



THE STATE
of **ALASKA**
GOVERNOR BILL WALKER

Department of Natural Resources

COMMISSIONER'S OFFICE

550 West 7th Avenue, Suite 1400

Anchorage, Alaska 99501

Main: 907.269.8431

Fax: 907.269.8918

January 21, 2016

The Honorable Mike Connor
Deputy Secretary
U.S. Department of the Interior
1849 C Street NW
Washington, DC 20240

SUBJECT: Revocation of Public Land Order (PLO) Withdrawals¹

Dear Deputy Secretary Connor:

Thank you very much for arranging the meeting between your Assistant Secretary for Land and Minerals Management, Janice Schneider, and our staff during her recent trip to Alaska. We appreciated the opportunity to discuss a variety of topics, including PLOs, that are important to the State of Alaska and the Department of Interior and we were impressed by Assistant Secretary Schneider's focus and receptiveness to our comments and concerns.

The purpose of this letter is to outline one of the issues that Governor Walker, Lieutenant Governor Mallott, and I discussed with you and Secretary Jewell on October 7, 2015 regarding the opportunity to lift priority PLOs in Alaska in order for the State to advance efforts for receiving its remaining land entitlements. At that meeting I very much appreciated your willingness to receive a priority list of these PLOs, which I committed to provide to you and is included in this letter.

These PLOs are impeding our best efforts to prioritize and receive our remaining land entitlements. This letter will provide the background of these PLOs that were put into place as a result of the 1971 Alaska Native Claims Settlement Act (ANCSA); how those PLOs impede the State's ability to prioritize our remaining land entitlements under the 1959 Alaska Statehood Act; and respectfully request that The Honorable Sally Jewell, U.S. Secretary of the Interior lift or revoke those withdrawals in 2016.

History of State Selections and ANCSA PLOs

By virtue of the 1959 Alaska Statehood Act the federal government agreed to grant, and to allow Alaska to select, a total of 103,350,000 acres from the public domain in order to provide for the development and self-sufficient economic base for the State. The promise to Alaska under the

¹ A "withdrawal" encompasses a variety of federal administrative actions and process that remove land from the public domain. Two common administrative actions that create withdrawals are Public Land Orders (PLOs) issued by the Department of the Interior (DOI) and Executive Orders (EOs) issued by the President. This letter is only focusing on PLOs.

Statehood Act allowed Alaskans to select “vacant, unappropriated, and unreserved” federal lands. Shortly after the passage of the Statehood Act, Alaska’s ability and priority position to select many of the valuable federal lands was restricted in a number of ways, including by federal administrative land withdrawals and the land claims of the State’s Alaska Native residents.

Ensuing federal legislation expanded, modified, and limited the State’s land entitlement and resulted in the total land entitlement being established at approximately 105.9 million acres, including:

- ANCSA, and a series of PLOs issued under the authority of ANCSA;
- The Cook Inlet Region, Inc. (CIRI) Land Exchange in 1979;
- The Alaska National Interest Lands Conservation Act (ANILCA) of December 2, 1980; and
- The Alaska Land Transfer Acceleration Act (ALTAA) enacted in 2004.

Prior to the enactment of ANCSA in 1971 there were competing land claims between the State and Alaska Natives. While the passage of ANCSA was designed to help settle these competing claims by granting Alaska Native regional and village corporations priority selection rights, it created additional provisions that are still impacting the State’s receipt of its land entitlements, particularly Section 17(d)(1) of ANCSA. Pursuant to ANCSA, the Department of the Interior created a large list of thirteen administrative land withdrawals under the authority of Sections 11, 12, 14, 16, and 17(d) of ANCSA that delay the State’s selection process by withdrawing and reserving lands for Village and Regional Corporation selections, as well as for study and classification.

These PLOs are preventing some of the State’s high priority top-filings from attaching, and are problematic because they prohibit Alaska from making final entitlement decisions. With these PLOs² in place, State cannot accurately prioritize, and thereby effectively request for transfer, lands based upon the sound science and the potential for future economic development of the resources contained in those lands. In addition to PLO 5150, first published on December 31, 1971 which withdrew lands for the Trans-Alaska Pipeline System Corridor, the next top five PLOs³ which are preventing Alaska from accurately receiving and ranking our remaining selections for conveyance include:

- PLO 5174 of March 16, 1972 as amended, which withdrew lands for Selections by Village Corporations and Regional Corporations in Cook Inlet and for classification for lands in withdrawals;

² This bulleted list is in numerical order and listing all of these PLOs are important to Alaska. Reference to PLO 5150 and the top five PLOs include all of the subsequent amendments or modifications thereto.

³ There are additional PLOs that affect the State’s selection process and the list is not intended to be a comprehensive list, only those PLOs that have the greatest impact on the State’s land entitlement prioritization process.

- PLO 5180 of March 16, 1972 as amended, which withdrew lands for classification and for protection of public interest in lands;
- PLO 5181 of March 16, 1972 as amended, which withdrew lands for classification and study as possible additions to the National Wildlife Refuge system;
- PLO 5184 of March 16, 1972 as amended, which withdrew lands for classification or reclassification of lands withdrawn under Section 11 of ANCSA, specifically those lands in paragraph 2 of the PLO that deal with withdrawal of lands in the Yukon/Kuskokwin Delta area; and
- PLO 5187 of March 16, 1972 as amended, which withdrew lands for classification and protection of the public interest in lands in Military Reservations.

Current Status of the State's Land Entitlements

As of the end of 2015, the majority of the State's land entitlements have been transferred into State "control." Of the 105.9 million acre total entitlement, the State has received "control" to approximately 100.5 million acres, which consists of 64.5 million acres with final survey and patent and a remaining 36 million acres that are tentatively approved while awaiting surveying and subsequent patents.

The remaining 5.4 million acres of the State's land entitlement is awaiting fulfillment by the federal government and awaiting the resolution of a several factors, including "top-filings."⁴ The State currently has approximately 10.4 million acres of land selected in which to receive the remaining land entitlements and approximately 10.5 million acres⁵ of top-filings that may eventually become selections in the future should the applicable withdrawals be lifted. While the total acreage identified by the State significantly exceeds the remaining entitlement, only a small portion of the currently selected lands (excluding top-filings) meets the standard of advancing the State's self-sufficient economic base.

Prioritization of and Impediments to State Entitlement Selections

The State ranks its selections based upon information that is known about current resource values and future potential in order to support Alaska's best economic interests. There is a wide variety

⁴ Section 906(e) of ANILCA gave the State the right to make "top-filings" for its land entitlement selections subject to valid existing rights and Native selection rights under ANSCA. Native selection rights could include individual Native Allottees' as well as Village and Regional Corporations. A top-filing makes the State's claim to land, "fourth in line" as a contingent selection. A valid existing right would also include any federal administrative withdrawals, such as the ANSCA PLOs being discussed herein. "Top-filings" prevent the land's adjudication as a "first in line" entitlement selection since they are a future interest and not counted towards the State's total land entitlements. However, once Native selection rights under ANSCA are finalized or the withdrawal is lifted, the State's selection would automatically attach to the land as a selection and be ready for adjudication.

⁵ It is conceivable that all of these top-filings could convert to state selections, which would mean that the total amount of lands the State would need to prioritize for ownership includes the remaining acres validly selected and "top-filings," for a total in excess of 20 million acres.

of criteria from multiple perspectives that go into this analysis to help ultimately determine the ranking of the remaining land entitlements. These rankings are based on three primary objectives for the purpose of resources, settlement and recreation as follows:

- High priority lands that typically include oil, gas, mineral, or rare earth potential, or lands with a variety of potential uses;
- Medium priority lands that typically include one or more discernable economic uses (such as potential sale or lease to the public, road or infrastructure corridors, etc.) but that would not be expected to provide long-term returns to the State; and
- Low priority lands are those that little long-term economic use has been identified after review.

These primary objectives have been in place since prior to the Statehood Act. In fact, the House Committee reports submitted along with the Alaska Statehood Act indicate that the large federal grant of public domain lands to Alaskans was specifically designed to provide the new state with the necessary economic resources required to generate sufficient revenues to self-govern apart from reliance on federal expenditures. The committee report acknowledged that if the resources from the land are withheld from the State's right of selection, such selections of land would be of little economic value to the newly proposed state and would seemingly confine the State to selecting millions of acres of barren and frozen tundra.

Given the fact that the State is down to its remaining 5% of land entitlements, proper evaluation and prioritization of the remaining lands selected becomes highly critical to meet this mandate. This requires that the State has every opportunity available to conduct exploration so that we can accurately evaluate the high, medium and low priorities to identify those lands that fulfill the intent of the State's land entitlement.

A huge impediment to this re-evaluation is the restriction of exploration on potential high priority lands that the State has "top-filed" until such time as the prior selections under ANCSA are relinquished, settled, and the relevant withdrawals are revoked or lifted. To protect the best economic interests of the State going forward, we must safeguard that we have adequate land entitlement remaining when key top-filings become selections when the withdrawals have been revoked, and/or the Native Claims are finally settled or relinquished.

As previously indicated, ANCSA-related PLOs were put into place during the 1970's to help facilitate settlement of all of the Native Alaskan claims from prior to the Statehood Act. ANCSA established the framework for the settlement of all Native claims by providing that the Regional Corporations, as well as the Village Corporations, receive their federal land entitlements in the vicinity of their Native communities by removing or withdrawing large areas of land from the public domain and thus from state selection while these corporations make their "first in line" selections under ANCSA.⁶

⁶ Proximity to high density communities and existing infrastructure are why such a large portion of the State's top-filed lands are ranked as high priority lands. ANCSA also provided a mechanism for these corporations to select alternative lands in the event that there was a "deficiency" in lands available near their original communities, which continues to cause further delays the ultimate settlement of Native claims under ANCSA.

While it is true that most of the ANCSA corporations have completed their selection determinations and final adjudication and receipt of their entitlement from the Bureau of Land Management (BLM)⁷ is on-going, the federal government has not yet lifted the ANSCA PLOs.⁸ This is despite the fact that the original reasons for the imposition of these PLOs, including protection of the resources and prevention of the encumbrances that might interfere with the Native entitlements, have been satisfied. Lifting these ANCSA PLOs, primarily the Section 17(d)(1) withdrawals, will allow the State to properly evaluate their selections and allow exploration on the lands identified as high priority⁹ with subsequent adjudication and transfer of these high priority areas to Alaska for the State's overall economic well-being.

Therefore, on behalf of the State, I am respectfully requesting the revocation or lifting of these identified PLOs is a crucial step that will allow the State to conduct necessary exploration, prioritize remaining selections, and move forward on the final transfer of the State's land entitlement as promised by the 1959 Statehood Act.

Very Respectfully,



Mark D. Myers
Commissioner
Alaska Department of Natural Resources

cc: Janice Schneider, Assistant Interior Secretary, Land and Minerals Management
Bill Walker, Governor
Brent Goodrum, Director, Division of Mining, Land and Water

⁷ BLM still has statutory surveying obligations to the ANCSA corporations before these transfers are entirely complete, but federal budget submissions seem to indicate that ANCSA transfers are supposed to be completed within the next five years.

⁸ BLM's planning process was to be the mechanism for lifting these PLOs, but lifting by the Department of the Interior has yet to happen as a consequence of the four plans that have approved Records of Decision.

⁹ Currently these PLOs are preventing top-filed lands from being converted to "selected" status, including approximately 1.5 million acres that have been assigned a high priority for transfer by the State and approximately 2.8 million acres where not enough is yet known about the land's resource value to assign it a definite priority.