Alaska Department of Law

Federal Laws and Litigation Report

in compliance with AS 44.23.020(h)

Dated: January 15, 2021

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. For more information on any item discussed in this report, contact Assistant Attorney General Sharla Mylar, at (907) 269-5171 or sharla.mylar@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

A. Bureau of Land Management's (BLM) refusal to recognize State's ownership in the submerged lands underlying certain rivers

Citation to Federal Action, Statute, or Regulation – Equal Footing Doctrine, Submerged Lands Act. 43 U.S.C. § 1311; Alaska Statehood Act, Pub. L. 85-508, § 6m, July 7, 1958, 72 Stat. 339, ANILCA 16 U.S.C. § 3103(c).

Description of the Issues Identified – Under the equal footing doctrine 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 The only exceptions are waters expressly withdrawn or lawfully conveyed by the federal government prior to statehood or waters determined to be "non-navigable." There are a number of ongoing disputes with BLM where the agency has refused to recognize the State's interest in the land underlying rivers that the State believes are navigable. The State has had recent success in lawsuits where BLM filed a disclaimer of interest rather than defending against the State's claim of ownership. The following cases are still pending or were recently resolved.

1. Kuskokwim River

The State requested a recordable disclaimer of interest on the Kuskokwim River to resolve a dispute over ownership of a portion of the riverbed. BLM denied the request, and the State filed an administrative appeal to the Interior Board of Land Appeals (IBLA). Briefing is complete, and the State is awaiting a decision by the board.

2. Middle Fork, North Fork, and Dennison Fork of the Fortymile River

BLM previously found portions of the Middle Fork of the Fortymile, North Fork of the Fortymile, Dennison Fork, and West Fork of the Dennison Fork non-navigable. In response to the State's notice of intent to sue, BLM reversed its position on the Dennison Fork and the West Fork of the Dennison Fork, but not the other two rivers. The State filed a quiet title action on those rivers in October, 2018. BLM filed an answer denying the navigability of the disputed portions of the Middle Fork and North Fork of the Fortymile. The parties are engaged in discovery; trial is anticipated in the summer of 2021.

3. Togiak Public Use Management Plan (PUMP)

The PUMP asserts jurisdiction over, and directs the United States Fish and Wildlife Service (USFWS) to adopt regulations to limit unguided use on state navigable waterways in the Togiak National Wildlife Refuge. The USFWS has not proposed the regulations yet.

B. Application of 2001 Roadless Rule in areas including the Tongass National Forest

Citation to Federal Action, Statute, or Regulation – 2001 Roadless Rule (66 Fed. Reg. 3243-3273 (Jan. 12, 2001)), 36 CFR 294.

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, the Alaska District Court struck down the exemption. The Roadless Rule has greatly impacted the timber industry in Southeast Alaska as well as increased costs for developing hydroelectric and other projects.

The State has pursued litigation to invalidate the Roadless Rule or reinstate an exemption for Alaska, and, more recently, the State has pursued a regulatory fix. The State entered into a memorandum of understanding for cooperating agency status with the U.S. Department of Agriculture (USDA) to work on a Tongass specific rule to replace the Roadless Rule . The rulemaking process resulted in the USDA proposing an exemption for the Tongass to the Roadless Rule.

Litigation – *State of Alaska v. U.S. Dept. of Agriculture* (D.C. Cir., 17-5260).

Status of Litigation – After the Alaska District Court struck down the exemption, the State filed a separate lawsuit in the D.C. District Court challenging the Roadless Rule and its application to Alaska. The district court upheld the Roadless Rule and dismissed the State's case. The State appealed to the D.C. Circuit Court of Appeals. Briefing was completed, but the appellate court granted intervenor's request to put the case on hold until the rulemaking is completed. In October 2020, the USDA published a final rule exempting the Tongass from the 2001 Roadless Rule. The 2001 Roadless Rule continues to apply to about 5.4 million acres in the Chugach. In December 2020, the State requested that the abeyance be lifted and the case put back on the calendar for argument. The

federal government and intervenor defendants have requested the case be dismissed as moot. The parties are responding to the motions.

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

Citation to Federal Action, Statute, or Regulation – Revised Statute 2477.

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 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); *State of Alaska v. U.S.* (9th Cir., 14-35051).

Status of Litigation – The case involves rights-of-way crossing lands in the area surrounding Chicken, Alaska owned by the U.S. and others, including Native allotment owners. The Ninth Circuit Court of Appeals held that the State needed to condemn the rights-of-way across any Native allotments. The State successfully condemned the rights-of-way across Native allotment lands, which was necessary before the case proceeded on the main issues relating to land owned by the federal government. The Native allotment owners appealed that decision, and in November 2020 the Ninth Circuit affirmed the district court. Since the district court's decision on the condemnation, the remainder of the case has also proceeded; trial is anticipated in the fall of 2021.

D. 2016 Amendment to the Tongass Land Resources Management Plan (TLMP)

Citation to Federal Action, Statute, or Regulation – 2016 Amendment to the TLMP

Description of the Issues Identified – The 2016 TLMP amendment fully incorporated both the Roadless Rule and the Secretary of Agriculture’s directive to rapidly transition

timber harvest from old growth to young growth. The result would effectively place millions of additional acres off-limits to timber harvest and other resource development. The timber industry would likely be forced out of business while utilities, mining, and other industries would be substantially harmed.

The Secretary of Agriculture granted the State's petition for a rulemaking to effectively amend the Roadless Rule by promulgating a state-specific rule to manage roadless areas in Alaska. USDA published a Notice of Intent to commence the rulemaking on August 30, 2018. But, the USDA declined the State's request to simultaneously amend the 2016 TLMP concluding that any amendment to the TLMP must be a second process after the regulation has been changed. The final rule published in October 2020 exempted the Tongass from the 2001 Roadless Rule and directed administrative changes be made to the Tongass forest plan consistent with the changes in timber suitability determinations from the new exemption rule. It is not anticipated that the plan will change regarding the transition from old growth to young growth.

E. 2019 Amendment to the Chugach National Forest Land Resources Management Plan

Citation to Federal Action, Statute, or Regulation – ANILCA Section 1326(b); 16 U.S.C. 3213(b).

Description of the Issues Identified – The new Chugach National Forest Land Resources Management Plan established de facto Conservation System Units (CSUs) in violation of ANILCA's prohibition of additional CSUs except by Act of Congress. The unauthorized CSU's overlap existing highways, railways, and utilities and will make it difficult to impossible to expand or improve these facilities.

The State sought resolution of these issues with the United States Forest Service (USFS) both formally and informally. On April 16, 2020 the USFS issued the final Record of Decision and new Plan, which specifically identified the Resurrection Pass Trail as a CSU, although the trail has no such congressional designation. The new Plan also mandates management of a number of river segments as if those segments were CSUs, although State highways parallel these rivers and are located within the restrictive management areas. The State is disappointed that the USFS did not resolve the State's concerns with their management plan and the State is considering its options.

F. NPS and USFWS Rules on Management of Fish and Game

Citation to Federal Action, Statute, or Regulation – 36 CFR Parts 13 & 36.

Description of the Issues Identified – The State challenged regulations adopted by the National Park Service affecting hunting on preserve lands throughout Alaska and regulations adopted by the U.S. Fish and Wildlife Service restricting hunting on the Kenai National Wildlife Refuge (NWR). Three cases were filed and consolidated. The NPS regulations preempted state management of wildlife, prohibited several means of take for predators, and changed public participation procedures for hunting and fishing closures. The USFWS regulations prohibit certain activities within the Kenai NWR and the State is objecting to the prohibition on taking brown bears at black bear baiting stations, a practice that is allowed under state regulations.

Litigation – *State v. Bernhardt* (3:17-cv-00013).

Status of Litigation – In July 2017, NPS and USFWS were directed by the Acting Assistant Secretary for Fish and Wildlife and Parks to initiate rulemaking procedures to reconsider their rules. In June 2020, NPS published a final rule that reversed much of the 2015 rule challenged in the litigation. USFWS published a proposed rule in June 2020 that would reverse a portion of the current rule being challenged. The NPS portion of the litigation has been stayed for several months pending possible settlement. In November 2020 the court upheld portions of the Kenai Rule but revoked restrictions on firearms along rivers and remanded for non-compliance with NEPA. The State appealed portions of the decision pertaining to the Kenai Rule.

G. Federal Subsistence Board actions

Citation to Federal Action, Statute, or Regulation – Title VIII of ANILCA, P.L. 96-487 as amended; Open Meetings Act, 5 USC 552b; Administrative Procedure Act, 5 USC 706.

Description of the Issues Identified – In August 2020 the State challenged actions taken by the Federal Subsistence Board as violating ANILCA, the federal open meetings laws, and the APA. The State challenged FSB's decision to close moose and caribou hunting in GMU 13A and 13B for two years to non-federally qualified hunters. The State also challenged FSB's delegation of authority to local federal land managers to open emergency hunts and to delegate hunt administration outside of a federal agency, neither action being authorized by Congress.

Litigation – *State of Alaska v. Federal Subsistence Board* (No. 20-00195).

Status of Litigation – The state's requests for injunctions were denied. The administrative record is being reviewed and a briefing schedule may be determined in early 2021.

H. Bureau of Land Management's Eastern Interior Resource Management Plan

Citation to Federal Action, Statute, or Regulation – Federal Land Policy and Management Act (FLPMA) 43 U.S.C. § 1712.

Description of the Issues Identified – The Eastern Interior Resource Management Plan (EIRMP), adopted January 6, 2017, covers approximately 6.5 million acres of public land, including White Mountains National Recreation Area, the Steese National Conservation Area, and the Fortymile area. The State believes the EIRMP recommends unjustified mineral closures and conservation designations that are inconsistent with the Alaska National Interest Lands Conservation Act and Federal Land Policy Management Act's multiple use mandate. The EIRMP also fails to provide for lifting outdated ANCSA d-1 withdrawals unless new conservation withdrawals are implemented, although BLM has lifted the withdrawals in some of the less controversial areas, facilitating conveyance of certain statehood selections. We continue to monitor congressional and agency action on the issue and evaluate our options, including administrative action, and litigation. We also continue to monitor implementation decisions made under EIRMP.

I. Bureau of Indian Affairs evaluation of lands into trust in Alaska

Citation to Federal Action, Statute, or Regulation – Solicitor's Opinion M-37053; 25 CFR § 151.1.

Description of the Issues Identified – After the district court in *Akiachak v. Dept. of Interior* found in favor of plaintiffs, the Department of Interior (DOI) changed its regulations to permit lands in Alaska to be taken into trust. In the summer of 2018, the Department of Justice rescinded the Solicitor's Opinion on which the DOI relied to change its regulations. DOI has stated it will not process any new applications, but federal representatives have stated that pending applications would continue to be processed.

The State commented on six applications before the DOI embarked on the new rulemaking process—one from the Craig Tribal Association, three from the Central

Council Tlingit and Haida Indian Tribes of Alaska, one from the Ninilchik Traditional Council, and one from the Native Village of Fort Yukon. The Bureau of Indian Affairs (BIA) has granted the Craig application, but has not acted on the other applications. The BIA held public meetings and consultations with tribes throughout the State. The State submitted comments to Interior on the proposed rule on January 25, 2019. DOI has not yet published a new rule.

J. Dispute over Arctic National Wildlife Refuge boundary with the Bureau of Land Management

Citation to Federal Action, Statute, or Regulation – Alaska Statehood Act, Pub. L. 85-508, § 6(b).

Description of the Issues Identified – It has long been the State's position that the western boundary of Arctic National Wildlife Refuge (ANWR) is the Canning River and that land between the Staines and Canning Rivers should be conveyed to the State; the State's position on the boundary also impacts the State's rights to lease offshore lands adjacent to this area. The State recently issued leases that included this disputed offshore area and, separately, requested conveyance of the uplands from BLM to resolve the issue. BLM denied the State's statehood entitlement request for conveyance of 20,000 acres, based on dispute over whether the western boundary of ANWR is the western bank of the Canning River or the western bank of the Staines River. The State also objected to a survey plat of the area directly south of the area requested for conveyance. BLM denied the protest.

Litigation – *SOA v. BLM* (IBLA 2016-109 & 2017-55).

Status of Litigation – The State filed an administrative appeal to the Interior Board of Land Appeals (IBLA) on the conveyance, which is pending. The State has also filed an administrative appeal of the survey plat to the IBLA.

IBLA denied BLM's motion to dismiss and consolidated the State's two appeals. Briefing was completed in May 2018 and IBLA denied a joint motion to expedite the case in June 2019. The IBLA issued its decision in November 2020, affirming the challenged BLM decisions and the underlying actions that informed them because they effectuated the intent behind PLO 2214, and Alaska failed to demonstrate error thereto. The State has two years from the date of the decision to determine whether to appeal to district court and is evaluating its options.

K. Arctic National Wildlife Refuge 1002 Open to Oil and Gas Exploration and Leasing

Citation to Federal Action, Statute, or Regulation – The Tax Cuts and Jobs Act of 2017, § 20001, Pub. L. 115- 97, 131 Stat. 2054, 2235-37 (2017).

Description of the Issues Identified – The Tax Cuts and Jobs Act of 2017 opened the ANWR 1002 area to oil and gas exploration and leasing. Department of Interior (DOI) conducted a lease sale on January 6, 2021. The sale net 13 bids, on 11 of the 22 tracts offered. AIDEA won 9 of the 11 leases. Regenerate Alaska won the lease of tract 29, title to which is disputed and is the subject of *SOA v. BLM*, IBLA 2016-109 & 2017-55, above. The leases are expected to be signed in January 2021..

L. ANWR 1002 Lease Sale Litigation

Citation to Federal Action, Statute, or Regulation – The Tax Cuts and Jobs Act of 2017, § 20001, Pub. L. 115- 97, 131 Stat. 2054, 2235-37 (2017).

Description of the Issues Identified – Two tribal groups, Non-Governmental Organizations, and a group of states allege violations of the National Environmental Protection Act (NEPA), Endangered Species Act (ESA), Migratory Bird Treaty Act (MBTA), National Wildlife Refuge System Administration Act (NWRSAA), Alaska National Interest Lands Conservation Act (ANILCA), and Tax Cuts and Jobs Act of 2017 (TCJA).

Litigation – *Native Vill. Venetie et al. v. Bernhardt et al.*, 3:20-cv-00223; *Gwich'in Steering Cmtee et al. v. Bernhardt et al*, 3:20-cv-00204; *Audubon Soc'y et al. v. Bernardt et al.*, 3:20-cv-00205; *State of Washington et al. v. Burnhardt et al*, 3:20-cv-00224.

Status of Litigation – Complaints were filed in late August and early September, 2020. Alaska Oil and Gas Association (AOGA), Alaska Petroleum Institute (API), North Slope Borough, Native Village of Kaktovik, and Kikiktagruk Iñupiat Corporation (KIC) intervened. The State was granted intervention on December 31. Plaintiffs' motions for preliminary injunctive relief were denied on January 5, 2021. Merits briefing is underway.

M. VABM (Vertical Angle Bench Mark) Ladue Statehood Entitlement Survey

Citation to Federal Action, Statute, or Regulation – Alaska Statehood Act, Pub. L. 85-508, § 6(b).

Description of the Issues Identified – This matter is before the IBLA. Alaska DNR has appealed a BLM decision that found unwarranted Alaska's objections to BLM's proposed patent on General Selection application F-028269 (GS- 913). Alaska rejected the proposed patent because the plat of survey used to describe the lands to be conveyed reflects an insufficiently surveyed or described southwesterly boundary.

The State appealed BLM's rejections of its objections to a proposed statehood entitlement patent on General Selection application F-028269 (GS- 913). The plat of survey includes an insufficiently surveyed and described boundary between SOA land and land owned by Tetlin Native Corporation. Mining claims straddle the insufficiently described boundary.

Litigation – *SOA v. IBLA*, 2020-0361.

Status of Litigation – Alaska filed the notice of appeal with the IBLA on June 5, 2020. Merits briefing is stayed, pending ongoing settlement discussions with BLM and Tetlin Native Corporation, the adjacent land owner.

N. Challenge to the 2017 Regional Haze State Implementation Plan Rule

Citation to Federal Action, Statute, or Regulation – 2017 Regional Haze State Implementation Plan Rule.

Description of the Issues Identified – The State, along with North Dakota, Texas, and Arkansas, challenged the 2017 Regional Haze State Implementation Plan Rule, which imposed quantification requirements on international air emission contributions to regional haze affecting national parks and wilderness areas. The State is concerned about having international contributions to haze, that are beyond the State's control, count against Alaska and other states. The State also objects to the Environmental Protection Agency (EPA) shifting its modeling responsibilities and modeling costs to Alaska.

Litigation – *State v. Environmental Protection Agency* (EPA); *Texas v. EPA* (D.C. Cir., 17-1074).

Status of Litigation – This case is at the appellate court level. Briefing is currently on

hold, while EPA revisits aspects of the rule and engages in a new rulemaking process.

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

Citation to Federal Action, 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, the federal government has jurisdiction over "waters of the United States." In 2015, EPA and the Corps adopted a rule that attempted to define what is encompassed by the term "waters of the United States" for purposes of federal jurisdiction under the Clean Water Act. Among other things, the rule expanded what fell 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 was 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.

In 2019 EPA and the Army Corps of Engineers initiated a 2-step process for revising the rule. Step 1, repealing the 2015 rule, has been completed—reinstating the prior definition. Step 2, a rulemaking to redefine WOTUS has now been completed and the new rule has been issued. Numerous states sued the EPA arguing that the new rule was too narrow. Alaska joined a multi-state effort and intervened in the lawsuit on behalf of EPA and in support of the new rule.

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

Status of Litigation – Alaska joined a coalition of twelve states in filing a complaint in the federal district court in North Dakota challenging the 2015 rule. Among other claims, the states assert that EPA and the Corps failed to consult as required by the Clean Water Act 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 district court action is currently proceeding in the U.S. District Court for the District of North Dakota. The WOTUS rule has been stayed by the court as to the states that are a party to this case, including Alaska. Summary judgment briefing is complete. The federal government is no longer defending the merits of the 2015 rule, though intervening environmental groups are. On April 23, 2020, there was a stay order issued on the case. In July, that stay order was extended for three months. The Plaintiff states have requested an additional stay in light of ongoing litigation related to the newly issued WOTUS 2020 Rule. The request was granted through March 23, 2021.

P. FMLA Definition of Workweek

Citation to Federal Action, Statute, or Regulation – 29 U.S.C. § 2612(a).

Description of the Issues Identified – The Secretary of Labor challenged the State's application of the Family and Medical Leave Act (FMLA) to Alaska Marine Highway System workers working "rotational" schedules, such as seven days on, seven days off. The district court sided with the Secretary, holding that the phrase "twelve workweeks of leave" in the Act means only weeks the worker was "actually scheduled to work" count against the leave entitlement, because a "workweek" can never have no hours scheduled. The State argued that "workweek" means the same thing in the FMLA as it means in the Fair Labor Standards Act—a period of seven consecutive 24-hour periods. We also argued that continuous leave under the statute and regulations must be simply one continuous block, not twelve weeks separated by "off" weeks, leading to the unfair result that some employees can stay away from work for 24 full weeks.

Litigation – *Eugene Scalia (in his official capacity as Secretary of Labor) v. State of Alaska Department of Transportation* (Ninth Circuit, 19-35824).

Status of Litigation – The Ninth Circuit decision on January 15, 2021 agreed with the State's analysis that "workweek" is a statutory term of art from the Fair Labor Standards Act and must mean the same thing in the FMLA. This means Alaska has been calculating 12 weeks of continuous leave correctly, by counting 12 continuous weeks for everyone, regardless of whether the employee works a traditional or a rotational schedule. The Secretary of Labor might request a rehearing en banc at the Ninth Circuit.

II. FEDERAL LITIGATION IN WHICH THE STATE INTERVENED IN SUPPORT OF A FEDERAL ACTION

A. Mining Claim Rules – *Earthworks v. U.S. Dept. of Interior* (D.C. Dist. Ct., 1:09-cv-01972; D.C. Cir. 20-5382)

Earthworks and other environmental plaintiffs filed a lawsuit against the federal government challenging the validity of certain federal rules related to the regulation of federal mining claims. These rules generally benefit miners by eliminating certain fees and restrictions. The State intervened in support of the federal government. The district court granted Defendants' motions for summary judgment on October 26, 2020. Plaintiffs appealed to the D.C. Circuit on December 23, 2020. The appeal is now pending, and the State must consider its degree of engagement in the appellate proceedings. The district court decision supports the State's position.

B. Wishbone Hill Mine – *Castle Mountain Coalition v. OSMRE* (AK Dist. Ct., 3:15-cv-00043)

Several environmental and citizen groups challenged the validity of the Wishbone Hill coal mine permits on the grounds that the permits should have automatically terminated under federal law. The district court found in favor of plaintiffs and remanded the decision back to the federal Office of Surface Mining Reclamation and Enforcement (OSMRE). On remand, the federal agency ultimately found that the State had "good cause" to not take action because it needed additional time to come to a decision. The State issued a decision at the end of November 2018, upholding the validity of the permits. OSMRE subsequently determined that it did not have sufficient reason to believe a violation existed, and therefore did not issue a ten-day notice or order an inspection. At this time, no party has requested further review. The State is currently reviewing another request to issue permits for this mining project, which may renew this issue through state or federal agency appeals, or through federal litigation. Currently, no immediate issues or litigation are anticipated, but the State (DNR) expects to hold a public hearing on any new permit issuance in Spring 2021.

C. 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 the National Marine Fisheries Service (NMFS) challenging the validity of Amendment 12 to the Fishery Management

Plan (FMP) for Salmon Fisheries in the Exclusive Economic Zone (EEZ) off the Coast of Alaska. Amendment 12 effectively removes federal oversight under the Magnuson-Stevens Act, thereby allowing state management for three fishing areas beyond the three-mile limit from shore. One of these areas was the Cook Inlet EEZ, 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. After UCIDA appealed, the Ninth Circuit reversed the district court and held that Amendment 12 was contrary to law to the extent it removed the Cook Inlet EEZ from the FMP. The court explained that the MSA allows delegation to the State under an FMP, but does not excuse the federal government's obligation to adopt an FMP when it opts for state management. The U.S. Supreme Court denied the State's request to hear the case. The district court retained jurisdiction to oversee adoption of a new plan. The North Pacific Fishery Management Council continues to work through the issues. The plaintiffs filed a motion to enforce judgement, seeking the court's intervention in the creation of the FMP and oversight of the fishery until the plan is in place. The district court denied the plaintiff's motion, and ordered that the Council adhere to their estimated timeline and adopt a final FMP amendment by December 31, 2020, with final agency action to occur within one year thereafter. On appeal the Ninth Circuit affirmed the district court. As a result of the litigation, and the associated deadlines to adopt an FMP, the North Pacific Fisheries Management Council adopted a plan that closes the federal waters in Cook Inlet to commercial fishing. That plan is now forwarded to the Secretary for adoption and final rulemaking.

D. Reversal of Former President Obama's offshore development ban — *League of Conservation Voters v. Trump* (Nos. 19-35460,19-35461, 19-35462)

Former President Obama issued an order pursuant to the 1953 Outer Continental Shelf Lands Act indefinitely banning all leasing in certain off-shore areas, including large portions of the Chukchi and Beaufort Seas. Upon taking office, President Trump rescinded the ban by the issuance of an executive order. The executive order was then challenged by various environmental groups. The State intervened to defend President Trump's executive order rescinding the leasing ban. The plaintiffs filed a motion for summary judgment, and the State filed its own motion for summary judgment and an opposition to plaintiff's motion. In March of 2019, Judge Gleason granted summary judgment to the League of Conservation Voters (and denied summary judgement to President Trump and the State) ruling that the Outer Continental Shelf Lands Act's language permitting a president to "from time to time withdraw" unleased lands from disposition did not permit President Trump to undo a previous withdrawal that had been ordered by President Obama. The federal government and the State appealed to the Ninth

Circuit, and briefing and argument was completed in June 2020. A decision is pending.

E. "Waters of the U.S." Rule – *State of California v. Wheeler* (ND CA Dist. Ct. 3:20 cv 03005-RS)

Under the Clean Water Act, the federal government has jurisdiction over "waters of the United States." In 2015, EPA and the Corps adopted a rule that attempted to define what is encompassed by the term "waters of the United States" for purposes of federal jurisdiction under the Clean Water Act.

In 2019 EPA and the Army Corps of Engineers initiated a two-step process for revising the rule. Step 1, repealing the 2015 rule, has been completed—reinstating the prior definition. Step 2, a rulemaking to redefine WOTUS has now been completed and the new rule has been issued. Numerous states sued EPA arguing that the new rule was too narrow. Alaska joined a multi-state effort and intervened in the lawsuit on behalf of EPA and in support of the new 2020 rule. According to the Court's scheduling order, the briefing will be complete by May 6, 2021. A hearing is currently scheduled for June 3, 2021.

F. Indian Gaming Regulatory Act—*Native Village of Eklutna v. U.S. Dept. of Interior et al* (D.C. Dist. Ct., 1:19-cv-02388)

The Native Village of Eklutna filed a lawsuit pursuant to the Administrative Procedures Act challenging the Department of the Interior's denial of its request that a certain allotment be considered "Indian lands" eligible for gaming under the Indian Gaming Regulatory Act (IGRA). The Department denied the request primarily on the grounds that the plaintiff does not have jurisdiction or "exercise governmental power" over the allotment, as required to meet IGRA's definition of "Indian lands." The State moved to intervene in defense of DOI's denial, and the motion was granted. Briefing is underway.

G. Pebble Mine – Clean Water Act Dredge and Fill Permit—Trout Unlimited v. U.S. Environmental Protection Agency (9th Cir. Case No. 20- 35504)

In 2019 the U.S. EPA withdrew a 2014 proposal to prohibit Clean Water Act dredge-and-fill permitting in the Pebble deposit area of Southwest Alaska. Trout Unlimited, along with a number of other tribal and environmental organizations, sued under the APA to invalidate the withdrawal. The State intervened to defend the

withdrawal. The District Court dismissed the case on the grounds that the withdrawal was unreviewable under the APA. Trout Unlimited appealed to the Ninth Circuit on an expedited basis. The case has been briefed and argued in the Ninth Circuit and is ripe for decision. The State did not participate in the appeal as it addresses the motion to dismiss that was filed and briefed before the State's intervention.

H. Affordable Clean Energy Rule (ACE) — *Am. Lung Assoc. v. EPA*, No. 19-1140 (D.C. Cir. July 8, 2019); *New York v. EPA*, No. 19-1166 (D.C. Cir. Aug. 14, 2019)

The Affordable Clean Energy rule (ACE rule) took effect on September 6, 2019. The ACE rule repeals the Clean Power Plan (CPP), issues emissions guidelines for greenhouse gas emissions, and revises the emission guidelines implementing regulations under the Clean Air Act. Various environmental groups and some states filed legal challenges seeking to repeal the ACE rule and reinstitute CPP. Alaska and several other states intervened in *New York v. EPA*, in support of EPA's ACE rule. On October 8, 2020, the D.C. Circuit Court of Appeals heard oral argument on the repeal of the Clean Power Plan, EPA's authority to promulgate a replacement rule for carbon dioxide emissions from existing power plants, and the legality of EPA's replacement rule, the Affordable Clean Energy Rule. The court also heard arguments on issues related to EPA's treatment of biomass-based fuels and biogenic emissions.

An unopposed motion for voluntary dismissal of the Environmental Defense Fund was granted November 22, 2019. Alaska withdrew from the defense against the Union of Concerned Scientists because arguments presented by the defendants included an argument that there should be no special treatment for individual states. This argument conflicts with special treatment given to Alaska for unique situations in the State.

I. Izembek National Wildlife Refuge/King Cove to Cold Bay Road— *Friends of Alaska NW Refuges. v. Bernhardt* (AK Dist. Ct., 3:19-CV-00216 (JWS)

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.

There have been three attempts to complete a land exchange with federal administrations. The State has participated as an intervenor-defendant and as an amicus

curiae in past litigation.

Most recently, King Cove Corporation and the U.S. Dept. of Interior (DOI) entered into a 2019 land exchange agreement, which, like previous similar agreements, has been challenged by environmental groups. In January 2020, the State filed to join as a defendant intervenor to present arguments regarding the purpose, need, and environmentally cognizant design of its proposed road.

On June 1, 2020, the district court vacated the land exchange agreement after finding it violated the Administrative Procedures Act and Title XI of the Alaska National Interest Lands Conservation Act. The State, King Cove Corporation, and DOI appealed the decision to the Ninth Circuit. The State's opening brief was filed in November 2020.

J. Endangered Species Act Rules — *California v. Bernhardt,* (N. Cal. Dist. Ct., 4:19-cv-06013-JST); *Animal Legal Defense Fund v. Bernhardt,* (N. Cal. Dist. Ct., 4:19-cv-06812-JST0; and *Center for Biological Diversity v. Bernhardt,* (N. Cal. Dist. Ct., 4:19-cv-05206-JST0)

Three lawsuits were filed challenging regulations adopted in 2019 by the U.S. Fish and Wildlife Service and National Marine Fisheries Service. In December 2019 and January 2020, Alaska joined twelve other states to move to intervene in all three cases to defend the new rules. Among other things, the rules clarified the meaning of "foreseeable future" in determining whether a species is threatened, allows economic factors to be considered while still making decisions based on the best scientific and commercial data, and provided guidance on when to consider unoccupied areas as critical habitat for listed species.

K. Seismic testing in Cook Inlet — *Cook Inletkeeper et al., v. Ross, et al.* (D. Alaska 3:19-cv-00238-SLG)

Cook Inletkeeper and others sued to challenge permission given to Hilcorp Alaska to conduct seismic testing in Cook Inlet. The testing is permitted by the National Marine Fisheries Service under the Marine Mammal Protection Act and the Endangered Species Act. The permission includes conditions to avoid and limit impacts on beluga whales. Cook Inlet belugas are listed as a distinct population segment. In December 2019, the court granted Alaska's motion to intervene. Plaintiffs filed a supplemental complaint in May 2020 and defendants filed answers. Summary judgment briefing was completed, and oral argument was held December 14, 2020. The motion for summary judgment is ripe for decision by the district court.

L. Clean Air Act and National Highway Traffic Safety Administration (NHTSA) Rule – Preemption of California Emissions Standards—*Union of Concerned Scientists v. National Highway Safety Administration* (D.C. Cir., No. 19-1230); *Environmental Defense Fund v. National Highway Safety Administration* (D.C. Cir., No. 19-1200)

Alaska and several other states intervened in two lawsuits involving a new rule promulgated by the National Highway Traffic Safety Administration (NHTSA) that will effectively preempt California laws that set vehicle emission standards that are different that the federal Clean Air Act standards. Briefing is underway in both cases.

M. Ambler Industrial Access Road Litigation (*Northern Alaska Envt'l Center et al. v. Bernhardt et al.*, 3:20-cv-00187; *Alatna Village Council et al. v. Padgett et al, 20-cv-00253*)

Environmental groups and native villages/corporations challenged the issuance of federal authorizations to construct a development road from the Dalton Highwayto the Ambler Mining District, which cuts through a small portion of Gates of the Arctic National Park and Preserve. The claims challenge the final records of decision for the Environmental Impact Statement (prepared by the Bureau of Land Management and the U.S. Army Corps of Engineers) and the Environmental and Economic Analysis (prepared by the National Park Service and the U.S. Department of Transportation). The project applicant is the Alaska Industrial Development and Export Authority (AIDEA), which has intervened as a defendant. The State seeks intervention on its own to protect resource development and State's rights, separate and distinct from AIDEA.

Complaints were filed in August 2020. Ambler Metals LLC and AIDEA intervened. The State moved to intervene in *NAEC v. Bernhardt* on December 16, 2020. The State moved to intervene in *Alatna Village Council et al. v. Padgett* on January 8, 2021.

Statutory references – Alaska National Interest Lands Conservation Act (ANILCA) § 201(4)(b)-(e), National Environmental Protection Act (NEPA), Federal Land Planning and Management Act (FLPMA), Administrative Procedure Act (APA).
Non-Governmental Organizations and Tribes allege violations of the National Environmental Protection Act (NEPA), Alaska National Interest Lands Conservation Act (ANILCA), National Historic Preservation Act (NHPA), Federal Land Policy and Management Act (FLPMA), and Clean Water Act (CWA).

N. NPRPA Integrated Activity Plan Litigation (*Nat'l Audubon Soc'y et al. v. Bernhardt*, 3:20-cv-00206; *Northern Alaska Envtl. Ctr. et al. v. Bernhardt*, 3:20-cv-00207)

Non-Governmental Organizations allege violations of the National Environmental Protection Act (NEPA) and the Naval Petroleum Reserves Production Act (NPRPA). Complaints were filed in late August 2020 and the cases were effectively stayed pending issuance of the Record of Decision (ROD). The ROD issued on December 31, 2020. The State moved to intervene in both cases on January 7, 2021 and we await the Court's order on these motions.

III. FEDERAL LITIGATION IN WHICH THE STATE FILED OR JOINED IN AN AMICUS BRIEF

The following list summarizes, in roughly chronological order, cases involving the federal government or the potential federal preemption of state law in which the State of Alaska either filed or joined in an amicus brief in 2020.

FILED:

1. ***Kennedy v. Bremerton Sch. Dist.***, Ninth Circuit; Case No. 20-35222. Alaska and Texas drafted an amicus brief to the Ninth Circuit in support a school coach who claimed he was terminated for engaging in public prayer, in violation of his First Amendment rights. In briefing stage.

2. ***Alaska Native Village Corporation Association v. Confederated Tribes of the Chehalis Reservation***, United States Supreme Court; Case Nos. 20-543/20-544. Alaska submitted an amicus brief in support of the petitions for certiorari in the CARES Act litigation concerning whether Alaska Native Corporations are eligible as statutorily-defined "Indian tribes" to receive CARES Act relief funds and whether they can continue to contract with the federal government to provide special services and programs to Alaska Natives because of their status as "Indian tribes," like they have been doing for the past forty-five years. Court also approved Alaskan congressional delegation to submit amicus brief in support of petition for certiorari.

3. ***Our Lady of Guadalupe School v. Agnes Morrissey-Berru***, United States Supreme Court; Case No. 19-267. Alaska drafted an amicus brief to the U.S. Supreme Court supporting the petitioner, a religious school, to address whether a

teacher at a religious school is a "minister" for the purposes of the "ministerial exception" to employment discrimination laws, a First Amendment-based doctrine which provides that a "minister" cannot sue his or her religious employer for employment discrimination (filed Feb 7, 2020). The Court held that the ministerial exception, grounded in First Amendment's Religion Clauses, barred the teachers' employment discrimination claims (140 S.Ct. 2049 (July 8, 2020)).

4. ***Belgau v. Inslee***, Ninth Circuit; No. 19-35137; Case No. 19-35137. Alaska submitted an amicus brief to the Ninth Circuit in support of appellants' petition for rehearing en banc, arguing that a state may only deduct union dues or fees from an employee's wages if the employee has knowingly waived his or her First Amendment rights, a waiver that must be freely given and shown by clear and compelling evidence. The petition for rehearing was denied October 26, 2020.

JOINED:

5. ***Faust v. B.K.***, 19-766. Alaska joined Missouri's amicus brief to the Supreme Court in support of Arizona, challenging the Ninth Circuit's affirmation of the district court's certification of a class, which it argues is overbroad. The class includes every single foster child in Arizona, even children who concededly are actively receiving adequate care and would lack standing to bring any individual claim. The amicus brief argues that this type of overbroad class certification violates principles of federalism by allowing federal court encroachment on core state functions.

6. ***Hill v. Whole Woman's Health Alliance***, 19-743. Alaska joined Kentucky's amicus brief to the Supreme Court arguing—in support of Indiana's petition for certiorari—that states should be free to regulate and license medical facilities as they see fit. On the merits, Indiana's petition contended that a federal court may not order a state agency to issue an abortion clinic a license as a remedy for an as-applied undue burden challenge to state implementation of its licensing laws. The petition was denied July 2, 2020.

7. ***Jacobson v. Florida Secretary of State***, 974 F.3d 1236 (11th Cir. 2020). Alaska joined Texas' amicus brief to the Eleventh Circuit in support of Florida, defending the constitutionality of its election system that orders candidates' names on the ballot based on the success of their political party in a previous election, and contending that this system does not provide an unfair advantage to the political party listed first. The Eleventh Circuit held this is a non-judiciable political question, and that the evidence presented did not establish standing for the

plaintiffs-appellants.

8. ***Box v. Planned Parenthood***, 18-1019. Alaska joined Kentucky's amicus brief to the Supreme Court in support of Indiana's petition for certiorari, defending the constitutionality of Indiana's statute requiring parental notification for minors obtaining an abortion without parental consent. In a July 2020 per curiam opinion, Indiana's petition for certiorari was granted, the judgment was vacated, and the case was remanded to the Seventh Circuit for further consideration.

9. ***303 Creative LLC v. Elenis***, 19-1413. Alaska joined Arizona's amicus brief to the Tenth Circuit, supporting a web designer's position that Colorado's public accommodation law cannot constitutionally be applied to prohibit her from posting a statement saying she won't design same-sex wedding websites. The case was argued November 16, 2020.

10. ***County of Summit, Ohio v. Purdue Pharma L.P. (In re Nat'l Prescription Opiate Litig.)***, 19-3827. Alaska joined Michigan's amicus brief to the Sixth Circuit challenging whether the district court properly certified a "negotiation class" in the National Prescription Opiate Litigation MDL. The brief argued that states should control the opioid litigation because they are in a position to enter into global settlements, which would be jeopardized by local, piecemeal litigation; and states protect all communities through statewide policy and equitable distribution of funds. The Sixth Circuit disagreed, allowing the municipal litigation to proceed.

11. ***Rutledge v. Pharmaceutical Care Management Ass'n***, 18-540. Alaska joined California's amicus brief to the Supreme Court on the merits, supporting the position that Arkansas' statute regulating pharmacy benefit managers' drug-reimbursement rates is not preempted by ERISA. The case was argued in October 2020.

12. ***Little Sisters of the Poor v. Pennsylvania***, 19-431; 19-454. Alaska joined Texas' amicus brief to the Supreme Court on the merits in support of a religious group, contending that the federal government lawfully exempted religious objectors from the regulatory requirement to provide health plans that include contraceptive coverage. The Supreme Court agreed, holding that the Affordable Care Act authorized Health Resources and Services Administration (HRSA) to exempt or accommodate employers' religious or moral objections to providing no-cost contraceptive coverage (140 S. Ct. 2367 (2020)).

13. ***New Hampshire Lottery Commission, et al v Barr, et al***, 19-1835. Alaska joined Michigan's amicus brief to the First Circuit, challenging the DOJ's 2018 Opinion that the Wire Act criminalizes interstate wire transmissions concerning all types of

gambling (including games conducted by government-operated lotteries) rather than only gambling involving sporting events. The case was argued June 18, 2020.

14. ***InterVarsity Christian Fellowship v. University of Iowa***, 19-3389. Alaska joined Nebraska's amicus brief to the Eight Circuit in support of a student group's position that the University of Iowa violated the group's First Amendment rights when it determined that the group could not be recognized as a registered student organization because it requires its leaders to agree with its organization's religious beliefs. Briefing is complete.

15. ***Montana and Wyoming v. Washington***, No. 152, ORIG. Alaska joined Kentucky's amicus brief to the Supreme Court in support of Montana and Wyoming's motion for leave to file a bill of complaint against Washington as an original action. The motion contends that Washington's refusal to permit a coal shipment terminal that would export Montana and Wyoming coal violates the Commerce Clause. The Court has invited the views of the Solicitor General.

16. ***Ford Motor Company v. Montana Eighth Judicial District Court, et al***, 19-368; 19-369. Alaska joined Minnesota and Texas' amicus brief to the Supreme Court on the merits in support of the position that a state court may exercise specific personal jurisdiction over a non-resident corporation that marketed its product in the state, but whose contacts with the state did not cause the plaintiff's claims. The brief argues that the lower court decisions properly applied the Supreme Court's precedent on this issue. Oral argument was heard October 7, 2020.

17. ***Chiafalo v. Washington, Colorado Dep't of State v. Baca***, 19-465. Alaska joined South Dakota's amicus brief to the Supreme Court on the merits in support of the position that the Constitution permits states to decide whether to require their presidential electors to vote in alignment with the outcome of the state's popular vote for president. The Supreme Court agreed, holding that a state may penalize a presidential elector for a faithless vote (140 S. Ct. 2316 (2020)).

18. ***Texas v. California***, No. 153, ORIG. Alaska joined West Virginia, Kansas, and Tennessee's amicus brief to the Supreme Court in support of Texas' complaint against California, contending that the Court should accept jurisdiction over Texas's original action challenging California's law restricting state-funded travel to states that enforce discriminatory laws. The Court has invited the views of the Solicitor General.

19. ***Adams & Boyle v. Slatery***, 20-5408. Alaska joined Kentucky's amicus brief to the Sixth Circuit in support of Tennessee, defending the legality of a Tennessee

executive order issued during the COVID-19 pandemic that delayed elective and non-urgent medical procedures and included abortion in that category. The Sixth Circuit affirmed an injunction of the order but narrowed it to only patients who, if their procedures were delayed until after April 30, 2020, would likely lose their ability to obtain an abortion in Tennessee or be forced to undergo a lengthier or more complex abortion procedure (956 F.3d 913 (6th Cir. 2020)). Tennessee petitioned the Supreme Court for certiorari in October 2020.

20. ***Baker v. Planned Parenthood***, 19-1186. Alaska joined Nebraska and Indiana's amicus brief to the Supreme Court in support of South Carolina's petition for certiorari arguing that Medicaid recipients do not have a private right of action under 42 U.S.C. 1983 and 42 U.S.C. 1396a(a)(23) to challenge a state's determination that a specific provider is not qualified to provide certain medical services. Certiorari was denied on October 13, 2020.

21. ***Bruni v. City of Pittsburg***, 19-1184. Alaska joined West Virginia's amicus brief to the Supreme Court in support of a petition for certiorari filed by demonstrators who challenged, on First Amendment grounds, the City of Pittsburg's buffer zone ordinance banning demonstrations within 15 feet of hospital, medical office, or clinic entrances. The brief argues that the Third Circuit impermissibly narrowed the ordinance to permit the petitioners' pro-life "sidewalk counseling" activities while prohibiting other protest activities in the zone.

22. ***New York et al. v. DHHS***, 19-4254. appealed by *National Family Planning & R v. Azar*, 20-32. Alaska joined Ohio's amicus brief to the Second Circuit in support of DHHS, supporting the legality of the federal government's new conscience-protection regulations prohibiting healthcare providers that receive federal funding from discriminating against doctors, nurses, and others in the healthcare field who have conscientious objections to medical procedures, including abortion and assisted suicide.

23. ***BP p.l.c. et al. v. Mayor and City Council of Baltimore***, 19-1189. Alaska joined Indiana's amicus brief to the Supreme Court in support of oil companies' petition for certiorari in a climate-change lawsuit brought by the City of Baltimore. The petition raises a question about federal appellate court jurisdiction; the amicus brief argues that the question is important and that the Court should hold that any time a defendant raises a non-frivolous federal-officer or civil-rights argument for removal, all grounds for removal may be considered on appeal. Certiorari was granted October 2, 2020.

24. ***Northern Plains Resource Council v. Army Corps of Engineers***, CV 19-44-GF-BMM. Alaska joined Texas and West Virginia's amicus brief to the U.S. District Court for the District of Montana, supporting the legality of the Army Corps of Engineers' streamlined Clean Water Act permit renewal program called "Nationwide Permit 12." On May 11, 2020, the court partially vacated the renewal decision for utility line projects nationwide, including oil and gas pipelines. The decision was appealed to the Ninth Circuit.

25. ***Brnovich v. DNC***, 19-1257. Alaska joined Ohio's amicus brief to the Supreme Court in support of Arizona's petition for certiorari defending its out-of-precinct policy and absentee ballot collection law, arguing that these laws do not violate the Voting Rights Act and do not deny minority voters an equal opportunity to vote on account of race. The petition for certiorari was granted October 2, 2020.

26. ***Fulton v. Philadelphia***, 19-123. Alaska joined Texas' amicus brief to the Supreme Court on the merits in support of Catholic Social Services' position that Philadelphia's refusal to allow it to provide foster care services based on its religious beliefs violates the First Amendment right to free exercise of religion. Oral argument was heard November 4, 2020.

27. ***Miller v. Thurston***, 20-2095. Alaska joined Ohio's amicus brief to the Eighth Circuit in support of Arkansas' defense of its laws requiring that signatures in support of a ballot initiative be signed in person and witnessed, arguing that these laws do not violate the First Amendment's Free Speech Clause by making it too difficult to legislate in the context of the COVID pandemic. Arkansas' motion for a stay of a district court decision was granted.

28. ***LaTurner v. United States*** **and** ***Lea v. United States***, 19-1285. Alaska joined Indiana's amicus brief to the Supreme Court in support of Kansas and Arkansas' petition for certiorari, challenging the Federal Circuit holding that the Department of Treasury's savings-bond regulations preempt state title-escheatment laws (which authorize the transfer of title, not just custody, to the State) for U.S. savings bonds. The petition was denied October 5, 2020.

29. ***Dobbs v. Jackson Women's Health Org.***, 19-1392. Alaska joined Texas' amicus brief to the Supreme Court supporting Mississippi's petition for certiorari, which defends the constitutionality of Mississippi's 15-week gestational limit on abortions, and challenges the Fifth Circuit's holding that that statute violated women's constitutional right to choose abortion.

30. ***Port of Corpus Christi Authority v. Sherwin Alumina Co.***, 20-46. Alaska joined Indiana's amicus brief to the Supreme Court in support of a Texas state entity's petition for certiorari arguing that state sovereign immunity prevents the federal bankruptcy court from authorizing the sale of a bankruptcy debtor's property free and clear of easements owned by state entities. The petition was denied October 5, 2020.

31. ***Box v. Planned Parenthood***, 17-2428. Alaska joined Kentucky's amicus brief to the Seventh Circuit on remand from the Supreme Court, supporting the constitutionality of Indiana's statute requiring parental notification for minors obtaining an abortion without parental consent.

32. ***HPBA v. EPA***, 15-1056. Alaska joined New York's amicus brief to the D.C. Circuit supporting the 2015 EPA rule establishing emission and audit standards for wood-burning devices in a case where wood heater manufacturers seek vacatur of the rule. Briefing is complete.

33. ***Association of New Jersey Rifle and Pistol Clubs, Inc. v. Attorney General of New Jersey***, 19-3142. Alaska joined Arizona's amicus brief to the Third Circuit in support of plaintiffs challenging the constitutionality of New Jersey's 2018 law that makes it illegal to possess a magazine capable of holding more than ten rounds of ammunition. On September 1, 2020, the Third Circuit reaffirmed its earlier decision denying an injunction of the law.

34. ***Online Merchants Guild v. Cameron***, 20-5723. Alaska joined Illinois' amicus brief to the Sixth Circuit in support of Kentucky's position that states may enforce price-gouging regulations against merchants that sell their products on Amazon. Briefing is underway.

35. ***Northern Plains et al. v. U.S. Army Corps of Engineers***, 20-35432. Alaska joined Texas and West Virginia's amicus brief to the Ninth Circuit in support of Montana, challenging the scope of the district court's nationwide injunction of the Army Corps of Engineers' streamlined Clean Water Act permit renewal program (called the Nationwide Permit 12 program) for utility line projects including oil and gas pipelines. Briefing is underway.

36. ***National Pork Producers Council & American Farm Bureau Federation v. Ross et al.***, 20-55631. Alaska joined Indiana's amicus brief to the Ninth Circuit supporting meat producers' challenge to California's Proposition 12, which bans the sale of veal, pork, and eggs that were not produced in compliance with certain requirements, arguing that the law violates the Commerce Clause's prohibition on

extraterritorial regulation. Briefing is underway.

37. ***Talevski v. Health and Hospital Corporation of Marion County***, 20-1664. Alaska joined Indiana's amicus brief to the Seventh Circuit in support of the defendant hospitals' position that the Federal Nursing Home Reform Act (FNHRA), 42 U.S.C. § 1396r, does not confer statutory rights that are privately enforceable via 42 U.S.C. § 1983. The court heard oral argument on December 4, 2020.

38. ***Facebook v. Duguid***, 19-511. Alaska joined Indiana and North Carolina's amicus brief to the Supreme Court on the merits, supporting the respondent's position that the definition of "automatic telephone dialing system" in the Telephone Consumer Protection Act of 1991 encompasses any device that can "store" and "automatically dial" telephone numbers, even if the device does not "us[e] a random or sequential number generator." Briefing is complete.

39. ***Hecox v. Little***, 20-35815. Alaska joined Nebraska's amicus brief to the Ninth Circuit supporting Idaho's appeal from the district court's preliminary injunction of its Fairness in Women's Sports Act, which excludes transgender female athletes from women's sports. The brief supports Idaho's defense of its law, contending that it does not violate the Equal Protection Clause. Briefing is underway.

40. ***BP p.l.c. et al. v. Mayor and City Council of Baltimore***, 19-1189. Alaska joined Indiana's amicus brief to the Supreme Court on the merits in support of oil companies in a climate-change lawsuit brought by the City of Baltimore. The brief supports the position that when a defendant unsuccessfully seeks to remove a case to federal court based in part on the federal-officer or civil-rights removal statutes, the federal appellate court may consider all the arguments raised in support of removal. Oral argument is scheduled for January 2021.

41. ***Brnovich v. DNC***, 19-1257. Alaska joined Ohio's amicus brief to the Supreme Court on the merits, supporting Arizona's defense of its out-of-precinct policy and absentee ballot collection law. The brief contends that Arizona's laws do not violate the Voting Rights Act, and do not deny minority voters an equal opportunity to vote on account of race as alleged. Briefing is underway.

42. ***Cameron v. EMW Women's Surgical Center***, 20-601. Alaska joined Arizona's amicus brief to the Supreme Court in support of the Kentucky attorney general's petition for certiorari from a denial to intervene in a case where the Sixth Circuit invalidated a statute prohibiting certain abortion procedures. The brief supports the position that an attorney general should be allowed to intervene to defend a state statute after a federal court of appeals invalidates the statute and other state defendants decline to seek further review.

43. ***North American Meat Institute v. Becerra***, 19-56408. Alaska joined Indiana's amicus brief to the Ninth Circuit supporting NAMI's request for en banc review of a challenge to California's Proposition 12, which bans the sale of veal, pork, and eggs that were not produced in compliance with certain requirements, arguing that the law violates the Commerce Clause's prohibition on extraterritorial regulation.

44. ***SmileDirect Club, LLC v. Battle*** (11th Circuit No. 19-12227). Alaska joined Tennessee's amicus brief to the Eleventh Circuit in support of the Georgia Board of Dentistry and its members in a case concerning whether interlocutory orders denying state-action immunity to public entities in antitrust actions are immediately appealable under the collateral-order doctrine.

45. ***National Rifle Association v. James*** (N.D.N.Y. 1:20-cv-00889-MAD-TWD). Alaska joined Arkansas's amicus brief to the District Court of the Northern District of New York in support of the NRA's federal lawsuit against the New York Attorney General. The NRA's lawsuit is in response to the New York Attorney General's state law dissolution suit. The amicus supports the NRA's opposition to New York's motion to dismiss the federal lawsuit.

46. ***Lidenbaum v. Realgy*** (6th Circuit No. 20-4252). Alaska joined Indiana's amicus brief in support of appellants in arguing that the Telephone Consumer Protection Act (TCPA)—which generally prohibits robocalls to cell phones and home phones—as enforceable between the enactment of the government-debt exception in 2015 and the *Barr v. AAPC* decision by the Supreme Court severing the government debt exception in 2020.