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Governor Sean Parnell
STATE OF ALASKA

January 26, 2011

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

Dear Mr. Secretary,

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

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

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

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

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

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

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

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

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

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

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

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

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

Sincerely,

Sean Parnell
Governor

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

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

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

The Alaska National Interest Lands Conservation Act (ANILCA)

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

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

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

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

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

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

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

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

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

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

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

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

National Petroleum Reserve – Alaska (NPRA)

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

De Facto Wilderness

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

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

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

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

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

"Balance" is Not Achieved

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

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

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

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

Unfunded Mandate

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

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

Affect on State Administrative Activities

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

Policy is Confusing and Contradictory

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

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

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

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

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

Lack of State Consultation and Public Review

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

A rigorous public review process is consistent with

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

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