restrictions on Hunters</u>

The discussion of the data presented in the draft RMP/EIS fails to support the conclusion it draws. It is unclear how BLM determined the management techniques found in Appendix I, for "Disturbance Limits" and "Noise Restrictions" (see page I-3). It is also unclear how BLM determined the following restrictions: "Manage permitted human disturbances, whether temporary or permanent, so they cover less than 5 percent of [Dall Sheep Habitat Areas] DSHAs and 15 percent of [Dall Sheep Movement Corridors] DSMCs." The primary temporary human activities in many of these areas are sheep hunters in the fall.

We reiterate the request of our March 24, 2017 Preliminary Alternative Concepts review letter requesting BLM explain the specific management concerns regarding mineral licks and how the proposed restrictions will address these concerns, improve habitat, and expand hunting:

> Most human use near mineral licks occurs primarily from Aug 1– Sept 20 during the general Dall sheep hunting seasons. ADF&G biologists maintain human disturbance likely has little biological effect on sheep during the fall because adults are in prime condition and lambs are fully mobile. Like other big game hunting seasons that occur during the fall, hunter disturbance to sheep during fall, in general and specifically near sheep mineral licks, has little or no biological impacts. Dall sheep are the least vulnerable to disturbance during this time of year. To demonstrate a need for restrictions related to mineral licks that affect hunter access, BLM needs to provide data to demonstrate how sheep are being significantly affected by low elevation disturbance to mineral licks from hunters during this period (B. Wendling, ADF&G-sheep researcher-personal communication).

As no additional information was provided in this draft RMP/EIS, as well as contrary biological data we possess, we request that hunters be excluded from the "human disturbance" restrictions stated in the RMP/DEIS.

<u>Noise Restrictions</u>
The draft RMP/EIS does not provide evidence supporting a need for the proposed 50 dBA limit for motorized noise: "Motorized noise would not exceed 50 dBA (a-weighted decibels) at identified DSHAs between 7 a.m. and 7 p.m." As a comparison, an electric toothbrush produces between 55 and 60 dBA. We request a more realistic noise limit be established should data reveal the necessity of a noise limit to protect DSHAs and documentation is provided for how the noise limit and timing is established.

- Dall sheep management needs to be coordinated with ADF&G rather than proposed in Appendix I,

If management according to Appendix I to implement Dall Sheep Priority Habitat Management Areas is carried forward in the selected alternative, we request that ADF&G be consulted on ROW permits and leases in DSHAs, DSMAs, and DSSAs to ensure the most current data is being considered and most valuable habitat is protected based on the scientific expertise of ADF&G in its role as manager of wildlife on all lands throughout Alaska.

B. Priority Caribou Habitat

- **Issue:**
    - Management under Appendix I does not clearly identify any actual management and instead merely briefly summarizes some information on the Galena Mountain, Ray Mountain, and Hodzana Hills herds and directs readers back to the proposed alternatives.

- **Resolution:**
    - If BLM moves forward with caribou management under Appendix I, we request a management program be cooperatively designed with ADF&G prior to release of the proposed final RMP/EIS.
    - Maintain the existing Galena Mountain ACEC designated under Alternative A as specified above with the special management as proposed.

- **Discussion:**

In our previous cooperator review comments, ADF&G recommended only the Galena Mountain Caribou ACEC be carried forward for its critical habitat. ADF&G maintains this position by proposing BLM implement a special management prescription that calls for case-by-case mitigation assessments of proposed development activities in coordination with ADF&G, which will provide suitable caribou habitat protections.

No new critical issues were identified in the draft RMP/EIS to indicate additional management actions are necessary; therefore, we do not support new or expanded ACECs for caribou habitat. When discussing core caribou habitat, the draft RMP/EIS notes the lack of need for additional ACECs: "Aside from allocation decisions described and proposed above [for core caribou habitat], these areas **do not require** [emphasis added] extensive special management" (page I-8).

6. Recreation Management

A. Extensive Recreation Management Areas (ERMA)

- **Issue:**
    - Two ERMAs identified in the draft RMP/EIS, the Spooky Valley ERMA and the Nigu-Iteriak River ERMA are proposed as Primitive under Alternative B and C1 and both alternatives would prohibit aircraft landings, eliminating one of the primary modes of access into these remote areas for recreational use.
    - Restrictions on use are not described in the Alternatives Tables and instead relegated to in an appendix (Appendix K) making it cumbersome for the public to understand how they could be affected by the proposed designations and associated restrictions.
    - Access restrictions make these areas less accessible than CSUs located in the planning area.
    - Little information is provided in the draft RMP outlining BLM planning area investments or management issues triggering the need for an ERMA given ERMAs are designated to manage existing recreation use, demand, or Recreation and Visitor Services program investments and are managed to sustain principal recreation activities and associated qualities and conditions.

- **Resolution:**
  - As the draft RMP/EIS does not identify resource management problems caused by aircraft landings we request the following edits to remove restrictions on aircraft landings:
    - Page K-18, Spooky Valley ERMA,
      Other Programs—Designate for seasonal, non-motorized use. Access into the ERMA would be by foot or aircraft, in winter, snowmobile.
    - Page K-18, Nigu-Iteriak River ERMA,
      Other Programs—Designate for seasonal, non-motorized use. Access into the ERMA would be by foot or aircraft, in winter, snowmobile.
  - We recommend removing existing ERMA designations in the planning area and avoiding any new ERMA designations, unless additional detail can be provided documenting the need for the designation.
  - Manage all aircraft use consistent with allowances for CSU's per ANILCA Section 1110(a) and 811 **throughout the planning area**.

- **Discussion:**

ANILCA Section 1110(a) specifically protects the public's use of aircraft in CSUs. This is often the only feasible means of access in areas without roads or trails, such as the Spooky Valley ERMA and the Nigu-Iteriak River ERMA/Wilderness Study Area. The Nigu-Iteriak ERMA shares a boundary with the CAMA, which was designated as a WSA in Sec. 1004(c) of ANILCA. ANILCA amends the Wilderness Act to allow the use of aircraft in Congressionally designated Wilderness and WSAs. It is inappropriate for the DEIS to propose managing administratively designated areas, Spooky Valley ERMA, or WSAs **more restrictively than Congressionally designated Wilderness in Alaska**. In particular, use of aircraft in the WSA for traditional activities, such as hunting or outfitting and guiding, cannot be prohibited unless "after notice and hearing in the affected area, it is determined to be detrimental to the resource values of the unit or area" (ANILCA Section 1110(a)). (*see also* the ANILCA provisions referenced in Travel Management Table 2-20).

Resource management issues caused by aircraft landings should be evaluated on a case-by-case basis. Any subsequent restrictions should be limited to the minimum portion of the area necessary to discretely, yet adequately, address the problem. Restrictions are only appropriate during time periods when an issue exists, *e.g.*, during a specific season, if applicable. However, neither of these areas receives high use at any time of the year and therefore do not warrant the proposed seasonal restrictions.

In addition, there are multiple layers of conflicting actions related to aircraft use in the draft plan, making the management indecipherable. The proposed aircraft closures for these two ERMAs is not consistent with management in other parts of the draft RMP/EIS. For example, Table K.1.3 "Operational Component-Conditions Created by Management over Recreation Use" (page K-5) allows aircraft landings for both primitive and semi-primitive classification: "aircraft activity permissible through Alaska National Interest Lands Conservation Act 1110(a) and 811" (Page K-5).

B. Backcountry Conservation Areas (BCAs)

- **Issue:**
  - BCA in Alternative B of the draft RMP/EIS does not accurately consider the on-the-ground reality in the data presented. This results in a conflict between what the on-the-ground environment is and what the draft RMP/EIS indicates the BCAs will be.
  - Similar to SRMAs, proposed management is not found in the Alternatives Table (2-7) but instead described in an appendix (Appendix K), making it cumbersome for the public to assess how the proposed designations and associated management would affect them.

- **Resolution:** If carried forward into the final plan, defer management decisions to a recreation management step-down plan for this area to better analyze designating the Dalton Highway Corridor BCA.

- **Discussion:**

The Dalton Highway BCA is incorrectly described as "being 5 miles from either mechanized, motorized routes or established landing fields" (Draft RMP/EIS, Appendix K, Page K-36). There are many areas of the BCA directly adjacent to airfields and routes open to mechanized or motorized travel. For example, the BCA north of Sukakpak Region SRMA contains the Chandalar Shelf airfield, oil pipeline infrastructure and access roads, is a mile east of Galbraith Lake airfield, and directly adjacent to the Dalton Highway.

Also, the BCA north of Sukakpak Region SRMA is treeless so most land uses are visible from the Dalton Highway unless hidden by topography. The on-the-ground situation conflicts with the discussions in the Remoteness and Naturalness section K.8.4, which state "Any new land uses would have a low level of contrast with the landscape and would not be visually obvious from the Dalton Highway" (Draft RMP/EIS, Appendix K, Page K-36). The clear lines of sight from the Dalton Highway make the desired conditions described in the draft RMP/EIS difficult to achieve and inappropriate next to developed infrastructure.

The BCA in the vicinity of the Central Dalton SRMA and Coldfoot RMZ is transited by the Nolan Road and Hammond River Road open to highway vehicle traffic and mechanized travel. Numerous mining access trails are also located in the BCA in the vicinity of Slate Creek (Myrtle Creek airstrip), Marion Creek, and Gold Creek. These mining access trails are open to heavy equipment travel by permit as well as OHV and mechanized travel. Airstrips in this portion of the BCA include Myrtle Creek airstrip and two airstrips in the vicinity of Gold Creek associated with trailheads. One of which is on the north side of Gold Creek and the other on the south side. The BCA's classification in the vicinity of the Jim River conflicts with the Bettles winter road, which is seasonally open to highway vehicles and with mining trails west of Chapman Lake.

The distances from landing fields, motorized, and mechanized routes we have noted in the Dalton Highway BCA, and adjacent, are more accurately associated with backcountry and frontcountry classification, not primitive or semi-primitive classification. The primitive/semi-primitive classification can unnecessarily limit hunter, fisher, and trapping access which conflicts

with the goals in the planning area to enhance opportunity for hunting, angling, and recreating and should be removed from all alternatives.

7. Trapping Cabins

- **Issue:** Numerous ACECs prohibit trapping cabin locations within the 100-year flood plain.

- **Proposed Resolution:** Clarify in the final RMP that trapping cabins are allowed within the 100-year floodplain areas of all streams; conform distance limits between cabins and waterways with those in the State Yukon Tanana Area Plan (YTAP) and North Slope Area Plan (NSAP).

- **Discussion:**

The draft RMP/EIS identifies trapping as an important subsistence activity in the communities located in the planning area and finds trapping and the use of temporary structures as a compatible activity, including LWCs, which often overlay ACECs. In Chapter 3 of the draft RMP/EIS, BLM states:

> In addition, the BLM considers several subsistence activities specified in ANILCA to be compatible with LWCs in Alaska, including use of public cabins and shelters, snowmachine use with adequate snow cover, airplane use and primitive landing areas, motorboat use, and building temporary structures for hunting, fishing, or trapping (BLM 2016b). (page 118, 4th full paragraph)

ANILCA 1303(b)(1) also allows for trapping cabins in CSUs as Congress recognized trapping was a traditional and customary use to be provided for in areas of high resource value. It follows that trapping cabins compatible with LWC and CSU lands would also be compatible with proposed ACECs. However, despite the intent to support trapping and clarify management actions within the draft RMP/EIS for LWCs, management actions for ACECs and HVWs under Alternative B impede the opportunity for trappers to locate trapping cabins along waterways within the planning area—an action critical to many trap lines. For example, management actions for the Tozitna ACEC in Appendix J states:

> All BLM-authorized camps and support facilities within the confines of the ACEC, including cabins and tent frames, would not be in the 100-year floodplain (Appendix J, p. 14).

This management action is not limited to the Tozitna ACEC as the draft RMP/EIS would also prohibit trapping cabins in the 100-year flood plain in the following ACECs: Hogatza River Tributaries, Indian River, Klikhtentotzna Creek, Sethkokna River, South Fork Koyukuk River, Upper Teedriinjik (Chandalar) River, Wheeler Creek, Alatna River, Jim River, Mentanontli River/Lake Todatonten, Sulukna River, and Huslia.

These management actions put trapping cabins a minimum of 100 feet from the ordinary high-water mark of a stream. The on-the-ground application of setting riparian buffer distances

according to the flood plain will make it extremely difficult for users to determine where these activities are allowed. This is another example of proposed management creating unnecessary confusion and uncertainty for the public and for law-abiding citizens who wish to use the public lands when even land management professionals have a hard enough time trying to discern the complexities of concurrent state and federal jurisdiction. The average person is in an even worse predicament.

We request trapping cabin use on BLM lands conform to State area plans, as determined in the YTAP and NSAP, which provides for trapping cabins to be located along waterways while still protecting area resources and maintaining management continuity for the public users of the area. Specifically, conformity with the YTAP and NSAP would allow trappers to have cabins within the 100-year floodplain but not within 100 feet of the ordinary highwater mark of anadromous waters and high value waterbodies, and 50 feet adjacent to all other waterbodies, as well as allow for greater buffer distances in specific identified circumstances.

8. Traditional Cultural Properties (TCPs)

- **Issues:**
  - The draft RMP/EIS provides conflicting information for the management implementation for TCPs making BLMs management intentions unknown.
  - **Pending** TCP designations are subject to Traditional Council consultation for determining issuance of Special Recreation Permits (SRPs).
  - The draft RMP/EIS selectively addresses SRPs as a targeted item for consultation in portions of the plan.

- **Resolution:**
  - Rectify conflicting management direction in the proposed final RMP/EIS.
  - Remove interim management for pending TCP designations relying on Traditional Council consultation for BLM determinations of SRP issuance.
  - Provide a management regime that holistically addresses designated TCP concerns throughout the plan.

- **Discussion:**

We fully concur with BLM's recognition of the value to residents in the Central Yukon planning area of culturally important areas. Our concern regarding the TCP component of the plan is that there are no qualifications described for how it is to be applied discriminately across all alternatives, as shown in Table 2-6 "Recreation and Visitor Services." Proposed TCP designations would need to be specific, discrete, and well-defined so as to not create a private local interest by broadly restricting general public use. In addition to potentially limiting public access broadly, we are concerned that, as described in Table 2-6 and Table 2-17 "Cultural Resources," BLM is effectively, if not in fact, assuming authority for fish and wildlife allocation as the result of targeted use of their recreation management special recreation permit (SRP) authority. As recognized by BLM in the response to comments on the BSWI RMP (see BSWI proposed final RMP, Appendix H, page 10) and consistent with DOI regulations at 43 CFR 24, BLM does not have this authority. In Tables 2-6 and 2-17 BLM states it will "consult" with tribes and or traditional councils on potential SRPs and does not provide further explanation of

how consultation will be conducted without potentially circumventing the allocative authorities of the Alaska Boards of Game and Fish and the FSB. Consulting with tribes is certainly appropriate on management issues related to designated TCPs; however, singling out SRPs gives us cause for concern.

The draft plan also contains the following conflicting information:

- Recreation and Visitor Service Table 2-6 (p 2-28) states:

  "Consult with subject tribes on potential **SRPs** in **designated** (emphasis added) traditional cultural property locations."

- Chapter 3. Affected Environment and Environmental Consequences (Cultural Resources) (p 3-97) states:

  "Management decisions for the Alatna and Allakaket TCP areas would be the same across all action alternatives, with the goal of ensuring access to, and use of, the TCP areas by tribal members. **Pending formal designation** (emphasis added) of 52,000 acres of the Allakaket and Alatna TCPs by the State Historic Preservation Officer, the **BLM would consult with the Allakaket and Alatna Traditional Councils when considering any permit applications, (including SRPs (special recreation permits) for proposed actions in the TCP areas** (emphasis added)."

The proposed final RMP/EIS should rectify this conflicting information by removing interim management that requires Traditional Council consultation for **pending** TCP designations that specifically target SRPs, and instead apply this direction only to **designated** TCPs for concerns in general.

The draft RMP/EIS does not clarify how BLM, without effectively delegating their federal authorities to a non-federal entity, will rely on concurrence from tribes and/or village councils to justify and effectively determine what SRPs are approved or disapproved. BLM's existing permitting guidance requires BLM to prevent favoritism, improper influence, and unfair or unjust treatment of certain individuals or groups when implementing management direction. BLM's cultural resource guidance also stresses the importance of using reasonableness and feasibility to maintain proportion and balance when evaluating uses for National Register listed and eligible properties affected by proposed land uses (BLM Manual 8140). We request BLM discuss this with ADF&G in advance of the proposed final RMP and that the proposed final RMP provide additional information to clarify what mechanisms BLM will employ to avoid exploitation of the permit process.

It is inappropriate for the BLM to target SRP determinations rather than implement a holistic management approach for TCP user conflict concerns. The solution to the issues presented is for the plan to recognize the need for BLM to actively work cooperatively with ADF&G to holistically manage the areas the public uses as a whole using all available data—including state and federal data, and sources from both western science and traditional knowledge. The public does not separate resources from their habitat nor from their use of the resource across public land status boundaries. Users subsist and recreate across the landscape as a whole.

9. Travel Management

- **Issues:**
  - Limits Casual (recreation) and Subsistence OHV use under the guise that limits protect resources without use data and other relevant information needed to assess impacts to use and access.
  - General OHV closures during August and September are problematic for hunter access.
  - Fails to allow for off-trail game retrieval when OHV use is limited to existing trails.

- **Resolution:**
  - Defer all travel management decisions to step-down plan when route inventory and necessary data is available to inform public.
  - Remove all seasonal OHV closures during August and September (hunting season).
  - Provide access consistent with the State of Alaska GAU's, as well as the conditions for GAU's found in 11 AAC 96.025, including allowance for off-trail game retrieval for subsistence and casual use.

- **Discussion:**

We share BLM's desire to reduce, prevent, and mitigate impacts from OHV use in sensitive areas such as wetlands, stream crossings, and important wildlife habitat. The State's Yukon Tanana and North Slope Area Plans address both the State's desire that the public have access to public lands for the responsible use and enjoyment of fish and wildlife habitat, as well as reducing, preventing, and mitigating impacts to sensitive public lands. Instead of the generalized discussions of typical OHV damage currently in the CYRMP, BLM should instead identify actual impacts that are occurring to vegetation, fish, or wildlife from OHV activity in the planning area, the locations damage has occurred, and the site-specific benefits that will be realized by restricting OHV use to justify access restrictions. The information needed for this type of analysis is typically found in a step-down travel management plan instead of an RMP.

Table 2-20 (page 2-56) and Maps 2-45 to 2-53 indicate travel management restrictions would be implementation level decisions and would be finalized under a step-down plan, yet Table 2-21 indicates that seasonal closures will occur under interim management. Otherwise, management would be consistent with Alternative A. The amount of public lands the draft RMP/EIS proposes for seasonal OHV restrictions under Alternative B (3,235,000 acres total) will limit the public's use and enjoyment of fish and wildlife resources by eliminating seasonal access to state-owned and state-selected lands and waters as well as federal public lands in a remote and roadless planning area where access is self-limiting and use is low. In these areas, without location specific identified resource damage or impacts, we support continuing management of the planning area under the Limited designation currently in place under Alternative A. The primary users of the planning area are local residents conducting subsistence activities by access methods allowed under ANILCA Section 811. In addition, off-trail game retrieval is not addressed in the draft RMP/EIS. This important use needs to be allowed in the proposed final RMP. Prohibiting off-trail use in the planning area (except for the Dalton Highway Corridor Management Area where other restrictions apply) would unnecessarily restrict game retrieval. Aligning uses on BLM trails with the State's GAUs, which allow for off-trail use for game retrieval, would provide needed consistency for hunters, anglers, and trappers recreating and gathering

subsistence resources across public lands and better align the planning effort with state policies and plans.

All travel management planning should be deferred to a step-down plan, which should not be initiated until BLM's current route inventory (including RS 2477s) and any trail issues and use can be analyzed in more detail. Without this information, the public is not able to assess the impacts proposed restrictions will have on existing routes and uses. In addition, we encourage BLM to include the following management prescription that applies to trail use in State area plans: "waterway crossings should be carried out at 90º angle." Where BLM proposes to restrict OHV use due to fish and wildlife concerns, we request that consultation with the State, including the appropriate area biologist at ADF&G, occur prior to proposing restrictions. Where state navigable waters are concerned, the plan cannot apply restrictions and must defer to the State's management authority (*see* State Navigable Waters general comment).

10. General draft RMP/EIS Comments

A. Terminology

We reiterate our request from previous cooperator review comments to use the term "general hunting" in lieu of the term "sport hunting" throughout the RMP for consistency with terms used in the state hunting regulations. While ANILCA referred to "sport" hunting as a means to distinguish between subsistence and non-subsistence hunting, the term is no longer used in state hunting regulations and the general term "hunting" is the appropriate term. (see, *e.g.*, see pages 3-102 and 3-208)

B. Advancing hunting, fishing, and recreational opportunities.

Section 1.6 of the draft RMP states the plan's intent is to "Advance efforts to expand hunting, fishing, and recreational opportunities consistent with Secretarial Orders 3347, 3356, and 3366." Yet the draft RMP provides no evidence of an applied strategy to increase public access to hunting in the field. Additionally, the draft RMP fails to recognize and support SO 3362 as it relates to improving collaboration with the State to advance such efforts in the planning area.

C. SOP Corrections (Appendix F).

- Revise SOPs that address work within anadromous waterbodies or in discussions on potential impacts to resident fish passage within waterbodies, to clarify that an ADF&G Title 16 permit must be obtained, and that the Authorizing Officer will work with ADF&G to determine allowances and appropriate stipulations. (*e.g.*, *SO WAT/FISH-1. Road crossings or low water crossings (fords) will not be permitted in the spawning habitat of fish species during spawning or the immobile life stages of fish (eggs and alevins), unless the applicant can demonstrate to the AO that on a site-specific basis impacts would be minimal; SO WAT/FISH-2; SO WAT/FISH-3; SO WAT/FISH-4; SO WAT/FISH-10 and as applicable, SO WAT/FISH-6, SO WAT/FISH-7; SO WAT/FISH-9, SO WAT/FISH-11; SO WAT/FISH-12; SO WAT/FISH-14; and SO WAT/FISH-15.*)
- Revise SOPs relating to species management to require consultation with ADF&G area biologists (e.g., SOP WILD-9, WILD-10, WILD-11, WILD-12).

THE SECRETARY OF THE INTERIOR
WASHINGTON

JUN 27 2012

The Honorable Sean Parnell
Governor of Alaska
Juneau, Alaska 99811

Dear Governor Parnell:

Thank you for your letter dated April 13, 2012, regarding additional land selections and conveyances to the State of Alaska and Public Land Order (PLO) 5150. I appreciate you taking the time to share your concerns.

You requested that the withdrawal under PLO 5150 be lifted to allow the State's selections to attach in the inner and outer segments of the Trans-Alaska Pipeline System corridor. The determination of whether to revoke or modify PLO 5150 is a discretionary action informed by the Bureau of Land Management's resource-management planning process. In the 2007 Record of Decision for the East Alaska Resource Management Plan, the BLM determined that it would be inappropriate to recommend the complete revocation of PLO 5150 to allow for conveyance of corridor lands to the State of Alaska. However, as you note, the BLM recommended a partial revocation of PLO 5150, which was accomplished in 2008 through PLO 7692. This allowed the State to select approximately 82,000 additional acres of land within the utility and transportation corridor for conveyance. The Department of the Interior also modified the Order in 1995 through PLO 7150, which allowed the patent of 3,840 acres near Jarvis Creek to the State. The BLM is committed to working with the State to consider further modification of PLO 5150.

With respect to lands outside the East Alaska planning area, the BLM Alaska State Office has proposed to initiate a plan revision in the near future that could affect decisions made in the 1989 Utility Corridor Resource Management Plan for lands within the BLM's Central Yukon Field Office, which includes public lands within the utility corridor, north of the Yukon River. The State will be invited to participate in this process, and I encourage you and your staff to work closely with the BLM-Alaska State Office as it moves forward with this planning effort.

I consider fulfillment of the State of Alaska's land entitlement a top priority. Please let me know if you have additional comments.

Sincerely,

Ken Salazar

Ken Salazar

DINYEA CORP.

IBLA 84-707 Decided January 8, 1986

Appeal from a decision of the Alaska State Office, Bureau of Land Management, dismissing Dinyea Corporation's protest to State selection applications, F-44205, et al.

Affirmed.

1. Alaska: Statehood Act -- Alaska National Interest Lands Conservation Act: Generally -- Conveyances: Generally -- State Selections

   The subsistence protection provisions of the Alaska National Interest Lands Conservation Act may not prohibit or impair land selections made pursuant to the Alaska Statehood Act of July 7, 1958.

2. Withdrawals and Reservations: Revocation and Restoration

   The Board of Land Appeals does not have the authority to modify the terms of a properly issued public land order selectively revoking a withdrawal.

APPEARANCES: Dave Lacey, General Manager, Dinyea Corporation, and Harold W. Simon, Chief, Stevens Village Council, for appellant; William C. Williams, President, Tanana Chiefs Conference, Inc.

OPINION BY ADMINISTRATIVE JUDGE MULLEN

Dinyea Corporation (Dinyea), an Alaska Native Corporation, has appealed from the May 24, 1984, decision of the Alaska State Office, Bureau of Land Management (BLM), which dismissed Dinyea's protest of the proposed conveyance of land in T. 12 N., Rs. 9 through 11 W. and T. 13. N., Rs. 10 and 12 W., Fairbanks Meridian, Alaska, to the State of Alaska pursuant to State selections. The Chief of the Tribal Council of the Native Village of Stevens Village, Alaska, joined in the notice of appeal. 1/

1/ The President, Tanana Chiefs Conference, Inc., has entered an appearance supporting Dinyea, but specifying different lands: Ts. 11 and 12 N., R. 10 W., Ts. 11 through 13 N., R. 10 W., and Ts. 11 through 13 N., R. 11 W., Fairbanks Meridian.

On December 28, 1971, a portion of the disputed lands were withdrawn by Public Land Order (PLO) 5150, (36 FR 25410-11 (Dec. 28, 1971), as amended) to provide a utility corridor. Various sections within the disputed townships were also designated for an oil or gas pipeline by PLO 5404, 39 FR 1593 (Jan. 11, 1974).

On November 14, 1978, the State of Alaska filed State selection applications for the five disputed townships pursuant to section 6(b) of the Alaska Statehood Act of July 7, 1958, 72 Stat. 339, 340, as amended. 2/ On October 29 and December 9, 1981, the State reasserted and amended (top filed) these five selection applications, pursuant to section 906(e) of the Alaska National Interest Lands Conservation Act (ANILCA), 94 Stat. 2371, 2439, 43 U.S.C. § 1601 note. On June 24, 1982, BLM approved for conveyance approximately 73,913 acres of the surface estate selected by Dinyea on November 11, 1974, pursuant to section 12(a) of the Alaska Native Claims Settlement Act (ANCSA). 43 U.S.C. § 1611 as amended (1982). Portions of T. 12 N., R. 9 W., flanking the Yukon River were included in this approval. 3/ Alaska State selection application F-44205 was rejected as to the approved acreage in that township. On November 3, 1982, BLM rejected State selection applications F-44206 and F-44207 because the lands described in those applications had been withdrawn for a utility corridor by PLO 5150.

On January 19, 1984, BLM issued a decision directing the State of Alaska to publish notice of the selection applications the State had filed pursuant to section 6(b) of the Alaska Statehood Act and subsequently refiled pursuant to section 906(e) of ANILCA. In March and April 1984, the State of Alaska published notice of selection applications for lands including the five townships at issue. BLM then published a partial revocation of PLO 5150, as amended, as to the lands described in the notice. PLO 6533, 49 FR 20001-2 (May 11, 1984). The notice of revocation stated that certain lands in T. 12 N., Rs. 9 through 11 W., Fairbanks Meridian, and other lands

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2/

Selection Application	Fairbanks Meridian
F-44205	T. 12 N., R. 9 W.
F-44206	T. 12 N., R. 10 W.
F-44207	T. 12 N., R. 11 W.
F-44210	T. 13 N., R. 10 W.
F-44212	T. 13 N., R. 12 W.

3/ The following portions of F-44205 were conveyed to Dinyea:
T. 12 N., R. 9 W.
Secs. 5 to 8, inclusive;
Sec. 9, excluding Native allotment F-14132 Parcel B;
Secs. 10 and 11;
Sec. 13, excluding Native allotments F-14799,
F-14132 Parcel A, and F-13355;
Sec. 14, excluding Native allotments F-13355,
F-026055, and F-026049 Parcel A;
Sec. 15, excluding Native allotments F-026055
and F-14132 Parcel C;
Sec. 16, excluding Native allotment F-14132 Parcel B.
Containing approximately 4,722 acres.

were being made available for selection by the State of Alaska, but would remain "closed to all other forms of appropriation and disposition under the public land laws, including mineral leasing, except for location and entry for metalliferous minerals under the mining laws." 4/ This partial revocation order was signed by Assistant Secretary Garrey E. Carruthers.

On December 27, 1983, appellant filed a protest to an amendment to the Corridor Management Framework Plan (MFP) permitting certain pipeline corridor lands to be selected by the State. The Director of BLM denied this first protest on February 28, 1984, stating:

> You indicated that the Dinyea Corporation is concerned that State selection of certain lands in the corridor ". . . will ultimately result in more outsiders coming in, and resulting in the final destruction of the already fragile economy. This could have a genocidal affect upon the tribe." You requested that we modify the Public Land Order draft to retain selected townships.
>
> The Bureau of Land Management (BLM), is also concerned about the subsistence lifestyle of the people of Stevens Village. However, we do not believe that making these lands available for State selection will necessarily result in the effects which you suggest. There are several reasons why we believe that the subsistence lifestyle of the tribe will be respected and protected. These reasons are:
>
> 1. The State of Alaska must comply with all State statutes and regulations as well as those of the Alaska National Interest Lands Conservation Act (ANILCA) governing subsistence;
>
> 2. The State of Alaska has indicated that the corridor will be managed to prevent the creation of new third party interests in the inner corridor, and the lands in the outer corridor would be open to multiple resource management under State law with the completion of detailed management plans to help resolve differences between statewide and local concerns. Enclosed is a copy of a letter dated June 28, 1982, from the Commissioner of the Department of National [sic] Resources, explaining this intent;
>
> 3. Lands adjacent to the Corridor are already under State management and the BLM feels that the remaining limited holdings would best be managed by a single landowner.
>
> It is our hope that the State of Alaska and the Native Village of Stevens will be able to realize their multiple objectives for the future use of the affected lands.

4/ The notice does not indicate that lands in T. 13 N., Rs. 10 and 12 W., were made available to the State.

After reviewing your protest and the procedures followed by the Alaska State Director and the Fairbanks District Manager, we conclude that they followed the appropriate planning procedures, laws, regulations, policies, and resource considerations in developing the amendment to the Corridor MFP. In addition, they have provided ample opportunity for public comment and have considered that comment prior to making the decision on the MFP amendment.

I hereby uphold the decision of the State Director. This is the final decision of the Department of the Interior on your protest.

Sincerely,
/s/ Robert F. Burford
Director

On April 13, 1984, BLM received an April 9, 1984, letter in which Dinyea objected to prospective State ownership of the five specified townships in the utility corridor. This protest was filed in response to the legal notices published by the State. Dinyea stated that the people of Stevens Village attempted to claim this land four times but their efforts were thwarted. Dinyea found it unjust to allow the State of Alaska to select lands withdrawn from village selection. Dinyea objected to the prospect of State land disposal programs after transfer to the State, claiming the likelihood of severe impacts on the land, the wildlife, and particularly the people and their way of life. Dinyea stated its preference for continued Federal preservation of these lands. BLM denied this protest in the decision on appeal.

The BLM decision stated that ownership by the State of Alaska would not be detrimental to the local subsistence economy, because Alaska is bound by its own statutes and by Title VIII of ANILCA, 16 U.S.C. §§ 3111-3126 (1982) (Subsistence Management and Use). BLM also said the State would not permit third-party interests in the inner part of the corridor. The State would open outer corridor lands "to multiple resource management under State law after detailed management plans to help resolve differences between local and statewide concerns have been completed." BLM added that the State already owned adjoining lands and, as a single landowner, it could best manage the area for the benefit of all Alaskans. BLM also stated: "[A]ll claims against the United States, the State and all other persons based on claims of aboriginal right, title, use or occupancy of land or water areas in Alaska were extinguished by Section 4 of the Alaska Native Claims Settlement Act." 43 U.S.C. § 1603 (1982).

On appeal appellant again argues that State selection of corridor land would bring an influx of outsiders who would disrupt the fragile local economy by competing for subsistence resources. Appellant claims BLM can best ensure a confirmation of traditional use by the Athabascan people living in and near Stevens Village. Appellant alleges the lands were made available for State selection without proper input from the tribe or from Dinyea, the largest private landowner in the area. Dinyea also claims it is unfair to

open the corridor for State selections only, after the withdrawal had denied Dinyea the opportunity to select the land. Dinyea asserts it should have jurisdiction over the land and projected State multiple use is incompatible with subsistence.

[1] In support of its appeal, Dinyea points to Congressional findings and statements of policy, found in Title VIII of ANILCA, 16 U.S.C. §§ 3111, 3112 (1982), 5/ which emphasize the need to minimize the impact of land management on subsistence activities. However, section 802(3) of ANILCA, 16 U.S.C. § 3112 (1982), also states:

> (3) except as otherwise provided by this Act or other Federal laws, Federal land managing agencies, in managing subsistence activities on the public lands and in protecting the continued viability of all wild renewable resources in Alaska, shall cooperate with adjacent landowners and land managers, including Native Corporations, appropriate State and Federal agencies, and other nations.

In addition, section 810 (c) of ANILCA, 16 U.S.C. § 3120(c), provides: "(c) Nothing herein shall be construed to prohibit or impair the ability of the State or any Native Corporation to make land selections and receive land conveyances pursuant to the Alaska Statehood Act or the Alaska Native Claims Settlement Act." This statutory provision clearly demonstrates Congressional intent to provide for unimpeded selection of land pursuant to the Alaska Statehood Act.

[2] Of greater importance, however, this Board does not have the authority to modify the terms of a revocation of a withdrawal when the revocation is issued by an Assistant Secretary. As stated in Vincent Barnard, 66 IBLA 100, 105 (1982), "[u]nder 43 U.S.C. § 1714(a) [(1982) of the Federal Land Policy and Management Act of 1976], a withdrawal can be revoked or modified only by an individual in the Office of the Secretary who has been appointed by the President with the advice and consent of the Senate."

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the Alaska State Office dismissing this protest is affirmed.

We concur:

R. W. Mullen
Administrative Judge

Will A. Irwin
Administrative Judge

Franklin D. Arness
Administrative Judge

5/ See also 16 U.S.C. § 3101(c) (1982).

ALASKA LAND USE COUNCIL

P.O. Box 120
Anchorage, Alaska 99510

(907) 272-3422

State Co-Chairman
Jay S. Hammond
Governor

Federal Co-Chairman
Vernon R. Wiggins

A SYNOPSIS FOR

GUIDING MANAGEMENT OF

WILD, SCENIC, AND RECREATIONAL

RIVER AREAS IN ALASKA

NOVEMBER 1982

ALASKA LAND USE COUNCIL

P.O. Box 120
Anchorage, Alaska 99510

(907) 272-3422

State Co-Chairman
Jay S. Hammond
Governor

Federal Co-Chairman
Vernon R. Wiggins

The contents of this document have been approved by the U.S. Department of the Interior, U.S. Department of Agriculture and the State of Alaska. The Alaska Land Use Council approved of the document at its November 16, 1982 meeting and urges all managers to carefully review and adhere to the information contained in this document.

Passed and approved the 16th day of November, 1982.

Jay S. Hammond, Governor
State Cochairman

Vernon R. Wiggins
Federal Cochairman

Introduction

This synopsis has been prepared to provide information to field managers in Alaska with responsibilities for planning and management of components of the National Wild and Scenic Rivers System. The subjects covered in this synopsis are those for which fairly specific guidance can be found in the Wild and Scenic Rivers Act or the Alaska National Interest Lands Conservation Act.

Wild and Scenic Rivers Act (P.L. 90-542)

The Wild and Scenic Rivers Act provides for basic protection of selected rivers and river segments with minimal Federal involvement and few actual restrictions. The Act protects free-flowing rivers by prohibiting construction projects licensed by the Federal Energy Regulatory Commission on or directly affecting those rivers.

Section 10(a) states:

> "Each component of the National Wild and Scenic Rivers System shall be administered in such a manner as to protect and enhance the values which caused it to be included in said system, without, insofar as is consistent therewith, limiting other uses that do not substantially interfere with public use an enjoyment of these values. In such administration primary emphasis shall be given to protecting its esthetic, scenic, historic, archeologic and scientific features. Management plans for any such component may establish varying degrees of intensity for its protection and development based on the special attributes of the area."

Specific management strategies will vary according to classification but will always be designed to protect and enhance the values of the river area.

Alaska National Interest Lands Conservation Act (ANILCA) (P.L. 96-487

ANILCA designated Alaska components to the National Wild and Scenic Rivers System, designated rivers in Alaska for study, and amended the Wild and Scenic Rivers Act as it pertains to Alaska (Title VI and Section 1107(b)). Among the significant provisions of ANILCA are that it recognizes and provides for the continuation of the opportunity for subsistence uses (Title VIII) and for the use of certain motorized vehicles for traditional activities and travel (Section 1110(a)). It also provides for transportation and utility systems in and across, and access into, conservation system units (including components of the Wild and Scenic Rivers System (Title XI, particularly Sections 1104, 1105 and 1107(b)).

Affected Activities and Uses

1. Water Resources Projects: Dams, reservoirs, powerhouses, and similar construction projects licensed by the Federal Energy Regulatory Commission for the generation of hydropower are prohibited within the area included in the National Wild and Scenic Rivers System. Other water resources projects which would have a direct and adverse effect on the values which caused the river to be included in the system are likewise prohibited. This prohibition does not apply to developments located upstream or downstream from the designated area which will not invade the area or unreasonably diminish the scenic, recreational, and fish and wildlife values (Section 7 of the Wild and Scenic Rivers Act). Systems for the transmission and distribution of electric energy may be located in the corridor subject to such conditions as may be necessary to assure that the stream flow of, and transportation on, such rivers are not interfered with or impeded. The transportation or utility system must be located and constructed in an environmentally sound manner (Section 1107(b) of P.L. 96-487).

2. Transportation and Utilities Systems: In accordance with the provisions of Sections 10(a) and 13(g) of the Wild and Scenic Rivers Act and Title XI of ANILCA, transportation and utility systems may be permitted within the river corridor. This includes items such as roads, highways, railroads, tunnels, tramways, airports, electric transmission lines, communication transmission lines, and other systems of general transportation and utility transmission. To the extent there already exists applicable law providing standards for the authorization of a transportation or utility system within a particular river corridor, that law provides the appropriate criteria for determining whether to grant the particular authorization. However, if an application involves a corridor in which there is no applicable law governing authorization of transportation or utility systems, Section 1105 provides the applicable standards for granting such an authorization. These standards mandate that before such a system can be authorized, a determination must first be made that (i) it would be compatible with the purposes for which the conservation system unit involved was established; and (ii) there is no economically feasible and prudent alternative route or location. This latter category would include corridors managed within portions of the National Park System or the National Wilderness Preservation System. Section 1104 of ANILCA contains the procedural requirements which must be followed by any federal agency with respect to the approval or disapproval of the authorization, in whole or in part, of any such transportation or utility system under Section 1105 or other applicable law. Any authorized transportation scheme should be located and constructed in an environmentally sound manner and in a manner that does not interfere with or impede stream flow or transportation on the river (Section 1107(b) of P.L. 96-487).

3. Motorized Travel:

Section 1110, (a) of ANILCA States:

Notwithstanding any other provision of this Act or other law, the Secretary shall permit, on conservation system units, national recreation areas, and national conservation areas, and those public lands designated as wilderness study, the use of snowmachines (during periods of adequate snow cover, or frozen river conditions in the case of wild and scenic rivers), motorboats, airplanes, and nonmotorized surface transportation methods for traditional activities (where such activities are permitted by this Act or other law) and for travel to and from villages and homesites. Such use shall be subject to travel to and from villages and homesites. Such use shall be subject to reasonable regulations by the Secretary to protect the natural and other values of the conservation system units, national recreation areas, and national conservation areas, and shall not be prohibited unless, after notice and hearing in the vicinity of the affected unit or area, the Secretary finds that such use would be detrimental to the resource values of the unit or area. Nothing in this section shall be construed as prohibiting the use of other methods of transportation for such travel and activities on conservation system lands where such use is permitted by this Act or other law.

(b) Notwithstanding any other provisions of this Act or other law, in any case in which State owned or privately owned land, including subsurface rights of such owners underlying public lands, or a valid mining claim or other valid occupancy is within or is effectively surrounded by one or more conservation system units, national recreation areas, national conservation areas, or those public lands designated as wilderness study, the State or private owner or occupier shall be given by the Secretary such rights as may be necessary to assure adequate and feasible access for economic and other purposes to the concerned land by such State or private owner or occupier and their successors in interest. Such rights shall be subject to reasonable regulations issued by the Secretary to protect the natural and other values of such lands.

4. Access: The State or private individual as owner or valid occupier of lands or subsurface rights within a wild, scenic or recreational river area shall be given by the administering Secretary such rights as may be necessary to assure adequate and feasible access for economic and other purposes to the concerned land. Such rights shall be subject to reasonable regulations issued by the Secretary to protect the natural and other values of such lands (Section 606(a) and 1110(b) of P.L. 96-487).

5. Mining: All prospecting, mining and other activities on federal mining claims not perfected prior to inclusion of the river in the system are subject to regulation by the administering Secretary. Such regulations shall, among other things, provide safeguards against pollution of the river and unnecessary impairment of the scenery within the designated area. Subject to valid existing rights, mining on federal lands within one-half mile of any river designated wild is prohibited (Section 9 of P.L. 90-542 and Section 606(a) of P.L. 96-487).

6. Oil and Gas Development: All activities under a Federally issued mineral lease, license , or permit issued or renewed after inclusion of a river segment in the national system shall be subject to regulation by the administering Secretary. Such regulations shall, among other things, provide safeguards against pollution of the river involved and unnecessary impairment of the scenery within the designated area. Subject to valid existing rights, the Federal lands within one-half mile of any river designated wild are withdrawn from operation of the mineral leasing laws (Section 9 of P.L. 90-542 and Section 606(a) of P.L. 96-487).

7. Forestry Practices: Timber harvest that does not substantially interfere with public use and enjoyment of the values which caused the river segment to be included in the wild and scenic rivers system is permitted (Section 10(a) of P.L. 90-542). Forestry practices should be similar in nature and intensity to those present in the area at the time of designation. Timber harvest in any river area will be conducted so as to avoid adverse impacts on the river area values.

8. Land Acquisition: Due to restrictions in the law on the use of eminent domain where public ownership is significant already, there will be no fee condemnation for purposes of the wild, scenic or recreational river designation. Condemnation may be used to acquire easements when reasonably necessary for public access to or along the river (Section 6 and 16 (c) of P.L. (0-542).

9. Boundary: The boundary of each wild, scenic or recreational river area shall include an average of not more that 640 acres per mile on both sides of the river. Such boundary shall not include any lands owned by the State or a political subdivision of the State nor shall such boundary surround any private lands adjoining the river (Section 606(a) of P.L. 96-487). On previously designated rivers in the United States the acreage limitation has been measured outward from the mean high water line along the shoreline and has not included islands in the river nor the river bed.

10. Hunting, Fishing and Trapping: Hunting, fishing and trapping are permitted uses, subject to applicable State and Federal laws and regulations. Nothing in the river designation affects the jurisdiction or responsibility of the State of Alaska with respect to fish and wildlife. The administering Secretary by appropriate regulations issued following consultation with the Alaska Department of Fish and Game and suitable public involvement may designate zones and establish periods when no sport hunting is permitted for reasons of public safety, administration, or public use and enjoyment. Rivers within a National Park or National Park Service administered monument are closed to sport hunting (Section 13(a) of P.L. 90-542).

11. Public Recreational Facilities: The managing agency may provide basic facilities to absorb user impacts on the resource. Wild river areas will contain only the basic minimum facilities in keeping with the "essential primitive" nature of the area. If facilities such as toilets and refuse containers are necessary, they will generally be located at access points or at a sufficient distance from the river bank to minimize their intrusive impact. In scenic and recreational river areas, simple comfort and convenience facilities such as toilets, shelters, fireplaces, picnic tables and refuse containers are appropriate. These, when placed within the river area, will be judiciously located to protect the values of popular areas from the impacts of public use. Major public use facilities such as developed campgrounds, major visitor centers and administrative headquarters will, where feasible, be located outside the river area. If such facilities are necessary to provide for public use and/or to protect the river resource and location outside the river area is infeasible, such facilities may be located within the river area provided they do not have an adverse effect on the values for which the river area was designated.

12. Carrying Capacity: Studies should be made during preparation of the management plan and periodically thereafter to determine the quantity and mixture of recreation and other public uses which can be permitted without substantial interference with public use and enjoyment of the resource values of the river area. Management of the river area can then be planned accordingly (Refer to Sections 801, 811, an 1110 of P.L. 96-487 and Section 10(a) of P.L. 90-542).

13. Water Rights: The jurisdiction of the State over waters of any stream included in wild, scenic or recreation river area shall be unaffected by the designation to the extent that such jurisdiction may be exercised without impairing the purposes of the Wild and Scenic Rivers Act. The Federal administering agency should cooperate with the Alaska Division of Land and Water Management, Department of Natural Resources to request reservations of minimum water flows sufficient to support the values for which the river area was designated (Section 13 (b)-(f) of P.L. 90-542).

14. Water Quality: The agency administering a component of the National Wild and Scenic Rivers System shall cooperate with the Secretary of the Interior and the Alaska Department of Environmental Conservation for the purpose of eliminating or diminishing the pollution of waters of the river (Section 12(c) of P.L. 90-542).

15. Management of Non-Federal Lands: Non-federal lands, including the bed of navigable streams, are excluded from the authorized boundary of wild, scenic, or recreational river areas (Section 606(a) of P.L. 96-487).

The management of these lands is, therefore, not directly subject to provisions of the Wild and Scenic Rivers Act.

For example, subject to State of Alaska rules and regulations, state owned lands may be open to filing of mineral claims and to oil and gas leasing and development. The State of Alaska retains its rights, including the right of access to the beds of navigable rivers (refer to Section 13(f) of P.L. 90-542), title to which has passed to the State under the Submerged Lands Act.

Localized Management Plans

A number of other concerns, issues and subjects related to river management have been identified by participants in the preparation and review of this document. The subjects include, but are not limited to:

Improvement of fish and wildlife habitat
Construction or replacement of cabins and other non-temporary structures
Aquaculture
Subsistence related activities
Cooperative management
Noise abatement
Fire management
Controls on types and amount of public recreation use
Commercial activities

Directives pertaining to the resolution of these issues are not included in the synopsis. The reason is because neither the Wild and Scenic Rivers Act nor ANILCA provide specific guidance.

Those subjects that could not be covered in this document will appropriately be addressed in the established planning processes of the administering agencies. Each agency in Alaska currently charged with administration of one or more existing or potential national wild and scenic river components has an established planning process which will result in management

plans for the Federal land areas, including the designated river areas. These management plans, developed with the input and involvement of concerned local, State and National organizations and interested individuals, will identify the issues and determine the management approach and emphasis appropriate to each individual river area.

One additional provision for users of this document to keep in mind is that other legislation applicable to the various managing agencies may also apply to wild and scenic river areas. Where conflicts exist between the provisions of the Wild and Scenic Rivers Act and other acts applicable to land within the system, the more restrictive provisions providing for protection of the river values shall apply. Reference is also made to the Guidelines for Eligibility, Classification and Management of River Areas adopted by the Department of Agriculture and the Department of the Interior in 1982.

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Governor Sean Parnell
STATE OF ALASKA

January 26, 2011

The Honorable Kenneth L. Salazar
Secretary
United States Department of the Interior
1849 C Street, NW
Washington, DC 20240

Dear Mr. Secretary,

I have grave concerns about Secretarial Order 3310 and associated policies, which appear to allow the Bureau of Land Management (BLM) to create de facto wilderness in a state without Congressional oversight. My concerns center on how the Order imposes a new "Wild Lands" designation for BLM to administer, and on the Interior's intention to conduct wilderness reviews in the BLM planning process.

The new "Wild Lands" designation places a higher priority on protection of "wilderness characteristics," as defined by the Wilderness Act, which effectively trumps most other land uses. Putting such a sweeping initiative in place overnight, with no Congressional direction and no advance consultation with affected states or the public, is unfathomable. This approach not only runs counter to President Obama's January 21, 2009 Memorandum entitled *Transparency and Open Government* and similar supplemental directives, but federal law as well.

The following outlines my specific concerns with Order 3310 and accompanying planning guidance:

- By designating "Wild Lands," Order 3310 usurps congressional authority where the Interior improperly acted as an administrative surrogate for Congressionally-designated Wilderness;

- In Alaska, where most of BLM's 86 million acres retain their wilderness values, the heavily-weighted default protection of wilderness characteristics could easily render most BLM lands de facto wilderness areas absent BLM's multiple-use direction. This would have a devastating effect on Alaska's people, economy, and land use and access. Thus, the Order directly conflicts with the "no more" clauses in the Alaska National Interest Lands Conservation Act (ANILCA) as well as the Federal Land Policy and Management Act (FLPMA);

- The Order is, for all practical purposes, an end-run around ANILCA, which I predict will lead to egregious social and economic consequences for Alaskans. Without the explicit provisions of ANILCA that apply to conservation system units, BLM Wild Lands will likely

be managed *more restrictively* in Alaska than ANILCA-designated Wilderness managed by the National Park Service, Fish and Wildlife Service, or Forest Service;

- The Order purports to seek "balance" between responsible resource development and protection of wilderness characteristics; yet there is a strong presumption in favor of wilderness-style protection. For that reason, this Order will have a severe chilling effect on future proposals designed to create jobs in resource development once an area is designated Wild Lands. This approach also contradicts BLM's multiple use mandate under FLPMA;

- BLM managers' discretion to determine where and when "impairment" of wilderness characteristics is "appropriate" is subject to undue scrutiny and approval in Washington DC, where decisions tend to be political and knowledge of local conditions, issues, and needs is diluted, at best;

- Last, but certainly not least, BLM has no authority whatsoever to apply this policy to the National Petroleum Reserve-Alaska because it is not subject to FLPMA.

These and other key issues are discussed in more depth in an attachment.

I know other western states are similarly concerned, if not appalled, by this new policy. Our state, and likely many others, would be best served by the former policy regarding wilderness reviews and recommendations that respected the preferences of State and local elected officials. Barring that, any new policy and associated planning direction must first undergo formal State and public review and compliance with the National Environmental Policy Act, and as appropriate, the Administrative Procedure Act.

In addition, no such policy should be applicable to the National Petroleum Reserve-Alaska. I urge you to work with the State Director of BLM in Alaska to ensure Secretarial direction does not run counter to the "balance" already established by ANILCA for Alaska.

Sincerely,

Sean Parnell
Governor

cc: The Honorable Lisa Murkowski, United States Senate
The Honorable Mark Begich, United States Senate
The Honorable Orrin Hatch, United States Senate
The Honorable Don Young, United States House of Representatives
The Honorable Mike Simpson, Chair, Interior Appropriations Committee, United States House of Representatives
The Honorable Rob Bishop, Chair, Natural Resources Subcommittee on National Parks, Forests and Public Lands, United States House of Representatives,

The Honorable Jan Brewer, Governor, State of Arizona
The Honorable Matt Mead, Governor, State of Wyoming
The Honorable Butch Otter, Governor, State of Idaho
The Honorable Brian Sandoval, Governor, State of Nevada
The Honorable Gary R. Herbert, Governor, State of Utah
The Honorable Mark Shurtleff, Attorney General, State of Utah
The Honorable Tom Home, Attorney General, State of Arizona
The Honorable Bruce Salzburg, Attorney General, State of Wyoming
The Honorable Lawrence Wasden, Attorney General, State of Idaho
Tom Strickland, Assistant Secretary, Fish, Wildlife and Parks, United States Department of the Interior
Kim Elton, Interior Director of Alaska Affairs, United States Department of the Interior
Pat Pourchot, Special Assistant to the Secretary for Alaska Affairs, United States Department of the Interior
Robert Abby, Director, Bureau of Land Management
Bud Cribley, State Director for Alaska, Bureau of Land Management
John W. Katz, Director of State/Federal Relations and Special Counsel, Office of the Governor
Greg Conrad, Interstate Mining Compact Commission
Western Governors Association
Conference of Western Attorney Generals
Alaska Miners Association
Resource Development Council
Association of Fish and Wildlife Agencies
Western Association of Fish and Wildlife Agencies

Attachment to Governor Sean Parnell's Letter Regarding Interior Secretarial Order 3310

The Alaska National Interest Lands Conservation Act (ANILCA)

The Order Inventory and Planning Guidance Questions and Answers (Q&A) relies on several provisions of ANILCA to justify application in Alaska; however, the Order fails to recognize the full context of the law and the many other provisions that contributed to the "proper balance" referred to in Section 101(d) of ANILCA. Specifically, the Q&A document claims that Section 1320 of ANILCA "invites" BLM to designate wilderness in Alaska. We agree ANILCA Section 1320 provides BLM the authority to make wilderness recommendations to Congress; however, contrary to the Order, Section 1320 specifically prohibits the presumptive management of land for its wilderness characteristics without Congressional action. While the Order distinguishes between recommending designated wilderness and administratively designating Wild Lands, there is a very fine line between the two, as the basis for both is the Wilderness Act, and any lands set aside as Wild Lands will be managed to preserve the wilderness characteristics as defined by Section 2(c) of the Wilderness Act. In addition, ANILCA Section 1326(b) states:

> *No further studies of Federal lands in the State of Alaska for the single purpose of considering the establishment of a conservation system unit, national recreation area, national conservation areas or for related or similar purposes shall be conducted unless authorized by this Act or further Act of Congress.* [emphasis added]

The underlined language broadens the scope of the provision beyond defined conservation system units (CSUs). Wild Lands are essentially administrative CSUs. Choosing to preserve wilderness character and administratively designating Wild Lands circumvents both Congress and the statutory intent behind ANILCA Sections 1320, 1326(b), and 101(d). In addition, the on-the-ground effects of a Wild Lands designation will likely resemble the administrative "withdrawal" that Congress prohibits in Section 1326(a), and thus are inappropriate.

The Order also ignores ANILCA's hard-fought provisions that protect access for traditional activities and to resources that are the bedrock of Alaska's economy. In contrast to Congressionally-designated conservation system units (CSUs), including Wilderness and Wilderness Study Areas, many of ANILCA's essential provisions would not apply to designated Wild Lands on general BLM lands. These provisions include, but are not limited to:

- Section 1102 Title XI transportation and utility systems;
- Section 1110(a) motorized access for traditional activities and for travel to and from villages and homesites;
- Section 1110(b) inholder access (vs. Section 1323(b) that currently applies);
- Section 1111 temporary access;
- Section 1310 navigation and communication facilities;
- Section 1314(c) taking of fish and wildlife; or
- Section 1315(c) and (d) new and existing cabins.

The importance of these provisions cannot be over-emphasized. For example, the Title XI process for considering transportation and utility systems is critical in Alaska where there are few roads. Congress assumed general BLM lands would remain available for this purpose. While we understand such corridors are not automatically prohibited in designated Wild Lands, we have little doubt that once wilderness characteristics have been identified as warranting protection, applicants would be forced into an excessively costly process or to utilize alternate routes that could end up precluding a legitimate access need.

In another example, ANILCA purposefully differentiated Section 1110(b) inholder access requirements for CSUs (including Wilderness areas) and Section 1323(b) inholder access provisions that apply to general BLM land. Section 1110(b) gives inholders a stronger right of access in areas designated for more restrictive management (CSUs). The stronger inholder access guarantee would not apply to inholdings within Wild Lands on general BLM lands, which could be highly problematic for individual land owners.

These differences, among others, illustrate that Congress understood the importance of balancing conservation objectives with special accommodations for Alaskans.

In addition, the "proper balance" referenced in Section 101(d) is further predicated on continued multiple use management on BLM lands in Alaska. The Order also speaks of the need to protect "rare opportunities for solitude…" as a basis for the new policy. This objective is apparently reflective of "Lower 48" circumstances where remote and primitive areas are the exception ("rare"), not the norm. As we have seen many times over the last several decades, cookie cutter federal land management policies do not fit in Alaska.

The Q&A (Page 6) claims "*There has never been a statewide wilderness inventory in Alaska.*" This assertion is offensive to those Alaskans who lived through the lengthy studies and deliberations leading up to ANILCA. Contrary to the Q&A claim, numerous reviews, inventories and studies were conducted pursuant to the Section 17(d)(1) and (d)(2) withdrawal processes initiated by the Alaska Native Claims Settlement Act (ANCSA). Virtually all these studies focused on BLM lands, and those deemed by Congress to have the highest national interest for conservation purposes eventually ended up in over 100 million acres of conservation system units, including 57 million acres of designated Wilderness. The BLM Kobuk-Seward Resource Management Plan adopted in 2008 documents this history (Page 14):

> *Alaska lands were inventoried, reviewed, and studied for their wilderness values under the Wilderness Act criteria beginning in 1971 when Congress enacted ANCSA. For eight years thereafter, the Department evaluated national parks, forests, wildlife refuges, wild and scenic rivers, and other lands for potential designation as wilderness.*
>
> *Subsequently, Congress passed ANILCA, which preserved more than 150 million acres in specially protected conservation units. This represents more than 40% of the land area of the State of Alaska, and about 60% of the Federal land in Alaska. Pursuant to ANILCA, more than one-third of the lands preserved in conservation units, or 57 million acres, were formally designated as wilderness.*

Examples of such pre-ANILCA studies include a 28-volume EIS completed in 1974 and another EIS signed by Secretary Cecil Andrus in 1978.

National Petroleum Reserve – Alaska (NPRA)

The State is especially alarmed by the extension of the Order to the National Petroleum Reserve – Alaska (NPRA). The Q&A document does not disclose the authority under which the Department of the Interior believes BLM may designate Wild Lands in NPRA. It simply states the BLM "*must inventory lands in the NPR-A and may designate Wild Lands in the NPR-A as part of its integrated activity planning for the area.*" The State strongly disagrees that BLM has such authority. Federal law prohibits BLM from exercising its land use planning authority under Section 202 of FLPMA in the Reserve, and also prohibits wilderness designation recommendations under Section 603 of FLPMA. In particular, land use planning and management in the Reserve is subject to the requirements of the Naval Petroleum Reserves Production Act of 1976, as amended. The Production Act provides no authority for applying the Wild Lands Order to NPR-A, and BLM is therefore prohibited from doing so.

De Facto Wilderness

Secretarial Order 3310 and the associated polices provide BLM with the ability to create de facto wilderness without Congressional oversight. The Order is largely based on authorities, values, and definitions in the Wilderness Act of 1964. In debates leading up to passage of the Wilderness Act, Congress struggled with how far to extend their new mandate. They considered automatically including "primitive" lands, roughly equivalent to the new "Lands with Wilderness Characteristics;" but in the end developed Section 3(b) of the Act, which established a suitability process that ended with Congressional approval. Below are some relevant remarks by Senator Peter Dominick from the Congressional record (Senate Bill 4) leading up to passage of the Wilderness Act:

> *. . . the difficulty is that we are grouping together and putting into one system, without any particular legislative scrutiny, a vast area of land known as primitive lands, which have not been classified by the executive department or reviewed by Congress, to see whether this is the most useful purpose for that particular group of public lands.*
>
> *. . . Congress, should have the right to determine, after recommendation by the executive department, which of these primitive lands or which group of these primitive lands should be brought into the wilderness system, and that they should not all be blanketed in at the same time.* [Congressional Record 109 (1963) pg. 5890]

Congress clearly rejected the option to delegate the creation of wilderness areas to the Executive branch; yet the creation of a new system of BLM Wild Lands is a thinly veiled effort to do just that. Department officials argued during the press conference that since a Wild Lands designation is not permanent, they are not "locked up." Yet conventional wisdom and experience show that once an area is placed in a formalized protective status through a plan, altering that status or accommodating competing uses becomes much more difficult, especially since plans are only updated every 15-20 years, sometimes less often.

The single-minded approach to wilderness characteristics is explicitly illustrated in the Order (Section 4 Policy): "*Where the BLM concludes that protection of wilderness characteristics is appropriate, the BLM shall designate these lands as "Wild Lands" through the planning process.*" [emphasis added] BLM has additional or alternative tools to maintain opportunities for primitive recreation in combination with other public use and/or reasonable development without applying a Wild Lands designation. Furthermore, the policy provides no standards to determine when BLM shall conclude that "*protection of wilderness characteristics is appropriate.*"

Also, just as Wild Lands are essentially de facto Wilderness areas, they also mimic Wilderness Study Areas – even though the Q&A (Page 3) attempts to dismiss the similarities. The draft planning Chapter 6300-2 (.3) describes a process whereby the State Directors will determine whether they will "*...develop a recommendation for Congress to designate Wild Lands as units within the National Wilderness Preservation System.*"

"Balance" is Not Achieved

The Order and policies purport to seek "balance" between responsible resource development and protection of wilderness characteristics. As stated in the Q&A document: "*Balance will be achieved through a public process where lands with energy potential and lands with wilderness characteristics will be identified, evaluated, and managed in accordance with the new policy and the BLM's multiple use mandate.*" Yet if "balance" is the goal, the planning policy need only require an improved inventory of all resources and values, including wilderness characteristics. Area managers would then retain the discretion to do the local "balancing" within the context of a plan. Instead, the policy imposes a default decision to protect wilderness character, unless the local manager can make a proactive determination that impairment of wilderness characteristics is appropriate. Making wilderness character a higher priority than other land uses is not "balance," nor is it consistent with FLPMA's multiple use mandate.

Parenthetically, we note that the Q&A quote above, while referencing "*lands with energy potential*," is curiously silent regarding mineral resources. We understand that mining is not necessarily precluded by the presence of wilderness characteristics; but the lack of recognition of mineral potential in this context may be indicative of bias against mining.

To avoid a Wild Lands designation, or authorize a development project, or use that could affect wilderness character, BLM must determine that "*impairment*" of such wilderness characteristics is "*appropriate.*" These terms set a high bar, and force BLM to make determinations in a negative context, rather than weighing all the options and making a positive choice toward a desired condition. This negative context adds built-in bias to the deliberative process.

Furthermore, it appears any attempt to steer away from wilderness protection at the State level must be approved in Washington DC by individuals far removed from local issues and control. This is especially problematic for Alaska where an understanding of Alaska's geography, economy, culture, infrastructure, resource development potential, and laws such as ANILCA seem to be poorly understood in Washington DC.

Unfunded Mandate

The Order also represents an unfunded mandate to BLM. Environmental organizations are poised to provide inventory information about wilderness characteristics. According to an

Anchorage Daily News article published on November 6, 2010, the Washington DC based conservation group, the Wilderness League, opened an office in Fairbanks, Alaska. The article quotes the League's stated purpose as "*...securing wilderness designations in the National Petroleum Reserve-Alaska...and on other BLM lands in eastern Interior.*" We are concerned BLM will have insufficient resources to review and either confirm or invalidate wilderness characteristics "nominated" by pro-wilderness interest groups, leading to excessive protection in areas where wilderness characteristics are already compromised. Also, based on the date of this article, we are disappointed the administration apparently engaged in informal consultation with environmental groups who seemed to be aware of the content of this policy before anyone else.

Affect on State Administrative Activities

The effects of a Wild Lands designation on State fish and wildlife management activities is not clear. For example, the use of motorized or mechanical transport and equipment is restricted in designated Wilderness; however, the new policy does not clarify whether similar restrictions would apply to public use or State management activities in administratively designated Wild Lands. The State of Alaska holds primary authority, jurisdiction, and responsibility to manage, control, or regulate all fish and wildlife within federal lands, including uses thereof, unless specifically preempted by federal law. Nothing in the Wilderness Act, FLPMA, or Order 3310 should be construed as an expansion of federal authority or oversight over this traditional State responsibility.

Policy is Confusing and Contradictory

The Order and accompanying direction to BLM are confusing and potentially contradictory – enabling abuse by those seeking a back door way to pursue wilderness protection at the expense of other legitimate uses. For example, the Q&A issued with Order 3310 indicates that "*BLM will consider wilderness values among the broad range of other potential resource values and uses for the public lands in accordance with its multiple-use mission, and make a decision about whether and to what extent to protect those wilderness characteristics.*" However, the Order directs all BLM offices to "*protect those inventoried wilderness characteristics when undertaking land use planning and when making project-level decisions by avoiding impairment of such wilderness characteristics unless BLM determines that impairment of wilderness characteristics is appropriate and consistent with applicable requirements of law and other resource considerations.*" The Order instructs BLM to place a higher priority on protection of wilderness characteristics than other uses contemplated by FLPMA's multiple use mandate.

BLM cannot manage land based on an inventory alone. Land management decisions may only be made in accordance with an adopted plan. This intent is appropriately represented in the Q&A document, which states "*When the BLM decides to protect LWCs through a land use plan decision, it will designate these areas as "Wild Lands." This determination will be made through a public land use planning process....*" (emphasis added) The Order, however, states "*Where the BLM concludes that protection of wilderness characteristics is appropriate, the BLM shall designate these lands as "Wild Lands" through the planning process,*" which essentially directs BLM to make an either/or choice between "protection" and "impairment" before the formal planning process has even begun. This pre-planning decision process is also mirrored in the policy Section (.06) of the draft BLM Manual 6300-2; however, the section entitled "Procedures for Considering LWCs in Land Use Planning" is more consistent with direction in

the Q&A document. These differences need to be reconciled to ensure that any management decisions concerning LWC's occur within a planning process, following public review.

Many questions also arise from the Order and associated documents, including:

- What flexibility will managers and State Directors have in determining Lands with Wilderness Characteristics and deciding which lands are appropriate for Wild Lands designation?
- How would the presence of inholdings, mining claims, rights-of-way, and other valid existing rights affect the inventory of wilderness characteristics and the likelihood of a Wild Lands designation?
- How will the Order affect the future of outdated ANCSA Section 17(d)(1) withdrawals?
- Will BLM conduct a "minimum requirements analysis" on State or federal administrative activities on Wild Lands?
- Have you considered that ANILCA Section 811 significantly constrains BLM's options to restrict access for subsistence purposes, including off-highway vehicles?
- How will long-standing recreational use of airplanes, snowmachines, and off-highway vehicles be addressed?
- What is the relationship between a Wild Lands designation, Areas of Critical Environmental Concern, the National Landscape Conservation System, and other classifications of land with conservation objectives?

Lack of State Consultation and Public Review

In conclusion, Secretarial Order 3310 is a dramatic departure from all previous approaches to BLM management, especially in Alaska. As these comments illustrate, the Order sets entirely new standards, challenges conventional wisdom regarding management of multiple use lands, and raises legal and policy questions. As such, much more rigorous justification and analysis of consequences and impacts are essential; along with an opportunity for formal State and public review. Compliance with the National Environmental Policy Act is also required – most likely through an environmental impact statement given the potential foreseeable impacts.

A rigorous public review process is consistent with

- President Obama's January 21, 2009 Memorandum entitled *Transparency and Open Government.*
- Open Government Directive from the Office of Management and Budget directing all executive departments and agencies to take specific actions to implement the principles stated in the President's memorandum.
- The Department of the Interior's own Open Government Plan assembled by a multi-functional team from across the Department.
- The Federal Land Policy and Management Act (FLPMA) and BLM planning regulations regarding State and public involvement.

The above policies, directives, regulations, and laws require rigorous public discourse.

State Determined List of Navigable in fact Waterbodies

RIVERS	
Alatna River	Pah River
Atutsak River	Prospect Creek
Bettles River	Ray River
Big Salt River	Robert Creek
Billy Hawk Creek, AKA North Fork Huslia River	Sethkokna River
Bonanza Creek	South Fork Koyukuk River
Chandalar River	South Fork Sulatna River
Chitanana River	Stink Creek
Curve Slough of Koyukuk River	Sulatna River
Dakli River and Wheeler Creek	Sulukna River
Dietrich River, Confluence with Bettles River upstream to Nutirwik Creek.	Swanneck Slough
Dulbi River	Telsitna River
Fish Creek	Titna River
Hammond River	Toklat River
Hogatza River	Tolovana River
Indian River	Totatlanika River
Jim River	Tozitna River
John Hansen Creek	West Fork Chandelar River (Portage Route)
Kantishna River, State received RDI from BLM	**LAKES**
Kanuti Kilolitna River	Lake Todatonten
Kanuti River	Lake Tokhakklanten
Koyukuk River	John Hansen Lake
Little Melozitna River	
Mathews River	
Melozitna River	
Mentanontli River	
Middle Fork Koyukuk	
Montana Creek	
Mosquito Fork	
North Fork Bonanza Creek	
North Fork Chandalar River	
North Fork Kuskokwim River	

RS 2477 Highways Within CYRMP

7	Eureka-Rampart
9	Coldfoot-Chandalar Lake Trail
13	Poorman-Ophir Route 1
15	Long-Birch Creek Road
18	Bettles-Wild Lake River Trail
19	Poorman-Ophir Route 2
27	Beaver-Caro
38	Tramway Bar
63	Dishkaket-Kaltag
64	Donnelly-Washburn
66	Dunbar-Brooks Terminal
70	Ester-Dunbar
99	Illinois Creek - Moran Creek
105	Alatna-Shungnak
119	Kobi-Bonnifield Trail to Tatlanika Crk
129	Lewis Landing-Dishkaket
152	Nenana-Tanana (serum run)
161	Nulato-Dishkaket
189	Snowshoe-Beaver
209	Bettles-Coldfoot
224	Vault Creek-Treasure Creek
245	Kaiyuh Hills (Galena)
251	O'Connor Creek Trail
254	Wiseman-Chandalar
255	Anvik-Kaltag
257	Beaver-Horse Creek-Chandalar Lake
262	Caro-Coldfoot
264	Old Mail Trail (Nenana-Minto)
278	Fairbanks - Chena Hot Springs
287	Ft. Gibbon-Kaltag Trail
289	Tanana-Allakaket
299	Kaltag-Topkok-Solomon-Nome Trail
303	Manley Hot Springs-Sullivan Creek
308	Hughes-Mile 70
340	Lignite-Stampede
343	Kobi-Kantishna
344	Lignite-Kantishna
345	Kobi-McGrath (via Nikolai & Big River)
346	Nenana-Kantishna
412	Slate Creek
444	Healy Creek Trail
450	Hickel Highway
460	Cosjacket-Kuskokwim Mountains
462	Bonnifield Trail

464	Richardson Highway (Birch Lake) - Caribou Creek Trail
468	Hunter Creek-Livengood
491	Rex-Roosevelt
591	Coldfoot-Junction Trail 49 (east route)
620	Tanana-Rampart along Yukon River
695	Donnelly Dome: Old Valdez Trail Segment
709	Healy-Diamond Coal Mine Dirt Road
730	Cripple Landing-Rennie's Landing
731	Cripple Landing-North Fork Innoko River
758	Lake Minchumina-Kuskokwim River
783	Shaw Creek Lodge - Tenderfoot Creek Trail
836	Thanksgiving Creek Trail
837	Grant Creek-Moran Dome Trail
840	Palisades Portage
841	Fish Lake - American Creek
899	Hammond River Trail
904	Ninemile Hills-Midas Creek
1043	Bullen-Staines River
1595	Dunbar-Minto-Tolovana
1596	Eldorado Creek Trail
1602	Ester Dome - Nugget Creek Trail
1609	Richardson Hwy-Gerstle River
1611	Bergman - Cathedral Mountain
1639	Tamarack Spur
1644	Caro - Ft. Yukon
1824	Alder Creek Trail
1824	Alder Creek Trail
1826	Chena - Ester
1843	Hudson Camp Trail
1844	Little Melozitna Hot Springs Trail
1845	Hutlinana Hot Springs Trail
1846	Melozitna Hot Springs Trail
1849	Horner Hot Springs Trail
1872	Manley Hot Springs - Sullivan Creek
1885	Little Minook Creek - Troublesome Creek
1888	Hogatza Road
1899	Minook Creek - Pioneer Creek
1913	Pah River Portage
1930	Pedro Dome Road
1932	Little Eldorado Road and Spurs
1966	Caro-Coldfoot: West Fork Route
1967	Davidson Ditch Access Road - Elliot Highway