VII. STATE LAND AND ACCESS

State Concern	Federal Law or Action	Conflict or Preemption	State Claim or Defense	Proceeding Status
Alaska Native Lands into Trust BIA's decision to take Alaska Native lands into trust infringes the State's sovereignty.	ANILCA, 43 U.S.C. § 1601, *et seq*. After several administration changes and three solicitor opinions presenting different legal theories, on November 16, 2022, the Solicitor issued opinion M-37076. That opinion states DOI has the legal authority to take an Alaska Tribes' lands into trust and to proclaim that trust land an Indian reservation. Consistent with M-37076, on November 17, 2022, the Bureau of Indian Affairs (BIA) placed a 787 square foot parcel of land in downtown Juneau into trust for the Central Council of Tlingit and Haida and proclaimed the parcel an Indian reservation.	There are 227 federally recognized tribes in Alaska. Lands held in trust by the United States constitute Indian country; thus tribes have territorial jurisdiction over these lands. The tribe—not the state or the municipality—regulates and controls these lands. There is only one reservation in Alaska: the Annette Islands Reserve. DOI's approach would increase the amount of Indian country in Alaska and increase the number of reservations in Alaska. The harm to the State's sovereignty—something Congress specifically preserved in ANCSA—is actual and occurred immediately upon the CLM grant of the Central Council's application. Moreover, the Central Council has four additional applications pending before the Department, and the agency has also received applications from the Ninilchik Traditional Council and the	For 46 years following the passage of ANCSA, under the guidance of multiple Secretaries of the Interior, the Department declined to take lands into trust on behalf of Alaska Natives. The Assistant Secretary's decision to accept land into trust on behalf of the Central Council and create Indian country in Alaska was arbitrary, capricious, an abuse of discretion, in excess of statutory authority, and/or otherwise contrary to the law and in violation of the APA.	• *Alaska v. Newland et al.* (D. Alaska) On January 17, 2023, the State of Alaska filed a complaint in federal district court challenging BIA's decision to place Tlingit and Haida's 787 square foot parcel into trust and proclaim that parcel a reservation.

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		Native Village of Fort Yukon. These pending applications, coupled with the Department's current position regarding the extent of its authority under 25 U.S.C. § 5108, as articulated in the most recent Solicitor Opinion, further jeopardize the State of Alaska's sovereign authority		
<u>Ambler Industrial Access Road</u> BLM, USACE and NPS permitting of 211-mile industrial road through southern Brooks Range and Gates of the Arctic National Park and Preserve to access the Ambler Mining District	National Environmental Policy Protection Act (NEPA), 2 U.S.C. 4321 *et seq*. Alaska National Interest Lands Conservation Act (ANILCA), 16 U.S.C. § 3101 *et seq*. National Historic Preservation Act (NHPA), 54 U.S.C. § 300101 *et seq*. Federal Land Policy and Management Act (FLPMA), 43 U.S.C. § 1701 *et seq*. Clean Water Act (CWA), 33 U.S.C., § 1251 *et seq*.	Environmental groups and tribal entities filed two lawsuits challenging BLM, USACE and NPS permits for 50-year right-of-way for an industrial road through the southern Brooks Range and Gates of the Arctic National Park and Preserve to access the Ambler Mining District. Plaintiffs allege that the permits violate ANILCA, CWA, NEPA, and NHPA.	The federal agencies complied with ANILCA and the NHPA when assessing the Ambler Road Project's impact. Remand prejudices AIDEA because it undermines AIDEA's rights under its permits, and results in an open-ended delay in the Ambler Road Project.	• *Northern Alaska Environmental Center et al v. Haaland,* 3:20-cv-00187-SLG (D. Alaska) • *Alatna Village Council et al v. Heinlein,* 3:20-cv-00253-SLG (D. Alaska) The State, AIDEA and Ambler Metals, LLC intervened in support of the permits. The cases have been remanded to federal defendants to conduct additional environmental review. Plaintiffs filed a motion for reconsideration seeking to vacate the underlying ROD, which was denied on June 14, 2022. Federal defendants are to file status reports every 60 days during the remand period. BLM has also issued a notice of intent to prepare a supplemental EIS. The State and intervenors

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				timely filed scoping comments on November 3, 2022.
ANCSA Land Remediation Significant portions of ANCSA land provided by federal government is environmentally contaminated.	Failure of the DOI to remediate contaminated ANCSA lands	Through ANCSA, the United States sought to extinguish all Alaska Natives' claims to aboriginal title to over 360 million acres of land in Alaska, in exchange for title to a designated 44 million acres of land ("ANCSA Lands") and other compensation. Significant portions of over 1000 of these parcels were contaminated with hazardous substances.	Congress required the US Executive to identify, investigate, and remedy contamination on lands conveyed under ANCSA three times over the last thirty years. The DOI has repeatedly failed to take the actions that Congress directed it to take. DOI's failure to follow Congress's instructions violates the APA.	• *Alaska v. U.S.,* 3:22-cv-00163-HRH (D. Alaska) The State brought suit against the United States alleging violations of the APA. The United States filed a motion to dismiss. In response, the State amended its complaint, after which the United States filed another motion to dismiss the amended complaint on December 21, 2022.
ANCSA 17(d) Withdrawals Revocation of 16 ANCSA Section 17(d)(1) withdrawals covering nearly 28 million acres of BLM-managed lands	Delay in implementing Public Land Orders 7899, 7900, 7901, 7902, and 7903	Pursuant to Section 17(d)(1) of ANCSA, DOI withdrew more than 158 million acres of land in Alaska from appropriation under the public land laws, removing them from availability for selection by the State. The five PLOs partially revoked Section 17(d)(1) withdrawals covering 28 million acres of BLM lands, and returned those lands to multiple use management, including possible conveyance to the State under Statehood Act entitlements. After the Biden Administration took office, however, BLM	BLM's action delaying implementation of the PLOs was arbitrary and capricious, an abuse of discretion, and not in accordance with law under the Administrative Procedures Act.	• *Alaska v. Haaland,* 22-35376 (9th Cir.) The State filed suit challenging the continued delay and seeking an injunction against BLM to revoke the ANCSA 17(d)(1) withdrawals and return the land to multiple-use management and possible conveyance to the State under its Statehood Act entitlements. In March 2022, the district court granted the federal defendants' motion to dismiss the complaint. The court held that the delay decision was not a final agency action and no statute or regulation

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		announced a 2 year minimum delay in implementation.		required publication. The State appealed to the 9th Circuit. On August 18, 2022, BLM issued its notice of intent to conduct NEPA analysis on the withdrawal revocations, with comments due on October 17, 2022. The parties are currently engaged in settlement discussions.
ANWR Boundary State ownership of land between Canning and Staines River	Public Land Order No. 2214 25 FR 12598	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. If the State's title is recognized, the State would be entitled to 100% of the mineral revenue instead of 50%.	Interior Board of Land Appeals determination that "the extreme west bank of the Canning River" should be reinterpreted as "the Staines River" was arbitrary and capricious under the Administrative Procedure Act .	• *Alaska v. US DOI,* 3:22-cv-0078-SLG (D. Alaska) On April 6, 2022, the State filed a complaint seeking review of the IBLA's decision to uphold BLM's determination that ANWR included the disputed 20,000 acres. The parties are currently disputing the contents of the administrative record. Briefing on cross-motions for summary judgment is anticipated to begin in mid-2023.
Chicken RS 2477 ROWs State's title to existing rights of way near Chicken arising under Revised Statute 2477	BLM is failing to recognize state owned RS 2477 rights of way through wild and scenic river corridors near Chicken, Alaska. BLM has taken the position that valid existing rights need to first be judicially determined	The routes provide access to state and federal mining claims, as well as overland access for hunting and to recreational sites. The State does not have clear ownership of the RS 2477 rights of way. BLM's management, regulation, and restrictions on its	The roads and trails at issue in this litigation are public rights-of-way granted by the United States pursuant to RS 2477. These rights arise automatically, by operation of law when all elements supporting their	• *Alaska v. U.S.,* 4:13-cv-00008-RRB (D. Alaska) The State sued the U.S. and others to quiet title to a number of RS 2477 rights-of-way near Chicken, Alaska. The State successfully condemned the rights-of-way

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	before it is obligated to recognize them.	servient land are inconsistent with the State's rights of way.	creation have been factually satisfied.	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 to the 9th Circuit and, in November 2020, the 9th Circuit affirmed the district court. Since the district court's decision on the condemnation, the remainder of the case has also proceeded. The case is currently stayed pending settlement discussions.
Chugach National Forest Plan The 2020 Chugach National Forest Land Management Plan creates de facto Conservation System Units (CSU)	On April 16, 2020, the Chugach National Forest released the Final Record of Decision for its 2020 Land Management Plan.	The unauthorized CSU's overlap existing highways, railways, and utilities and will make it difficult to impossible to expand or improve these facilities. The new plan 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 new Chugach National Forest Plan established de facto CSUs in violation of ANILCA's prohibition of additional CSUs except by Act of Congress. ANILCA Title V; ANILCA section 1326.	No litigation at this time. The State sought resolution of these issues with the USFS both formally and informally. The State is considering its options.

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Eastern Interior RMP BLM's Eastern Interior Resource Management Plan (EIRMP) is inconsistent with ANILCA	BLM adoption of Eastern Interior Resource Management Plan (EIRMP).	The EIRMP recommends unjustified mineral closures and conservation designations. 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.	The EIRMP is inconsistent with ANILCA and Federal Land Policy Management Act's multiple use mandate.	No litigation at this time. The State continues to monitor congressional and agency action on the issue and evaluate options, including administrative action and litigation.
Fortymile River Navigability Alaska ownership of submerged land underlying Middle and North Forks of Fortymile River	1983 Navigability Finding	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 Without a judicial order, the State's ownership of the submerged lands would not be recognized by BLM; these lands would continue to be managed by BLM, not the State.	The "equal footing doctrine" guarantees to newly-admitted states the same rights enjoyed by the original thirteen states and other previously-admitted states, including title ownership to lands underlying navigable and tidally influenced waters. In addition, the Submerged Lands Act of 1953 vested in the states title to and ownership of lands beneath navigable waters within the boundaries of respective States. Alaska's title to its submerged lands vested at statehood on January 3, 1959. Therefore, unless a pre-statehood withdrawal	• *Alaska v. US,* 3:18-cv-00265-TMB (D. Alaska) The State filed a quiet title action on these two 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. After conducting extensive discovery, the United States disclaimed ownership to the claimed segment of the Middle Fork and a portion of the claimed segment of the North Fork, below Champion Creek. Approximately 16 miles of the North Fork remain in dispute. On August 30, 2022, the State filed a motion for summary judgment as to the remaining North Fork, the United States filed a response and cross-

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			clearly included the submerged lands and intended to defeat Alaska's statehood title, Alaska retains ownership and management authority of its submerged lands and navigable waters.	motion for summary judgment on November 14, 2022. Briefing is anticipated to conclude by the end of March 2023, with trial to occur in mid to late 2023, if necessary.
<u>King Cove Access Road</u> King Cove's right to reasonable access across the Izembek NWR to cure the landlocking of the City via the creation of the NWR	On July 15, 2021, the DOI Deputy Secretary Beaudreau issued a one-page memo (the Beaudreau decision) withdrawing a prior DOI determination that the City of King Cove is entitled to a road right-of-way across the Izembek National Wildlife Refuge (NWR) to connect King Cove to the airport at Cold Bay.	Deputy Secretary Beaudreau's July 15, 2021 memorandum withdrawing the earlier DOI decision resulted in a complete shutdown of the State's environmental permitting process for the King Cove to Cold Bay road. Until such road is developed, the residents of King Cove will remain a landlocked community and will have inadequate access to the rest of Alaska for health and safety needs.	Secretary Bernhardt's January 15, 2021 threshold determination that the City of King Cove was an "inholding" under ANILCA section 1110(b) guaranteed the city's right to reasonable access across the Izembek NWR to cure the landlocking of the city via the creation of the NWR. Secretary Bernhardt's finding was a thoroughly documented factual determination made under the regulatory processes of 43 CFR 36.10.	On October 1, 2021 the State filed its administrative appeal of DOI's withdrawal of the prior final agency action that determined King Cove was an inholding under ANILCA Title XI and, thus, entitled to a road right-of-way to the Cold Bay airport. The City of King Cove and the Aleutians East Borough are co-applicants to the State's right-of-way application under ANILCA 1110(b). On March 11, 2022, the USFWS Alaska Region Director denied the State's administrative appeal without considering or addressing the merits of the State's arguments. USFWS's March 11, 2022 decision to dismiss the State's appeal is a denial of the State's access request to complete environmental studies—the requested relief of the appeal—and a denial of the State's request to reinstate the decision that

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				found King Cove and inholding under ANILCA Title XI. The decision by the USFWS Alaska Region Director constitutes a final agency action that may be appealed to the federal district court in Alaska
<u>King Cove Land Swap</u> DOI entered into a land swap agreement in 2019 with King Cove Corporation.	NEPA, 2 U.S.C. 4321 *et seq* ESA, 16 U.S.C. § 1531 *et seq*. ANILCA, 16 U.S.C. § 3101 *et seq*.	For many years, residents of King Cove have been trying to get a road from the village to the airport at Cold Bay. The road would be primarily for health and safety purposes, as the airport at Cold Bay is the nearest location where large planes can land in the area's often poor weather conditions. A road directly connecting these two towns would have to cross federally designated wilderness in the Izembek National Wildlife Refuge. DOI agreed to a land exchange that would permit the road to be built. The land swap was challenged by environmental groups alleging violations of NEPA, ESA, and ANILCA.	The land swap complies with federal law and is urgently needed to provide access to land-locked King Cove.	*Friends of Izembek NWF v. Bernhardt* (9th Circuit: 20-35721, 35727, 35728). In June 2020, the land swap agreement was vacated by the district court after finding the agreement 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 vacating the agreement to the 9th Circuit. On March 16, 2022, the 9th Circuit reversed the district court on all grounds and remanded the decision for further proceedings. That decision was vacated for a rehearing before an 11-judge panel of 9th Circuit judges, which was held on December 13, 2022. The State awaits a decision from the rehearing.

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Koyukuk River Navigability State ownership of South Fork and Middle Fork of the Koyukuk River, the Bettles River, and the Dietrich River	BLM administrative decision finding waters non-navigable	Alaska's title to the South Fork and Middle Fork of the Koyukuk River, the Bettles River, and the Dietrich River vested at statehood on January 3, 1959, by operation of the Equal Footing Doctrine, the Submerged Lands Act, and the Alaska Statehood Act. BLM has failed to acknowledge the State's ownership. Instead, the United States has claimed that the subject waters are non-navigable, and hence did not convey to the State at statehood. Without a judicial order, the State's ownership of the submerged lands would not be recognized by BLM; these lands would continue to be managed by BLM, not the State.	The "equal footing doctrine" guarantees to newly-admitted states the same rights enjoyed by the original thirteen states and other previously-admitted states, including title ownership to lands underlying navigable and tidally influenced waters. In addition, the Submerged Lands Act of 1953 vested in the states title to and ownership of lands beneath navigable waters within the boundaries of respective States. Alaska's title to its submerged lands vested at statehood on January 3, 1959. Therefore, unless a pre-statehood withdrawal clearly included the submerged lands and intended to defeat Alaska's statehood title, Alaska retains ownership and management authority of its submerged lands and navigable waters.	• *Alaska v. US,* 3:21-cv-0221-SLG (D. Alaska) The state filed a quiet title action on these rivers in October 2021. The parties are engaged in discovery.
Ladue Statehood Entitlement Survey BLM rejected State's objections to a proposed	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	BLM's proposal is inconsistent with section 6 of the Alaska Statehood Act.	• *SOA v. IBLA*, 2020-0361 Alaska filed the notice of appeal with the IBLA on June 5, 2020. Merits briefing is stayed pending

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statehood entitlement patent on General Selection application		Tetlin Native Corporation. Mining claims straddle the insufficiently described boundary.		ongoing settlement discussions with BLM and Tetlin Native Corporation, the adjacent landowner. BLM submitted a proposed new informational traverse and field notes in August 2021, which are acceptable to the State. BLM required Tetlin to concur in the informational traverse for it to adopt this new informational traverse. In December 2022, DNR learned Tetlin would not concur in that informational traverse. Currently, the State's statement of reasons is due on or before February 28, 2023.
<u>Mendenhall Lake Navigability</u> State ownership of submerged land underlying Mendenhall Lake and the Mendenhall River	United States continued assertion of ownership of the subject submerged lands	Alaska's title to the Mendenhall Lake and River vested at statehood on January 3, 1959, by operation of the Equal Footing Doctrine, the Submerged Lands Act, and the Alaska Statehood Act. The United States has claimed, however, that these waters were the subject of a pre-statehood withdrawal, and hence did not convey to the State at statehood.	The "equal footing doctrine" guarantees to newly-admitted states the same rights enjoyed by the original thirteen states and other previously-admitted states, including title ownership to lands underlying navigable and tidally influenced waters. In addition, the Submerged Lands Act of 1953 vested in the states title to and ownership of lands beneath navigable waters within the boundaries of respective States.	• *Alaska v. US,* 3:22-cv-0240-HRH (D. Alaska) The State filed a quiet title action on these waters in November 2022. The United States' answer is currently due in early 2023.

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			Alaska's title to its submerged lands vested at statehood on January 3, 1959. No pre-statehood withdrawals in effect at the time of statehood defeated the State's interest to the subject submerged lands	
<u>Mulchatna River Navigability</u> State ownership of submerged lands underlying Turquoise Lake, Twin Lakes, the Mulchatna River, and the Chilikadrotna River, Lake Clark National Park and Preserve	BLM administrative decision finding waters non-navigable	Alaska's title submerged lands underlying Turquoise Lake, Twin Lakes, the Mulchatna River, and the Chilikadrotna River, Lake Clark National Park and Preserve vested at statehood on January 3, 1959, by operation of the Equal Footing Doctrine, the Submerged Lands Act, and the Alaska Statehood Act. BLM has failed to acknowledge the State's ownership. Instead, the United States has claimed that the subject waters are non-navigable, and hence did not convey to the State at statehood. Without a judicial order, the State's ownership of the submerged lands would not be recognized by BLM; these lands would continue to be managed by BLM, not the State.	The "equal footing doctrine" guarantees to newly-admitted states the same rights enjoyed by the original thirteen states and other previously-admitted states, including title ownership to lands underlying navigable and tidally influenced waters. In addition, the Submerged Lands Act of 1953 vested in the states title to and ownership of lands beneath navigable waters within the boundaries of respective States. Alaska's title to its submerged lands vested at statehood on January 3, 1959. Therefore, unless a pre-statehood withdrawal clearly included the submerged lands and intended to defeat Alaska's statehood title, Alaska	• *Alaska v. US,* 3:22-cv-0103-SLG (D. Alaska) The State filed a quiet title action on these waters in October 2022. The United States has filed a motion to dismiss portions of this case related to segments of the Chilikadrotna River. Briefing of the motion to dismiss is anticipated to conclude in early 2023. Following a decision on the motion to dismiss, the parties will begin discovery.

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			retains ownership and management authority of its submerged lands and navigable waters.	
Tongass Exemption Rule 2020 Tongass Exemption Rule exempts Tongass National Forest from the Roadless Rule	ANILCA, 16 U.S.C. § 3101 *et seq*. Administrative Procedures Act, 5 U.S.C. §§ 551–559 NEPA, 2 U.S.C. § 4321 *et seq*. Biden Administration proposed repeal of the Tongass Exemption Rule	The Roadless Rule prohibits new road construction and reconstruction in inventoried roadless areas on National Forest System lands. The 2020 Tongass Exemption Rule was published following a rulemaking process that begin in 2018 with the State of Alaska's petition for an exemption. A group of Alaska Native tribes, tourism businesses, a fisheries advocacy group, and environmental organizations filed a complaint alleging that the 2020 Tongass Exemption Rule violates ANILCA, NEPA, and the APA.	Alaska supports the Tongass Exemption to the Roadless Rule. The rule was issued in compliance with the APA, NEPA, and ANILCA.	• *Village of Kake v. US Dept. Ag,* 1:20-cv-00011-HRH (D. Alaska) The State intervened to support defense of the 2020 Tongass Exemption Rule. In November 2021, USDA proposed to repeal the 2020 Tongass Exemption Rule. The case is stayed pending the Biden administration's proposed repeal of the 2020 Tongass Exemption. The State opposed the repeal. The final decision is expected in January 2023.
Tongass Land Management Plan 2016 amendment to Tongass Land Management Plan (TLMP) does not incorporate the Tongass Exemption.	Tongass National Forest Land and Resource Management Plan Amendment 81 FR 88657	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	The 2016 TLMP is inconsistent with federal law because it incorporates the 2001 Roadless Rule. The Forest Service also failed to make the administrative change to the plan as required by the 2020 Tongass Exemption Rule.	No litigation at this time. The State's objections to the 2016 TLMP were not resolved. Also, in support of the USDA's motion to stay litigation challenging the 2020 Tongass Exemption Rule, the USDA indicated that it did not anticipate approving any projects in inventoried roadless areas in the Tongass. The USDA has yet to amend the TLMP as required

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		forced out of business while utilities, mining, and other industries would be substantially harmed.		by the 2020 Tongass Exemption Rule. The State is monitoring the USDA's implementation of the 2020 Tongass Exemption Rule and the 2016 TLMP.