THE STATE
of ALASKA
GOVERNOR BILL WALKER

Department of Law

CIVIL DIVISION
1031 West 4th Avenue, Suite 200
Anchorage, Alaska 99501
Main: 907-269-5100
Fax: 907-276-3697

August 29, 2016

Via Email and U.S. Mail
Neil Kornze, BLM Director
Attention: Protest Coordinator, WO-210
P.O. Box 71383
Washington, DC 20024-1383

Dear Mr. Kornze,

Pursuant to 43 C.F.R. § 1610.5-2, the State of Alaska protests certain issues in the Proposed Eastern Interior Resource Management Plan (EIRMP or "Plan") and Final Environmental Impact Statement (FEIS), dated July, 2016. The State of Alaska protests issues that are inconsistent with the Alaska National Interest Lands Conservation Act (ANILCA), the Alaska Native Claims Settlement Act (ANCSA), the Wild and Scenic Rivers Act (WSRA), the Federal Land Policy and Management Act (FLPMA) and various federal policies and regulations.

This protest is being submitted on or before August 29, 2016, and is therefore timely filed. This protest is separate from and in addition to the Governor's consistency review.

In accordance with our written agreement, the State of Alaska worked cooperatively with BLM to fully participate in the planning process, including providing input, relevant data and information, and technical review of the plan in a timely manner.

The State's previous comments are referenced in this protest and attached hereto. This protest incorporates by reference all previous applicable comments.

PROTEST

I. Issue being protested: The Plan fails to provide for lifting ANCSA withdrawals unless new conservation withdrawals are implemented.

Retaining existing withdrawals pending implementation of new withdrawals violates BLM's policy in its 2006 Report to Congress on the 2004 Alaska Land Transfer Acceleration Act, frustrates the State's ability to fulfill its statehood land entitlement, is inconsistent with the four preceding Alaska RMPs, and is inconsistent with ANILCA § 1326(a).

A. Parts of the Plan being protested:

Section 2.6.3.8. Withdrawals (page 73)
Section 2.7.2.4.2.7. Withdrawals (page 118)

Section 2.8.2.4.2.7. Withdrawals (page182)
Section 2.9.2.4.2.6. Withdrawals (page 213)
Section 2.10.2.4.2.7. Withdrawals (page 273)

B. Where the State submitted this issue during the planning process:

State's comments dated April 6, 2008 (pages 2, 33, 35); July 17, 2009 (page 11, 20, and 22); March 8, 2010 (page 12); April 22, 2011 (pages 3, 7); December 7, 2011 (page 2); April 11, 2013 (page 23, DMLW Table, page 24); June 2014 (ANILCA comments page 4); February 18, 2015 (page 3); April 28, 2016 (page 7-9).

C. Why the State Director's decision is wrong:

ANCSA § 17(d)(1) authorized the Secretary of Interior to withdraw lands in Alaska to allow selection by Alaska Native and Village Corporations. These withdrawals are known as "d-1 withdrawals." ANCSA §17(d)(2) authorized the withdrawal of 80 million acres for the future establishment of conservation system units ("d-2 withdrawals"). The vast majority of these withdrawals have fulfilled their intended purpose – either for ANCSA selection purposes or because ANILCA legislatively converted them to part of the 100-million acre system of conservation system units and other specially designated lands in Alaska. Additionally, extensive federal and state environmental and natural resource regulatory authorities now protect natural resource values on federal public lands. The Plan should recommend lifting the ANCSA withdrawals that have fulfilled their original purpose, as no current justification for retaining them exists.

1. Retention of the d-1 withdrawals violates BLM's policy in its 2006 Report to Congress on the 2004 Alaska Land Transfer Acceleration Act and is inconsistent with BLM's four most recent Alaska RMPs.

In enacting the 2004 Alaska Land Transfer Acceleration Act, Congress prescribed a process to expedite settling the complex process by which the State and ANCSA corporations fulfilled their land entitlements. Section 207 of the Act directed BLM to review the d-1 withdrawals and report to Congress on whether any of them could be opened to entry.[1] BLM concluded that many had fulfilled their purpose and recommended lifting them through BLM's land use planning process:

> 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…

[1] Pub. L. No. 108-452, § 207 (2004).

> In summary, there are more than 158,958,000 acres of d-1 withdrawals in Alaska. Many of these d-1 withdrawals have outlived their original purpose. It may be appropriate to lift many of the d-1 withdrawals and the most effective and preferred means in managing this process is through BLM's land use planning process. Approximately 152,181,400 acres or 95% of these withdrawals could be lifted consistent with the protection of the public's interest.
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> This and the more stringent requirements for managing development, means the original protections from the d-1 withdrawals are no longer critical for the protection of the public's interest. The d-1 withdrawals are an unnecessary encumbrance on the public land records complicating interpretation of the title record by the public.[2]

As described above, many of the withdrawals on BLM lands in Alaska have "outlived their purpose," are an "unnecessary encumbrance on the public land records complicating interpretation of the title record by the public," and "are no longer critical for the protection of the public's interest." The State agrees, and notes that since issuing the report, BLM has developed four RMPs in Alaska – Bay, Ring of Fire, Kobuk-Seward, and East Alaska. All four of these plans followed the recommendations of the Report and recommend lifting the vast majority of ANCSA withdrawals, allowing for mineral exploration and development in accordance with existing federal regulations, operating procedures, and mining laws. The Eastern Interior Plan, however, deviates from this precedent and the recommendations of the 2006 Report and instead expressly seeks to curtail mineral exploration and development in an area that has significant mineral potential and rich mining history, including the oldest mining district in the state. The Plan doubles down on this effort by failing to recommend lifting any existing withdrawals until new substitute withdrawals are in place. The Eastern Interior Plan's new approach unnecessarily and unjustifiably complicates land management in the planning area and will likely result in the retention of ANCSA withdrawals in the planning area in perpetuity.

In determining whether the d-1 withdrawals were needed to protect the public interest in the lands, "BLM gave full consideration to the opportunity to achieve better management of federal lands, and to meet the needs of state and local residents and their economies through a public involvement process and resource analysis."[3] In contrast, the Eastern Interior Plan fails to analyze whether BLM's oil and gas lease stipulations, required operating procedures, and surface management regulations for miners are insufficient to assess and protect the identified resources. Instead, the Plan ignores the assessment BLM provided Congress and instead perpetuates an outdated management regime that frustrates current land management objectives, such as providing for multiple use and fulfilling the State's statehood land entitlement. Furthermore, the

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2 BLM, Sec. 207 Alaska Land Transfer Acceleration Act: A Review of D-1 Withdrawals, Report to Congress (June 2006), at 5, 6.

3 *Id.* at 5.

Plan acknowledges that BLM may close lands to leasable minerals through a land use planning decision, and that withdrawals are not necessary to accomplish this.[4]

The State protests the Plan's failure to recommend lifting all ANCSA withdrawals and portions thereof that are no longer necessary to fulfill ANILCA, ANCSA and statehood land selection requirements because it contradicts the policy BLM reported to Congress and other Alaska RMPs.

2. Retention of the d-1 withdrawals frustrates the State's ability to fulfill its statehood land entitlement.

Maintaining outdated ANCSA withdrawals restricts the State's ability to accurately prioritize its requests for transfer of statehood entitlement lands based upon sound science and the potential for future economic development of the land's resources. These withdrawals—specifically PLO 5180, 5184, and 5186, and any amending PLOs—impede or prevent some of the State's high priority top-filings from automatically attaching to selected lands in the region and prohibit Alaska from making final entitlement decisions consistent with the Statehood Act. The attached letter of January 21, 2016 to Deputy Secretary of the Interior, Mike Connor, from Department of Natural Resources Commissioner Mark Myers[5] emphasizes the importance of this issue.

The extensive mineral withdrawals in the planning area interfere with State's ability to explore, locate, and define the mineral resources on large tracts of lands identified for selection. The State has five percent of its land entitlement remaining. With the d-1 withdrawals in place, the State cannot properly evaluate and prioritize the land it is entitled to under the law.

Furthermore, even though PLO 6590 provides an avenue to receive title to selected lands, that process adds another layer to the already complicated process of receiving title. Furthermore, BLM is not required to convey lands that are subject to a withdrawal and therefore there is no certainty that the lands can or will be conveyed to the State. If the ANCSA withdrawals were lifted, then ANILCA 906(e) could operate as intended and allow the State's selections attach with no further administrative action.

The State protests the Plan's failure to recommend lifting all ANCSA withdrawals and portions thereof that are no longer necessary to fulfill ANCSA land selection requirements and ANILCA requirements because it impairs the State's ability to finalize its statehood land selections.

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4 EIRMP, App. G (p. 1260).

5 The letter offers a state-wide perspective on the implications of the outdated withdrawals and how they affect state selections and conveyance.

3. The Plan's intent to not lift the d-1 withdrawals until new FLPMA mineral withdrawals are approved circumvents congressional intent in ANILCA Section 1326(a).

ANILCA § 1326(a)[6] strictly limits the Secretary's authority to withdraw large tracts of land in Alaska. Executive withdrawals that exceed five thousand acres in the aggregate terminate after one year unless Congress passes a joint resolution approving the action. However, the Plan recommends new FLPMA withdrawals on 2,500,000 acres in the planning area and directs that any underlying ANCSA 17(d)(1) withdrawals be revoked *only after* new FLPMA withdrawals are put in place. The Plan fails to provide for lifting the ANCSA withdrawals if the Secretary doesn't execute or Congress doesn't approve the new FLPMA withdrawals. This failure frustrates Congressional direction in ANILCA by allowing BLM to manage the d-1 withdrawals for a purpose other than their original intent without obtaining congressional approval.

Coupled with the lack of action by the Secretary on previous planning recommendations to revoke ANCSA withdrawals, the Plan's approach likely will create new or expended de facto conservation areas subject to more restrictive management than ANILCA's legislatively designated conservation system units. BLM land is supposed to be managed under FLPMA for multiple use. Therefore, ANILCA does not define BLM land as a conservation system unit, and it is not subject to the special access and use provisions that protect the State's social and economic interests. The Plan's intent to address the d-1 withdrawals only if new FLPMA withdrawals are ordered by the Secretary and Congress approves them results in an impermissible administrative end-run around Congress's management direction that upsets the balance described in section 101(d) of ANLICA[7] and FLPMA's multiple use mandate.

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[6] 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.

ANILCA Sec. 1326(a)

[7] 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 Sec. 101(d)

The State protests the Plan's failure to lift existing withdrawals until new FLPMA mineral withdrawals are ordered by the Secretary and approved by Congress because it violates the intent of sections 101(d) and 1326(a) of ANILCA.

II. Issue being protested: Retaining ANCSA withdrawals that have fulfilled their purpose until new FLPMA mineral withdrawals for the recreational and scenic segments of the Fortymile Wild and Scenic River are approved is inconsistent with ANILCA §§ 606(a) & 1326(a) the Wild and Scenic Rivers Act.

A. Parts of the Plan being protested:

Section 2.7.2.4.2.7. Withdrawals (page 118).

B. Where the State submitted this issue during the planning process:

Issue raised in the State's comments dated June 26, 2014 (page 6); April 28, 2016 (page 8).

C. Why the State Director's decision is wrong:

The Plan's recommendation for new FLPMA withdrawals for the scenic and recreational segments of the Fortymile Wild and Scenic River contradict its enabling legislation, ANILCA § 606, which intended to accommodate existing road and mining activities in the area. ANILCA applied a mineral withdrawal only to the wild segment of the river. The Act did not specify the values for which the scenic and recreational segments of the river were designated, so BLM is identifying them through administrative action. However, ANILCA's legislative history confirms congressional intent to accommodate the existing and future mining activities:

> The Fortymile River is designated in this legislation due to its scenic, recreational, and historic values. Much of this historic value stems from its role in the gold rush and to its more modern gold mining activities. One of the primary reasons for designation of certain segments as "scenic" and "recreational" is to accommodate the existing road and mining activities in the area. Thus it should be the intent that current gold mining activities, operating under existing law and regulations, be permitted to continue . . .[8]

Withdrawing the scenic and recreational segments of the river directly contradict this intent.

Additionally, as it does in many places, the Plan recommends retaining existing ANCSA withdrawals that overlay the scenic and recreational segments of the Fortymile Wild and Scenic River to further protect water quality and the river's outstandingly remarkable values until new FLPMA withdrawals are put in place. As explained above, this practice circumvents ANILCA §

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[8] 126 Cong. Rec. S11186 (daily ed. Aug. 9, 1980) (statement of Sen. Gravel).

1326(a)'s requirement the congress approve any withdrawals exceeding 5,000 acres in the aggregate.

Finally, this approach ignores existing protections that specifically apply. As noted in BLMs 2006 Report to Congress, existing environmental laws and federal and state regulatory authorities, including the WSRA itself and BLM's authority to mitigate resource impacts through application of standard operating procedures and permitting stipulations, already protect water quality and other river values, both within and outside the designated river corridor. In particular, the Interagency Wild and Scenic Rivers Coordinating Council published a technical report in 1999 titled "Implementing the Wild and Scenic Rivers Act: Authorities and Roles of Key Federal Agencies" that outlines the mandates in the WSRA and key federal authorities and agencies tasked with ensuring wild and scenic river values are protected, which among several includes the Environmental Protection Agency and U.S. Army Corps of Engineers' responsibilities under the Clean Water Act.

The State protests the Plan's intent to create new withdrawals for the recreational and scenic segments of the Fortymile Wild and Scenic River, as well as retention of the existing d-1 withdrawals, until implementation of new withdrawals. The State requests that the Plan recognize congressional intent to continue to allow mining activities on the recreational and scenic segments of Wild and Scenic rivers within the planning boundary.

III. Issue being protested: Recommended new FLPMA withdrawals within and outside the Birch Creek Wild & Scenic River corridor violate ANILCA § 606(a), the Wild and Scenic Rivers Act, and ANILCA § 1326(a).

A. Parts of the Plan being protested:

Section 2.8.2.4.2.7. Withdrawals (page 182).

B. Where the State submitted this issue during the planning process:

Issue raised in the State's comments dated June 26, 2016 (ANILCA comments page 7); April 28, 2016 (page 8).

C. Why the State Director's decision is wrong:

ANILCA § 606(a) specifies the boundaries for wild and scenic rivers designated by the Act, and states that they shall include an average of not more than six hundred and forty acres per mile on both sides of the river, not including State and private lands. ANILCA § 606(a) also specifies that mineral withdrawals apply to federal lands that constitute the bed or bank or are situated within one-half mile of the bank of any wild river. The Plan recommends FLPMA withdrawals outside the mineral withdrawal and statutory boundary established for the Birch Wild and Scenic River by ANILCA and the WSRA, and is thus inconsistent with the river's enabling legislation. As with other areas, the Plan violates ANCSA § 1326(a) by recommending that existing ANCSA withdrawals remain until the new FLPMA withdrawals are in place.

Additionally, as described in issue II, the Plan fails to explain why existing federal and state environmental and resource protection authorities inadequately protect river resource values both within and outside the wild and scenic river corridor. Neither does the Plan consider BLM's authority to mitigate resource impacts through application of standard operating procedures and permitting stipulations that protect water quality and other river values. The reference above to the Interagency Wild and Scenic Rivers Coordinating Council's publication on key federal authorities that protect wild and scenic river values is also relevant to this issue.

BLM staff previously stated that the justification for retaining these ANCSA withdrawals until new FLPMA withdrawals are in place was to account for the Birch Creek Wild and Scenic River meandering outside of its designated boundary. In response, the State recommended BLM pursue a boundary adjustment pursuant to ANILCA § 103(b), which gives the Secretary authority to make minor boundary adjustments up to 23,000 acres. In BLM's response to the State's April 28, 2016 comments, BLM states that the river's migration is no longer the main concern; the purpose of the mining withdrawal is also to protect adjacent riparian conservation areas, which affect entire watersheds. The new total withdrawal in the area is now 24,000 acres.

Finally, as discussed above for issues one and two, the Plan is inconsistent with ANILCA § 1326(a) because it fails to address lifting the underlying ANCSA withdrawals should Congress not approve the new withdrawals.

The State protests the arbitrary and capricious recommendation for new mineral withdrawals within and outside the Birch Creek wild and scenic river corridor. The State also protests the Plan's inconsistency with ANILCA § 1326(a).

IV. Issue being protested: The Plan does not follow BLM policy for recommending mineral withdrawals in resource protection areas such as Areas of Critical Environmental Concern (ACECs), Riparian Conservation Areas, and High Priority Restoration Watersheds.

A. Parts of the Plan being protested:

Sections 2.7.2.4., 2.8.2.4.2.4 Minerals,
Section 2.9.2.4.2.4. Minerals
Section 2.10.2.4.2.4 Minerals

B. Where the State submitted this issue during the planning process:

Issue raised in the State's comments dated August 6, 2008 (page 34); July 17, 2009 (page 1, 2, 6, 10, and 13); March 8, 2010 (page 3, 8, and 14), December 7, 2011 (page 3); April 11, 2013 (page 13); June 26, 2014 (ANILCA comments, page 1 and 2, ADF&G Table – page 2, 5-7); February 18, 2015 (page 1 and 4); April 28, 2016 (page 1, 6-7, and 10-11).

C. Why the State Director's decision is wrong:

The Plan recommends extensive mineral closures (i.e. fluid leasable minerals, solid leasable minerals, and locatable minerals) as management prescriptions for ACECs and other

areas delineated for resource protection, such as riparian conservation areas and high-priority restoration watersheds. Except for general goals to protect habitat and fish and wildlife resources, the Plan does not provide any meaningful explanation as to why mineral closures are necessary nor any explanation why existing environmental laws and federal and state regulatory authorities do not otherwise provide adequate protection. The Plan's mechanical effects analysis rotely equates the absence of mining with resource protection and assumes that mining activities negatively affect resource values.

The ACEC Manual posted on BLM's website states that ACEC "[d]esignation is based on whether or not a potential ACEC requires special management attention in the selected plan alternative."[9] The manual also requires identification of factors that influence management prescriptions, and states that these factors may include the conditions or trends of the potential ACEC, the relationship to other resource or activities, and opportunities for protection and/or restoration of ACEC values. The manual specifically requires BLM to consider alternatives to restricting other resource uses and to discuss the rationale for ACEC designations in the preferred alternative.[10] The Eastern Interior Plan concludes that special management attention is necessary in the case of ACECs (Appendix C), but it does not explain how or why BLM determined that mineral closures, the most restrictive management action possible, were necessary. BLM's justification for mineral closures in other resource protection areas is similarly lacking.

Without consideration of existing environmental laws, regulations, and policies in the analysis, the Plan fails to justify mineral closures in ACECs and other resource protection areas and these decisions are arbitrary and capricious.

The State protests the Plan's unjustified recommendations for new mineral withdrawals. The Plan should comply with FLPMA's multiple use mandate and evaluate the protections to habitat and fish and wildlife-related resource values afforded by existing federal and state environmental and resource regulatory authorities before recommending mineral closures.

V. Issue being protested: The Plan arbitrarily fails to provide for meaningful mineral exploration and development opportunities within the planning area.

A. Parts of the Plan being protested:

Section 2.6.3.8. Withdrawals (page 73)
Section 2.6.3.5.3. (page 65) Locatable Minerals

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9 BLM Manual Section 1613—Areas of Critical Environmental Concern, Release 1-1541 (Sept. 29, 1988) at .23.

10 *Id.* at .22.A.3 ("What measures can be taken to protect the potential ACEC value(s) without restricting other resource uses? Is it feasible to protect the resource value(s) without restricting other resource uses? Is it feasible to protect the resource values(s) or reduce or minimize threats from hazards?"); .33.E ("The rationale for ACEC designations in the preferred alternative must be discussed.")

B. Where the State submitted this issue during the planning process:

Issue raised in the State's comments dated August 6, 2008 (page 14-31); July 17, 2009 (page 12); March 8, 2010 (page 4, and 13-14); April 22, 2011 (page 3-4); December 7, 2011 (page 8); April 11, 2013 (page 13-21); June 26, 2014 (DGGS Table and general comments).

C. Why the State Director's decision is wrong:

Throughout, the Plan fails to provide for meaningful mineral exploration and development. As explained earlier, mineral closures frustrate the State's efforts to prioritize its statehood land selections. The Plan's failure to address existing withdrawals until new FLPMA withdrawals are implemented circumvents any meaningful determination of the mineral resources in planning area. Furthermore, the Plan fails to adequately justify the de facto mineral closures and proposed withdrawals.

As an example of BLM's failure to allow mineral exploration of federal land consistent with ANILCA § 1010, while the BLM analyzed leasing for hardrock minerals in the White Mountains National Recreation Area (NRA) in a Supplement to the Draft RMP/EIS that modified Alternative D, the preferred alternative (Alternative E) in the FEIS prohibits hardrock mineral leasing in the entire NRA. Section 1312 of ANILCA (16 U.S.C. 460mm-4) allows the Secretary to permit the removal of the non-leasable minerals from the NRA provided the Secretary makes a finding that such disposition would not have significant adverse effects on the administration of the national recreation area. BLM based this decision on conclusory findings in the Supplemental EIS that leasing would result in cumulative adverse effects on the administration of the NRA.

The effects analysis discusses economic benefits associated with mining activities and the ability of required operating procedures and stipulations to mitigate for impacts to recreational use, but fails to explain why allowing mining activities would have an "adverse effect on the administration of the recreation area." The decision denying access to areas in the NRA with medium and high mineral potential requires more justification. The NRA contains high potential for rare earth elements, which are uncommon and considered by the U.S. Geological Survey and the Department of Defense to be strategic and critical metals that are important to the nation's security interests. The Plan dismisses this important need with minimal explanation. Similar decisions lack adequate justification, such as in the Steese National Conservation Area (NCA), where all but 30,000 acres will be closed to locatable mineral entry. The Plan should explain why existing federal and state environmental and resource regulatory authorities, including BLM's required operating procedures and permit stipulations are inadequate to protect habitat and fish and wildlife resource values.

Additionally, in recognition of the State's resource-based economy, ANILCA § 1010 directed the Secretary to assess the oil, gas, and other mineral potential on all public lands in Alaska (except for those identified in ANILCA § 1001) in order to expand the data base with respect to their mineral potential. Planning decisions that prohibit mineral exploration and development on federal land circumvent this requirement, and impede resource development

overall by preventing geologists from identifying small systems or geologic deposits that occur within relatively small areas. The Plan also further restricts prospectors' and geologists' ability to conduct trend analyses of larger systems, such as the Tintina belt which covers much of the planning area. This discourages private exploration and development, as most companies are unwilling to invest funds in areas without certainty that they can establish a property right or that development can occur. Ultimately the benefits of mineral exploration and development; such as tax revenue to local boroughs and governments, jobs in local communities, and revenue in the form of royalties paid to the state on state mining claims are unrealized.

The State protests the Plan's arbitrary and preemptive closure of land in the planning area to mineral exploration and development. The State requests that the Plan allow exploration and development activities in areas with high and medium mineral potential, as well as areas where mineral potential isn't currently known, subject to existing federal and state regulatory authorities, including BLM's required operating procedures and permit stipulations, to protect habitat and fish and wildlife resource values.

VI. Issue being protested: The plan wrongly states that the Mosquito Fork from Ingle Creek upstream is not navigable.

A. Parts of the Plan being protested:

Executive Summary (page 74),
Section 2.7.2.2.2.6, Travel Management (page 95)
Section 2.7.2.3.2.6 Travel Management (page 104).

B. Where the State submitted this issue during the planning process:

Issue raised in the State's comments dated August 6, 2008 (page 9-10); March 8, 2010 (page 11); April 22, 2011 (page 6); December 7, 2011 (page 5); June 26, 2014 (DMLW Table).

C. Why the State Director's decision is wrong:

As the result of litigation over the navigability of the Mosquito Fork of the Fortymile River, the United States has disclaimed any title interest to the bed of the river from its confluence with the Dennison Fork upstream to its confluence with Wolf Creek. The disclaimer recognizes that title vested in the State at statehood pursuant to the Submerged Lands Act and the Equal Footing Doctrine because the river is navigable, and includes the segment above Ingle Creek that the Plan states is non navigable.

The July 27, 2015 disclaimer states:

COMES NOW the United States of America, through undersigned counsel, and, pursuant to 28 U.S.C. § 2409a(e), disclaims all interest adverse to the Plaintiff, State of Alaska, in submerged lands along the disputed reach of the Mosquito Fork of the Fortymile River identified in paragraph 19 of Plaintiff's complaint in

this action filed June 1, 2012 (ECF No. 1), and described therein as: the submerged lands and bed up to and including the ordinary high water lines of the right and left banks of the Mosquito Fork from its confluence with Dennison Fork within Sec. 8, T. 26 N., R. 18 E., Copper River Meridian, upstream to just above its confluence with Wolf Creek within Sec. 24, T. 24 N., R. 12 E., Copper River Meridian, except for those portions of the river that traverse state-owned uplands and the State's ownership of the underlying bed is undisputed. The included portions of the Mosquito Fork (hereinafter referred to as the "designated portion of the Mosquito Fork") include approximately river miles 0 through 38, 39 through 44, and 53.5 through 80.5. The excluded portions of the Mosquito Fork include the point at which the river exits the National Wild and Scenic River System at approximately river mile 38 in Sec. 19, T. 26 N., R. 15 E., Copper River Meridian upstream to the point at which the river enters Sec. 25, T. 26 N., R. 14 E., Copper River Meridian at approximately river mile 39, and the section of the river that starts in Sec. 2, T. 25 N., R. 14 E., Copper River Meridian at approximately river mile 44 through 53.5 and ending at approximately river mile 53.5 in Sec. 12, T. 25. N., R. 13.

The State protests the inaccurate statement in the Plan that the Mosquito Fork is not navigable above Ingle Creek, and requests that the Plan be corrected.

VII. Issue being protested: The 30-day protest period is inadequate, especially because the adopted alternative includes management prescriptions that were not subject to public review.

A. Parts of the Plan being protested:

Alternative E. In particular, 2.7.2.4.1.6. Wildlife, and all other areas of the plan where new decisions or combinations of decisions proposed in the draft plan are significantly different.

B. Where the State submitted this issue during the planning process:

Comments submitted by the State dated July, 17, 2009, page 1-2); March 8, 2010 (1-2); April 11, 2013 (page 1-2); June 26, 2014 (page 1, ANILCA Comments page 1); April 28, 2016 (page 1).

C. Why the State Director's decision is wrong:

The State consistently commented on the size and complexity of the Eastern Interior Plan, which combines four separate sub-units into one plan and establishes independent layers of management direction, without clear indication of how they will function collectively. The final proposed plan is a hybrid alternative (Alternative E), which is comprised of various elements of the alternatives presented in the draft plan and EIS. We question BLM's claim that all newly combined elements are within the range of alternatives presented in the draft EIS, as the Plan now delineates 685,000 acres as crucial caribou and Dall sheep habitat in the Fortymile subunit

accompanied with management prescriptions not previously proposed in any alternative in the draft Plan and EIS.

Instead of providing the public with a meaningful opportunity to comment on the revised Plan consistent with FLPMA's directive for public involvement in the planning process (Section 202(f)), BLM planning regulation requirements for meaningful public participation (43 CFR 1610.2(a)) and National Environmental Policy Act (NEPA) requirements to prepare supplemental documents when the agency makes substantial changes to a proposed action (43 CFR 1502.9(c)(1)), BLM has provided the public with a mere 30-day protest period. This is not only an inadequate amount of time but impossible to comply with, given any new or unique combinations of management decisions in the revised plan. Protest regulations at 43 CFR 1610.5-2 require an interested party to "raise only those issues which were submitted for the record during the planning process."

The release of the final plan and EIS was also poorly timed to coincide with the busy summer season in Alaska, when many potentially affected users are in the field conducting business associated with mining and tourism, for example, or engaged in subsistence activities in preparation for the long winter months ahead. Most will not only have inadequate time to digest this immense and complex plan, many will not likely even be aware of the Plan's release.

The State protests the inadequate timeframe allowed for review of the final Plan and inappropriate use of the protest as a mechanism for public review. We request the Plan be re-released as a revised or supplemental draft Plan and EIS in the fall of 2016 with a minimum 90-day public comment period.

Sincerely,

JOHNA LINDEMUTH
ATTORNEY GENERAL

By:

J. Anne Nelson
Sr. Assistant Attorney General

JAN/ajc
Enclosures: State Comments
January 21, 2016 Meyers Letter