



THE STATE  
of **ALASKA**  
GOVERNOR MIKE DUNLEAVY

**Department of Natural Resources**  
OFFICE OF PROJECT MANAGEMENT AND PERMITTING

550 West 7<sup>th</sup> Avenue, Suite 1430  
Anchorage, AK 99501-3561  
Main: 907.269-8690  
Fax: 907-269-5673

November 8, 2023

Timothy Hammond  
Manager, Eastern Interior Field Office  
222 University Avenue  
Fairbanks, AK 99709

Submitted electronically via <https://eplanning.blm.gov/> and to [birchcreek@blm.gov](mailto:birchcreek@blm.gov)

Re: Birch Creek Wild and Scenic River draft Comprehensive River Management Plan and draft Environmental Assessment

Dear Mr. Hammond,

The State of Alaska (State) reviewed the Bureau of Land Management's (BLM) Birch Creek Wild and Scenic River Draft Comprehensive River Management Plan (CRMP) and Environmental Assessment (EA). We appreciate BLM's consideration of our comments during the cooperating agency review stage, as well as the CRMP/EA recognition of the State's authorities, and the acknowledgement of unique management conditions established under the Alaska National Interest Lands Conservation Act (ANILCA).

We disagree with the discussions on subsistence management and are providing comments below on how subsistence is managed within the State. The draft CRMP/EA does not accurately capture BLM's assigned responsibilities from the Federal Subsistence Board, nor does it incorporate the State subsistence component of wildlife management. We are supportive of the intent stated in the CRMP to coordinate fish and game research with the Alaska Department of Fish and Game (ADF&G). Historically, our agencies have worked very well together, and we look forward to future cooperative efforts.

The State resource agencies, including the Departments of Natural Resources (DNR), Environmental Conservation (DEC) and ADF&G, offer the following comments.

**DNR Management**

Section 1.6, Regulatory Authorities, is an important disclosure section in the EA, and we appreciate BLM's recognition of the various players in the region and their responsibilities. In this section, the BLM should acknowledge DNR as the manager of submerged lands under navigable waterways across the state in addition to the manager of water rights. We note that this information is appropriately disclosed in Section 3.5.1 (EA, page 26). We request BLM add similar language to Section 1.6 (EA, page 7), for example: "The State of Alaska owns and manages the submerged lands under navigable waterways across the State."

Additionally, DNR manages RS 2477 rights-of-way across the state. There are three RS 2477s within the Birch Creek Wild River corridor. The State requests that BLM acknowledge these

existing, state-managed, public transportation corridors within the wild river corridor. The RS 2477s are: the Birch Creek Trail, Frying Pan Creek Trail, and the Bielenberg Trail. As referenced in the draft EA, the Circle to Fairbanks trail is in the vicinity of Birch Creek, but not within the wild river corridor.

- The Birch Creek Trail, codified as “RST 815 Birch Creek Trail,” begins at the Steese Highway, travels roughly parallel to the west of Birch Creek to Harrington Fork Birch Creek, then west, and northwest along Harrington Fork Birch Creek where it exits the wild river corridor.
- The Frying Pan Creek Trail, codified as “RST 1604 Frying Pan Creek Trail,” enters the wild river corridor west of Great Unknown Creek, travels along the west bank of Great Unknown Creek and ends at Birch Creek.
- The Bielenberg Trail, codified as “RST 230 Bielenberg Trail,” enters the wild river corridor in S20, T 7 N, R 17 E, FM, traverses through S29, 28, and exits in S33 of T 7 N, R 17 E, FM.
- Page 40 of the draft EA references the Circle to Fairbanks Trail. While this trail is outside the wild river corridor, it is in the general vicinity. The Circle to Fairbanks Trail is an RS 2477, codified as “RST 237 Circle to Fairbanks Trail.”

Finally, please also make the following edit for accuracy: “The Alaska Department of Natural Resources, Division of Mining, Land and Water authorizes water rights. A water right is a legal right to use surface water or ~~groundwater~~ subsurface water under the Alaska Water Use Act” (EA, page 7). This excerpt is repeated in the CRMP on page 133. We request BLM make the same edits in that location as well.

### **ADF&G Management**

We appreciate the CRMP/EA appropriately describing ADF&G’s overall management authority and its relationship to ANILCA Section 1314. We are providing the comments below on how subsistence is managed within the State. The draft CRMP/EA does not capture the State subsistence component of wildlife management.

We are supportive of the intent stated in the CRMP to coordinate fish and game research with ADF&G. Historically, our agencies have worked very well together, and we look forward to future cooperative efforts. The CRMP should include reference to the Memorandum of Understanding (MOU) that exists between BLM and ADF&G (1983) as well as to the 2018 Master MOU between BLM and the Association of Fish and Wildlife Agencies (AFWA) and the Western Association of Fish and Wildlife Agencies on Collaboration Regarding Conservation and Management of Fish, Wildlife, and their Habitat. The MOU with AFWA clarifies that:

In the West, the BLM and the state fish and wildlife agencies are truly dependent upon each other to effectively fulfill their respective responsibilities with regard to fish and wildlife and their habitat.<sup>1</sup>

And that:

Department of the Interior policy (43 C.F.R. Part 24) recognizes both the primary authority and responsibility of the states for management of resident fish and wildlife on

---

<sup>1</sup> MOU among AFWA, Western AFWA, and BLM, Section III; signed 2018

BLM-managed lands and the BLM's authority to manage lands for fish and wildlife values.<sup>2</sup>

The EA and CRMP should include reference to the following additional statutes regarding the State's authority for wildlife management:

- Wild and Scenic Rivers Act (WSRA) Section 13(a) and (f)
- Omnibus Public Lands Act of 2009, Title II Establishment of the National Landscape Conservation System Sec. 2002
- The John D. Dingell, Jr. Conservation, Management, and Recreation Act (Public Law 116-9), Title IV, Sportsmen's Access and Related Matters, Sec. 4001(a)(2)(A)
  1. Sec. 4001 (a)(3), and
  2. Sec. 4103(b)
  3. 4103(b)

### **Subsistence Management**

The State of Alaska has concerns with any language in the EA that may exceed statutory authority. ADF&G requests the BLM stay within the statutory authority language Congress provided in ANILCA. Regulations or planning language that exceed statutory authority in ANILCA are questionable.

The EA/CRMP appropriately recognizes the importance of subsistence to many residents of Alaska, especially rural Alaskan residents. The EA/CRMP does not recognize that ANILCA Title VIII provides for a subsistence priority for rural residents on public lands to be implemented "when it is necessary to restrict taking of fish or wildlife to assure the continued viability of a fish or wildlife population or to assure the continuation of subsistence uses of the population."<sup>3</sup>

In the discussion in Section 1.7.7 Federal Subsistence Management Program on page 9 of the EA, we request the EA use the language from ANILCA which gives the FSB the ability to restrict harvest when necessary to assure the continued viability of a fish or wildlife population (e.g., caribou). Adding "conservation concerns" could be interpreted as meaning something else. Additionally, the EA should include a discussion of the Harvest Management Coalition, a consensus-based planning group initiated by user groups in Alaska and the Yukon to provide recommendations to management agencies on harvest management of the Fortymile Caribou Herd in Alaska and on the allocation of an annual allowable harvest between Alaska and Yukon.<sup>4</sup> This group is endorsed by the Board of Game and the Federal Subsistence Board. The discussion does not identify certain additional elements from the regulations at 50 CFR 100.10.

- The discussion about the Federal Subsistence Management Program needs to explicitly reference that it implements the requirements of ANILCA Title VIII regarding subsistence management.
- The preamble to the 2002 Subsistence Management Regulations for Public Lands in Alaska (67 FR 30559 @ <https://www.federalregister.gov/documents/2002/05/07/02-11319/subsistence-management-regulations-for-public-lands-in-alaska>) indicates this

---

<sup>2</sup> MOU among AFWA, Western AFWA, and BLM, Section III; signed 2018

<sup>3</sup> ANILCA Section 802(2)

<sup>4</sup> Fortymile Caribou Herd Harvest Plan 2019-2023, Introduction, page 1

delegated authority from the FSB for field officers is only to make in-season management decisions, not to provide BLM with unlimited decision-making authority. The discussion needs to correct and clarify this.

- The FSB (of which BLM is a voting member), in consultation with state managers, is responsible for evaluating all requests for additional consumptive subsistence opportunities for qualified rural residents through an open and active public process while maintaining healthy populations of fish and wildlife. The federal subsistence regulations are found at 36 CFR part 242 and 50 CFR part 100. The discussion needs to clarify this.

We request the following paragraphs on pages 9 and 95 be revised as shown by the underline and strikethrough:

The Federal Subsistence Board was created by regulation to serve as the decision-making body that oversees the Federal Subsistence Management Program, which is a multi-agency effort to implement the provisions of ANILCA Title VIII – Subsistence Management and Uses. A policy of ANILCA Title VIII provide is to continue the opportunity for a nonwasteful subsistence way of life uses by rural Alaskans on federal public lands. ~~and waters while maintaining healthy populations of fish and wildlife.~~

~~In accordance with~~ Under 36 CFR 242.10(d)(6) and 50 CFR 100.10(d)(6), the Federal Subsistence Board may delegate to agency field officials the authority ~~to set harvest and possession limits, define harvest areas, specify methods or means of harvest, specify permit requirements, and open or close specific fish or wildlife harvest seasons~~ implement certain in-season management actions within frameworks established by the FSB board.

Currently, the BLM EIFO manager is delegated the authority (delegation letter from the Chair of the Federal Subsistence Board to the BLM EIFO Manager on December 1, 2020) to implement certain in-season management actions established by the FSB. ~~“to modify or restrict harvest limits, including sex restrictions, season dates, and methods and means for caribou on Federal public lands in Units 20E, 20F and 25C,” as well as “to close and reopen Federal public lands to nonsubsistence hunting.”~~ The delegation is to be exercised only when necessary to restrict harvest to conserve caribou populations; to continue subsistence uses, for reasons of public safety; or to assure the continued viability of the populations. ~~In practice, this means the BLM establishes season and bag limits for the Fortymile and White Mountains caribou herds. Those~~ Any decisions are made in consultation with the ADF&G, as well as the National Park Service, the US Fish and Wildlife Service, and, to the extent feasible, the Eastern Interior Subsistence Advisory Council.

We also request a subsection be added that identifies the existence and benefits of State subsistence management and how the State and federal subsistence systems coexist. State subsistence hunts frequently are the only available option for individuals who no longer live in a rural community, but seek to continue traditional hunting practices, oftentimes with family who still live in the rural communities.

We request the discussion regarding the analysis required by ANILCA Sec. 810 be placed in its own subsection. The 810 analysis is not part of the Federal Subsistence Program, rather it is a requirement under ANILCA for federal agencies determining “whether to withdraw, reserve, lease or otherwise permit the use, occupancy, or disposition of public lands.”<sup>5</sup> Section 810 (see text below) requires federal agencies to evaluate whether their proposed action may significantly restrict subsistence use by rural residents.

... The Federal agency having primary jurisdiction over such lands ... shall evaluate the effect of such use, occupancy, or disposition on subsistence use and needs. The availability of other lands for the purposes sought to be achieved, and other alternatives which would reduce or eliminate the use, occupancy, or disposition of public lands needed for subsistence purposes. No such withdrawal, reservation, lease, permit, or other use, occupancy, or disposition of such lands which would significantly restrict subsistence uses shall be effected until the head of such Federal agency –

- 1) gives notice to the appropriate State agency and the appropriate local committees and regional councils established pursuant to section 805;
- 2) gives notice of, and hold, a hearing in the vicinity of the area involved; and
- 3) determines that (A) such a significant restriction of subsistence use is necessary ... (B) the proposed activity will involve the minimal amount of public land necessary to the purposes of such use ... (C) reasonable steps will be taken to minimize adverse impacts upon subsistence uses and resources resulting from the action.

### **Water Resources and Instream Flow**

DNR’s Water Resources Section requests the following edits for accuracy to the EA Section 2.2.1, Instream Flow.

- In the first paragraph, clarify that the instream water rights process is separate from the process to establish federal reserve water rights. We suggest revising this sentence by adding the underlined portion: “It is the BLM’s policy to use the State’s appropriate instream water rights process, a separate process from federal reserve water rights, to protect the flow-dependent ORVs” (EA, page 11)
- In the second paragraph, we request the following revisions to articulate with more precision the State’s water rights process (add underlined language, delete language with strikethrough): “Under Action 5.1 in the 1983 River Management Plan for Birch Creek WSR, a reservation of ~~minimum adequate~~ water flows sufficient for public recreation use and to support the values for which the wild river was designated, would be ~~determined in cooperation with~~ submitted to and adjudicated by the Alaska Department of Natural Resources...” (EA, page 11)
- In the third paragraph, we request the following revisions for clarity and accuracy (add underlined language, delete language with strikethrough): “While the application has not yet been adjudicated, the application ~~approval~~ submission date (January 11, 2011) for

---

<sup>5</sup> ANILCA Section 810(a)

Birch Creek WSR is the priority date ~~for adjudication~~ should the application be certificated” (EA, page 11-12).

Relatedly, we request a similar edit in a later reference to the 1983 Birch Creek CRMP (add underlined language, delete language with strikethrough): “Action 5.1: A reservation of ~~minimum~~ adequate water flows sufficient for public recreation use and to support the values for which the wild river was designated will be ~~determined in cooperation with~~ submitted to and adjudicated by the Alaska Department of Natural Resources, Division of Land and Water Management” (EA, page 79). This excerpt is repeated in the CRMP on page 133. We request BLM make the same edits in that location as well.

We request the following edit to Table C-8. Birch Creek WSR Baseline Monitoring (EA, page 125) for clarity and accuracy regarding the State’s adjudication of water rights (add underlined language, delete language with strikethrough; two right columns of table omitted below). This table is repeated in the CRMP on page 186. We request BLM make the same edits in that location as well.

Value	Key Indicator	Standard to Meet	Action if Not Met
Water Quantity	Average monthly flow rates (discharge) in cubic feet per second (cfs)	<p>The WSRA directs that each component of the NWSRS shall be administered to protect and enhance the values that caused it to be included in said system.</p> <p>Section 13(c) of the WSRA includes implicit language that <del>establishes</del> a federal reserved water right for WSRs <u>may be asserted</u>.</p> <p>Recommended monthly average water reservations for selected locations on Birch Creek are outlined in <b>Table C-1</b> above.</p>	<p>If evidence suggests a federal reserved water right is being injured by water uses by other parties, the BLM shall consult with the <del>state water engineer</del> <u>State’s Water Resources Management Office</u>, Office of the Solicitor and Department of Justice to determine how the federal reserved water right claim can be asserted and protected. <u>Until such a time comes that a federal reserve water right is necessary</u>, it <del>is</del> is the BLM’s policy to use the state’s appropriate instream flow water right process for protecting instream flows quantities. Protect the natural flow regime through water reservations, as outlined in <b>Table C-1</b> above.</p>

**Federal Management Authorities for Birch Creek WSR**

As we commented during scoping for this proposed CRMP, we disagree with the continued emphasis on the implications of the National Landscape Conservation System (NLCS) (part of the Omnibus Public Land Management Act of 2009 (OPLMA)) on the management of the Birch Creek WSR because the emphasis distracts from the management direction required by ANILCA.

The overarching provision for the management of the Birch Creek WSR is ANILCA Sec. 401 which states the purpose for the Steese National Conservation Area (NCA) is to ensure the area continues to operate “within the framework of a program of multiple use and sustained yield and for the maintenance of environmental quality.” Sec. 401(b) specifically identifies Birch Creek as one of the special values to be considered under the above framework.

Section 2002 of the OPLMA clarifies that the designating statutes prevail over the NLCS and specifically prohibits the NLCS from affecting State fish and wildlife management.

Nothing in [the NLCS] enhances, diminishes, or modifies any law or proclamation (including regulations relating to the law or proclamation) under which the components of the system ... were established or managed, including --- (A) the Alaska National Interest Lands Conservation Act (16 U.S.C. 3101 et seq.). [16 USC 7202(d)(1)]

...the authority, jurisdiction, or responsibility of the several states to manage, control, or regulate fish and resident wildlife under state law or regulations, including the regulation of, or access to, hunting, fishing, trapping, and recreational shooting on BLM-managed public land. [16 USC 7202(d)(2)]

The direction in the NLCS to manage units as an integral part of the larger landscape contradicts ANILCA's direction at 103(c) that "Only those lands within the boundaries of any conservation system unit which are public lands ... shall be deemed to be included as a portion of such unit."

We recognize the OPLMA and its NLCS provisions direct BLM to "conserve, protect, and restore nationally significant landscapes," but according to BLM staff and policy, BLM accomplishes those goals through collaborative relationships with local communities, States, tribes, friends groups, and private citizens; through providing opportunities for scientific inquiry; and by providing visitors with an opportunity to explore, discover and relax. Management, however, is directed to be carried out "in a manner that **protects the values for which the components of the system were designated** [emphasis added]."<sup>6</sup> In the case of the Birch Creek WSR, this means in accordance with the Wild and Scenic Rivers Act (WSRA) as amended by ANILCA and ANILCA's provisions for conservation system units (CSUs) and public lands.

The CRMP and EA focus on the authorities granted to BLM under the WSRA and the OPLMA [i.e., NLCS] but do not explain the limitations in Section 13 of the WSRA, the management exceptions in ANILCA and the Alaska Statehood Act and how they affect those authorities. The EA and CRMP list of relevant authorities should include the John D. Dingell, Jr. Conservation, Management, and Recreation Act, Title II, Sportsman's Act of 2015 (Dingell Act). We request the EA and CRMP recognize and address these other applicable authorities and explain how these other authorities shape the Birch Creek WSR management.

### **User Capacity (Common to all action alternatives (Alternatives B and C))**

In the discussion of desired river conditions, BLM notes that "[p]ublic use and access may be regulated and distributed, where necessary, to protect and enhance the wild river value" (EA, page 16). We request BLM add a sentence noting that any closures to public access to protect river values must be conducted pursuant to the ANILCA Section 1110 and 43 CFR Part 36 as a unique consideration for Alaska.

Regarding user capacity (also called "visitor capacity" in the CRMP) issues, as BLM states in the EA and the CRMP: "Overall, visitor use within the Birch Creek WSR area is quite low and it does not appear to be threatening river values. Commensurate with this there has not been a large degree of investment in data collection, monitoring, and analysis to support visitor capacity

---

<sup>6</sup> The Omnibus Public Land Management Act, Title II, Section 2002

estimates.”<sup>7</sup> BLM is clear there are currently no capacity issues. “The BLM believes the use is nowhere near capacity and does not believe the use trend would approach capacity, given the current rates for 20 years, if not longer.”<sup>8</sup>

Additionally, BLM states, “If in the future, events or actions begin to threaten these thresholds, the BLM would begin with initiating an educational campaign and/or more frequent river patrols to remedy the situation before attempting to take more formal actions” (EA, page 17). We generally support the approach of the least restrictive management options being employed first, especially in an area with relatively low use such as the Birch Creek Wild River corridor.

Currently, visitor use is not threatening riparian area function or other river-related natural values. For this reason, we do not believe now is the appropriate time to set limits on the number of guides allowed to use the river. A high percentage of visitors to public lands in Alaska depend on commercial operators to access public land areas and people benefit from going with someone who is familiar with the waterway. We are generally concerned that, over time, reducing outfitter/guide allocations could effectively curtail public access within the Birch Creek WSR Corridor or create safety concerns. The WSRA specifically tasks the Secretary of the Interior to “encourage and assist the States...and cooperate with States...” with respect to WSR areas (WSRA Sec. 11(a); additional direction regarding cooperation with States is found in Sec. 12; Sec.13 addresses State authorities regarding resources in WSR areas).

Rather than setting a limit on the number of guides allowed on the river in as proposed in Alternative B (SRPs for guided hunts would not be permitted<sup>9</sup>) or Alternative C of this CRMP (set at SRP issuance (not permits) up to 10 river float trips on a yearly basis), we request BLM set up a valid baseline and monitoring program to support the adaptive management strategy outlined in the Steese ROD and Eastern Interior RMP. This will ensure any impacts that develop over time are caught early and mitigated. This also is in line with BLM Manual 6400, which directs that public use and access may be regulated and distributed, **where necessary** [emphasis added], to protect and enhance the wild river value. Limiting user group size to four and contact numbers to four per day is below the use levels set in the Eastern Interior RMP. An upper limit of twelve guides allowed (and only 10 guided trips allowed per year) in a 111-mile river that is difficult to access is unreasonable.

We suggest BLM establish the following bulleted information below and use it to track use and impacts and to set any limits on permit numbers based on actual data if needed. This information will allow evaluation of the allocative decisions by area. Information framing visitor capacity and commercial allocation quantitatively (how many), spatially (where), and temporally (when) is particularly useful.

- Historic use of the corridor user groups, including outfitter/guides (e.g., sport fishing, hunting, trapping, wildlife viewing).
- Matrix of data (by season, use, resources, and site) used to compile projected resource use.

---

<sup>7</sup> Birch Creek CRMP, p. 15, BLM 2023

<sup>8</sup> Birch Creek CRMP, p. 16 and p 117, BLM 2023

<sup>9</sup> Birch Creek CRMP, p. 43, BLM 2023

- Documented, quantified examples of user conflicts including how perceived conflicts are being reported, documented, and quantified.
- Consideration of potential indirect effects on public access.
- Alternatives to user limits in high-use areas.
- Description of the standards and indicators that will be used to increase or decrease allocations for specific areas.
- Rationale if restrictive allocations are proposed in areas with current low use levels.

Outfitting and guiding opportunities are extremely important to the economy throughout Alaska. Additionally, the State owns and manages the submerged lands of Birch Creek, and the WSRA directs federal agencies to work with States in the management of rivers where the State is an adjacent landowner. Because of the importance of commercial and recreational activities to State interests, we request an opportunity to work with BLM before any allocation limits are set.

At a minimum we request the use numbers proposed in this draft EA be included as part of Alternative B – Wild Character and Ecological Resilience Emphasis and a baseline and monitoring program be included in Alternative C – Enhanced Visitor Services.

### **ANILCA Allowed Access/Steese Travel Management Plan**

Section 1.7.6 of the EA identifies itself as summarizing the “Approved Travel Management Plan for the Steese Travel Management Area.” The section fails to describe what the relationship is between travel management and the NLCS. The final EA should clarify how the NLCS legislation comes into play regarding travel management. The NLCS is clear that its units are to conserve, protect, and restore nationally significant landscapes recognized for their outstanding cultural, ecological, and scientific values. The NLCS is also clear that all management will be conducted in accordance with the unit’s designating legislation. ANILCA Sec.1110(a) allows unlimited snowmachine travel unless closed in accordance with 43 CFR 36.11(h). We pointed this out to BLM during the preparation of the Steese Travel Management plan. To our knowledge, BLM has yet to follow the closure procedure in 43 CFR 36.11(h) to implement the limitations it is placing on snowmachines over 1,000 pounds curb weight and 50 inches in width. 43 CFR 36.11(h) requires BLM to demonstrate that such use is detrimental to the resource values of the area. It also requires BLM to conduct notice and hearing on the closure and publish a notice of the closure in the federal register, among other things.

Additionally, off-highway vehicle (OHV) and snowmachine travel is allowed in the Steese NCA for subsistence use in accordance with ANILCA Sec. 811. Sec. 811 ensures that BLM lands are open to subsistence access until closed by regulation. OHV use does need to comply with the State’s generally allowed use restrictions.

The final Birch Creek CRMP should address both situations. It should also outline how it will comply with the requirements at 43 CFR 8341.2 “Special rules” which requires the authorized officer to demonstrate that off-road vehicles are causing or will cause “considerable adverse effects upon soil, vegetation, wildlife, wildlife habitat, cultural resources, historical resources, threatened or endangered species, wilderness suitability, other authorized uses, or resources prior to closing an area to OHV use. 43 CFR 8364.1 “Closure and restriction orders” outlines the requirements BLM must follow to close an area. This section of BLM’s visitor service regulations directs the public lands authorized officer to issue an order to close or restrict use of designated public lands. In addition to including specific information in the order and posting it

at the local BLM Office and in places near where the closure or restriction applies, BLM must publish these closures in the Federal Register. We are unaware of any Federal Register notice that outlines BLM's closures of any of the areas within the Birch Creek corridor to OHV use.

During the preparation of the Steese Travel Management Plan, ADF&G outlined to BLM the importance, at times, of OHV use to achieving high caribou harvest in the Steese NCA. Please include a qualifying statement that summer OHV use may be allowed in the future for ADF&G management purposes.

### **Water Resources and Water Quality**

The BLM's discussion of the historic and current impact of mining in the Birch Creek watershed is incomplete and inadvertently misleading. As written, the statement attributes the EPA's impairment of Birch Creek for turbidity to the State's management of state mining claims. This is an incomplete picture that leaves out environmental factors as well as federal mining activity in the watershed. We request the BLM add the following important context for accuracy:

- State Mine Reclamation Laws were not in effect until 1992 and reclamation takes time
- The Alaska Department of Environmental Conservation did not take primacy for Clean Water Act 402 permitting (APDES) until after 2011 for placer mining
- Up until 1996, significantly more of the mines in the Birch Creek watershed were on federal claims managed by BLM

### **Recreation and Visitor Services**

We are concerned with the language BLM uses to discuss noise from OHVs and mining as a "threat" to the recreational value of the Birch Creek Wild River (EA, page 35). Labeling legal activities as "threats" sets the stage for conflict rather than solutioning. We understand that conflict can exist between different user groups and that management can help create mutually acceptable solutions. However, labeling legal activities as "threats" to an area's use by other groups is a challenging place to start. Please qualify or remove the reference to noise from OHV use as a threat to the recreational ORV in the Birch Creek WSR. Noise from OHV use is not a problem for many recreationists and the EA and CRMP should not assume noise is an across-the-board threat. It is appropriate to note that "noise from fighter jets and OHV use were noted in scope comments as issues decreasing the quality of the remote recreation setting" (EA, page 35), however the BLM must make management decisions based on data supporting these comments. We suggest that the actual threat is the conflict that may be perceived between user groups and impacts from improperly mitigated or unpermitted mining operations in the upper watershed. Properly defining the threat allows BLM to develop appropriate solutions.

### **Visitor Service Providers**

ANILCA provides a preference for certain visitor service providers and for some guided activities. We are unaware if any commercial operators in the Birch Creek WSR area were operating prior to its designation as a WSR in 1980. If operators were operating prior to that designation, Section 1307(a) provides for the continuation of existing visitor services by persons engaged in the activities on or before January 1, 1979.

We request the final CRMP and EA recognize this ANILCA allowance and describe how these visitor services are either included or excluded from the capacity limits for commercial services.

Additionally, Section 1307(b) provides that preference must be given to local residents and Native Corporations for visitor services, except for guided sport fishing and hunting. The preference in ANILCA Section 1307 would apply to floating the river and any other guided activities.

**Recreational Use**

The Birch Creek Wild and Scenic River is unique in that it offers a truly remote recreational experience in Alaska accessible by an existing road system. The legislative history of ANILCA indicates that Congress saw “outstanding future potential for developing full scale public outdoor recreation uses in a natural setting” due to road access from the Steese Highway as well as for Birch Creek which it notes as “the single most important resource in the Steese National Conservation Area...Its excellent road accessibility provides immediate high use potential. This use will greatly increase in the future.”<sup>10</sup>

In reviewing the EA/CRMP, we considered BLM’s definition of the Semi-primitive Recreation Opportunity Spectrum (ROS) from the Eastern Interior (EI) Steese Record of Decision (ROD) and Approved Resource Management Plan (RMP),<sup>11</sup> a definition that also applies to the Birch Creek WSR Corridor. We are concerned that rather than building on Congressional intent in ANILCA as well as the WSRA’s emphasis on protecting the river’s natural values while enhancing recreational opportunities (especially hunting and fishing in accordance with the Dingell Act), the Birch Creek WSR CRMP is focused on landscape/watershed management and on limiting the recreational opportunities foreseen in the Steese ROD and approved RMP.

As we identified during cooperating agency communications, we recognize that the Steese ROD includes direction that the Semi-Primitive Classification manages for a majority of group sizes that usually average fewer than four people per group with an average number of fewer than four group contacts per day.

Table 9 “Matrix of recreation setting classifications and character of the social environment (visitor use and users)” in the Steese ROD and Approved RMP, laid out the ROS for areas designated as semi-primitive, they are as follows:

<b>Contacts (with other groups)</b>	Average number of contacts per day <b>usually</b> [emphasis added] fewer than four groups.
<b>Group Size</b>	Manage for a majority of group sizes that <b>usually average</b> [emphasis added] fewer than four people per group.
<b>Evidence of Use</b>	Footprints plus slight vegetation trampling at campsites and travel routes, winter snow trails, and or tracks may be present. <sup>12</sup>

During Agency scoping, we requested this EA be used to amend the ROD and remove both group size recommendations and contact numbers for the Birch Creek WSR for safety reasons.

<sup>10</sup> Senate Report No. 96-413, Report of the Committee on Energy and Natural Resources, United States Senate, Nov. 14 (legislative day, November 5), 1979. page 205

<sup>11</sup> BLM (December 2016), Table 8, page 69, *Steese Record of Decision and Approved Resource Management Plan, Eastern Interior*

<sup>12</sup> BLM (December 2016), Table 9, page 70, *Steese Record of Decision and Approved Resource Management Plan, Eastern Interior*

The WSR portion of Birch Creek is not a beginner float. The put-in and take-out sites are road accessible, however, it is a very primitive, multi-day, float with no easy way to get help if you get in trouble. In the event of injuries, with a group size of four, if two individuals are injured it will be difficult for the other two to adequately care for or transport them out of the field. This past May (2023) a group of four boaters capsized, one of whom drowned in a sweeper.

Managing for a group size of four is smaller than anywhere else in Alaska. By comparison, the group size limit is 12 people on the Alsek River in Glacier Bay National Park and Preserve. Limiting groups to four people is not realistic for many families and social groups - groups that will teach the next generation of wild and scenic river users needed outdoor skills. The Gates of the Arctic considered group size limits of 4 in developing their Wilderness Stewardship plan but after review of the public comments-maintained group size limits of 10<sup>13</sup> in the final plan. The proposed small group size would have a negative impact on the social and economic benefits of public lands.

The proposed group and contact sizes are arbitrary and have not been shown to have any basis in data or documented resource impacts. The EA itself states in numerous places that overall use of the river is low and river values do not appear threatened, considering the remoteness, overall primitive and challenging nature, and the length of time needed to complete the float (roughly one week). State staff do not see this becoming a popular float destination to the point that would justify limiting group size or overall group numbers.

We reiterate our previous request and ask that the final EA be used to amend the existing ROD and remove both group size recommendations and contact numbers for the Birch Creek WSR for both safety reasons as well as a lack of impact caused to river resources.

### **Managing for Wilderness Rather than Wild River**

Both the EA (page 11) and the CRMP (page 91) reference the 1975 United States Department of the Interior (DOI) Environmental Impact Statement (EIS) that recommended Birch Creek for inclusion in the WSR System as informing the decision on appropriate values and management needed to protect those values in the context of this CRMP development. The EA/CRMP fails to include the Alaska context in these background summaries.

Congress gave substantial thought and debate to the areas it chose to designate as CSUs under ANILCA. As a result of ANILCA designations, fifty-two percent of all nationally designated wilderness acreage is in Alaska, and forty-two individual CSUs are designated wilderness areas. Alaska has more than 10 percent of all designated wild and scenic rivers (25) and almost 24 percent of all WSR miles 3,193.<sup>14</sup> In designating Birch Creek as a WSR, located within the Steese NCA, Congress made a conscious decision to bypass these areas as designated wilderness. Birch Creek is not a designated wilderness; ANILCA Sec. 605(b) designated it as a Wild River.

According to the WSRA, “Wild River Areas – Those rivers or sections of rivers that are free of impoundments and generally inaccessible except by trail, with watersheds or shorelines essentially primitive and waters unpolluted. These represent vestiges of primitive America.” The

---

<sup>13</sup> Gates of the Arctic General Management Plan Amendment/Wilderness Stewardship Plan/ Environmental Assessment, NPS 2014.

<sup>14</sup> [Alaska | Rivers.gov](https://www.alaska.gov/rivers), accessed 10/26/2023.

classification/designation/administration of rivers have little to do with recreation, scenery, or wilderness, but instead are measures of the level of access and development along the river at the time of designation.

By intermixing wilderness phraseology and failing to take into consideration the Alaska context regarding the establishment of public conservation lands in Alaska, BLM is inappropriately managing the Birch River WSR as designated wilderness. As we requested in our scoping comments, please remove references to wilderness phraseology (e.g., solitude and self-reliance) and wilderness management practices from the EA and CRMP.

We note the excerpts from the 1975 DOI EIS (published prior to ANILCA's passage but used to help Congress formulate its intent in ANILCA), include providing a "wilderness experience along the river" (EA, page 3). However, wilderness recreational opportunities are not one of the management components the designating legislation (ANILCA) assigned to BLM for the Birch Creek WSR.

Discussion of the Wild and Scenic River Act should clarify how WSRA Section 7 determinations will be made in the event of a water resource project on the river. The final decision authority to approve or disapprove a water resource project could interfere with constitutionally protected property rights granted to the State of Alaska under the Alaska Statehood Act and to Alaska Native corporations under the Alaska Native Claims Settlement Act (ANCSA) as amended. The discussion of Section 7 projects should also reference ANILCA's Title XI process.

### **Facilitation and expansion of hunting, fishing, and recreational shooting.**

The Dingell Act, Title 2, directs BLM to facilitate the expansion and enhancement of hunting, fishing, and recreational shooting on its public lands and address how they are meeting that direction in their planning documents. Please include sections on hunting, fishing, and recreational shooting and how BLM is facilitating the expansion and enhancement of these activities in the Birch Creek WSR Corridor in the final EA/CRMP.

### **Trapping**

As discussed in the 1983 Birch Creek WSR Management Plan, the known historical use of the river corridor consists of trapper and prospector cabins, roadhouses, and trails. (page 8)

As trapping is one of the traditional uses/activities of the river corridor, as well as a traditional activity Congress intended to continue in Alaska, the alternatives should address how BLM will maintain/enhance trapping opportunities. BLM should work with ADF&G, as time and funding allows, to collect additional data to determine actual use in the river corridor.

### **Hunting**

The EA and CRMP need to discuss how they will facilitate hunting opportunities in the Birch Creek Area in accordance with the Dingell Act. BLM should work with ADF&G, as time and funding allows, to collect additional data determine actual use in the river corridor.

### **Fisheries Outstandingly Remarkable Values**

The State is supportive of fisheries management, especially as outlined in Alternative C of the EA, when carried out in cooperation with ADF&G staff. BLM should work with ADF&G, as time and funding allows, to collect additional data to determine actual use in the river corridor.

### **Collection of salvage timber and “special forest products”**

The State is supportive of these activities remaining open for subsistence use (as required by ANILCA Title VIII) and personal use, as well as when carried out in association with hunting and fishing activities (ANILCA Sec. 1316). Collection of these items is a traditional activity carried out by many Alaskans, not just rural residents.

The EA does not provide adequate documentation to support its statements that these activities, as they occur in the Birch Creek WSR Corridor, lead to soil erosion, sedimentation, decreased water quality, and fisheries and aquatic habitat degradation. These activities were not identified in the document as activities reasonably foreseen to increase in such size and scale as to cause the impacts identified in the document. Please provide this information or remove the proposed restrictions from the EA and CRMP.

The EA and CRMP should provide definitions for “salvage timber” and “special forest products.”

### **Wildland Fire Management**

The State requested discussion of wildland fire management in our scoping comments as prescribed burns are one of our management tools, particularly for moose populations. Section 1.9 identifies that this issue had been eliminated from further consideration in the EA, yet there is frequent reference throughout the EA/CRMP about fire, especially as related to climate change and each alternative includes a discussion of it. Alternative C even states “fire suppression would be prioritized in the Birch Creek WSR Corridor” (page 29). We request Wildland Fire Management be identified as a relevant issue in the EA and that BLM work with the State to identify appropriate management activities for the individual alternatives.

Additionally, the EA should discuss how BLM’s fire management practices may impact ADF&G’s ability to manage moose populations through controlled burns.

### **Appendix E: ANILCA Section 810 Evaluation**

One of the primary managements actions the EA and CRMP note is closing the Corridor to the collection of salvage logs and “special forest products.” The primary gatherers of these resources are subsistence users. Please address these decisions in the 810 Analysis.

The 810 Analysis should also address the impact of closing the Birch Creek WSR Corridor to subsistence OHV travel and use of snowmachines over 1,000 pounds.

### **Cooperation and Coordination**

The State values its role as a cooperating agency; however, based on our understanding of BLM’s [A] Desk Guide to Cooperating Agency Relationships (2012), we had the expectation that we would work collaboratively with BLM to identify and resolve issues during the planning process. While we do not expect to resolve all issues, we should be able to resolve many, and for any outstanding issues, we should at least have a common understanding of the basis for any disagreements. Although we were given opportunities to review and comment on draft documents during this planning process, the review timeframes were extremely short. That coupled with the amount of time necessary to reach out to various State staff with subject matter expertise to develop comments, made it difficult for the State to meaningfully participate. We did

not receive feedback on the comments we provided and, as we found in subsequent reviews, only minor changes to the document occurred because of our comments.

The Cooperating Agency Memorandum of Understanding the State signed with BLM was in part based on ADF&G's expertise and role as the primary agency responsible for management of fish and wildlife on all lands in Alaska regardless of land ownership. Clarification of this role and a commitment to cooperate with BLM in related matters is also addressed in the Master MOU between the BLM and ADF&G. Given ADF&G's fish and wildlife management authority and expertise, we are disappointed with the absence of meaningful back-and-forth discussion of issues during the CRMP development process.

As the agency that oversees fish and wildlife management on all land in Alaska, we reiterate our objection to BLM implementing a Strategic Science Plan that "provide[s] the base strategy for science activities in and around the WSR." (EA page 14) This action is contrary to the agreements made by the BLM and ADF&G under our 1983 Memorandum of Understanding and is another example of poor interagency cooperation. We provided this comment both during the Steese/White Mountain Travel Management planning process and in our scoping comments on this CRMP and have had no response to our concerns.

### **Page-Specific Corrections**

The State offers the following corrections to inaccuracies within the documents. Where edits are proposed, we use strikethrough to indicate text to remove, and underlining to indicate text to add.

#### Page 6 – Change to:

The Alaska Department of Environmental Conservation, Division of Water, oversees the federal Clean Water Act for the state and is responsible for establishing water quality standards, ~~assessment, and regulation~~ managing the Alaska Pollutant Discharge Elimination System permit program, and identifying waters that do not meet water quality standards under Clean Water Act Section 303(d) (impaired waters). ~~As such, the Division of Water is responsible for identifying 303(d) streams (which means the water quality is limited).~~ The Birch Creek WSR is a 303(d)-listed stream.

#### Page 7 – Change to:

Approximately 1 mile of the Birch Creek WSR is listed as impaired for turbidity. The EPA issued a Total Maximum Daily Load (TMDL) for total ~~suspended~~ settleable solids to meet turbidity water quality criteria ~~standards for turbidity~~.

#### Pages 14-15 –

DNR appreciates the inclusion of Section 2.2.6 in the EA (page 14). The legal description on page 15 contains typos. The Birch Creek legal description from the State's Notice of Intent appears to have copy-paste errors. A number of the township *Ts* were converted to *Is*. We underline the corrections below. The correct description is:

The notice of intent included the following submerged lands: Birch Creek from upstream of its confluence with South Fork Birch Creek downstream<sup>2</sup> to the put-in location at the confluence of North Fork Birch Creek and Birch Creek. This includes all lands between the ordinary high water lines of the left and right banks of Birch Creek upstream of the confluence of the South Fork Birch Creek within Section 34, T. 6 N., R. 16 E., FM., including the following townships: T. 6 N., R.

16 E., FM; T.6 N., R. 15 E., FM.; T. 6 N, R. 14 E., FM; T.6 N., R. 13 E., FM; T. 5 N., R. 13 E., FM; T.5 N., R. 12 E., FM; T. 5 N., R. 11 E., FM; T. 5 N., R. 10 E., FM; T. 6N, R. 10 E., FM; and T. 7 N., R. 10 E., FM, to the put-in location at the confluence of North Fork Birch Creek and Birch Creek within Section 32, T. 7 N., R. 10 E., FM.

Page 26 – Change to:

The State of Alaska regulates state mining claims in the watershed. State law requires miners to conduct mining operations in a manner that prevents unnecessary and undue degradation of the land and water resources, and to return the mined ground to a stable configuration to prevent erosional degradation and promote regrowth by native plant species. ADEC has determined that activities associated with placer mining, especially in the past prior to a robust permit program, have caused water quality pollution in the Birch Creek watershed. However, the ADEC website specifically lists placer mining as the cause for impaired streams in the headwaters of Birch Creek. So, while conditions seem to be improving, the State’s regulation of mining has not been sufficient to keep the impact within legal standards to date (EPA 1996).

Page 99 – Change to:

The Environmental Protection Agency (EPA) issued a TMDL for total ~~suspended~~ settleable solids to meet water quality standards for turbidity (EPA 1996; BLM 2016a).

Page 125 Table C-8; Page 186, Appendix I, Table 2-2; Page 187, Appendix I, Table 2-3; and Page 189, Appendix I, Table 2-4

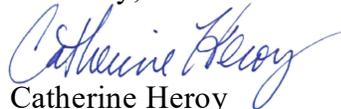
In multiple places in the appendix tables, there is an erroneous reference to standards for specific conductance; this needs to be corrected in each instance. Alaska does not have Water Quality Standards for Specific Conductance. Change to:

~~“Criteria p~~Parameters are State of Alaska freshwater Water Quality Standards criteria for Turbidity, pH, temperature, dissolved oxygen, and Specific Conductance as a surrogate for Toxic and Other Deleterious Organic and Inorganic Substances., ~~pH, and Temperature.~~

## Closing

Thank you for the opportunity to comment. We encourage additional discussion of State comments and are available to provide feedback on any of the points raised here. Please contact me at (907) 269-0880 or by email at [Catherine.heroy@alaska.gov](mailto:Catherine.heroy@alaska.gov) to coordinate any follow up discussions.

Sincerely,



Catherine Heroy  
Acting State ANILCA Program Coordinator