

FEDERAL OVERREACH *into* RESOURCE DEVELOPMENT *in* ALASKA

Senate State Affairs Committee

Tuesday, January 22, 2013

Juneau, Alaska

Dan Sullivan, Commissioner

Alaska Department of Natural Resources



OUTLINE

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PART III: Litigation - Striking a Balance

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PART I

Introduction

STATE of ALASKA

- LAND BASE & OWNERSHIP-

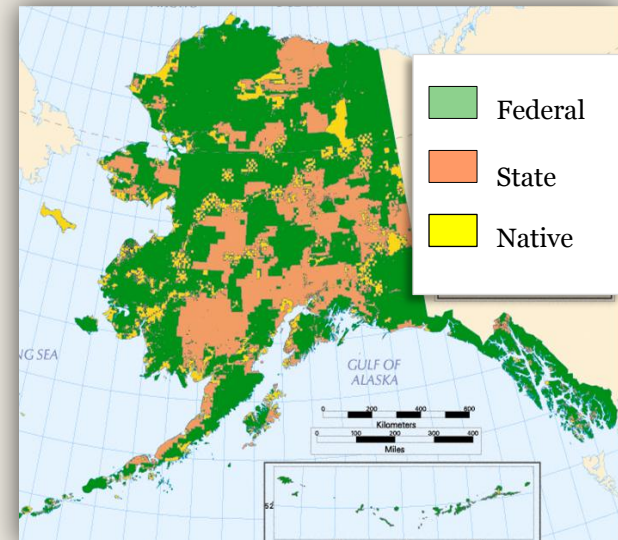


Land Base

- 586,412 square miles—more than twice the size of Texas
- Is larger than all but 18 sovereign nations
- Has more coastline than all other U.S. states combined
- Has more than 3 million lakes and half of the world's glaciers
- Has approximately 40% of the nation's freshwater supply
- Is the least densely populated U.S. state

Land Ownership

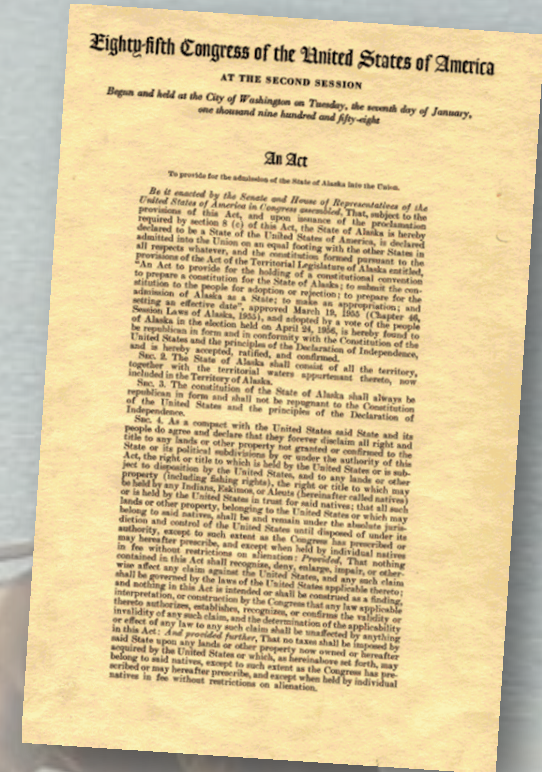
- *Federal Land*: more than 200 million acres
- *State Land*: Approx. 100 million acres of uplands, 60 million acres of tidelands, shore lands, and submerged lands, and 40,000 miles of coastline
- *Native Corporation Land*: 44 million acres



LAWS GOVERNING FEDERAL/STATE RELATIONS

Numerous laws form the unique legal framework for relations between the federal government and Alaska as a sovereign state:

- The Alaska Statehood Act
- Alaska National Interest Lands Conservation Act (ANILCA)
- Alaska Native Claims Settlement Act (ANCSA)
- NPR-A federal statutes
- Outer Continental Shelf (OCS) Lands Act



The FEDERAL GOVERNMENT - TROUBLING TRENDS IN DECISION MAKING-

One or more of the following troubling elements has often been present in recent major federal decisions affecting Alaska:

- **Significant Overreach**

Examples: Huge Endangered Species Act (ESA) critical habitat designations (i.e., polar bear), Arctic drilling moratorium, Wild Lands designation initiative, National Petroleum Reserve – Alaska (NPR-A) land withdrawals, Environmental Protection Agency (EPA) Clean Water Act 404(c) pre-emption, Department of Interior OSM state permit challenges on coal

- **Lengthy Delays**

Examples: CD-5 permitting, Point Thomson permitting, Outer Continental Shelf (OCS) Shell permits, Healy Clean Coal plant, Cook Inlet seismic operations, EPA Tanana River bridge delays

- **Lack of State Consultation and Input**

Examples: CD-5, Arctic drilling moratorium, NPR-A Wild Lands initiative planning process, Izembek National Wildlife Refuge land exchange, critical habitat designations

Some of these actions have been taken through Executive Orders or other executive authorities, without any congressional or public review

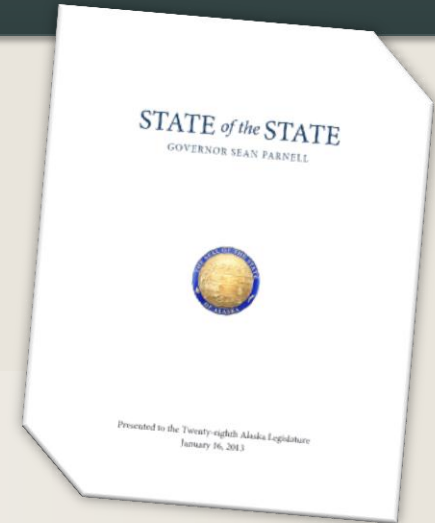
PART II

State's Efforts to Address Overreach

APPROACHES *to* ADDRESS FEDERAL OVERREACH

“Let us also come together to stop federal overreach. When a federal agency tramples on what is our right, we will not roll over; we will not lie down. We will stand up for what is right.”

– Governor Parnell, 2013 *State of the State* speech



- **In order to address certain federal agencies and certain outside groups' attempts to lock up our natural resources and economic future, the State has taken a variety of actions:**

- **Monitor** activities, decisions and litigation strategies that could infringe upon state sovereignty and the right of our citizens to create their own economic future
- **Advocate publicly** through op-eds, speeches, and U.S. congressional testimony
- **Build alliances** with other government entities to advocate for shared rights and interests
- **Assume authority** in regulatory areas where states programs can be granted primacy
- **Work cooperatively** with regulatory agencies and environmental groups to reach a mutual agreeable resolutions
- **Research** legal options, build an evidentiary and administrative record, and prepare a legal strategy to protect Alaska's interests and, when appropriate as a last resort, **initiate litigation**

ADDRESSING OVERREACH - MONITORING -

- A key element of addressing overreach is being aware of what possible federal actions are being contemplated. Then the State can preemptively engage on issues before they build momentum and take shape without State input.
 - For example: In 2010, there was discussion in Washington, D.C. about designating ANWR as a national monument, despite the “no more” clauses of ANILCA. The Governor was able to quickly respond to this issue and the federal government has not taken further action on this front.

12/3/10 – Governor Parnell to President Obama :

“I understand that you recently received a letter from a group of United States senators requesting that you declare the Arctic National Wildlife Refuge (ANWR) a national monument... The State of Alaska Department of Law has reviewed this matter and determined that such action would violate federal law unless ratified by both houses of Congress.”

MEMORANDUM

TO: Governor Sean Parnell
FROM: Attorney General Dan Sullivan

On November 19, twenty-five United States Senators requested that President Obama take unilateral executive action and designate part of the Arctic National Wildlife Refuge (“the Refuge”) as a national monument. However, such a unilateral action by the President would violate federal law, unless it were ratified by both houses of Congress.

The Alaska National Interest Lands Conservation Act (ANILCA) expressly limits executive branch withdrawal authority in Alaska:

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

authorized by joint resolution of the Legislature of Alaska, which shall be provided in advance. Such action shall be a joint action of such

designation of the Refuge, wilderness designations, and any other action to be

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December 3, 2010

The Honorable Barack Obama
President
The White House
1600 Pennsylvania Avenue, N.W.
Washington, D.C. 20500

Dear Mr. President,

I understand that you recently received a letter from a group of United States senators requesting that you declare the Arctic National Wildlife Refuge (ANWR) a national monument. The State of Alaska strongly opposes any measures that would further encumber job potential and domestic energy production on the coastal plain of ANWR, the most promising unexplored petroleum region in North America.

Beyond this, compelling legal reasons weigh against a monument designation. The State of Alaska law unless ratified by both houses of Congress, even though the lands involved were previously included within an established wildlife refuge. Provisions of the Alaska National Interest Lands Conservation Act (ANILCA) expressly limit executive branch withdrawal authority in the state, with additional restrictions related to ANWR. A copy of the Alaska Attorney General's legal memorandum supporting the State's conclusion is enclosed.

Thank you for considering our views. We would be pleased to discuss this issue further.

Sincerely,

Sean Parnell
Governor

cc: The Honorable Kenneth L. Salazar, Secretary, United States Department of the Interior

ADDRESSING OVERREACH - PUBLIC ADVOCACY/TESTIMONY -

Governor Parnell in WSJ op-ed, June 2, 2010:

“Although familiar with ANWR, most Americans are less likely to know about NPR-A and how vital it is to our energy security... Alaska stands ready to help move the nation closer to energy independence, and it's a shame that the federal government is standing in the way.”

Recent U.S. Congressional Testimony by DNR officials:

- 8/2/12 U.S. House of Representatives Subcommittee on Energy and Power, *American Energy Initiative*
- 6/2/11 U.S. House Subcommittee on Energy & Mineral Resources, *Alaska's drilling innovations*
- 6/2/11 U.S. House Subcommittee on Energy & Mineral Resources, *Alaska's strategic minerals*
- 5/10/11 U.S. Senate Committee on Energy & Natural Resources, *New developments in upstream oil and gas technologies*
- 4/13/11 U.S. House Subcommittee on Energy & Power, *Alaska's hydrocarbon resources*

“What’s the hold-up on Alaskan Oil?”

My state’s ANWR region could produce one million barrels of oil per day if only Washington let us.

— Governor Parnell, WSJ, 2-9-12



THE WALL STREET JOURNAL
OPINION

OPINION | June 2, 2010

The Gulf Spill and Alaska

We see signs that the Obama administration wants to use the disaster to shut down oil production even in the safest areas.

By SEAN PARNELL

Juneau, Alaska

In Alaska we empathize with residents of the Gulf states who are watching a potentially catastrophic oil spill continue unchecked. This tragedy reminds a financial and environmentalist that we still feel here from the 1970 Exxon Valdez studies still find lingering subsurface oil, for example, and the burning history. But just as Alaskans did not abandon our belief in responsible petroleum exploration after that disaster, Americans cannot afford to take their eyes off the ball now.

As I noted in these pages last year, responsible offshore oil and gas production cost, has to be a critical component of our long-term energy security strategy: responsible offshore domestic production. Yet there are troubling signs that it is attempting to stifle—particularly in my state—the critical offshore component produce in our energy.

The coastal plain of the Arctic National Wildlife Refuge (ANWR) holds up a recoverable oil. While this area was set aside by Congress in 1980 for later oil and gas production, a federal agency is now undertaking a "no" plan of the refuge—a review that seems aimed at laying the groundwork for a would have production.

But it is not only ANWR that the Obama administration seems intent on lock also now blocking oil development in the National Petroleum Reserve—Alaska. Although familiar with ANWR, most Americans are less likely to know about to our energy security. Given recent developments, it's time to elevate the public national discourse.

NPR-A, a 23 million acre stretch of Alaska's North Slope, was set aside by the 1923 for the specific purpose of supplying our country and military with oil. It has been administered by the Department of the Interior, and since 1980 it has been development. The most recent estimates indicate that it holds 12 billion barrels of natural gas.



Offshore oil rig in the Arctic.

Valdez, Alaska

and gas production means jobs and economic growth, which develop the stable communities that underpin a strong nation. Somehow this reasoning continues to fall flat.

Just last month, President Obama said in his State of the Union address that he had directed his administration to "open more than 75% of our potential offshore oil and gas resources." He should have said "redirected," for this simply repackaged his current position on the Outer Continental Shelf, which slowed Arctic development and did nothing to advance ANWR's potential.

Million barrels of it—is accessible. It's extractable. Yet we wait. Ignoring promising a willing accepting a steady diet of foreign oil. That's exactly what's happening.

Testimony before the U.S. House of Representatives Subcommittee on Energy and Power

The American Energy Initiative

August 2, 2012

Given by:
Dan Sullivan, Commissioner
Department of Natural Resources
State of Alaska

I. Introduction

Chairman Whitfield, Ranking Member Rosten, and members of the House Subcommittee on Energy and Power, on behalf of Governor Sean Parnell, the State of Alaska welcomes this opportunity to testify as part of this Committee's important work on the American Energy Initiative. More specifically, we want to emphasize to this Committee and to the rest of your colleagues in the U.S. Congress that the United States is on the cusp of an energy and responsible resource development renaissance which will have enormous benefits for our country and citizens. But in order to fully seize this strategic opportunity, we must modernize and reform our federal permitting system and increase access to energy production on federal lands.

Biographical Information

Before getting into substantive matters, I would like to briefly mention my professional background as it pertains to this testimony. I have been serving as the Commissioner of the Alaska Department of Natural Resources (DNR), a state agency of over 1,100 personnel, since December 2010. DNR is responsible for managing Alaska's vast land, energy, and natural resources with approximately 100 million acres of uplands, 60 million acres of tundra, shore lands, and submerged lands, and 40,000 miles of coastline. DNR manages one of the largest portfolios of oil, gas, minerals, land, water, timber, and renewable energy in the world.

Prior to being appointed as the DNR Commissioner, I served as Alaska's Assistant Attorney General. One of my areas of focus was issues relating to natural resource management and development. From May 2006 to January 2009, I served as the U.S. Assistant Secretary of State for Economic, Energy, and Business Affairs, where much of my work focused on international energy issues, including serving as the U.S. Governing Board member of the International Energy Agency. Prior to my time as U.S. Assistant Secretary of State, I served as a Director in

ADDRESSING OVERREACH: BUILDING ALLIANCES

- Washington, Oregon, and Alaska submitted two petitions to NOAA in September 2010 asking that the eastern Steller sea lion population be removed from threatened status under the ESA. In April 2012, NOAA proposed removing the eastern Steller sea lion from the threatened list.
- The State of Alaska partnered with the North Slope Borough to challenge the critical habitat designation for the polar bear, urge the Army Corps of Engineers to promptly process permits for the Point Thomson project, and engage with federal officials in other areas of shared interest.
- Governor Parnell is currently chairman of the Outer Continental Shelf (OCS) Governors' Coalition. This organization facilitates communication between States and the federal government in support of responsible off-shore development.

The Honorable Bobby Jindal, Governor of Louisiana (Chair)
The Honorable Sean Parnell, Governor of Alaska
The Honorable Rick Perry, Governor of Texas
The Honorable Phil Bryant, Governor of Mississippi
The Honorable Robert Bentley, Governor of Alabama
The Honorable Nikki Haley, Governor of South Carolina
The Honorable Robert McDonnell, Governor of the Commonwealth of Virginia



March 13, 2012

President Barack Obama
The White House
1600 Pennsylvania Avenue NW
Washington, DC 20500

Dear Mr. President:

On behalf of all of the Governors participating in the Outer Continental Shelf (OCS) Governors Coalition, we are writing to inform you of the status of our coalition and to express some concerns we have regarding the status of offshore energy development.

In May 2011, the Governors of Alaska, Louisiana, Mississippi, Texas and Virginia formed the OCS Governors Coalition with the goal of better understanding the promise and potential of offshore energy development. Since its inception, the Governors of Alabama and South Carolina have joined the Coalition.

Specifically, the mission of the Coalition is to improve the potential role of offshore energy production in a comprehensive national energy policy. In addition, the Coalition seeks improved communication with federal officials on offshore resource development and improved overall management and stewardship of coastal resources. We believe these resources could play an important role in job creation, increasing economic activity, mitigating national, state and local government deficits, reducing our foreign trade deficit and putting America on a path to energy independence.

Similar to your recent endorsement of an "all-of-the-above" energy policy, our Coalition embraces the understanding that the United States should develop all of our energy resources – both traditional and renewable sources – to provide our nation with a stable, secure supply of affordable American energy. The soaring cost of fuel further underscores how imperative a comprehensive domestic energy policy is for American families and businesses, particularly at a time of economic recovery.

As we begin a New Year, the Coalition has identified four priorities for 2012 and would like to have a better dialogue with your Administration in order to address these issues.

First, the Coalition requests that you:

3/13/12 – OCS Governors' Coalition to President Obama:
"... the Coalition seeks improved communication with federal officials on offshore resource development and improved overall management and stewardship of coastal resources."

ADDRESSING OVERREACH: ASSUMING PERMITTING AUTHORITY

Some federal environmental statutes include sections that allow state programs to receive approval from federal agencies to administer their provisions:

- Earlier this year, the Department of Environmental Conservation (DEC) assumed full responsibility for wastewater discharge permitting in Alaska.
- At the beginning of this legislative session, Governor Parnell introduced a bill that would allow state agencies to take initial steps needed to assume wetlands dredge and fill permitting responsibilities from the Army Corps of Engineers.



Alaska Department of Environmental Conservation Assumes Wastewater Discharge Permitting from the Environmental Protection Agency

(JUNEAU, AK) –The Department of Environmental Conservation (DEC) has assumed permitting authority for wastewater discharges from the U.S. Environmental Protection Agency (EPA). Under the Clean Water Act, EPA had been the permitting authority to issue wastewater discharge permits in Alaska. With the final transfer of authority, DEC assumes full authority to administer the wastewater discharge permitting and compliance program in Alaska.

In 2008, the State of Alaska applied to implement the National Pollutant Discharge Elimination System (NPDES) Program. EPA approved the application and agreed to transfer program authority to the State over four phases. The State's program is called the Alaska Pollutant Discharge Elimination System (APDES) Program. The initial phase transferred in 2008 and included domestic discharges, log storage and transfer facilities, seafood processing facilities, and hatcheries. Phase II was completed in 2009 and included federal facilities, stormwater, wastewater pretreatment programs, and non-domestic discharges. Phase III was completed in 2010 and included mining activities. November 1 marks the completion of Phase IV and is the final transfer of authority for the oil and gas industry, petrochemicals, and other facilities that have not yet been transferred.

11/1/2012 – Larry Hartig, Commissioner of the DEC, upon assuming wastewater discharge permitting from the Environmental Protection Agency:
"This is an important accomplishment for the State of Alaska... The transfer of this authority will enable us to manage wastewater issues closer to home and better serve Alaskans as a result. We appreciate EPA's efforts in helping us reach this goal."

ADDRESSING OVERREACH - COOPERATION -

STATE OF ALASKA

DEPARTMENT OF NATURAL RESOURCES

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Febr

Mr. J
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THE STATE
of ALASKA

Department of Natural Resources

Office of the Commissioner

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THE STATE
of ALASKA
GOVERNOR SEAN PARNELL



August 27, 2012

Harry A. Baij
Department of the Army
U.S. Army Engineer District, Alaska
Regulatory Division
P.O. Box 6898
Joint Base Elmendorf-Richardson, Alaska 99506-0898

Re: Timeline for Issuance of Record of Decision (ROD) for the Point Thomson Project (POA-2001-1082-M1)

Dear Mr. Baij:

In addition to comments submitted today from the State of Alaska in regard to the U.S. Army Corps of Engineers (Corps) Public Notice of Application for Permit for the Point Thomson project (POA-2001-1082-M1), we—the State of Alaska and North Slope Borough—are writing to jointly express our concern over the potential delay in issuance of the Record of Decision (ROD) for the Point Thomson project.

The Corps has recently informed State officials that the Record of Decision (ROD) may not be issued on the Corps' previous target date of September 21, 2012. The State of Alaska has consistently expressed serious concerns at all levels of the federal government about not meeting target dates and further delaying the issuance of the ROD.

As you are well aware, there have been previous federal delays that have delayed first production of gas condensate from Point Thomson from 2014-2015 to 2015-2016. This one-year delay of bringing Point Thomson online has unfortunately cost hundreds of jobs and new production into the Trans-Alaska Pipeline System (TAPS)—something Alaska and our country desperately need.

Point Thomson is the largest undeveloped oil and gas field in Alaska. Timely completion of the ROD is important to keep Point Thomson on schedule for development—in particular, to enable construction to begin this winter. As part of its settlement of a long-standing dispute with the State, the field operator, ExxonMobil, has committed to first production of gas condensate from the field no later than the winter of 2015-2016. The project is expected to sustain 600 to 700 jobs and peak employment of 2,400 jobs. It will increase TAPS throughput and provide an important impetus to large-scale commercialization of North Slope natural gas.

2/2/12 – Commissioner Sullivan to DOI Deputy Secretary Hayes:

“Thank you for the time you have taken on several occasions to meet me and other staff from the State of Alaska regarding the Interagency Working Group on Coordination of Domestic Energy Development and Permitting in Alaska.”

8/11/12 – Deputy Commissioner Fogels to DOI Deputy Secretary Hayes:

“Thank you for your letter of October 18, 2012 asking for State of Alaska input to the report you are preparing for President Obama on an integrated management approach for the Arctic. We believe that such an approach must be founded on a collaborative federal-State relationship.”

8/27/12 – Commissioner Sullivan and Mayor Charlotte Brower to Army Corps Regulatory Staff:

“Given our concern over continued delayed federal permit decisions, we are encouraged to learn the Corps has recently expressed dedication to issuing the ROD on the original September 21st target date. We hope this remains the case.”

PART III

Litigation – Striking a Balance

STRIKING THE BALANCE

- STATE SUPPORTING FEDERAL DECISIONS THROUGH LITIGATION-

- Defending challenges to Chukchi and Beaufort Sea exploration plans
- Defending OCS lease sale 193 and related seismic activity
- Defending challenges to 2007-2012 OCS five-year Lease Plan
- Fighting to keep the ribbon seal unlisted
- Supporting favorable mining regulations
- Opposing last-ditch efforts by environmental groups to block a federally authorized timber sale
- Supporting the “Tongass Exemption” to the USFS “Roadless Rule”

STRIKING THE BALANCE

- STATE OPPOSING FEDERAL DECISIONS THROUGH LITIGATION-

- Challenging the EPA's "endangerment finding."
- Challenging NPS regulation that infringes upon state sovereignty.
- Appealing an overbroad federal assertion of federal water rights in Alaska's rivers.
- Opposing the federal offshore drilling moratorium.
- Challenging the polar bear listing and opposing the broad critical habitat designation for the polar bear.
- Challenging the beluga listing and opposing the broad critical habitat designation for the belugas in Cook Inlet.

PART IV

Positive Outcomes but
Ongoing Concerns

POSITIVE OUTCOMES: DEFINING SUCCESS

Success is not win/lose on a lawsuit – success is responsible development moving forward, Alaskan's rights preserved, and economic opportunities being available to all of Alaska's citizens. All of our efforts, including lawsuits, have this focus. Examples of success include:

- Point Thomson permitting
- Polar bear critical habitat federal court ruling
- Tanana River bridge project approval
- Arctic drilling moratorium reversal
- CD-5 permitting
- Kensington mine Supreme Court ruling
- Diesel timber sale federal court victory
- No executive branch ANWR monument designation

ONGOING CONCERNS

- EXAMPLES OF UNRESOLVED ISSUES -

- Shell permitting, including the Department of Interior's current "Expedited Assessment of 2012 Arctic Operations"
- OSM response to state's position on Wishbone Hill permits
- Cook Inlet – permit delays for new companies that could support energy production in the Inlet
- NPR-A Final Environmental Impact Statement and upcoming Record of Decision
- Jurisdictional/navigability issues for waterways