



August 8, 2022

Timothy Hammond
Manager, Eastern Interior Field Office
222 University Avenue
Fairbanks, AK 99709
Submitted electronically to birchcreek@blm.gov

Re: Birch Creek (Ikhèenjìk River) Wild and Scenic River WMP Stakeholder Input

Dear Mr. Hammond:

The State of Alaska (State) reviewed the stakeholder input request for the Bureau of Land Management (BLM) watershed management plan (WMP) for the Ikhèenjìk River watershed and the comprehensive river management plan (CRMP) for the Birch Creek Wild and Scenic River. The following comments represent the consolidated views of the State's resource agencies.

The Alaska National Interest Lands Conservation Act (ANILCA) designated the Birch Creek Wild River as a component of the Wild and Scenic River System (WSRS) in Sections 603 (designation) and 605 (classified, designated, and calls for administration as a wild river). Alaskan units of the WSRS are considered conservation system units (CSUs) under ANILCA and, as such, are subject to unique management provisions Congress enacted in ANILCA. In preparing these plans BLM must take the unique provisions of ANILCA into account rather than writing the plans based on inapplicable national management practices used elsewhere. For example, ANILCA allows some motorized access in support of traditional activities under Section 1110 and for subsistence purposes in Section 811.

Birch Creek is a very accessible river, with ready access from the Steese Highway at Mileposts 94 and 140 to remote areas. It has been identified as a spawning area for Chinook, chum, and coho salmon and as providing habitat for resident species such as Arctic grayling. It provides excellent recreational opportunities for floating, fishing, hunting, and hiking, among other activities. We are also supportive of maintaining and improving recreational use of Birch Creek.

State Participation in Future Planning

The State requests clarification on how the WMP and CRMP relate to the Eastern Interior Resource Management Plan (RMP). The State was a cooperating agency (CA) in the RMP process and requests the same status for watershed management planning. Per BLM's "A Desk Guide to Cooperating Agency Relationships and Coordination with Intergovernmental Partners, 2012" (the Desk Guide) ... *the Council on Environmental Quality (CEQ) and the Department of the Interior (DOI) "have affirmed that the CA relationship may be used in the preparation of*

EAs (CEQ Memorandum on Cooperating Agency Reports, May 26, 2006; 43 CFR 46.225(e)). The Desk Guide also instructs that CAs should be identified prior to conducting scoping and identifying issues, the scoping process is identified as “a major opportunity for BLM and CA discussion.”¹

The proposed watershed management plan covers a large area of varying land ownership including State lands and State shorelands underneath and along navigable waters within the planning area. We look forward to participating in this planning effort and appreciate the BLM’s efforts to ensure coordination with the State to address questions and facilitate the resolution of issues early and throughout the planning process.

ADF&G Management Responsibilities

Both the WMP and the CRMP should recognize the Alaska Department of Fish and Game (ADF&G)’s primary authority and responsibility for the management of fish and wildlife, including State authorized fish and wildlife harvest, on all lands, including BLM’s. The following statutory and regulatory citations re-emphasize this:

- ANILCA, 1314
- Federal Land Policy and Management Act, 302(b)
- Wild and Scenic Rivers Act (WSRA), 13(a)
- John D. Dingell, Jr. Conservation Management, and Recreation Act (P.L. 116-9, March 12, 2019)
- Subtitle E, The Omnibus Public Land Management Act of 1009 (P.L. 111-11, 123 Stat. 991, March 30, 2009), and
- 43 CFR Part 24 (especially 43 CFR 24.4(c)).

ADF&G participated in the preparation of the Gulkana River Management Plan, a process specifically tailored to the Gulkana River and guided by intensive State and public involvement. We are supportive of this sort of comprehensive planning effort – one that provides a reasonable basis for standards and management prescriptions to meet those standards. The WSRA Section 11 specifically promotes cooperation with the State and other adjacent landowners in the planning, protection, and management of river resources. As an example, we request an opportunity to review and comment on any visitor surveys BLM plans to use in monitoring and evaluating visitor satisfaction.

Access to Fish and Wildlife Resources

Through both the BLM’s Eastern Interior RMP and Steese and White Mountains Travel Management Plan processes, BLM and the State of Alaska have cooperated on providing hunter access to the Fortymile Caribou Herd in both areas. As ADF&G documented, access to the herd for hunting purposes is the only means of managing the population. Our vision of the watershed and the WSR management area include continuing to improve access to hunting areas to provide harvest opportunity and help us manage the herd.

¹ The Desk Guide, page 12.

The State supports an alternative/improved put-in location downstream of Harrington Fork to provide additional access to fish and wildlife resources along Birch Creek. Besides the road accessible put-in and take-out, the only summer trail accessing Birch Creek is the user-created Frying Pan Creek Trail. To provide better angler and hunter access to Birch Creek, we recommend the plan analyze improving/hardening the Frying Pan Creek Trail. Increasing hunting and fishing access will assist BLM in meeting the Congressional direction provided in the John D. Dingell, Jr. Conservation Management and Recreation Act².

Any proposal to curtail fish and/or wildlife recreational use needs to involve cooperative engagement with the ADF&G and demonstrate a resource-based need for such action. In accordance with the Sikes Act and 43 CFR 24.4, this cooperation also extends to habitat improvement projects.

DNR Management Responsibilities

The Alaska Department of Natural Resources (DNR) has management authority for state lands (including the land, water, tidelands, and shorelands of navigable waters within the State). This authority includes management of navigable waters, tidelands, and shorelands within and adjacent to the boundaries of federal lands, including conservation system units created under ANILCA. In addition to State shorelands along the navigable portion of the Ikhèenjìk River (Birch Creek), the State claims numerous waters within the planning area, including all lakes with an area of fifty acres or greater and other waters and associated shorelands shown on the attached map. The BLM's planning documents and maps should identify these lands and waters as State-owned throughout the planning process.

Revised Statute 2477

The State of Alaska claims numerous rights-of-way across federal land under RS 2477, including rights-of-way identified in AS 19.30.400. There are several valid RS 2477 rights-of-way owned and managed by the State of Alaska that fall within the boundaries of the planning area. Please see attached map showing these rights of way.

Navigable Waters

The BLM determined Birch Creek (Ikhèenjìk River) navigable from the Yukon River upstream to the confluence with the South Fork Birch Creek through multiple determinations with the final on May 11, 1983. The BLM also determined Crooked Creek navigable from its confluence with the Ikhèenjìk River upstream to the Steese Highway bridge in Central, based on transport to mining areas. The State reserves the right to assert its ownership over other river segments within the planning area.

As mentioned above, the State claims numerous waters and shorelands that are within the planning area and manages these waters for both water quality and quantity. We look forward to working with the BLM to articulate management of these waters that is accomplished by

² P.L. 116-9, especially Sec 4001(a), March 12, 2019

numerous state agencies including the DNR, ADF&G, and the Alaska Department of Environmental Conservation (ADEC).

Reservations of Water

There are numerous In Stream Flow Reservations (IFR) throughout the planning area. DNR determines and adjudicates rights in, and appropriation and distribution of water of the state (AS 46.15). Please see the attached map depicting active IFR certificates and applications in the planning area, including throughout the Ikhèenjìk River downstream of the Birch Creek Wild and Scenic River corridor. BLM should consider existing Certificates of Reservation when contemplating goals for the watershed management plan.

Watershed Management Plan

We understand the purpose of a WMP is to bring people together to discover and document conditions, issues, and interests throughout the watershed and to develop a framework to address the regional and local issues, priorities, and management strategies within a specific watershed. In this instance, the purpose of the WMP is also to help inform the development of a more effective and responsive comprehensive river management plan for the Birch Creek WSR. Please provide more information on how BLM is planning to coordinate this stakeholder group.

BLM has been working with ADEC to document water quality in the river, and we are supportive of that effort. Prior to reaching out for substantive comments, BLM should circulate the information BLM and ADEC have collected to date, both from the existing WSR Plan and under the monitoring required by the 2016 Steese National Conservation Area ROD, to interested parties to aid them in assisting BLM in formulating management priorities and strategies.

WSR Planning

Early planning actions should educate visitors that while Wild Rivers should avoid major public-use areas, such as large campgrounds, interpretive centers, or administrative corridors, minimum facilities are allowable, though sanitation facilities should not be visible from the riverbank. It is also important to recognize that the WSRA Section 10(b) specifically states that any portion of a WSR that flows through a designated Wilderness shall also be managed in accordance with the Wilderness Act. None of the Birch Creek WSR flows through any designated wilderness, therefore, we request planning documents avoid confusing the public via the incorporation of wilderness-specific terminology such as “naturalness,” “solitude” and “primitive and unconfined recreational opportunities.” As noted in the RMP, ANILCA allows certain uses in wilderness areas of Alaska³, since these uses are allowed in designated wilderness, they can also occur on lands with wilderness characteristics.⁴

³ ANILCA 606 (boundary and withdrawals), ANILCA 811, 1110, 43 Code of Federal Regulations (CFR) Part 36, Eastern Interior Final RMP and Steese ROD (Access and Closure Requirements), Cabins (ANILCA Section 1303(b) (Cabins), ANILCA Section 1310 (Access to, operation and maintenance of fisheries research and monitoring sites, navigation aids and other facilities), ANILCA 1316 (Temporary facilities for the take of fish and wildlife), ANILCA Title XI and regulations found at 43 CFR Parts 36 and 2808 (Transportation and Utility Systems)

⁴ Eastern Interior Proposed RMP/Final EIS, 2016, Section 2.6.2.11, page 50

WSRA does not require a CRMP for rivers designated by Congress prior to January 1, 1986 (see WSRA Section 3(d)(2)). What deficiencies have been identified in the existing Birch Creek National Wild River Management Plan, beyond the need to incorporate the Outstanding and Remarkable Values determined during the 2016 Eastern Interior Resource Management Plan, requiring a completely new CRMP as opposed to a revision of the existing Wild River Management Plan? The current plan addresses the protection of river values, development of lands and facilities, user capacity, and necessary management practices to achieve compliance with the WSRA. The Plan should limit itself to the planning components outlined in the WSRA (Sections 3 and 10) and to the unique management prescriptions ANILCA provides for CSUs in Alaska.

The provisions of the John D. Dingell, Jr. Conservation Management and Recreation Act⁵, relating to facilitating the expansion and enhancement of hunting, fishing, and recreational shooting opportunities must also be reflected in the Plans, specifically the provisions of Title IV, Sportsman's Access and Related Matters. Sec 4001(a) of this Act states that the Congressional declaration of National policy is to:

- (1) facilitate the expansion and enhancement of hunting, fishing, and recreational shooting opportunities on Federal land, in consultation with the Wildlife and Hunting Heritage Conservation Council, the Sport Fishing and Boating Partnership Council, State and Tribal fish and wildlife agencies, and the public.
- (2) Conserve and enhance aquatic systems and the management of game species and the habitat of those species on Federal land, including through hunting and fishing, in a manner that respects-
 - (A) State management authority over wildlife resources; and
 - (B) Private property rights
- (3) Consider hunting, fishing, and recreational shooting opportunities as part of all Federal plans for land, resource, and travel management.

The Plans should also identify changes that have occurred in the WSR Corridor since the original Birch Creek National Wild River Management Plan, the data sources BLM used to identify those changes, and the periodic monitoring that will occur to compare past to current conditions.

We request the WSR Plan incorporate allowances for the use of prescribed fire within the WSR Corridor to restore or maintain ecological conditions⁶. Suppression activities should be carried out in accordance with the Alaska Interagency Wildland Fire Management Plan prepared by the Alaska interagency fire management program coordinated by BLM.

The Plans also need to recognize that the Steese, as a National Conservation Area, and Birch Creek, as a WSR, are components of the National Landscape Conservation System (NLCS).⁷ Per Section 2002 of the NLCS Act, lands in Alaska under ANILCA management provisions are not affected by any regulations or laws that apply to lands designated as components of the NLCS.

⁵ P.L. 116-9, March 12, 2019

⁶ BLM 6400 – Wild and Scenic Rivers – Policy and Program Direction for Identification, Evaluation, Planning, and Management (Public) -- Section 7.5 H. Fire Management 1.

⁷ Title II of P.L. 111-11, Omnibus Public Land Management Act of 2009, Section 2002

(d) *EFFECT.* –

(1) *IN GENERAL.* – ***Nothing in this subtitle enhances, diminishes, or modifies any law or proclamation (including regulations relating to the law or proclamation) under which the components of the system described in subsection (b) were established or are managed, including [emphasis added]***

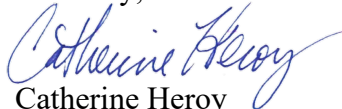
A. The Alaska National Interest Lands Conservation Act (16. U.S.C. 3101 et seq.)

Closing

In summary, the State supports efforts to maintain the existing condition of Birch Creek. We look forward to working cooperatively throughout this planning process to address issues of mutual interest and ensure recognition of the State’s responsibility for management of fish and wildlife on all lands in Alaska and ensuring access to state resources and lands.

Thank you for this opportunity to comment. Please contact me if you have any questions or to discuss any of these issues further. We look forward to further discussions as these plans are developed.

Sincerely,



Catherine Heroy
State ANILCA Program Coordinator

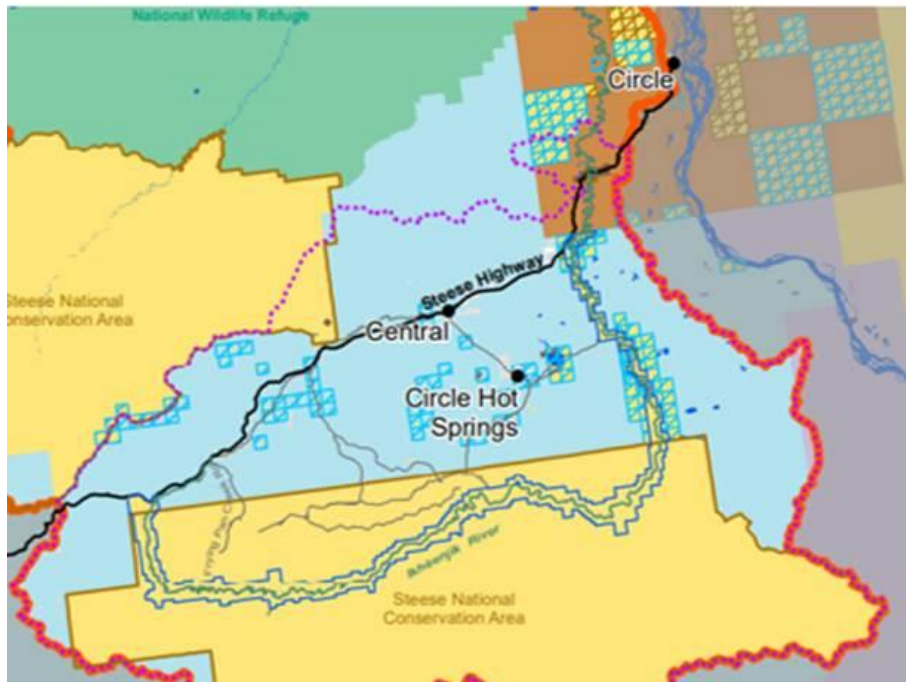
Enclosures: IFR Map Birch Creek WSR
Birch Creek RS2477 Map

IFR Map Birch Creek WSR

Orange lines = Reservation of Water applications or certificates

Arrows → = Direction of flow

Red Oval ○ = General area of the Birch Creek (Ikhèenjik River) Wild and Scenic River

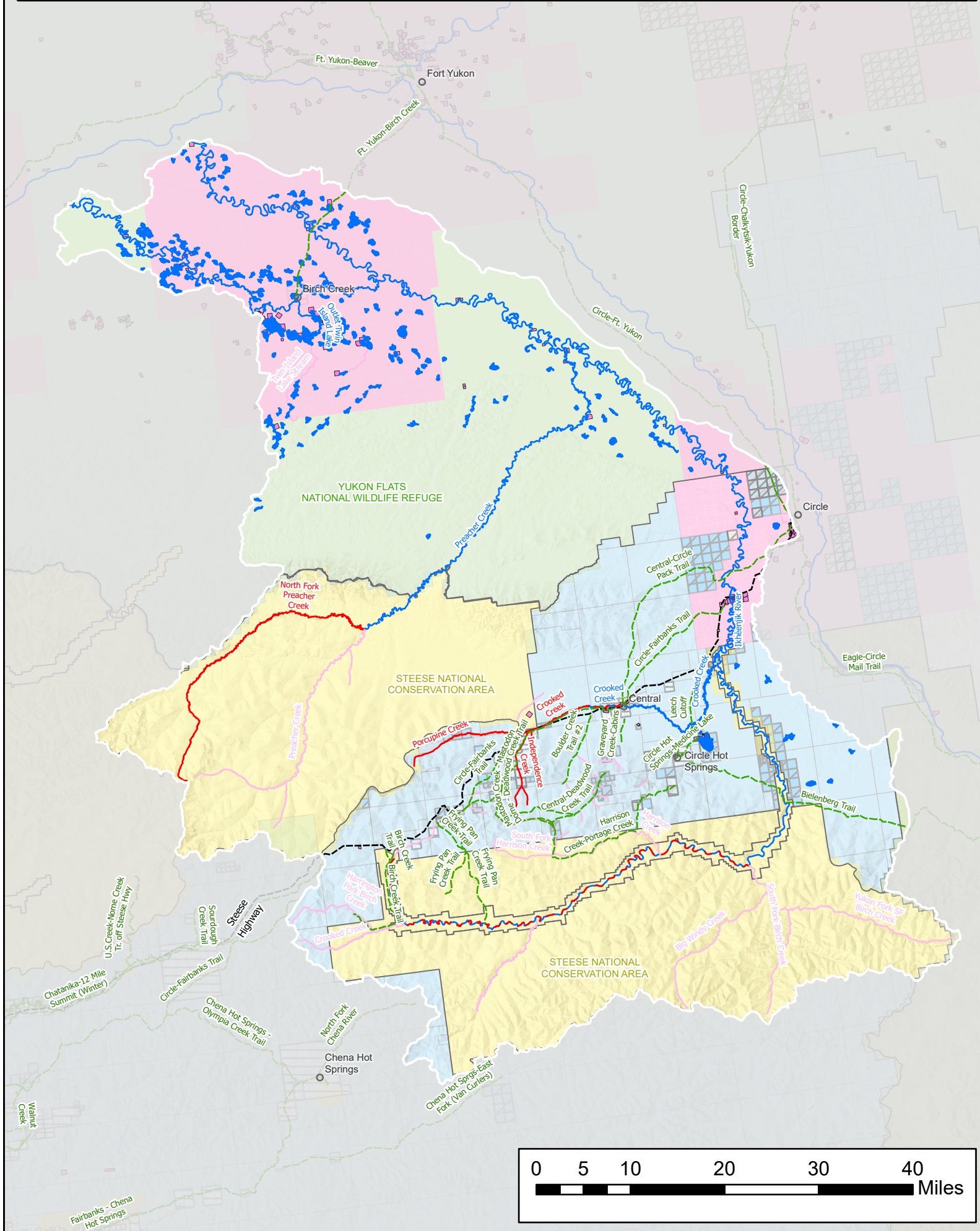
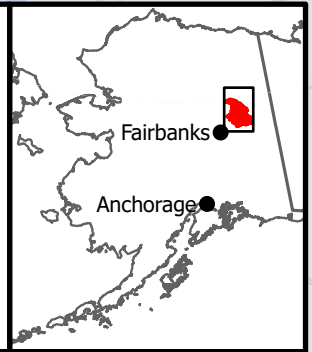


The DNR – DMLW Reservation of Water (IFR) casefiles associated with this watershed are: LAS 24386, 24005, 24001, 24000, 24003, 23676, 23651, 23656, 23652, 23653, 23657, 23658, 23645, 23660, 23646, 23661, 23666, and 23675.

* Top map retrieved 07/21/2022 from Alaska Mapper within DNR Intranet system. Bottom map retrieved from https://eplanning.blm.gov/public_projects/2019528/200521034/20061784/250067966/lkh%EF%BF%BD%EF%BF%BDenjikWMP_8.5x11SimpleMap_508_20220617.pdf retrieved 07/21/2022

Birch (Ikhéenjik River) Creek RS2477 Map

- | | | | |
|-------------------|---------------------|--------------------------------------|---|
| RS2477 | Navigable River | Native Patent | National Park Service Withdrawal |
| Major Road | Non-Navigable River | Native Allotment | U.S. Fish and Wildlife Service Withdrawal |
| City | Conflict River | Municipal Land | Birch Creek Wild & Scenic River Corridor |
| State Selected | Undetermined River | Bureau of Land Management Withdrawal | |
| State TA / Patent | Navigable Lake | Military Withdrawal | |
| Private | Native Selected | | |



Map Produced by
Alaska Dept. of Natural Resources
Division of Mining Land and Water
Public Access Assertion and Defense Unit



This map is based on the most recent data available; however the actual and/or historical location of the waters involved may differ from that shown on this map due to the changes in the waters over time. Land Status describes ownership types within a section. Please note that Land Status may not cover entire section; please refer to Master Title Plat for precise land ownership.

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Birch (Ikhéenjik River) Creek

Projection: Alaska Albers Equal Area Conic
Data Sources: Navigable Waters Dataset
USGS Hydrography Dataset
BLM Land Status Layers
Printed: July 21, 2022

