Alaska Department of Law

Federal Laws and Litigation Report

In compliance with AS 44.23.020(h)

Dated: September 9, 2015

Foreword

Under AS 44.23.020(h), the Department of Law must submit a report to the legislature that identifies federal laws, regulations, or actions that impact the State of Alaska and that the department believes may have been improperly adopted or unconstitutional. This report provides a brief summary of each federal law, regulation, or action identified along with a description of any ongoing litigation. To provide a complete picture, this report also identifies cases in which the State intervened or filed or joined in an amicus brief relating to a federal action or law.

Although the deadline for this report is January 15, the Department of Law is submitting the report early in light of limited staffing throughout the fall. If there are substantial changes that occur before the start of the upcoming legislative session, an addendum to this report will be submitted. For more information on any item discussed in this report, contact the Civil Division's legislative liaison, Cori Mills, at (907) 465-2132 or cori.mills@alaska.gov.

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I. Federal Laws or Actions that Conflict with, or Attempt to Preempt, State Management of its Lands and Resources

1. Adoption by the Environmental Protection Agency (EPA) and the U.S. Army Corps of Engineers (Corps) of the "waters of the United States" (WOTUS) rule

Citation to Federal Statute or Regulation – The final rule would affect state and federal regulation across all facets of the Clean Water Act, including activities permitted under Section 402 (wastewater discharges) and Section 404 (dredge and fill); 33 CFR Part 328; 40 CFR Parts 110, 112, 116, 117, 122, 230, 232, 300, 302, and 401.

Description of the Issues Identified – Under the Clean Water Act (CWA), the federal government has jurisdiction over "waters of the United States." The EPA and the Corps adopted a new rule that attempts to define what is encompassed by the term "waters of the United States" for purposes of federal jurisdiction under the CWA. Among other things, the new rule expands what falls under federal jurisdiction by automatically sweeping up "adjacent" or "neighboring" waters and wetlands within a certain geographic limit to downstream waters already covered by federal law. Additionally, if "adjacent" or "neighboring" water extends into the set geographic limit by even just a few feet, the entire water body or wetland is now subject to federal jurisdiction and permitting. By virtue of Alaska's unique and abundant water and wetland areas, many adjacent or neighboring waters will fall within the rule, regardless of their true "connectivity" to downstream waters.

Litigation – *North Dakota v. EPA* (ND Dist. Ct., 3:15-CV-00059)

Status of Litigation – Alaska joined a coalition of 12 states in filing a complaint in the federal district court in North Dakota challenging the WOTUS rule. Among other claims, the states assert that EPA and the Corps failed to consult as required by the CWA in developing the rule; acted arbitrarily and capriciously in violation of the Administrative Procedures Act; and violated the National Environmental Policy Act by failing to prepare an environmental impact statement to assess the impacts of this significant rulemaking. The North Dakota District Court recently granted a preliminary injunction to stop the rule from going into effect in the 13 plaintiff-states while the litigation proceeds.

2. **Clean Power Plan Rule by the Environmental Protection Agency Under Section 111(d) of the Clean Air Act**

Citation to Federal Statute or Regulation – 40 C.F.R. §§ 60.5700-60.5820.

Description of the Issues Identified – The Clean Power Plan establishes mandatory "goals" for reducing carbon emissions from certain coal and natural gas fired power plants. EPA contemplates that state plans required by the rule will include measures "beyond the fence" of the targeted power plants – e.g. statewide energy efficiency programs and new renewable generation. Because state plans would be federally enforceable, the rule effectively grants EPA new authority to regulate in areas traditionally within the state's jurisdiction. When the rule was first proposed, Alaska submitted comments explaining the severe impacts the rule would have on the delivery of electricity in Alaska and requesting an exemption. The EPA excluded Alaska and Hawaii from the final rule but indicated that this may only be temporary. Although Alaska was not included, the State continues to monitor the implementation of the rule and the lawsuits that have been brought by other states to challenge the rule.

3. **Federal action, inaction, and management activities related to R.S. 2477 rights-of-way owned by the State**

Description of the Issues Identified – The federal government refuses to recognize the State's interest in many rights-of-way that were granted to the State under Revised Statute 2477. If left unchallenged, the impact would be substantial. The State could lose its ownership interest and/or management authority over more than 600 identified and codified rights-of-way, encompassing over 20,000 linear miles of travel corridors. The State could also lose its ownership interest or management authority over numerous other R.S. 2477 rights-of-way within Alaska that are known or believed to exist. Additionally, the federal government has imposed public use restrictions in some rights-of-way which are impacting citizen livelihoods. The State has filed litigation, identified below, asserting its rights to a portion of the R.S. 2477 rights-of-way.

Primary Litigation – *State of Alaska v. U.S.* (AK Dist. Ct., 4:13-cv-00008-RRB); *State of Alaska v. U.S.* (9th Cir., 14-35051)

Status of Litigation – The case involves rights-of-way crossing lands owned by the U.S. and others, including Native allotment owners. The district court granted the Native allotment landowners' motion to dismiss the case as against their property. The court indicated that an immediate appeal would be wise before moving forward with the case, and the State agreed. The State appealed

the order granting the Native allotment landowners' motion to dismiss and that appeal is pending before the Ninth Circuit Court of Appeals. The State's case against the other defendants has been stayed pending the outcome of the appeal.

Other Related Litigation – A number of other cases address similar issues:

Ahtna, Inc. v. State, Case No. 3AN-08-6337 CI (involving Klutina Lake Road and Copper Center to Valdez R.S. 2477, a/k/a RST 633).

Dickson v. State, Case No. 3AS-12-7260 CI (involving a portion of the historic Iditarod Trail (Knik to Susitna), a/k/a RST 118).

Aubrey v. State, Case No. 3PA-13-02322 CI (involving an appeal of DNR management actions taken concerning the Chickaloon-Knik-Nelchina R.S. 2477 right-of-way, a/k/a RST 564).

In Re. Memorandum of Decision Concerning Chitina Cemetery Road, 43 U.S.C. § 932, RST File Number 1974 (involving an administrative appeal of DNR's decision concerning the Chitina Cemetery Road, a/k/a RST 1974).

*(The State is also monitoring many R.S. 2477 cases outside of Alaska (mainly in Utah) which have the potential to influence and affect R.S. 2477 legal precedent created within the Ninth Circuit and Alaska.)

4. Refusal of federal government to recognize State's ownership of the land underlying the Mosquito Fork of the Fortymile River

Description of the Issues Identified – Under the U.S. Constitution and federal law, the State of Alaska gained ownership to the beds of navigable or tidally-influenced water on the date of statehood. The only exceptions are waters expressly withdrawn by the federal government prior to statehood or waters determined to be "non-navigable." The federal Bureau of Land Management (BLM) previously rejected evidence presented by the State that the Mosquito Fork is navigable. It instead labeled the river "non-navigable" and denied the State's ownership of the land underlying that river. BLM has since disclaimed any interest in the lands underlying the Mosquito Fork.

Litigation –*State of Alaska v. U.S.* (AK Dist. Ct., 3:12-cv-00114-SLG)

Status of Litigation – On July 27, 2015, one day prior to oral argument on the State's motion for summary judgment and three weeks prior to trial, the United States filed a disclaimer of interest pursuant to 28 U.S.C. § 2409a(e). The

United States disclaimed all interest adverse to the State in the submerged lands underlying the disputed portion of the Mosquito Fork. The Court confirmed the disclaimer on July 28. The State filed a motion for an award of fees and costs on August 11.

5. **National Park Service (NPS) regulations that apply to "waters subject to the jurisdiction of the United States located within the boundaries of the National Park System, including navigable waters and areas within their ordinary reach . . . and without regard to the ownership of submerged lands, tidelands, or lowlands."**

   Citation to Federal Statute or Regulation – 36 C.F.R. § 1.2(a)(3)

   Description of the Issues Identified – The State believed this regulation violated ANILCA section 103(c) (43 U.S.C. § 3103(c)), which excludes state-owned lands (including submerged lands) and waters from national parks and preserves and prohibits application of NPS regulations to them. The State was involved in two separate cases relating to this regulation.

   Litigation – *Sturgeon and State of Alaska v. Masica, et al.* (9th Cir., 13-36165, 13-36166); *Wilde v. U.S.* (AK Dist. Ct., 4:10-cr-021-RBB)

   Status of Litigation – In *Sturgeon*, the State intervened in the case to challenge the authority of the National Park Service to require Alaska Department of Fish & Game (ADF&G) to obtain a research specimen collection permit to conduct salmon genetic sampling from the State-owned bed (a gravel bar) of the Alagnak River. The federal district court ruled in favor of the Park Service and the State appealed to the Ninth Circuit. The Ninth Circuit ruled that the State did not have standing because the State's harm in obtaining the permit would not be remedied by a favorable decision. In a separately decided but related case brought by Mr. Sturgeon, the Ninth Circuit held that the regulation did not violate ANILCA. Mr. Sturgeon has filed a petition for certiorari with the U.S. Supreme Court, and the U.S. Supreme Court has not decided yet whether it will review the case. The State filed an amicus brief in support of Mr. Sturgeon's petition.

   In *Wilde*, the State filed amicus briefs explaining that 43 U.S.C. § 3103(c) prohibits application of NPS regulations on the Yukon River where it flows through Yukon-Charley Rivers National Preserve. Mr. Wilde was arrested by NPS rangers when he refused to allow them to conduct a boat safety check under NPS regulations. His arrest was upheld by the federal district court and the Ninth Circuit.

6. **Federal action listing certain populations of the ringed and bearded seals as threatened or endangered under the Endangered Species Act (ESA) by relying on speculative science**

Citation to Federal Register – 77 Fed. Reg. 76706, 76740 (Dec. 28, 2012)

Description of the Issues Identified – Listings under the ESA are to be made "solely on the basis of the best scientific and commercial data available" to the applicable federal agency. The National Marine Fisheries Service listed the ringed and bearded seals as threatened or endangered under the ESA despite lacking information supporting its finding and in conflict with the State's data and the best available scientific and commercial data. NMFS also recently proposed to designate approximately 350,000 square miles of waters off Alaska's coast as critical habitat for the ringed seal. Alaska's ability to manage its wildlife resources and develop appropriate mitigation and conservation measures for the bearded and ringed seals and their habitat within Alaska's lands and waters are displaced or limited by the federal government's actions taken under the ESA.

Litigation – *Alaska Oil and Gas Association v. Pritzker* (AK Dist. Ct., 4:13-cv-00018-RRB; 9th Cir., 14-35811); *State of Alaska v. NMFS* (AK Dist. Ct., 5:15-cv-00005-RRB)

Status of Litigation – In 2013, the State, along with the Alaska Oil and Gas Association and the North Slope Borough, filed a lawsuit challenging the listing of the bearded seal as threatened under the ESA based on climate model projections 100 years into the future. The federal district court agreed with the State and overturned the decision. The case is now on appeal before the Ninth Circuit. The appellees' responsive briefs are due September 21, 2015.

Based on the success with the case regarding the bearded seal, the State filed a lawsuit challenging the listing of the ringed seal in March 2015. The case is pending before the Alaska District Court. The State, along with other plaintiffs, filed their opening briefs August 10, 2015.

7. **Federal action designating a large area in Alaska as critical habitat for the polar bear under the Endangered Species Act (ESA)**

Citation to Federal Register – 75 Fed. Reg. 76086 (December 7, 2010)

Description of the Issues Identified – Designation of critical habitat under the ESA is to be made on the "…basis of the best scientific data available and after taking into consideration the economic impact, and any other relevant impact,

of specifying any particular area as critical habitat." For the polar bear critical habitat designation, the federal government's action did not follow the required process and failed to include sufficient record evidence justifying the designation. For example, the federal government included large areas of land in the designation without providing evidence demonstrating features essential to polar bears were present. If the critical habitat designation is upheld, 187,147 square miles of Alaska and territorial waters of the U.S. would be subject to Section 7 federal ESA permitting requirements.

Litigation – *State of Alaska v. Salazar, et al.* (9th Cir., 13-35619)

Status of Litigation – Following the district court's decision in favor of the State and other plaintiffs vacating and remanding the final rule, the cases were appealed to the Ninth Circuit as Case Nos. 13-35619, 13-35662, 13-35667, 13-35669, and 13-35666. The case is awaiting decision by the Ninth Circuit with briefing and oral argument completed on August 11, 2015.

8. Federal Ground Fish Fishery Regulations Covering Western Alaska

Citation to Federal Register – 79 Fed. Reg. 70286 (November 25, 2014)

Description of the Issues Identified - Steller sea lions are divided into two populations under the ESA. The dividing line between the Western distinct population segment (DPS) and the Eastern DPS is at 144 degrees west longitude (Cape Suckling, Alaska). The Western population is listed as endangered under the ESA. Although the Eastern population was previously listed as threatened, it was delisted in 2013 following a petition by the State of Alaska and a separate petition by the states of Washington and Oregon. In 2010, NMFS changed the federal regulations governing the ground fish fishery in western Alaska to protect the Western DPS based on the theory that fisheries were causing nutritional stress and lowering Steller sea lion reproduction rates within the Western DPS. The State and fishing industry groups sued but lost at the trial court level and on appeal. However, one trial court claim was resolved in the State's favor which required that NMFS complete a full EIS under NEPA. That process resulted in NMFS completing a new biological opinion and issuing new fishing regulations that removed some of the more onerous regulatory provisions. Although the State was not involved, various environmental groups challenged the new biological opinion. Ultimately, the biological opinion was upheld in court.

9. Potential Listing of the "Alexander Archipelago Wolf" in Southeast

Description of the Issues Identified – In 2011, the Center for Biological Diversity and Greenpeace filed a petition before the U.S. Fish and Wildlife Service to list the so-called "Alexander Archipelago Wolf" in Southeast Alaska as a threatened or endangered species under the ESA. Among other things, the petitioners claim logging on the Tongass brings new roads, making wolves vulnerable to hunting and trapping. On March 31, 2014, the USFWS published a 90-day finding indicating that the 2011 petition presented substantial information to suggest that listing may be warranted. Pursuant to a settlement agreement reached between USFWS and the petitioners after petitioners sued for delay in making a decision, USFWS has until December 31, 2015, to decide (1) whether the wolves comprise a population that can be listed and, if so, (2) whether listing is warranted. If both findings are affirmatively resolved, then USFWS will propose a listing rule. The State is monitoring the listing and will be providing comments.

10. Application of 2001 Roadless Rule in areas like the Tongass National Forest

Description of the Issues Identified – The 2001 Roadless Rule prohibits road construction, reconstruction, and timber harvesting on inventoried roadless areas in national forests, including the Tongass National Forest in Southeast Alaska. The State believes that the rule was improperly adopted and incorrectly applied to Alaska. Although an exemption for Alaska was issued by the federal government, a court struck down the exemption, which the State appealed. The Roadless Rule has greatly impacted the timber industry in Southeast Alaska as well as increased costs for developing hydroelectric and other projects.

Litigation – *State of Alaska v. U.S. Dept. of Agriculture* (D.C. Cir., 13-5147); *Organized Village of Kake v. U.S. Dept. of Agriculture* (9th Cir., 11-35517)

Status of Litigation – The State intervened in *Organized Village of Kake* to support the U.S. Department of Agriculture's exemption of Alaska from the Roadless Rule. The Alaska District Court struck down the exemption, and the State appealed to the Ninth Circuit. A three-judge panel of the Ninth Circuit upheld the exemption, but the Ninth Circuit agreed to rehear the case, nullifying the panel decision. The oral argument in the rehearing en banc occurred on December 16, 2014. In a 6 to 5 split decision released on July 29, 2015, the Ninth Circuit ruled against the State and upheld the district court decision striking down the Tongass exemption to the roadless rule. The State has until October 26, 2015 to decide whether it will file a petition of certiorari with the U.S. Supreme Court.

After the Alaska District Court struck down the exemption in *Organized Village of Kake*, the State filed a separate lawsuit in D.C. District Court challenging the Roadless Rule and its application to Alaska—*State of Alaska v. U.S. Department of Agriculture*. After various procedural challenges that were rejected by the D.C. Court of Appeals, the case is being heard on the merits by the D.C. District Court.

11. Izembek National Wildlife Refuge/King Cove to Cold Bay Road

Description of the Issues Identified – For many years, residents of King Cove have been trying to get a road from the village to the airport at Cold Bay, primarily for health and safety purposes, where large planes can land in the area's often poor weather conditions. A portion of the area the road would traverse is within federal wilderness in the Izembek National Wildlife Refuge. The State intervened in a case filed by Agdaagux Tribe of King Cove, and others, challenging the decision of Interior Secretary Jewell denying a proposed land exchange which would have allowed construction of a road. The State asserted that the secretary's decision violates the National Environmental Policy Act and the Omnibus Public Land Management Act, among other claims. The State is also continuing to explore the potential for asserting an R.S. 2477 right-of-way across the refuge based on the historical use of roads and trails in the King Cove area. In April 2014, the State provided the Department of Interior a 180-day notice of intent to sue, which is required before an R.S. 2477 lawsuit could be filed. In addition to further evaluating the R.S. 2477 claim, the State is also actively pursuing other legal alternatives to achieving construction of the road.

Litigation – *Agdaagux Tribe of King Cove v. Jewell* (AK Dist. Ct., 3:14-cv-0110-HRH).

Status of Litigation – The district court recently upheld Secretary Jewell's decision. The plaintiffs are considering whether to appeal to the Ninth Circuit.

12. Non-Drilling Oil and Gas Exploration Plans for ANWR under Section 1002 of ANILCA

Description of the Issues Identified - In 2013, the State filed a proposed plan for non-drilling oil and gas exploration in the Arctic National Wildlife Refuge (ANWR) under Section 1002 of ANILCA. The plan was rejected by the United States Fish and Wildlife Service (USFWS) based on the argument that authorization for exploration in the 1002 Area expired after the report mandated by section 1002(h) was submitted to Congress in 1987. The State

filed a lawsuit seeking a determination that the Department of Interior and USFWS may continue to approve non-drilling oil and gas exploration plans for the Coastal Plain of ANWR under Section 1002 of ANILCA.

Litigation – *State of Alaska v. Jewell* (AK Dist. Ct., 3:14-cv-00048-SLG)

Status of Litigation – The Alaska District Court issued a decision in favor of Secretary Jewell, upholding the federal government's interpretation that any obligation with respect to Section 1002 exploration plans expired in 1987. The State is evaluating whether to appeal.

13. Preemptive exercise by the Environmental Protection Agency (EPA) of its Clean Water Act Section 404(c) authority to veto dredge and fill activities on state lands in the absence of a Section 404 permit application

Description of the Issue Identified – EPA announced in the winter of 2011 that, in response to certain petitions, it would prepare a Bristol Bay Watershed Assessment (BBWA) that would comprehensively look at the potential impacts of large scale development throughout 15 million acres in the Bristol Bay area. Later, EPA refined its assessment to consider only potential impacts of hypothetical large scale mine development. But EPA records show that as early as 2009, before any petitions were filed, EPA was discussing whether it would use its Section 404(c) authority to regulate State lands at the Pebble deposit in order to prevent or curtail mining at the site. The final BBWA was released in January 2014, and in February 2014 EPA announced it was conducting a Section 404(c) veto review. In July 2014, EPA published a proposed veto decision in the Federal Register proposing to significantly restrict dredge and fill activities for mining at Pebble. Throughout these events, the State voiced concerns about EPA's actions with respect to both the BBWA and commencement of the veto review process. EPA has not yet issued a final decision.

Litigation – *Pebble Limited Partnership v. EPA* (AK Dist. Ct., 3:14-cv-00097; 9th Cir., 14-35845).

Status of Litigation – The State intervened in support of a lawsuit brought by Pebble Limited Partnership (PLP), asserting two claims. The first claim asserted that EPA did not have jurisdiction under the Clean Water Act to commence a Section 404(c) veto review in the absence of a Section 404 dredge and fill application associated with mine development at Pebble. The second claim asserted that EPA's exercise of its Clean Water Act Section 404(c) veto authority was premature and violates the Alaska Statehood Act, and the compact that Congress and the State made under the Act with respect to lands

and resources granted to the State for its management and socio-economic use. The EPA filed a motion to dismiss, which was granted after the court concluded the action was not ripe. However, the order dismissing the action was without prejudice, and the State may bring the same claims at a later date when EPA's veto review process is completed. PLP filed an appeal of the dismissal with the Ninth Circuit. The State did not join the appeal. In May of 2015, the Ninth Circuit affirmed the district court's dismissal of the case.

In the fall of 2014, PLP also filed two other lawsuits against EPA for its actions on the Pebble Deposit. One appeal addresses EPA's alleged violations of the Freedom of Information Act (FOIA) in responding to PLP's records requests. The other focuses on EPA's alleged violations of the Federal Advisory Committee Act (FACA) in establishing technical review teams of the BBWA. In the latter case, the district court issued a preliminary injunction enjoining EPA from taking further action on its Section 404(c) veto review until the court considers PLP's FACA claim on the merits. The State did not intervene in either the FOIA or FACA lawsuits, but continues to monitor the two cases.

II. Federal Litigation in Which the State Intervened to Challenge a Federal Action

1. Clean Air Act Emission Standards – *Michigan v. EPA* (S.Ct., 14-46)

The State intervened with Michigan and several other states challenging an EPA rule setting new Clean Air Act hazardous air pollutant emission standards for power plants. The D.C. Circuit Court of Appeals found in favor of the EPA and upheld the new rules in *White Stallion Energy Center LLC v EPA,* 748 F.3d 1222 (D.C. Cir. 2014). Subsequently, the U.S. Supreme Court granted the states' petition for certiorari and held that the Environmental Protection Agency unreasonably refused to consider costs in determining whether it is appropriate to regulate hazardous air pollutants emitted by electric utilities.

III. Federal Litigation in Which the State Intervened in Support of a Federal Action

1. **Taking Land into Trust for Tribes – *Akiachak Native Community v. Dept. of Interior* (D.C. Cir., 13-5360)**

   The State intervened to support a regulation excluding Alaska from regulations that otherwise govern the creation of Indian trust land. The State has claimed that the Alaska Native Claims Settlement Act forecloses taking land into trust for Alaska Natives, except Metlakatla. The federal district court disagreed and found in favor of the plaintiffs. The case is now on appeal before the D.C. Circuit Court of Appeals and the State filed its opening brief on August 24, 2015.

   After the federal district court ruled, the United States proposed to amend the land-into-trust regulation to remove the Alaska exclusion. The State submitted comments on the proposed rule, and the final regulation has been published. The federal district court has enjoined the Secretary of the Interior from creating any new trust land in Alaska pending resolution of the appeal.

2. **CD-5 USACE Permit – *Nukapigak v. U.S. Army Corps of Engineers* (AK Dist. Ct., 3:13-cv-00044)**

   Two cases were combined that challenge a 404 permit issued by the U.S. Army Corps of Engineers (USACE) to ConocoPhillips. The permit allows discharge of fill materials into waters of the U.S. to construct the CD-5 drill pad. The State intervened in support of USACE's action. After USACE submitted supplemental information pursuant to the court's order, the court upheld the permit and rejected plaintiffs' claims.

3. **Mining Claim Rules – *Earthworks v. U.S. Dept. of Interior* (D.C. Dist. Ct., 1:09-cv-01972)**

   Earthworks filed a lawsuit against the federal government challenging certain rules relating to mining claims. These rules generally benefit miners by eliminating certain fees and restrictions. The State intervened in support of the federal government. The case is pending before the federal district court.

4. **Salmon Fishery Management Plan – *United Cook Inlet Drift Association v. National Marine Fisheries Service* (9th Cir., 14-35928)**

   United Cook Inlet Drift Association (UCIDA) sued NMFS challenging the validity of Amendment 12 to the Fishery Management Plan for Salmon Fisheries in the Exclusive Economic Zone off the Coast of Alaska. Amendment 12 effectively removes federal oversight under the Magnuson-Stevens Act for three fishing areas beyond the three-mile limit from shore. One of these areas was the lower Cook Inlet, which is the focus of the lawsuit. The State intervened in support of NMFS to protect the State's interest in maintaining management authority over the area. The federal district court found in favor of NMFS, upholding Amendment 12. UCIDA appealed to the Ninth Circuit, and the case is in the briefing stages.

5. **Bureau of Ocean Energy Management's Lease Sale 193 in Chukchi Sea – *Native Village of Point Hope v. Salazar* (9th Cir., 12-35287)**

   Plaintiffs challenged the Bureau of Ocean Energy Management's (BOEM) decision to conduct Lease Sale 193 in the outer continental shelf of the Chukchi Sea. The State intervened to support BOEM's decision. The district court dismissed the case, and plaintiffs appealed to the Ninth Circuit. The Ninth Circuit reversed, holding that the EIS relied on an improper estimate of "economically recoverable oil." BOEM issued another EIS in compliance with the court's order, and the matter is back before the district court with a challenge to the new EIS.

6. **Shell's Chukchi Exploration Plan -- *Alaska Wilderness League v. Jewell* (9th Cir. 15-71656)**

   Appellants challenged Bureau of Ocean Energy Management's (BOEM) approval of Shell's Exploration Plan for the Chukchi Sea (exploration plan appeals are filed directly with the circuit court). The State intervened in support of BOEM's decision. The parties are briefing the appeal on an expedited schedule.

7. **Big Thorne Timber Sale - *SEACC v. U.S. Forest Service* (AK Dist. Ct., 1:14-cv-00013-RRB; 9th Cir., 15-352332)**

   In three separate suits, plaintiffs are seeking injunctions to prevent the U.S. Forest Service's (USFS) Big Thorne Timber sale on Prince of Wales Island. The State has joined with several other parties as intervenor-defendants in support of the USFS. The district court upheld the timber sale and plaintiffs

appealed. The Ninth Circuit denied plaintiffs motion for injunction pending appeal, and the case is in the early briefing stages.

IV. Federal Litigation in Which the State Filed or Joined in an Amicus Brief

The following list summarizes the cases where the State either filed or joined in an amicus brief in 2015 to date involving the federal government or the potential preemption of state law.

1. ***Sturgeon v. Masica* (Petition for Certiorari, Supreme Court).** Alaska filed an amicus brief to the Supreme Court in support of a private plaintiff-appellant challenging the National Park Service's authority to regulate state waters—and by extension state, Native, and private lands—falling within conservation system units. The State argued that under the Alaska National Interest Lands Conservation Act (ANILCA), Alaska retains the sovereign right to manage its lands and resources without federal regulatory interference.

2. ***People for the Ethical Treatment of Property Owners v. U.S. Fish & Wildlife Service* (Tenth Circuit).** Alaska joined Utah's amicus brief in support of a group of private land owners arguing that Congress lacks authority under the Commerce Clause to regulate an exclusively intrastate threatened species.

3. ***Sierra Club v. McCarthy* (Ninth Circuit).** Alaska joined Nebraska's amicus brief in support of a multi-state group of intervenors challenging an EPA settlement with the Sierra Club. The intervenor-states argued that EPA's settlement disregarded requirements in the Clean Air Act.

4. ***Peruta v. San Diego* (En Banc Ninth Circuit).** Alaska joined Alabama's amicus brief in support of a group of private plaintiffs challenging a "good cause" requirement to obtain a concealed weapon permit on the grounds that the requirement violates the Second Amendment.

5. ***Jackson v. San Francisco* (Petition for Certiorari, Supreme Court).** Alaska joined Nebraska's amicus brief in support of a group of private plaintiffs challenging a San Francisco regulation that required handguns in homes be kept in a locked box when not carried on a person on the grounds that the regulation violated the Second Amendment.

6. ***Freidman v. Highland Park* (Petition for Certiorari, Supreme Court)**. Alaska joined West Virginia's amicus brief in support of petitioners Illinois State Rifle Association and a municipal resident in challenging a municipal ordinance that prohibits possession of assault weapons and large-capacity magazines and considers the appropriate framework to be applied in Second Amendment cases.