

HJR

11

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Alaska House of Representatives

Session: Jan. – Apr.
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Representative Charisse Millett District 30

January 25, 2011
Bill Version: 27-LS0187\M

House Joint Resolution 11 Sponsor Statement

“Urging the United States Congress to refrain from passing legislation that designates land in Area 1002 of the Arctic National Wildlife Refuge as wilderness”

House Joint Resolution 18 urges the United States Congress to reject any legislation seeking a wilderness designation for Area 1002 of the Arctic National Wildlife Refuge.

The U.S. Fish and Wildlife Service is drafting a new Comprehensive Conservation Plan for ANWR and the draft report is due out by late March 2011. No matter what the report recommends, it will renew calls for a wilderness designation. Not only will a wilderness designation lock it up – it will throw away the key.

Legislation has already been introduced in the US House of Representatives (H.R. 139) to make the coastal plain of ANWR a wilderness area.

The 1002 Area could be the largest untapped onshore oil prospect in the United States and that makes it both a national refuge and a strategic resource. The two are not incompatible.

Congress deliberately set aside Area 1002 for future oil and gas exploration. Lawmakers at the time understood the day may come when those reserves will be needed to fuel the economy and reduce the flow of imported oil into America.

Alaska needs new jobs to grow its economy and new revenue to fund basic services like education, public safety and transportation infrastructure. America needs a stable, safe and secure supply of energy to help the economy get back on its feet. ANWR can do all of that without harming the fragile arctic environment.

Locking up a two thousand acre area that makes up less than one percent of the refuge and holds an estimated 10,400,000,000 barrels of oil does not make sense for America's economy and national security.

HJR 11 has been referred to the House Resources Committee. For more information, contact Representative Millett at (907) 465-3879.

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FISCAL NOTE

STATE OF ALASKA
2011 LEGISLATIVE SESSION

Fiscal Note Number _____
 Bill Version HJR 11
 () Publish Date _____

House Joint Resolution NO. 11
 Title "Urging the United States Congress to refrain from passing legislation that that designates land in Area 1002 of the Arc..."
 Sponsor Representative Millett
 Requester House Resources Committee
 Dept. Affected Legislature
 Appropriation B&A Committee, Leg Council
 Allocation & Subcommittees, Leg Operating
 Budget Budget
 OMB Component Number 783; 775

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information						
		FY 2012	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017
OPERATING EXPENDITURES								
Personal Services								
Travel								
Contractual								
Supplies								
Equipment								
Grants & Claims								
Miscellaneous								
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES								
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CHANGE IN REVENUES								
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FUND SOURCE (Thousands of Dollars)

	FY 2012	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017
1002 Federal Receipts							
1003 GF Match							
1004 GF							
1005 GF/Program Receipts							
1037 GF/Mental Health							
Other Interagency Receipts							
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2011) cost _____

POSITIONS

Full-time							
Part-time							
Temporary							

Why this fiscal note differs from previous version

This legislation has zero fiscal impact on the Legislative Affairs Agency.

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 Date 2/3/2011

Analysis

This fiscal note has zero impact on the Legislative Affairs Agency.

ANWR TALKING POINTS

HJR 12

- More than 75 percent of Alaskans support opening ANWR
- Past legislatures and governors has unanimously supported oil and gas exploration and production in ANWR
- ANWR is America's best chance for a major oil discovery
- That makes it a wildlife refuge and a strategic resource – the two are not incompatible
- The country needs the oil and natural gas within the 1002 Area of ANWR now more than ever
- The recession in the Lower-48 may be headed our way
- Alaska needs the new jobs to grow its economy and the revenue so we can pay for basic state services like education
- A safe, steady supply of domestic oil fuels the economy and helps get the economy back on its feet
- We cannot give up on ANWR

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- Any future natural gas pipeline will need the gas in ANWR to heat homes, businesses and generate power in Alaska and the Lower-48
- Locking up a two thousand acre area that makes up less than one percent of the refuge and holds an estimated 10 billion barrels of oil is bad economic and national security policy
- The Inupiat Eskimos living in and around ANWR support onshore development in the 1002 Area
- These resolutions are important - we have to send the message to congress and the Obama administration that ANWR must be part of an overall national energy strategy
- Alaska is doing its part in the global renewable energy production effort

- But it will not happen overnight - we will have to rely on a mix of renewable and non-renewable sources of energy
- The Central Arctic Caribou Herd – which migrates through Prudhoe Bay – has expanded to from 3,000 to 32,000 animals since the pipeline began shipping oil
- The region also has healthy bear, fox and bird populations

**THE IMPACT OF ANILCA ON THE POTENTIAL DESIGNATION
OF THE COASTAL PLAIN OF ANWR AS A NATIONAL MONUMENT**

Prepared by

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For

THE ALASKA STATE LEGISLATURE

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INTRODUCTION

In 1980, Congress enacted the Alaska National Interest Lands Conservation Act (“ANILCA” or the “Act”), transferring approximately 105 million acres of public lands in Alaska into various conservation units and withdrawing many of these lands from further development. The legislation followed several years of debate over the disposition of Alaska lands and a series of unilateral Executive withdrawals in Alaska under the Federal Land Policy and Management Act (“FLPMA”) and the Antiquities Act. By the time ANILCA passed, Congress had considered several versions of the legislation. To enact the legislation, the advocates of ANILCA made concessions that were intended to foreclose future withdrawals of Alaska lands from natural resource development.¹

In addition to the lands set aside in national parks and comparable units through ANILCA, Congress created the Arctic National Wildlife Refuge (“ANWR”) from the existing Arctic National Wildlife Range and other public lands.² Recognizing its extraordinary potential for oil and gas development, Congress designated approximately fifteen percent of ANWR bordering the Beaufort Sea—an area known as the “coastal plain”³—as a special study area to determine both its natural resource potential and its environmental values. *See generally* ANILCA § 1002, 16 U.S.C. § 3142. Unlike the national parks, wilderness areas, and wildlife refuges created through ANILCA, the ultimate status of the coastal plain was left for a future Congress to determine.

Some have suggested that President Clinton should designate the coastal plain of ANWR a national monument under the Antiquities Act⁴ and thereby permanently withdraw the area “from all

¹ *See* discussion *infra*, Section III.

² *See* ANILCA § 303(2), Pub. L. No. 96-487, 94 Stat. 2371, 2390 (1980); Pub. Land Order 2214, 25 Fed. Reg. 12,598-99 (1960) (establishing Arctic National Wildlife Range). President Carter sought to expand the Refuge in 1980 under the Federal Land Policy and Management Act (“FLPMA”). *See* Pub. Land Order 5711, 45 Fed. Reg. 9716 (Feb. 12, 1980). ANILCA, however, specifically rescinded this withdrawal. ANILCA § 1322, 16 U.S.C. § 3209.

³ ANILCA § 1002(b), 16 U.S.C. § 3142(b). The coastal plain represents approximately 1.5 million of the 19.6 million acres that comprise ANWR.

⁴ Under the Antiquities Act, 16 U.S.C. §§ 431-433, the President may declare “historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest,” which are located on lands owned or controlled by the Government, to be national monuments. 16 U.S.C. § 431.

forms of entry, location, selection, sale, leasing, or other disposition under the public land laws.”⁵ The Alaska State Legislature has requested that Patton Boggs LLP determine whether ANILCA prohibits this designation. We have analyzed the issue and conclude that ANILCA precludes a permanent withdrawal of the coastal plain under the Antiquities Act.

DISCUSSION

I. THE TEXT OF ANILCA FORBIDS DESIGNATION OF ANWR’S COASTAL PLAIN AS A NATIONAL MONUMENT UNDER THE ANTIQUITIES ACT.

The plain language of ANILCA § 1326’s prohibition on unilateral executive withdrawals, coupled with the text of related provisions, demonstrates that Congress intended to preclude the President from acting alone to effect a permanent withdrawal of the coastal plain under the Antiquities Act.

A. The Plain Language Of Section 1326 Prohibits National Monument Designations Without The Approval Of Congress.

Section 1326(a) of the statute plainly proscribes any permanent monument designation without the approval of Congress:

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 compliance with this subsection. To the extent authorized by existing law, the President or the Secretary may withdraw public lands in the State of Alaska

⁵ Recent designations under the Antiquities Act have included this withdrawal language. *See, e.g.*, Proclamation No. 7263, 65 Fed. Reg. 2815-20 (Jan. 18, 2000) (establishing Agua Fria National Monument); Proclamation No. 7264, 65 Fed. Reg. 2821-23 (Jan. 18, 2000) (establishing California Coastal National Monument); Proclamation No. 7265, 65 Fed. Reg. 2825-29 (Jan. 18, 2000) (establishing Grand Canyon-Parashant National Monument); Proclamation No. 7266, 65 Fed. Reg. 2831-34 (Jan. 18, 2000) (enlarging Pinnacles National Monument); Proclamation No. 7295, 65 Fed. Reg. 24,095-100 (Apr. 25, 2000) (establishing Giant Sequoia National Monument); Proclamation No. 7317, 65 Fed. Reg. 27,243-47 (June 13, 2000) (establishing Canyons of the Ancients National Monument); Proclamation No. 7318, 65 Fed. Reg. 37,249-52 (June 13, 2000) (establishing Cascade Siskiyou National Monument); Proclamation No. 7319, 37,252-57 (June 13, 2000) (establishing Hanford Reach National Monument); Proclamation No. 7320, 65 Fed. Reg. 37,258-62 (June 13, 2000) (establishing Ironwood Forest National Monument); Proclamation No. 7329, 65 Fed. Reg. 43,671-75 (July 13, 2000) (establishing President Lincoln and Soldiers’ Home National Monument).

A “withdrawal” is distinguishable from a “reservation” in that a withdrawal “is negative, forbidding certain uses, while a reservation is a positive declaration of future use.” 1 GEORGE C. COGGINS & ROBERT L. GLICKSMAN, PUBLIC NATURAL RESOURCES LAW § 1.02[1][d], at 1-14.

exceeding five thousand acres in the aggregate, which withdrawal shall not become effective until notice is provided in the Federal Register and to both Houses of Congress. Such withdrawal *shall* terminate unless Congress passes a joint resolution of approval within one year after the notice of such withdrawal has been submitted to Congress.

16 U.S.C. § 3213(a) (emphasis added). Section 1326(a) reflects Congress' careful allocation of authority for future withdrawals of lands in Alaska. If the putative withdrawal involves a significant amount of land (*i. e.*, over five thousand acres), Congress must pass a joint resolution confirming the withdrawal in order for it to become permanent. Should Congress decline to pass the resolution within one year of receiving notice, the withdrawal terminates.

Therefore, any Executive Branch withdrawal post-dating ANILCA that exceeds five thousand acres will expire at the end of one year unless Congress expressly approves it. It follows, of course, that the Administration could not effect a permanent withdrawal of the sort contemplated in a national monument designation without contravening section 1326(a). Thus, short of a congressional resolution, there can be no new permanent national monuments in Alaska.

B. Even If Section 1326(a) Does Not Prohibit Monument Designation Of The Coastal Plain, Section 1002 Precludes Any Such Unilateral Executive Action.

Congress made clear in ANILCA that the coastal plain was an area separate and apart from the remainder of ANWR. Section 1002's detailed scheme for ANWR's coastal plain demonstrates that Congress reserved the decision-making authority with respect to this area, leaving no room for Executive discretion. Through section 1002, Congress:

provide[d] for a comprehensive and continuing inventory and assessment of the fish and wildlife resources of the coastal plain of the [ANWR]; an analysis of the impacts of oil and gas exploration, development, and production, and [authorized] exploratory activity within the coastal plain in a manner that avoids significant adverse effects on the fish and wildlife and other resources.

ANILCA § 1002(a), 16 U.S.C. § 3142(a). This section mandates a baseline study assessing (i) fish and wildlife and their habitat, and (ii) the potential impacts of oil and gas exploration, development and production. ANILCA § 1002(c), 16 U.S.C. § 3142(c). It requires a later report to Congress examining these topics in more detail as well as setting forth the Secretary of the Interior's recommendations regarding oil and gas exploration, development, and production in the coastal

plain.⁶ ANILCA § 1002(h), 16 U.S.C. § 3142(h). Pending completion of the studies, Congress withdrew the coastal plain from entry and appropriation under the mining law as well as from operation of the mineral leasing laws. ANILCA § 1002(i), 16 U.S.C. § 3142(i). Further, Congress prohibited oil and gas production in ANWR as a whole until authorized by Congress. ANILCA § 1003, 16 U.S.C. § 3143.

This legislative structure leaves no room for any exclusive act of the Executive Branch. Any national monument designation of the coastal plain would contradict congressional direction—namely, that Congress should in the first instance, determine the possibility of more extensive preservation efforts or, alternatively, future oil and gas development.

C. Other Provisions Confirm That ANILCA Prohibits A National Monument Designation Of ANWR's Coastal Plain.

Other provisions of ANILCA demonstrate that Congress intended to prevent the President's unilateral designation of ANWR's coastal plain as a national monument. The Act's statement of purpose and its prohibition on studies for withdrawals confirm that Congress intended to prevent national monument designation.

1. *Congress' Statement of Purpose demonstrates that Congress intended to prohibit future Executive Branch withdrawals.*

To counterbalance massive conveyance of land into units withdrawn from development, ANILCA's authors foreclosed future, additional withdrawals in Alaska. More specifically, through ANILCA, Congress intended to strike a balance between (i) preservation of environmental features and (ii) development of Alaska's natural resources. In its "statement of purpose," Congress explicitly found:

This Act provides sufficient protection for the national interest in the scenic, natural, cultural and environmental values on the public lands in Alaska, and at the same time provides adequate opportunity for satisfaction of the economic

⁶ In 1987, after several years of study and completion of a comprehensive report, the Department of the Interior recommended development. See U.S. DEPT OF THE INTERIOR, FISH AND WILDLIFE SERVICE, GEOLOGICAL SURVEY, AND BUREAU OF LAND MANAGEMENT, ARCTIC NATIONAL WILDLIFE REFUGE, ALASKA, COASTAL PLAIN RESOURCE ASSESSMENT, REPORT AND RECOMMENDATION TO THE CONGRESS OF THE UNITED STATES AND FINAL LEGISLATIVE ENVIRONMENTAL IMPACT STATEMENT (1987).

and social needs of the State of Alaska and its people; accordingly, the designation and disposition of the public lands in Alaska pursuant to this Act are found to represent a proper balance between the reservation of national conservation system units and those public lands necessary and appropriate for more intensive use and disposition, and thus Congress believes that the need for future legislation designating new conservation system units, new national conservation areas, or new national recreation areas, has been obviated thereby.

ANILCA § 101(d), 16 U.S.C. § 3101(d) (emphasis added). Clearly, Congress believed sufficient land had been withdrawn in Alaska to satisfy environmental concerns. The drafters recognized that withdrawing additional land from potential development could have devastating impacts upon Alaska's economy.

Congressional intent could not have been more clear: ANILCA was intended to strike the proper balance between preservation and development and to eliminate the need for future set-asides of conservation areas in Alaska. It would hardly have been Congress' intent to allow a Presidential withdrawal in this context. Accordingly, interpreting section 1326(a) to preclude permanent national monument designation of the coastal plain is entirely consistent with this statement of congressional purpose.

2. *By prohibiting even a study for the purpose of a further withdrawal, Congress confirmed that it had precluded designations under the Antiquities Act.*

Further, Congress was so concerned about the potential for a future administration's unilateral withdrawal that it even proscribed studies for the purpose of withdrawing lands in Alaska. Section 1326(b) forbids "further studies of Federal lands in the State of Alaska for the single purpose of considering the establishment of a conservation system unit, national recreation area, national conservation area, or for related or similar purposes . . . unless authorized by this Act or further Act of Congress." ANILCA § 1326(b), 16 U.S.C. § 3213(b). Thus, Congress plainly intended to prevent even a "study" of the potential for a withdrawal of the sort contemplated by the advocates of national monument designation. Obviously, Congress did not envision allowing a withdrawal while prohibiting a study in preparation for that withdrawal. Accordingly, section 1326(a) should be read to coincide with Congress' intent as manifested in other provisions of the Act: further designations outside the legislative process are simply prohibited.

II. FORMER WITHDRAWALS OF ANWR'S COASTAL PLAIN DO NOT AFFECT SECTION 1326(A)'S PROHIBITION AGAINST PERMANENT NATIONAL MONUMENT DESIGNATIONS.

The advocates of a national monument designation have suggested that section 1326(a)'s prohibition on permanent withdrawals does not apply to any contemplated monument designation of the coastal plain because the area has already been "withdrawn"—either by section 1002 or through withdrawals prior to the passage of ANILCA. The argument is unfounded.

Section 1326(a) applies to "future executive branch action which withdraws more than five thousand acres . . . of public lands within the state of Alaska." As with many withdrawals, a designation of the coastal plain under the Antiquities Act would effect a withdrawal on property that already carries some development restrictions.

Under the current scheme, the coastal plain is set aside for study and, potentially, for further congressional action either completely withdrawing the land or opening it for development of its natural resources. To the extent ANILCA effects a withdrawal, it is only "until otherwise provided for" by separate legislation. *See* ANILCA § 1002(i), 16 U.S.C. § 3142(i). The national monument designation, by contrast, contemplates a permanent withdrawal from development. Thus, a designation under the Antiquities Act would constitute an additional "withdrawal" within the meaning of section 1326(a).

Advocates intend that the proposed designation would protect the coastal plain under the Antiquities Act by permanently withdrawing that area, subjecting it to a separate management scheme, and preventing future resource development. That withdrawal would be separate and distinct from Congress' initial limited withdrawal of the coastal plain in ANILCA § 1002(i). It follows, of course, that the potential designation falls well within the "withdrawals" that cannot be made without congressional concurrence. Indeed, were it otherwise, *i. e.*, if the proposed designation effected no further "withdrawal," the designation would be pointless.⁷

⁷ Some advocates of monument designation have also suggested that such a designation would not constitute a "future" executive withdrawal because the area had already been withdrawn in the 1960s. This argument misses the mark. First, to the extent the 1960 withdrawal establishing the Arctic National Wildlife Range is inconsistent with ANILCA's treatment of the coastal plain, ANILCA prevails, and the earlier withdrawal has no effect. *See* ANILCA § 305, Pub. L. No. 96-487, 94 Stat. 2371, 2390 (1980); Pub. Land Order 2214, 25 Fed. Reg. 12,598-99 (1960) (establishing Arctic National Wildlife Range). Further, the 1960 withdrawal

(continued . . .)

III. ANILCA'S LEGISLATIVE HISTORY CONFIRMS THAT CONGRESS INTENDED SECTION 1326 TO PROHIBIT PERMANENT NATIONAL MONUMENT DESIGNATIONS WITHOUT CONGRESSIONAL APPROVAL.

The bill that became ANILCA was the Senate-passed H.R. 39 (96th Cong., 2d Sess., Aug. 19, 1980). Section 1326 was not included in the original bill passed by the House in the 96th Congress and referred to the Senate for consideration. Similarly, section 1326 was not included in the version of H.R. 39 reported to the full Senate by the Senate Committee on Energy and Natural Resources ("Senate Energy Committee"), which initially considered the House-passed Alaska lands bill. Instead, section 1326 was included in a floor amendment in the nature of a substitute for the Senate Energy Committee-reported bill, co-sponsored by Senator Tsongas. Amendment No. 1961 (As Modified), Calendar No. 442; 126 CONG. REC. S11063 (daily ed. Aug. 18, 1980) (Sen. Tsongas calling up the modified amendment). Therefore, little direct legislative history on this provision exists. What little history exists, however, supports the interpretation that Congress intended section 1326 to prohibit further permanent withdrawals without its approval. Further, a prior version of the bill included a section remarkably similar to section 1326. The legislative history of this provision also supports this interpretation.

A. ANILCA's Purpose

ANILCA's legislative history demonstrates that Congress intended to retain authority over further public lands withdrawals in Alaska. Discussing a precursor to the bill that ultimately became ANILCA, Senator Hatfield, who would later co-sponsor such bill, criticized Executive withdrawals as an inadequate land management tool and stated categorically that it was "the responsibility of *Congress* to make these important land classification decisions," including "where to establish . . . wilderness." 126 CONG. REC. S9400 (daily ed. July 21, 1980) (remarks of Sen. Hatfield) (emphasis

explicitly did *not* withdraw the area from oil and gas development. Specifically, the Public Land Order withdrew the lands "from all forms of appropriation under the public land laws, including the mining *but not the mineral leasing laws*." 25 Fed. Reg. at 12,598 (emphasis added). Oil and gas development on federal lands can only take place under the aegis of the mineral leasing laws. Any withdrawal contemplated under the Antiquities Act, which would of necessity withdraw the area from oil and gas development, would constitute a withdrawal above and beyond that effected by the 1960 creation of the Wildlife Range. Therefore, even if the 1960 withdrawal were somehow relevant, any monument designation would indeed constitute a "future" withdrawal of public lands for purposes of section 1326(a).

added). Further, Senator Tsongas, another co-sponsor and the chief architect of the bill that would become ANILCA, both criticized Executive withdrawals as a land management tool and expressed his belief that the final disposition of Alaska lands was for Congress to make. *See* 126 CONG. REC. S9423-24 (daily ed. July 21, 1980) (remarks of Sen. Tsongas).

B. Legislative History Of ANILCA § 1326

Over the years that the Alaska lands legislation was considered, the Alaska delegation had repeatedly emphasized the detrimental economic impact of withdrawing 105 million acres of land from development in Alaska. *See, e.g.,* S. REP. NO. 96-413, at 434 (1979).⁸ Because the language that ultimately became law was a floor amendment substituted for the legislation passed out of the Senate Energy Committee, there are no committee reports directly interpreting section 1326. Nonetheless, the principal sponsor of the legislation, Senator Tsongas, described the import of section 1326. The sponsor explained that by including this amendment the legislation would:

Add a "no more" provision. This is one of the State [of Alaska's] seven consensus points Basically *it provides that any future executive withdrawal for conservation system unit purposes would terminate if not ratified by passing a joint resolution of Congress within 1 year after the notice of such withdrawal has been submitted to Congress.*

126 CONG. REC. S11118 (daily ed. Aug. 18, 1980) (remarks of Sen. Tsongas) (emphasis added).⁹

Thus, the direct legislative history of the provision leaves no room for dispute: any further withdrawal would require the concurrence of Congress and unilateral executive action is proscribed.

⁸ Senator Gravel criticized the bill passed out of the Senate Energy Committee, complaining:

We cannot continue to be exposed to the threats and intimidation of a zealous Executive which may feel in the future that the Congress did not meet the Administration's desires for land designations in Alaska. *Thus, absent from this bill is a provision barring further conservation system designations through administrative action such as the Antiquities Act. Obviously, the Congress could act again in the future if it were so inclined, but the arbitrary permanent removal of federal lands from the public domain can no longer be left to the Executive in Alaska.*

S. REP. NO. 96-413, at 434 (1979) (letter from Sen. Gravel) (emphasis added).

⁹ The bill that ultimately became ANILCA originated on the Senate floor as an amendment in the nature of a substitute for the version of H.R. 39 reported by the Senate Energy Committee. *See* Amendment No. 1961 (As Modified), Calendar No. 442; 126 CONG. REC. S11063 (daily ed. Aug. 18, 1980) (Sen. Tsongas calling up the modified amendment). Senator Tsongas was the substitute bill's principal architect. His comments on

(continued . . .)

C. Legislative History Of Section 1326's Predecessor

The Alaska lands bill reported by the House Committee on Interior and Insular Affairs ("House Interior Committee") on April 18, 1979, contained a section very similar to ANILCA § 1326. *See* H.R. REP. NO. 96-97, Part I, at 115 (1979). That section provided:

Sec. 1209. Notwithstanding any other provision of law, *no further studies or withdrawals of Federal lands in Alaska except those authorized by this Act shall be conducted unless authorized by concurrent resolution of Congress.*

Id. at 253 (emphasis added). Section 1209 was added to the bill to indicate that Congress intended this act to contain the full and complete public lands withdrawals in Alaska:

The designation of national interest lands in Alaska has been a controversial subject. A major concern of many involved has been whether further studies or withdrawals of public land in Alaska will occur in the future. *The Committee feels that the areas designated by this Act, along with accompanying special studies and wilderness review provisions, completes the contribution of Alaska's public lands to the national conservation systems. Further studies or withdrawals should be accomplished with the agreement of a future Congress, consistent with its constitutional authority to determine the disposition of the Nation's publicly owned lands. This section prohibits the executive branch from instituting such studies or withdrawals without the concurrence of Congress by joint resolution.*

Id. (emphasis added). The Committee further explained that section 1209:

the Senate floor indicated that his substitute bill was a "compromise" bill. *See* 126 CONG. REC. S11116 (daily ed. Aug. 18, 1980) (Sen. Tsongas); 126 CONG. REC. S10794 (daily ed. Aug. 5, 1980) (Sen. Tsongas). The compromise was specifically designed to address "the legitimate interests of the people of Alaska, as expressed by their Senators" during the Senate Energy Committee hearings. 126 CONG. REC. S9423 (daily ed. July 21, 1980) (Sen. Tsongas); 126 CONG. REC. S10794 (daily ed. Aug. 5, 1980) (Sen. Tsongas). The interests expressed in committee included inclusion of a "no more" provision in the Alaska lands legislation to restrict the exercise of Executive authority in Alaska, as revealed by transcripts of Senate Energy Committee mark up hearings on the Alaska lands bill. *See Senate Comm. on Energy and Natural Resources, Markup Session on S. 9, Alaskan Lands Bill, reprinted in XXXII Alaska Dep't of Fish and Game, Public Law 96-487, Alaska National Interest Lands Conservation Act, Legislative History, at 632, 637-43 (1981) (hearing of Oct. 30, 1979).* In this same context, Senator Tsongas added that any lands conservation bill that did not take into account other Alaskan interests was "simply ill founded and ill fated." 126 CONG. REC. S9423-24 (daily ed. July 21, 1980) (remarks of Sen. Tsongas). Thus, ANILCA's prime sponsor recognized that balance and compromise were vital to enactment of a law resolving "once and for all" the Alaska lands issue. *Id.*

[p]rovides that no further studies or withdrawals of Federal lands in Alaska except those authorized by this Act shall be conducted unless authorized by concurrent resolution of Congress. The purpose of this section is to insure that Congress reviews any proposed study or withdrawal prior to it being undertaken by the executive branch. *It is the opinion of the committee that this Act fulfills the needs for the establishment of conservation system units in Alaska and that no future studies should be conducted without first being authorized by Congress.*

Id. at 314 (emphasis added).

In addition to the specific intent underlying section 1209, the Committee's report reflected its strong belief in the importance and role of the balance struck among a multitude of competing interests. *See generally id.* at 138-41. For example, the Committee noted that one of the bill's "fundamental attributes" was that it was "balanced as it protects the 'crown jewels of Alaska' without denying the U.S. needed resources or trampling the legitimate rights and needs of Alaskans." *Id.* at 138. Section 1209 and the classification of ANWR were integral parts of this carefully-crafted legislative balance. *See generally id.* at 138-39.

Thus, the House Interior Committee regarded language very similar to ANILCA § 1326 as completing the land disposal and classification process in Alaska. In addition, the House Interior Committee plainly contemplated that Congress, not the President, would make any future decisions regarding land disposals or classifications in Alaska.

IV. THE PROHIBITION AGAINST UNILATERAL PRESIDENTIAL WITHDRAWALS IS CONSTITUTIONAL.

A. ANILCA § 1326(a) Is Readily Distinguishable From The "Legislative Veto" Struck Down By The Supreme Court In *Chadha*.

Despite suggestions by supporters of national monument designation for ANWR's coastal plain, ANILCA's "no more" clause is not a legislative veto of the sort found unconstitutional in *Immigration & Naturalization Service v. Chadha*, 462 U.S. 919 (1983). The statute at issue in *Chadha* "authorized one House of Congress, by resolution, to invalidate the decision of the Executive Branch, pursuant to authority delegated by Congress to the Attorney General of the

United States, to allow a particular deportable alien to remain in the United States.”¹⁰ *Id.* at 923. In *Chadha*, therefore, the Supreme Court addressed the constitutionality of a statutory provision that permitted one House of Congress to override, or effectively to “veto,” an action taken by the Executive Branch. The Court held this provision to be unconstitutional because it amounted to legislative action taken without regard to the procedures mandated by Article I of the Constitution. *Id.* at 956-58. First, the statute violated principles of bicameralism because it permitted a veto of Executive action by a resolution passed by only *one* House of Congress. *Id.* at 954-57. Second, the statute constituted a legislative act that had not been presented to the President, in violation of the Presentment Clauses, Article I, § 7. *Id.*

ANILCA § 1326(a) in no way resembles the statute struck down by the Supreme Court in *Chadha*. The supposedly offending language in section 1326(a) provides, in pertinent part, that “Such [presidential] withdrawal shall terminate unless Congress passes a joint resolution of approval within one year after the notice of such withdrawal has been submitted to Congress.” ANILCA § 1326(a), 16 U.S.C. § 3213(a). The provision does not involve unilateral action by one House of Congress. Instead, the statute requires passage by both Houses and presentment to the President before any national monument designation may extend beyond the one-year time frame delineated in section 1326. In addition, the provision does not purport to veto or override an action taken by the Executive. In contrast, the congressional action detailed in this provision supports the actions of the Executive. Thus, the provision is constitutionally sound.

B. Section 1326(a) Does Not Violate The Principles Of Bicameralism.

The bicameralism requirement for legislative action springs from Article I of the Constitution: “All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate *and* House of Representatives.” U.S. CONST., art. I, § 1 (emphasis added). Further, section 7 provides: “Every Bill which shall have passed the House of Representatives *and* the Senate, shall, before it becomes a Law, be presented to the President of the

¹⁰ Through this statute, Congress had delegated to the Executive Branch the authority to permit deportable aliens to remain in the United States. 462 U.S. at 954. However, Congress retained the ability to reverse, through resolution passed by only one House, a decision made by the Executive to exercise this authority. *Id.* at 925.

United States . . .” *Id.*, art. I, § 7, cl. 2 (emphasis added). The bicameral nature of the legislature was established to “assure[] that the legislative power would be exercised only after opportunity for full study and debate in separate settings.” *Chadha*, 462 U.S. at 951. As mentioned above, the Court in *Chadha* struck the legislative veto in part on bicameralism grounds because the statute only required passage of the resolution by one House of Congress. *Id.* at 954-57.

Unlike the scheme in *Chadha*, ANILCA § 1326(a) requires a *joint* resolution that, by definition, must pass both Houses.¹¹ ANILCA’s “no more” provision, therefore, clearly does not implicate the bicameralism requirement.

C. The “No More” Clause Does Not Violate The Presentment Clauses Of The Constitution.

As with bicameralism, the Framers required presentment to the President when Congress acts in its legislative capacity. Article I, section 7 provides in part: “Every Bill which shall have passed the House of Representatives and the Senate, *shall, before it becomes law, be presented to the President of the United States . . .*” U.S. CONST., art. I, § 7, cl. 2 (emphasis added). In addition:

Every Order, Resolution, or Vote to which the Concurrence of the Senate and House of Representatives may be necessary . . . shall be presented to the President of the United States; and before the Same shall take Effect, shall be approved by him, or being disapproved by him, shall be repassed by two thirds of the Senate and House of Representatives, according to the Rules and Limitations prescribed in the Case of a Bill.

Id., cl. 3 (emphasis added). Presentment was considered a critical check on the power of the Legislature and, in conjunction with bicameralism, “represents the Framers’ decision that the legislative power of the Federal Government be exercised in accord with a single, finely wrought and exhaustively considered, procedure.” *Chadha*, 462 U.S. at 951.

Unlike the resolution considered in *Chadha*, ANILCA § 1326 involves a *joint resolution*. A joint resolution is the same as a bill in that, to become effective, it must pass both Houses of

¹¹ That a joint resolution requires the concurrence of both Houses of Congress is not at issue. HOW OUR LAWS ARE MADE, Part IV (Jan. 31, 2000) (ed. Charles W. Johnson) <<http://thomas.loc.gov/home/lawmade.bysec/formsofaction.html>>. See also CONGRESSIONAL QUARTERLY’S UNDERSTANDING CONGRESS, Part VI, § I.A.2(b) (1997).

Congress and *be presented to the President*.¹² HOW OUR LAWS ARE MADE, *supra*, Part IV. See also UNDERSTANDING CONGRESS, *supra*, Part VI, § I.A.2(b). Indeed,

[t]here is little practical difference between a bill and a joint resolution and *the two forms are often used interchangeably*. . . . Statutes that have been initiated as bills have later been amended by joint resolution and vice versa. *Both are subject to the same procedure*

. . . .
Joint resolutions . . . become law in the same manner as bills.

HOW OUR LAWS ARE MADE, *supra*, Part IV (emphasis added). Therefore, ANILCA's joint resolution requirement ensures that any congressional action taken must pass both Houses and be presented to the President before it can become effective.¹³ ANILCA's "no more" provision does not exempt the resolution at issue from this constitutional requirement. Given that courts must construe statutes to avoid constitutional issues,¹⁴ the last sentence of section 1326(a) does not raise presentment issues because it does not preclude adherence to the constitutional procedures required for the "activation" of a joint resolution—passage by both Houses and presentment to the President. See also *Alaska v. Brown*, 850 F. Supp. 821, 825-26 (D. Alaska 1994) (upholding as

¹² There exists one exception to presentment of joint resolutions. Joint resolutions that propose amendments to the Constitution are not presented to the President for approval but are instead sent to the states for ratification. HOW OUR LAWS ARE MADE, *supra*, Part IV.

¹³ The Court's discussion of the presentment issue in *Chadha* supports the conclusion that presentment is required for a joint resolution to take effect. The Court noted:

Presentment to the President and Presidential veto were considered so imperative that the draftsmen took special pains to assure that these requirements could not be circumvented. *During the final debate on Art. I, § 7, cl. 2, James Madison expressed concern that it might easily be evaded by the simple expedient of calling a proposed law a "resolution" or "vote" rather than a "bill." As a consequence, Art. I, § 7, cl. 3 . . . was added.*

Chadha, 462 U.S. at 947 (emphasis added) (citation omitted). As noted above, clause 3 requires presentment of every resolution passed by the House and Senate.

¹⁴ *Public Citizen v. Department of Justice*, 491 U.S. 440, 465-66 (1989) (constructions that cast doubt on a statute's constitutionality should be avoided); *Edward J. DeBartolo Corp. v. Florida Gulf Coast Bldg. & Constr. Trades Council*, 485 U.S. 568, 575 (1988) ("[E]very reasonable construction must be resorted to, in order to save a statute from unconstitutionality.").

constitutional similar provision wherein Congress in essence approved Executive action via joint resolution).

D. Section 1326(a) Does Not Violate Separation Of Powers Principles.

Supporters of national monument designation for the coastal plain may argue that section 1326(a) violates separation of powers principles. This argument may take the form that Congress, through the last sentence of section 1326(a), attempted to exercise Executive authority by taking upon itself—and away from the President—authority to implement either the Antiquities Act or ANILCA. An examination of the case law addressing separation of powers and the history of national monument designation demonstrates that this argument carries little weight.

Separation of powers is based upon the Constitution's division of the Federal government into three separate Branches—Legislative, Executive, and Judicial—in order to diffuse power. *Bowsher v. Synar*, 478 U.S. 714, 721 (1986). Although these three Branches must be “entirely free from the control or coercive influence, direct or indirect, of either of the others, the Framers did not require—and indeed rejected—the notion that the three Branches must be entirely separate and distinct.” *Mistretta v. United States*, 488 U.S. 361, 380 (1989) (citations, internal quotations omitted). Instead, the courts have recognized “that the greatest security against tyranny—the accumulation of excessive authority in a single Branch—lies not in hermetic division among the Branches, but in a carefully crafted system of checked and balanced power within each Branch.” *Id.* at 381. The Framers recognized, therefore, that the Branches must be permitted to work together and to have a degree of overlapping responsibility in order to govern effectively. *Id.* (citation omitted). In keeping with this philosophy, the Court has struck down as unconstitutional laws “that either accrete to a single Branch powers more appropriately diffused among separate Branches or that undermine the authority and independence of one or another coordinate Branch,”¹⁵ while upholding statutes “that to some degree commingle the functions of the Branches, but that pose no danger of either aggrandizement or encroachment.” *Id.* at 382.

¹⁵ See, e.g., *Chadha*, 462 U.S. 919 (striking provision that permitted Congress to override an Executive decision without following the Article I procedures required for legislative acts); *Bowsher*, 478 U.S. 714 (striking provision that invested Legislative officer with Executive authority).

In assessing a constitutional challenge based on separation of powers, one must consider whether (i) Congress followed the procedures outlined in Article I for legislative action; (ii) Congress invested in itself either executive or judicial powers; and (iii) the statute disrupts the functioning of a coordinate Branch of government. *Metropolitan Wash. Airports Auth. v. Citizens for the Abatement of Aircraft Noise, Inc.*, 501 U.S. 252, 274 (1991); *Stop H-3 Ass'n v. Dole*, 870 F.2d 1419, 1436 (9th Cir. 1987). This memorandum has already addressed the first of these prongs, and section 1326(a) clearly does not run afoul of this mandate because section 1326(a) does not preclude, and indeed provides for, adherence to Article I procedures.

Likewise, section 1326(a) does not invest Congress with Executive functions. The Executive Branch interprets laws enacted by Congress so as to implement legislative mandates. *Bowsher*, 478 U.S. at 733. Pursuant to section 1326(a), Congress does not carry out such a function. First, through the Antiquities Act, Congress exercised its constitutional authority pursuant to the Property Clause and delegated to the President the power to designate national monuments to protect items of historic and/or scientific value on lands already owned or controlled by the Federal government. *See* 16 U.S.C. § 431. Second, in ANILCA, Congress exercised its constitutional authority to alter its prior Antiquities Act delegation to the President by placing a one-year time limit on all large withdrawals within the state of Alaska.¹⁶ *See* ANILCA § 1326(a), 16 U.S.C. § 3213(a). Finally, through the last sentence of section 1326(a), Congress may choose to lift the limitation that it placed upon the Antiquities Act delegation of authority to the President with respect to a particular withdrawal. This action, therefore, is clearly not an executive function; rather, it is a legislative one that only becomes effective after Article I's requirements—passage by both Houses and presentment to the President—have been met. Because the final sentence of section 1326(a) does no more than repeal, for a specific withdrawal, a limitation that Congress constitutionally placed

¹⁶ Congress clearly has the ability to limit prior delegations of authority provided it complies with Article I's procedural mandates for legislative actions. *Stop H-3*, 870 F.2d at 1434-35 & n.24 ("Simply put, Congress may change its mind, so long as it complies with the Constitution's requirements for action that alters the delegation of authority to the Executive branch."). *See also id.* at 1435 n.24 ("Appellants have not presented, and we have not found, any authority forbidding Congress to alter a legislative grant of authority by means of new legislation . . ."). Indeed, the Supreme Court in *Chadha* recognized that Congress could have altered the authority that it had delegated to the Attorney General (an Executive officer) by following Article I's requirements for the passage of legislation—passage by both Houses and presentment to the President. *Chadha*, 462 U.S. at 954, 956.

upon the Antiquities Act delegation of authority to the President and because any congressional action under this provision only becomes effective after passage by both Houses and presentment to the President, the final sentence of section 1326(a) does not violate the Constitutional principle of separation of powers.

Finally, ANILCA's "no more" provision does not interfere with or disrupt the functions of the Executive Branch. Unlike the statutory provision in *Chadha*, no "veto" exists in ANILCA § 1326(a). In *Chadha*, the statute permitted Congress to override, or "veto," a decision of the Executive. In contrast, the final sentence of section 1326(a) permits Congress to further the intent of the Executive by lifting a limitation that it constitutionally placed on the President's power to designate a national monument. At the same time, any congressional action under section 1326(a) cannot become effective until either the President approves the joint resolution lifting the time limitation for a specific withdrawal or Congress overrides a Presidential veto. The Executive, therefore, plays an important role in the section 1326(a) process: (i) any national monument designation must originate with the Executive, and (ii) the President must approve (or his veto must be overridden by Congress) any alteration in the limited duration of the Executive's monument designation under ANILCA. The Framers' system of checks and balances between the Executive and Legislative Branches remains intact, and section 1326(a) does not violate any separation of powers principles.¹⁷

¹⁷ Even if a court were to determine that the joint resolution approval provision of the final sentence of ANILCA § 1326(a) is invalid on constitutional grounds, the language requiring congressional approval is clearly severable from the remainder of section 1326(a). Courts do not declare more of a statute unconstitutional than is necessary. *Alaska Airlines, Inc. v. Brock*, 480 U.S. 678, 684 (1987) (quoting *Regan v. Time, Inc.*, 468 U.S. 641, 652 (1984) (plurality opinion)). If consistent with congressional intent, the invalid portion of a statute may be severed from the remainder where "what is left is fully operative as a law." *Id.* (quoting *Buckley v. Valeo*, 424 U.S. 1, 108 (1976) (per curiam)). When determining whether the unconstitutional portion is severable from the remainder, one must consider whether the remaining portion of the statute "will function in a manner consistent with the intent of Congress." *Id.* at 685 (emphasis original). Congress, through ANILCA, intended to limit the authority of the Executive Branch to effect permanent withdrawals within the state of Alaska. If the language requiring congressional approval of the Executive's withdrawal in the final sentence of section 1326(a) were stricken (*i.e.*, "unless Congress passes a joint resolution of approval within"), the remainder of this subsection would remain fully operable and would accurately reflect congressional intent—all permanent withdrawals made by the Executive Branch exceeding five thousand acres would expire at the end of one year. Therefore, if a court were to invalidate the final sentence of section 1326(a), the remainder of this subsection would nonetheless preclude a permanent monument designation of the coastal plain.

E. The Property Clause Confirms Congressional Authority To Prevent The President From Unilaterally Effecting A Permanent Withdrawal.

The Property Clause of the United States Constitution grants Congress unique and powerful authority to manage federal lands. U.S. CONST., art. IV, § 3, cl. 2. The Property Clause provides that “Congress shall have the power to dispose of and make all needful Rules and Regulations respecting the Territory and other Property belonging to the United States” *Id.* Because Congress enacted ANILCA under the authority of the Property Clause, any analysis of the constitutionality of ANILCA § 1326(a) must take into account the broad discretion and authority that the Clause grants to Congress.

The Supreme Court has consistently interpreted the Property Clause as providing Congress with plenary power to manage federal lands. By way of illustration, in *United States v. Midwest Oil Co.*, the Court noted that “Congress not only has a legislative power over the public domain, but it also exercises the power of the proprietor therein.” 236 U.S. 459, 474 (1915). The Court in *Midwest Oil* further reasoned that “the land laws are not of a legislative character in the highest sense of the term ‘but savor somewhat of mere rules prescribed by an owner of property for its disposal.’” *Id.* at 474 (quoting *Butte City Water Co. v. Baker*, 196 U.S. 119, 126 (1905)). In *United States v. California*, 332 U.S. 19, 27 (1947), the Court determined that Congress’ proprietary interest in public lands gives it constitutional prerogatives that transcend those that it enjoys in its purely legislative role. The Court in *Kleppe v. New Mexico* reiterated the far-ranging power of Congress to act pursuant to the Property Clause by holding that the Clause,

in broad terms, gives Congress the power to determine what are “needful” rules “respecting” the public lands. And while the furthest reaches of the power granted by the Property Clause have not yet been definitively resolved, we have repeatedly observed that “[t]he power over the public land thus entrusted to Congress is without limitations.”

426 U.S. 529, 539 (1976) (citations omitted).

Thus, even setting aside the apparent constitutionality of section 1326(a), when Congress acts in its proprietary capacity pursuant to the Property Clause, it holds authority beyond what its limits may be in other spheres of its exercise of legislative powers. It follows that Congress may constrain the Executive Branch to a far greater degree when Congress exercises its “plenary”

authority over public lands.¹⁸ In ANILCA, Congress acted in its proprietary capacity when it set forth the designations and administrative schemes for the disposition and management of federal lands in Alaska. Acting as the nation's "principal agent"¹⁹ in administering Alaska's federal lands, Congress certainly has the constitutional authority to retain approval power over any additional permanent withdrawal of federal land in Alaska. *See* ANILCA § 1326(a), 16 U.S.C. § 3213(a).

Regardless of the degree to which the Property Clause expands Congress' powers, ANILCA's system for governing future permanent withdrawals is constitutionally sound. Specifically, ANILCA § 1326(a) is constitutional because it is well within the acknowledged scope of the Property Clause and fulfills the bicameralism and presentment requirements in Article I of the Constitution. While the Property Clause may not immunize patently unconstitutional efforts at congressional land management,²⁰ it clearly provides Congress with sufficient authority to require its concurrence in future permanent withdrawals of specific federal lands. Therefore, ANILCA § 1326(a)'s system for governing the withdrawal of federal land in Alaska is constitutionally valid.

CONCLUSION

The plain language of ANILCA dictates that the Administration may not designate the coastal plain of ANWR a national monument under the Antiquities Act and thereby permanently withdraw this area from development without congressional approval. The text of section 1326(a) is abundantly clear: in the absence of ratification by congressional joint resolution, no further withdrawals for longer than one year are permitted. By prescribing an evaluation of the coastal plain to guide Congress as to the area's ultimate disposition, ANILCA's authors confirmed that Congress never intended a withdrawal by presidential fiat. Two other provisions of ANILCA (i) expressed the congressional determination that there should be no further withdrawals, and (ii) prohibited future

¹⁸ *See also National Wildlife Federation v. Watt*, 571 F. Supp. 1145, 47 (D.D.C. 1983) (stating in dicta that "it is not at all clear that" a provision in FLPMA that empowered one House of Congress to order the Secretary of the Interior to withdraw land was "void. Indeed [it] may well be authorized by Article IV, Section 3, of the Constitution, independently of Article I, the subject of the *Chadha* decision.")

¹⁹ *Butte City Water Co. v. Baker*, 196 U.S. 119, 126 (1905).

²⁰ *Metropolitan Wash. Airports Auth. v. Citizens for the Abatement of Aircraft Noise*, 501 U.S. 252, 254 (1991) (Congress cannot use the Property Clause to circumvent the Constitution).

studies addressing further withdrawals. None of these provisions is consistent with a unilateral permanent designation under the Antiquities Act. If there were any doubt remaining about the import of ANILCA, the legislative history clarifies that the “no more” language was essential to passage of the legislation and that it was intended to preclude further incursions upon Alaska’s natural resources.

Section 1326(a) is constitutional. Decisions addressing separation of powers issues would not invalidate a legislative scheme that requires that Congress affirm a future withdrawal through a joint resolution presented to the President. The plenary authority over public lands confirms that the Constitution does not preclude legislation of the sort that retains the balanced authority of the Legislative and Executive Branches of the government over management of federal lands. Accordingly, we conclude that ANILCA forbids withdrawal of the coastal plain as a national monument under the Antiquities Act.

112TH CONGRESS
1ST SESSION

H. R. 139

To preserve the Arctic coastal plain of the Arctic National Wildlife Refuge, Alaska, as wilderness in recognition of its extraordinary natural ecosystems and for the permanent good of present and future generations of Americans.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 5, 2011

Mr. MARKEY introduced the following bill; which was referred to the
Committee on Natural Resources

A BILL

To preserve the Arctic coastal plain of the Arctic National Wildlife Refuge, Alaska, as wilderness in recognition of its extraordinary natural ecosystems and for the permanent good of present and future generations of Americans.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Udall-Eisenhower Arc-
5 tic Wilderness Act”.

6 **SEC. 2. FINDINGS AND STATEMENT OF POLICY.**

7 (a) FINDINGS.—The Congress finds the following:

1 (1) Americans cherish the continued existence
2 of expansive, unspoiled wilderness ecosystems and
3 wildlife found on their public lands, and feel a
4 strong moral responsibility to protect this wilderness
5 heritage as an enduring resource to bequeath undis-
6 turbed to future generations of Americans.

7 (2) It is widely believed by ecologists, wildlife
8 scientists, public land specialists, and other experts
9 that the wilderness ecosystem centered around and
10 dependent upon the Arctic coastal plain of the Arctic
11 National Wildlife Refuge, Alaska, represents the
12 very epitome of a primeval wilderness ecosystem and
13 constitutes the greatest wilderness area and diversity
14 of wildlife habitats of its kind in the United States.

15 (3) President Dwight D. Eisenhower initiated
16 protection of the wilderness values of the Arctic
17 coastal plain in 1960 when he set aside 8,900,000
18 acres establishing the Arctic National Wildlife Ref-
19 uge expressly “for the purpose of preserving unique
20 wildlife, wilderness and recreational values”.

21 (4) In 1980, when the Congress acted to
22 strengthen the protective management of the Eisen-
23 hower-designated area with the enactment of the
24 Alaska National Interest Lands Conservation Act
25 (Public Law 96-487), Representative Morris K.

1 Udall led the effort to more than double the size of
2 the Arctic National Wildlife Refuge and extend stat-
3 utory wilderness protection to most of the original
4 area.

5 (5) Before the enactment of the Alaska Na-
6 tional Interest Lands Conservation Act, the House
7 of Representatives twice passed legislation that
8 would have protected the entire Eisenhower-des-
9 ignated area as wilderness, including the Arctic
10 coastal plain.

11 (6) A majority of Americans have supported
12 and continue to support preserving and protecting
13 the Arctic National Wildlife Refuge, including the
14 Arctic coastal plain, from any industrial development
15 and consider oil and gas exploration and develop-
16 ment in particular to be incompatible with the pur-
17 poses for which this incomparable wilderness eco-
18 system has been set aside.

19 (7) When the Arctic National Wildlife Refuge
20 was established in 1980 by paragraph (2) of section
21 303 of the Alaska National Interest Lands Con-
22 servation Act (Public Law 96-487; 94 Stat. 2390;
23 16 U.S.C. 668dd note), subparagraph (B)(iii) of
24 such paragraph specifically stated that one of the
25 purposes for which the Arctic National Wildlife Ref-

1 uge is established and managed would be to provide
2 the opportunity for continued subsistence uses by
3 local residents, and, therefore, the lands designated
4 as wilderness within the Refuge, including the area
5 designated by this Act, are and will continue to be
6 managed consistent with such subparagraph.

7 (8) Canada has taken action to preserve those
8 portions of the wilderness ecosystem of the Arctic
9 that exist on its side of the international border and
10 provides strong legal protection for the habitat of
11 the Porcupine River caribou herd that migrates an-
12 nually through both countries to calve on the Arctic
13 coastal plain.

14 (9) The extension of full wilderness protection
15 for the Arctic coastal plain within the Arctic Na-
16 tional Wildlife Refuge will still leave most of the
17 North Slope of Alaska available for the development
18 of energy resources, which will allow Alaska to con-
19 tinue to contribute significantly to meeting the en-
20 ergy needs of the United States without despoiling
21 the unique Arctic coastal plain of the Arctic Na-
22 tional Wildlife Refuge.

23 (b) STATEMENT OF POLICY.—The Congress hereby
24 declares that it is the policy of the United States—

1 (1) to honor the decades of bipartisan efforts
2 that have increasingly protected the great wilderness
3 ecosystem of the Arctic coastal plain;

4 (2) to sustain this natural treasure for the cur-
5 rent generation of Americans; and

6 (3) to do everything possible to protect and pre-
7 serve this magnificent natural ecosystem so that it
8 may be bequeathed in its unspoiled natural condition
9 to future generations of Americans.

10 **SEC. 3. DESIGNATION OF ADDITIONAL WILDERNESS, ARC-**
11 **TIC NATIONAL WILDLIFE REFUGE, ALASKA.**

12 (a) **INCLUSION OF ARCTIC COASTAL PLAIN.**—In fur-
13 therance of the Wilderness Act (16 U.S.C. 1131 et seq.),
14 an area within the Arctic National Wildlife Refuge in the
15 State of Alaska comprising approximately 1,559,538
16 acres, as generally depicted on a map entitled “Arctic Na-
17 tional Wildlife Refuge—1002 Area Alternative E—Wilder-
18 ness Designation” and dated October 28, 1991, is hereby
19 designated as wilderness and, therefore, as a component
20 of the National Wilderness Preservation System. The map
21 referred to in this subsection shall be available for inspec-
22 tion in the offices of the Secretary of the Interior.

23 (b) **ADMINISTRATION.**—The Secretary of the Interior
24 shall administer the area designated as wilderness by sub-
25 section (a) in accordance with the Wilderness Act as part

1 of the wilderness area already in existence within the Arc-
2 tic National Wildlife Refuge as of the date of the enact-
3 ment of this Act.

○

112TH CONGRESS
1ST SESSION

H. R. 49

To direct the Secretary of the Interior to establish and implement a competitive oil and gas leasing program that will result in an environmentally sound program for the exploration, development, and production of the oil and gas resources of the Coastal Plain of Alaska, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 5, 2011

Mr. YOUNG of Alaska introduced the following bill; which was referred to the Committee on Natural Resources, and in addition to the Committees on Energy and Commerce and Science, Space, and Technology, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To direct the Secretary of the Interior to establish and implement a competitive oil and gas leasing program that will result in an environmentally sound program for the exploration, development, and production of the oil and gas resources of the Coastal Plain of Alaska, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “American Energy Inde-
3 pendence and Price Reduction Act”.

4 **SEC. 2. DEFINITIONS.**

5 In this Act:

6 (1) **COASTAL PLAIN.**—The term “Coastal
7 Plain” means that area described in appendix I to
8 part 37 of title 50, Code of Federal Regulations.

9 (2) **SECRETARY.**—The term “Secretary”, except
10 as otherwise provided, means the Secretary of the
11 Interior or the Secretary’s designee.

12 **SEC. 3. LEASING PROGRAM FOR LANDS WITHIN THE**
13 **COASTAL PLAIN.**

14 (a) **IN GENERAL.**—The Secretary shall take such ac-
15 tions as are necessary—

16 (1) to establish and implement, in accordance
17 with this Act and acting through the Director of the
18 Bureau of Land Management in consultation with
19 the Director of the United States Fish and Wildlife
20 Service, a competitive oil and gas leasing program
21 that will result in an environmentally sound program
22 for the exploration, development, and production of
23 the oil and gas resources of the Coastal Plain; and

24 (2) to administer the provisions of this Act
25 through regulations, lease terms, conditions, restric-
26 tions, prohibitions, stipulations, and other provisions

1 that ensure the oil and gas exploration, development,
2 and production activities on the Coastal Plain will
3 result in no significant adverse effect on fish and
4 wildlife, their habitat, subsistence resources, and the
5 environment, including, in furtherance of this goal,
6 by requiring the application of the best commercially
7 available technology for oil and gas exploration, de-
8 velopment, and production to all exploration, devel-
9 opment, and production operations under this Act in
10 a manner that ensures the receipt of fair market
11 value by the public for the mineral resources to be
12 leased.

13 (b) REPEAL.—

14 (1) REPEAL.—Section 1003 of the Alaska Na-
15 tional Interest Lands Conservation Act of 1980 (16
16 U.S.C. 3143) is repealed.

17 (2) CONFORMING AMENDMENT.—The table of
18 contents in section 1 of such Act is amended by
19 striking the item relating to section 1003.

20 (c) COMPLIANCE WITH REQUIREMENTS UNDER CER-
21 TAIN OTHER LAWS.—

22 (1) COMPATIBILITY.—For purposes of the Na-
23 tional Wildlife Refuge System Administration Act of
24 1966 (16 U.S.C. 668dd et seq.), the oil and gas
25 leasing program and activities authorized by this

1 section in the Coastal Plain are deemed to be com-
2 patible with the purposes for which the Arctic Na-
3 tional Wildlife Refuge was established, and no fur-
4 ther findings or decisions are required to implement
5 this determination.

6 (2) ADEQUACY OF THE DEPARTMENT OF THE
7 INTERIOR'S LEGISLATIVE ENVIRONMENTAL IMPACT
8 STATEMENT.—The “Final Legislative Environ-
9 mental Impact Statement” (April 1987) on the
10 Coastal Plain prepared pursuant to section 1002 of
11 the Alaska National Interest Lands Conservation
12 Act of 1980 (16 U.S.C. 3142) and section 102(2)(C)
13 of the National Environmental Policy Act of 1969
14 (42 U.S.C. 4332(2)(C)) is deemed to satisfy the re-
15 quirements under the National Environmental Policy
16 Act of 1969 that apply with respect to prelease ac-
17 tivities, including actions authorized to be taken by
18 the Secretary to develop and promulgate the regula-
19 tions for the establishment of a leasing program au-
20 thorized by this Act before the conduct of the first
21 lease sale.

22 (3) COMPLIANCE WITH NEPA FOR OTHER AC-
23 TIONS.—Before conducting the first lease sale under
24 this Act, the Secretary shall prepare an environ-
25 mental impact statement under the National Envi-

1 ronmental Policy Act of 1969 with respect to the ac-
2 tions authorized by this Act that are not referred to
3 in paragraph (2). Notwithstanding any other law,
4 the Secretary is not required to identify nonleasing
5 alternative courses of action or to analyze the envi-
6 ronmental effects of such courses of action. The Sec-
7 retary shall only identify a preferred action for such
8 leasing and a single leasing alternative, and analyze
9 the environmental effects and potential mitigation
10 measures for those two alternatives. The identifica-
11 tion of the preferred action and related analysis for
12 the first lease sale under this Act shall be completed
13 within 18 months after the date of enactment of this
14 Act. The Secretary shall only consider public com-
15 ments that specifically address the Secretary's pre-
16 ferred action and that are filed within 20 days after
17 publication of an environmental analysis. Notwith-
18 standing any other law, compliance with this para-
19 graph is deemed to satisfy all requirements for the
20 analysis and consideration of the environmental ef-
21 fects of proposed leasing under this Act.

22 (d) RELATIONSHIP TO STATE AND LOCAL AUTHOR-
23 ITY.—Nothing in this Act shall be considered to expand
24 or limit State and local regulatory authority.

25 (e) SPECIAL AREAS.—

1 (1) IN GENERAL.—The Secretary, after con-
2 sultation with the State of Alaska, the city of
3 Kaktovik, and the North Slope Borough, may des-
4 ignate up to a total of 45,000 acres of the Coastal
5 Plain as a Special Area if the Secretary determines
6 that the Special Area is of such unique character
7 and interest so as to require special management
8 and regulatory protection. The Secretary shall des-
9 ignate as such a Special Area the Sadlerochit Spring
10 area, comprising approximately 4,000 acres.

11 (2) MANAGEMENT.—Each such Special Area
12 shall be managed so as to protect and preserve the
13 area's unique and diverse character including its
14 fish, wildlife, and subsistence resource values.

15 (3) EXCLUSION FROM LEASING OR SURFACE
16 OCCUPANCY.—The Secretary may exclude any Spe-
17 cial Area from leasing. If the Secretary leases a Spe-
18 cial Area, or any part thereof, for purposes of oil
19 and gas exploration, development, production, and
20 related activities, there shall be no surface occu-
21 pancy of the lands comprising the Special Area.

22 (4) DIRECTIONAL DRILLING.—Notwithstanding
23 the other provisions of this subsection, the Secretary
24 may lease all or a portion of a Special Area under
25 terms that permit the use of horizontal drilling tech-

1 nology from sites on leases located outside the Spe-
2 cial Area.

3 (f) LIMITATION ON CLOSED AREAS.—The Sec-
4 retary's sole authority to close lands within the Coastal
5 Plain to oil and gas leasing and to exploration, develop-
6 ment, and production is that set forth in this Act.

7 (g) REGULATIONS.—

8 (1) IN GENERAL.—The Secretary shall pre-
9 scribe such regulations as may be necessary to carry
10 out this Act, including rules and regulations relating
11 to protection of the fish and wildlife, their habitat,
12 subsistence resources, and environment of the Coast-
13 al Plain, by no later than 15 months after the date
14 of enactment of this Act.

15 (2) REVISION OF REGULATIONS.—The Sec-
16 retary shall periodically review and, if appropriate,
17 revise the rules and regulations issued under sub-
18 section (a) to reflect any significant biological, envi-
19 ronmental, or engineering data that come to the Sec-
20 retary's attention.

21 **SEC. 4. LEASE SALES.**

22 (a) IN GENERAL.—Lands may be leased pursuant to
23 this Act to any person qualified to obtain a lease for depos-
24 its of oil and gas under the Mineral Leasing Act (30
25 U.S.C. 181 et seq.).

1 (b) PROCEDURES.—The Secretary shall, by regula-
2 tion, establish procedures for—

3 (1) receipt and consideration of sealed nomina-
4 tions for any area in the Coastal Plain for inclusion
5 in, or exclusion (as provided in subsection (c)) from,
6 a lease sale;

7 (2) the holding of lease sales after such nomina-
8 tion process; and

9 (3) public notice of and comment on designa-
10 tion of areas to be included in, or excluded from, a
11 lease sale.

12 (c) LEASE SALE BIDS.—Bidding for leases under
13 this Act shall be by sealed competitive cash bonus bids.

14 (d) ACREAGE MINIMUM IN FIRST SALE.—In the first
15 lease sale under this Act, the Secretary shall offer for lease
16 those tracts the Secretary considers to have the greatest
17 potential for the discovery of hydrocarbons, taking into
18 consideration nominations received pursuant to subsection
19 (b)(1), but in no case less than 200,000 acres.

20 (e) TIMING OF LEASE SALES.—The Secretary
21 shall—

22 (1) conduct the first lease sale under this Act
23 within 22 months after the date of the enactment of
24 this Act;

1 (2) evaluate the bids in such sale and issue
2 leases resulting from such sale, within 90 days after
3 the date of the completion of such sale; and

4 (3) conduct additional sales so long as sufficient
5 interest in development exists to warrant, in the Sec-
6 retary's judgment, the conduct of such sales.

7 **SEC. 5. GRANT OF LEASES BY THE SECRETARY.**

8 (a) **IN GENERAL.**—The Secretary may grant to the
9 highest responsible qualified bidder in a lease sale con-
10 ducted pursuant to section 4 any lands to be leased on
11 the Coastal Plain upon payment by the lessee of such
12 bonus as may be accepted by the Secretary.

13 (b) **SUBSEQUENT TRANSFERS.**—No lease issued
14 under this Act may be sold, exchanged, assigned, sublet,
15 or otherwise transferred except with the approval of the
16 Secretary. Prior to any such approval the Secretary shall
17 consult with, and give due consideration to the views of,
18 the Attorney General.

19 **SEC. 6. LEASE TERMS AND CONDITIONS.**

20 (a) **IN GENERAL.**—An oil or gas lease issued pursu-
21 ant to this Act shall—

22 (1) provide for the payment of a royalty of not
23 less than 12½ percent in amount or value of the
24 production removed or sold from the lease, as deter-

1 mined by the Secretary under the regulations appli-
2 cable to other Federal oil and gas leases;

3 (2) provide that the Secretary may close, on a
4 seasonal basis, portions of the Coastal Plain to ex-
5 ploratory drilling activities as necessary to protect
6 caribou calving areas and other species of fish and
7 wildlife;

8 (3) require that the lessee of lands within the
9 Coastal Plain shall be fully responsible and liable for
10 the reclamation of lands within the Coastal Plain
11 and any other Federal lands that are adversely af-
12 fected in connection with exploration, development,
13 production, or transportation activities conducted
14 under the lease and within the Coastal Plain by the
15 lessee or by any of the subcontractors or agents of
16 the lessee;

17 (4) provide that the lessee may not delegate or
18 convey, by contract or otherwise, the reclamation re-
19 sponsibility and liability to another person without
20 the express written approval of the Secretary;

21 (5) provide that the standard of reclamation for
22 lands required to be reclaimed under this Act shall
23 be, as nearly as practicable, a condition capable of
24 supporting the uses which the lands were capable of
25 supporting prior to any exploration, development, or

1 production activities, or upon application by the les-
2 see, to a higher or better use as approved by the
3 Secretary;

4 (6) contain terms and conditions relating to
5 protection of fish and wildlife, their habitat, subsist-
6 ence resources, and the environment as required
7 pursuant to section 3(a)(2);

8 (7) provide that the lessee, its agents, and its
9 contractors use best efforts to provide a fair share,
10 as determined by the level of obligation previously
11 agreed to in the 1974 agreement implementing sec-
12 tion 29 of the Federal Agreement and Grant of
13 Right of Way for the Operation of the Trans-Alaska
14 Pipeline, of employment and contracting for Alaska
15 Natives and Alaska Native Corporations from
16 throughout the State;

17 (8) prohibit the export of oil produced under
18 the lease; and

19 (9) contain such other provisions as the Sec-
20 retary determines necessary to ensure compliance
21 with the provisions of this Act and the regulations
22 issued under this Act.

23 (b) PROJECT LABOR AGREEMENTS.—The Secretary,
24 as a term and condition of each lease under this Act and
25 in recognizing the Government's proprietary interest in

1 labor stability and in the ability of construction labor and
2 management to meet the particular needs and conditions
3 of projects to be developed under the leases issued pursu-
4 ant to this Act and the special concerns of the parties to
5 such leases, shall require that the lessee and its agents
6 and contractors negotiate to obtain a project labor agree-
7 ment for the employment of laborers and mechanics on
8 production, maintenance, and construction under the
9 lease.

10 **SEC. 7. COASTAL PLAIN ENVIRONMENTAL PROTECTION.**

11 (a) NO SIGNIFICANT ADVERSE EFFECT STANDARD
12 TO GOVERN AUTHORIZED COASTAL PLAIN ACTIVITIES.—
13 The Secretary shall, consistent with the requirements of
14 section 3, administer the provisions of this Act through
15 regulations, lease terms, conditions, restrictions, prohibi-
16 tions, stipulations, and other provisions that—

17 (1) ensure the oil and gas exploration, develop-
18 ment, and production activities on the Coastal Plain
19 will result in no significant adverse effect on fish
20 and wildlife, their habitat, and the environment;

21 (2) require the application of the best commer-
22 cially available technology for oil and gas explo-
23 ration, development, and production on all new ex-
24 ploration, development, and production operations;
25 and

1 (3) ensure that the maximum amount of sur-
2 face acreage covered by production and support fa-
3 cilities, including airstrips and any areas covered by
4 gravel berms or piers for support of pipelines, does
5 not exceed 2,000 acres on the Coastal Plain.

6 (b) SITE-SPECIFIC ASSESSMENT AND MITIGATION.—

7 The Secretary shall also require, with respect to any pro-
8 posed drilling and related activities, that—

9 (1) a site-specific analysis be made of the prob-
10 able effects, if any, that the drilling or related activi-
11 ties will have on fish and wildlife, their habitat, sub-
12 sistence resources, and the environment;

13 (2) a plan be implemented to avoid, minimize,
14 and mitigate (in that order and to the extent prac-
15 ticable) any significant adverse effect identified
16 under paragraph (1); and

17 (3) the development of the plan shall occur
18 after consultation with the agency or agencies hav-
19 ing jurisdiction over matters mitigated by the plan.

20 (c) REGULATIONS TO PROTECT COASTAL PLAIN

21 FISH AND WILDLIFE RESOURCES, SUBSISTENCE USERS,

22 AND THE ENVIRONMENT.—Before implementing the leas-

23 ing program authorized by this Act, the Secretary shall

24 prepare and promulgate regulations, lease terms, condi-

25 tions, restrictions, prohibitions, stipulations, and other

1 measures designed to ensure that the activities undertaken
2 on the Coastal Plain under this Act are conducted in a
3 manner consistent with the purposes and environmental
4 requirements of this Act.

5 (d) COMPLIANCE WITH FEDERAL AND STATE ENVI-
6 RONMENTAL LAWS AND OTHER REQUIREMENTS.—The
7 proposed regulations, lease terms, conditions, restrictions,
8 prohibitions, and stipulations for the leasing program
9 under this Act shall require compliance with all applicable
10 provisions of Federal and State environmental law, and
11 shall also require the following:

12 (1) Standards at least as effective as the safety
13 and environmental mitigation measures set forth in
14 items 1 through 29 at pages 167 through 169 of the
15 “Final Legislative Environmental Impact State-
16 ment” (April 1987) on the Coastal Plain.

17 (2) Seasonal limitations on exploration, develop-
18 ment, and related activities, where necessary, to
19 avoid significant adverse effects during periods of
20 concentrated fish and wildlife breeding, denning,
21 nesting, spawning, and migration.

22 (3) That exploration activities, except for sur-
23 face geological studies, be limited to the period be-
24 tween approximately November 1 and May 1 each
25 year and that exploration activities shall be sup-

1 ported, if necessary, by ice roads, winter trails with
2 adequate snow cover, ice pads, ice airstrips, and air
3 transport methods, except that such exploration ac-
4 tivities may occur at other times if the Secretary
5 finds that such exploration will have no significant
6 adverse effect on the fish and wildlife, their habitat,
7 and the environment of the Coastal Plain.

8 (4) Design safety and construction standards
9 for all pipelines and any access and service roads,
10 that—

11 (A) minimize, to the maximum extent pos-
12 sible, adverse effects upon the passage of mi-
13 gratory species such as caribou; and

14 (B) minimize adverse effects upon the flow
15 of surface water by requiring the use of cul-
16 verts, bridges, and other structural devices.

17 (5) Prohibitions on general public access and
18 use on all pipeline access and service roads.

19 (6) Stringent reclamation and rehabilitation re-
20 quirements, consistent with the standards set forth
21 in this Act, requiring the removal from the Coastal
22 Plain of all oil and gas development and production
23 facilities, structures, and equipment upon completion
24 of oil and gas production operations, except that the
25 Secretary may exempt from the requirements of this

1 paragraph those facilities, structures, or equipment
2 that the Secretary determines would assist in the
3 management of the Arctic National Wildlife Refuge
4 and that are donated to the United States for that
5 purpose.

6 (7) Appropriate prohibitions or restrictions on
7 access by all modes of transportation.

8 (8) Appropriate prohibitions or restrictions on
9 sand and gravel extraction.

10 (9) Consolidation of facility siting.

11 (10) Appropriate prohibitions or restrictions on
12 use of explosives.

13 (11) Avoidance, to the extent practicable, of
14 springs, streams, and river system; the protection of
15 natural surface drainage patterns, wetlands, and ri-
16 parian habitats; and the regulation of methods or
17 techniques for developing or transporting adequate
18 supplies of water for exploratory drilling.

19 (12) Avoidance or minimization of air traffic-re-
20 lated disturbance to fish and wildlife.

21 (13) Treatment and disposal of hazardous and
22 toxic wastes, solid wastes, reserve pit fluids, drilling
23 muds and cuttings, and domestic wastewater, includ-
24 ing an annual waste management report, a haz-
25 ardous materials tracking system, and a prohibition

1 on chlorinated solvents, in accordance with applica-
2 ble Federal and State environmental law.

3 (14) Fuel storage and oil spill contingency plan-
4 ning.

5 (15) Research, monitoring, and reporting re-
6 quirements.

7 (16) Field crew environmental briefings.

8 (17) Avoidance of significant adverse effects
9 upon subsistence hunting, fishing, and trapping by
10 subsistence users.

11 (18) Compliance with applicable air and water
12 quality standards.

13 (19) Appropriate seasonal and safety zone des-
14 ignations around well sites, within which subsistence
15 hunting and trapping shall be limited.

16 (20) Reasonable stipulations for protection of
17 cultural and archeological resources.

18 (21) All other protective environmental stipula-
19 tions, restrictions, terms, and conditions deemed
20 necessary by the Secretary.

21 (e) CONSIDERATIONS.—In preparing and promul-
22 gating regulations, lease terms, conditions, restrictions,
23 prohibitions, and stipulations under this section, the Sec-
24 retary shall consider the following:

1 (1) The stipulations and conditions that govern
2 the National Petroleum Reserve-Alaska leasing pro-
3 gram, as set forth in the 1999 Northeast National
4 Petroleum Reserve-Alaska Final Integrated Activity
5 Plan/Environmental Impact Statement.

6 (2) The environmental protection standards
7 that governed the initial Coastal Plain seismic explo-
8 ration program under parts 37.31 to 37.33 of title
9 50, Code of Federal Regulations.

10 (3) The land use stipulations for exploratory
11 drilling on the KIC-ASRC private lands that are set
12 forth in appendix 2 of the August 9, 1983, agree-
13 ment between Arctic Slope Regional Corporation and
14 the United States.

15 (f) FACILITY CONSOLIDATION PLANNING.—

16 (1) IN GENERAL.—The Secretary shall, after
17 providing for public notice and comment, prepare
18 and update periodically a plan to govern, guide, and
19 direct the siting and construction of facilities for the
20 exploration, development, production, and transpor-
21 tation of Coastal Plain oil and gas resources.

22 (2) OBJECTIVES.—The plan shall have the fol-
23 lowing objectives:

24 (A) Avoiding unnecessary duplication of fa-
25 cilities and activities.

1 (B) Encouraging consolidation of common
2 facilities and activities.

3 (C) Locating or confining facilities and ac-
4 tivities to areas that will minimize impact on
5 fish and wildlife, their habitat, and the environ-
6 ment.

7 (D) Utilizing existing facilities wherever
8 practicable.

9 (E) Enhancing compatibility between wild-
10 life values and development activities.

11 (g) ACCESS TO PUBLIC LANDS.—The Secretary
12 shall—

13 (1) manage public lands in the Coastal Plain
14 subject to subsections (a) and (b) of section 811 of
15 the Alaska National Interest Lands Conservation
16 Act (16 U.S.C. 3121); and

17 (2) ensure that local residents shall have rea-
18 sonable access to public lands in the Coastal Plain
19 for traditional uses.

20 **SEC. 8. EXPEDITED JUDICIAL REVIEW.**

21 (a) FILING OF COMPLAINT.—

22 (1) DEADLINE.—Subject to paragraph (2), any
23 complaint seeking judicial review of any provision of
24 this Act or any action of the Secretary under this
25 Act shall be filed—

1 (A) except as provided in subparagraph
2 (B), within the 90-day period beginning on the
3 date of the action being challenged; or

4 (B) in the case of a complaint based solely
5 on grounds arising after such period, within 90
6 days after the complainant knew or reasonably
7 should have known of the grounds for the com-
8 plaint.

9 (2) VENUE.—Any complaint seeking judicial re-
10 view of any provision of this Act or any action of the
11 Secretary under this Act may be filed only in the
12 United States Court of Appeals for the District of
13 Columbia.

14 (3) LIMITATION ON SCOPE OF CERTAIN RE-
15 VIEW.—Judicial review of a Secretarial decision to
16 conduct a lease sale under this Act, including the en-
17 vironmental analysis thereof, shall be limited to
18 whether the Secretary has complied with the terms
19 of this Act and shall be based upon the administra-
20 tive record of that decision. The Secretary's identi-
21 fication of a preferred course of action to enable
22 leasing to proceed and the Secretary's analysis of
23 environmental effects under this Act shall be pre-
24 sumed to be correct unless shown otherwise by clear
25 and convincing evidence to the contrary.

1 (b) LIMITATION ON OTHER REVIEW.—Actions of the
2 Secretary with respect to which review could have been
3 obtained under this section shall not be subject to judicial
4 review in any civil or criminal proceeding for enforcement.

5 **SEC. 9. FEDERAL AND STATE DISTRIBUTION OF REVENUES.**

6 (a) IN GENERAL.—Notwithstanding any other provi-
7 sion of law, of the amount of adjusted bonus, rental, and
8 royalty revenues from Federal oil and gas leasing and op-
9 erations authorized under this Act—

10 (1) 50 percent shall be paid to the State of
11 Alaska; and

12 (2) except as provided in section 12(d), the bal-
13 ance shall be transferred to the ANWR Alternative
14 Energy Trust Fund established by this Act.

15 (b) PAYMENTS TO ALASKA.—Payments to the State
16 of Alaska under this section shall be made semiannually.

17 **SEC. 10. RIGHTS-OF-WAY ACROSS THE COASTAL PLAIN.**

18 (a) IN GENERAL.—The Secretary shall issue rights-
19 of-way and easements across the Coastal Plain for the
20 transportation of oil and gas—

21 (1) except as provided in paragraph (2), under
22 section 28 of the Mineral Leasing Act (30 U.S.C.
23 185), without regard to title XI of the Alaska Na-
24 tional Interest Lands Conservation Act (30 U.S.C.
25 3161 et seq.); and

1 (2) under title XI of the Alaska National Inter-
2 est Lands Conservation Act (30 U.S.C. 3161 et
3 seq.), for access authorized by sections 1110 and
4 1111 of that Act (16 U.S.C. 3170 and 3171).

5 (b) TERMS AND CONDITIONS.—The Secretary shall
6 include in any right-of-way or easement issued under sub-
7 section (a) such terms and conditions as may be necessary
8 to ensure that transportation of oil and gas does not result
9 in a significant adverse effect on the fish and wildlife, sub-
10 sistence resources, their habitat, and the environment of
11 the Coastal Plain, including requirements that facilities be
12 sited or designed so as to avoid unnecessary duplication
13 of roads and pipelines.

14 (c) REGULATIONS.—The Secretary shall include in
15 regulations under section 3(g) provisions granting rights-
16 of-way and easements described in subsection (a) of this
17 section.

18 **SEC. 11. CONVEYANCE.**

19 In order to maximize Federal revenues by removing
20 clouds on title to lands and clarifying land ownership pat-
21 terns within the Coastal Plain, the Secretary, notwith-
22 standing the provisions of section 1302(h)(2) of the Alas-
23 ka National Interest Lands Conservation Act (16 U.S.C.
24 3192(h)(2)), shall convey—

1 (1) to the Kaktovik Inupiat Corporation the
2 surface estate of the lands described in paragraph 1
3 of Public Land Order 6959, to the extent necessary
4 to fulfill the Corporation's entitlement under sec-
5 tions 12 and 14 of the Alaska Native Claims Settle-
6 ment Act (43 U.S.C. 1611 and 1613) in accordance
7 with the terms and conditions of the Agreement be-
8 tween the Department of the Interior, the United
9 States Fish and Wildlife Service, the Bureau of
10 Land Management, and the Kaktovik Inupiat Cor-
11 poration effective January 22, 1993; and

12 (2) to the Arctic Slope Regional Corporation
13 the remaining subsurface estate to which it is enti-
14 tled pursuant to the August 9, 1983, agreement be-
15 tween the Arctic Slope Regional Corporation and the
16 United States of America.

17 **SEC. 12. LOCAL GOVERNMENT IMPACT AID AND COMMU-**
18 **NITY SERVICE ASSISTANCE.**

19 (a) **FINANCIAL ASSISTANCE AUTHORIZED.**—

20 (1) **IN GENERAL.**—The Secretary may use
21 amounts available from the Coastal Plain Local Gov-
22 ernment Impact Aid Assistance Fund established by
23 subsection (d) to provide timely financial assistance
24 to entities that are eligible under paragraph (2) and
25 that are directly impacted by the exploration for or

1 production of oil and gas on the Coastal Plain under
2 this Act.

3 (2) ELIGIBLE ENTITIES.—The North Slope
4 Borough, the City of Kaktovik, and any other bor-
5 ough, municipal subdivision, village, or other com-
6 munity in the State of Alaska that is directly im-
7 pacted by exploration for, or the production of, oil
8 or gas on the Coastal Plain under this Act, as deter-
9 mined by the Secretary, shall be eligible for financial
10 assistance under this section.

11 (b) USE OF ASSISTANCE.—Financial assistance
12 under this section may be used only for—

13 (1) planning for mitigation of the potential ef-
14 fects of oil and gas exploration and development on
15 environmental, social, cultural, recreational, and sub-
16 sistence values;

17 (2) implementing mitigation plans and main-
18 taining mitigation projects;

19 (3) developing, carrying out, and maintaining
20 projects and programs that provide new or expanded
21 public facilities and services to address needs and
22 problems associated with such effects, including fire-
23 fighting, police, water, waste treatment, medivac,
24 and medical services; and

1 (4) establishment of a coordination office, by
2 the North Slope Borough, in the City of Kaktovik,
3 which shall—

4 (A) coordinate with and advise developers
5 on local conditions, impact, and history of the
6 areas utilized for development; and

7 (B) provide to the Committee on Resources
8 of the House of Representatives and the Com-
9 mittee on Energy and Natural Resources of the
10 Senate an annual report on the status of co-
11 ordination between developers and the commu-
12 nities affected by development.

13 (c) APPLICATION.—

14 (1) IN GENERAL.—Any community that is eligi-
15 ble for assistance under this section may submit an
16 application for such assistance to the Secretary, in
17 such form and under such procedures as the Sec-
18 retary may prescribe by regulation.

19 (2) NORTH SLOPE BOROUGH COMMUNITIES.—A
20 community located in the North Slope Borough may
21 apply for assistance under this section either directly
22 to the Secretary or through the North Slope Bor-
23 ough.

24 (3) APPLICATION ASSISTANCE.—The Secretary
25 shall work closely with and assist the North Slope

1 Borough and other communities eligible for assist-
2 ance under this section in developing and submitting
3 applications for assistance under this section.

4 (d) ESTABLISHMENT OF FUND.—

5 (1) IN GENERAL.—There is established in the
6 Treasury the Coastal Plain Local Government Im-
7 pact Aid Assistance Fund.

8 (2) USE.—Amounts in the fund may be used
9 only for providing financial assistance under this
10 section.

11 (3) DEPOSITS.—Subject to paragraph (4), there
12 shall be deposited into the fund amounts received by
13 the United States as revenues derived from rents,
14 bonuses, and royalties from Federal leases and lease
15 sales authorized under this Act.

16 (4) LIMITATION ON DEPOSITS.—The total
17 amount in the fund may not exceed \$11,000,000.

18 (5) INVESTMENT OF BALANCES.—The Sec-
19 retary of the Treasury shall invest amounts in the
20 fund in interest bearing government securities.

21 (e) AUTHORIZATION OF APPROPRIATIONS.—To pro-
22 vide financial assistance under this section there is author-
23 ized to be appropriated to the Secretary from the Coastal
24 Plain Local Government Impact Aid Assistance Fund
25 \$5,000,000 for each fiscal year.

1 **SEC. 13. ANWR ALTERNATIVE ENERGY TRUST FUND.**

2 (a) **ESTABLISHMENT OF TRUST FUND.**—There is es-
 3 tablished in the Treasury of the United States a trust fund
 4 to be known as the “ANWR Alternative Energy Trust
 5 Fund”, consisting of such amounts as may be transferred
 6 to the ANWR Alternative Energy Trust Fund as provided
 7 in section 9.

8 (b) **EXPENDITURES FROM ANWR ALTERNATIVE**
 9 **ENERGY TRUST FUND.**—

10 (1) **IN GENERAL.**—Amounts in the ANWR Al-
 11 ternative Energy Trust Fund shall be available with-
 12 out further appropriation to carry out specified pro-
 13 visions of the Energy Policy Act of 2005 (Public
 14 Law 109–58; in this section referred to as
 15 “EPAct2005”) and the Energy Independence and
 16 Security Act of 2007 (Public Law 110–140; in this
 17 section referred to as “EISAct2007”), as follows:

To carry out the provisions of:	The following percentage of annual receipts to the ANWR Alternative Energy Trust Fund, but not to exceed the limit on amount authorized, if any:
EPAct2005:	
Section 210	1.5 percent
Section 242	1.0 percent
Section 369	2.0 percent
Section 401	6.0 percent
Section 812	6.0 percent
Section 931	19.0 percent
Section 942	1.5 percent
Section 962	3.0 percent
Section 968	1.5 percent
Section 1704	6.0 percent
EISAct2007:	

To carry out the provisions of:	The following percentage of annual receipts to the ANWR Alternative Energy Trust Fund, but not to exceed the limit on amount authorized, if any:
Section 207	15.0 percent
Section 607	1.5 percent
Title VI, Subtitle B	3.0 percent
Title VI, Subtitle C	1.5 percent
Section 641	9.0 percent
Title VII, Subtitle A	15.0 percent
Section 1112	1.5 percent
Section 1304	6.0 percent.

1 (2) APPORTIONMENT OF EXCESS AMOUNT.—

2 Notwithstanding paragraph (1), any amounts allo-

3 cated under paragraph (1) that are in excess of the

4 amounts authorized in the applicable cited section or

5 subtitle of EPLAct2005 and EISAct2007 shall be re-

6 allocated to the remaining sections and subtitles

7 cited in paragraph (1), up to the amounts otherwise

8 authorized by law to carry out such sections and

9 subtitles, in proportion to the amounts authorized by

10 law to be appropriated for such other sections and

11 subtitles.

○

STATE OF ALASKA

CITIZENS' ADVISORY COMMISSION ON FEDERAL AREAS

SEAN PARNELL, Governor

*3700 AIRPORT WAY
FAIRBANKS, ALASKA 99709*

*PHONE: (907) 374-3737
FAX: (907) 451-2751*

June 7, 2010

Richard Voss
Refuge Manager
Arctic National Wildlife Refuge
101 12th Avenue, Room 236
Fairbanks, AK 99701-6237

Dear Mr. Voss:

The Citizens' Advisory Commission on Federal Areas has considered the Notice of Intent to revise the Comprehensive Conservation Plan (CCP) for the Arctic National Wildlife Refuge and prepare an environmental impact statement. We note that this planning process also will include a review of refuge rivers for potential recommendation for inclusion in the National Wild and Scenic River System and review of refuge lands for potential recommendation for inclusion within the National Wilderness Preservation System. We appreciate the opportunity to offer the following scoping comments for consideration by the refuge planning team.

Public Involvement

The Commission thanks you for providing the briefing and answering questions about the CCP revision at our June 2nd meeting in Fairbanks. We are encouraged by the extensive public outreach effort made by you and your staff during this initial phase of the plan revision. We are particularly pleased that the public meetings did not simply follow the "open house" format, but included the opportunity for the public to provide testimony as part of the planning record. Also, giving attendees the option of presenting testimony in an open forum or by meeting one on one with a member of the refuge staff is commendable. As you know, the Arctic Refuge receives more attention than other unit in the refuge system, making public involvement a critical part of this plan revision. We are confident that you will offer the same level of opportunities for public involvement in each phase of the process. The Commission is available to assist with future public outreach efforts or to again distribute information through our newsletter if that would be helpful.

Wilderness Review

The Commission is strongly opposed to the development of new recommendations for designation of additional wilderness within the Arctic Refuge. The question of additional

wilderness designations for all national wildlife refuge units in Alaska was previously addressed in studies mandated by ANILCA Section 1317. The study for the Arctic Refuge was conducted in conjunction with the development of the current CCP. The November 1988 Record of Decision for the CCP and Final Environmental Impact Statement selected a plan alternative that represented the existing management situation and did not include a wilderness proposal.

The Commission supports retention of this decision, primarily because the 8.0 million acres of designated wilderness already within the Arctic Refuge is sufficient. Maintaining the remainder of the refuge in a non-wilderness status will allow the Service a measure of flexibility to respond to changing circumstances or management needs. Existing statutory and regulatory authorities provide sufficient protections for refuge values and purposes without reducing management options by imposing an additional layer of restrictions on the Service, cooperating agencies such as the Alaska Department of Fish and Game or the public.

The restrictions imposed by wilderness designation in Alaska are slightly less restrictive because of the special provisions of ANILCA. In spite of those special provisions, however, it is our considered opinion that each Federal land management agency has adopted wilderness policies that are more restrictive than was intended by Congress. These policies can unnecessarily restrict public activities and use, even those of a transitory nature that have no impact to refuge resources.

During the CCP revision process we would encourage the Service to look at how these policies are applied to the existing wilderness area in the refuge. The CCP should contain a table or summary of those activities and uses that are allowed and those that are restricted within designated wilderness. Included in the CCP should be a discussion of the applicable Service policies, regulations and statutes which guide wilderness management. Plan alternatives and refuge management policies should also allow for special circumstances where restrictions on the use of mechanized or power equipment can be waived for medical reasons or to accommodate handicapped individuals.

1002 Area

Although the ANILCA Section 1317 recommendations were never submitted to Congress by the Secretary, Congress has considered the question of wilderness in the 1002 area of the Arctic Refuge many times. There have been bills proposed in both the House and the Senate in each of the last 11 Congresses. At least 22 bills proposing wilderness designation for the 1002 Area have been introduced. Several other bills also contained wilderness proposals for lands within the Arctic Refuge. To our knowledge, none of these bills has advanced beyond committee. Given this and the controversial nature of wilderness designation in Alaska overall, the Commission would suggest that the time and effort in conducting wilderness studies in the 1002 area (Coastal Plain Wilderness Review Units) as well as the Brooks Range and Porcupine Plateau Wilderness Review Units could be better spent on other important management issues.

Wild and Scenic River Studies

The Commission is also opposed to studies and/or recommendations for additional wild and scenic rivers within the Arctic Refuge. As we have stated above on the wilderness study issue, existing statutory and regulatory authorities are more than adequate to protect all rivers and

waters within the refuge. In fact, one of the purposes of the refuge is to ensure "water quality and necessary water quantity within the refuge." We see no need to conduct wild and scenic river studies that will divert staff resources from other management issues.

Access

Under the current CCP and regulations, there are no restrictions for the Arctic Refuge on public access via snowmachine, motorboat, airplane or nonmotorized surface transportation. Even though there have been increases in public use and visitation, Commission members who are knowledgeable about the refuge see no need for any restrictions at this time. While we are aware that restrictions may be implemented only through the closure process and subject to the criteria found in the regulations at 50 CFR §36.42, the findings in the environmental impact statement and the revised CCP will heavily influence any decisions on future proposals for public access restrictions. This issue should be thoroughly and objectively examined as part of this revision.

Visitor Use Survey

We recently learned that implementation of the revised visitor use survey will be delayed until after the plan revision is completed. The Service should reconsider this decision and release the visitor survey for this season so that this information can be included in the CCP revision.

Cabins

Guidance for cabin management in the current CCP was developed prior to the promulgation of regulations for the use and construction of cabins within national wildlife refuges in Alaska. At the time the CCP was adopted, cabins were managed under a regional policy that was not uniformly applied and which was not consistent with the provisions of ANILCA. Formal cabin regulations were not adopted until 1994.

The Service estimated in the original CCP that there were 37 cabins on refuge lands used for trapping or other customary and traditional subsistence uses. According to the CCP, 25 of those were used to "some degree" and 12 were not being actively used. Twelve of the cabins were under special use permit. The CCP (pg. 210) states: "The Service eventually will place all of the cabins on refuge lands under permit, or declare them abandoned after researching their pattern of use."

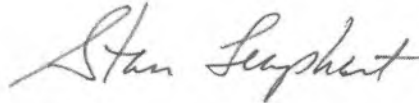
The CCP goes on to say that a detailed inventory of cabins and their uses on refuge lands will be conducted. It also says that before declaring a cabin abandoned, the Service will research its pattern of use and that all cabins determined to be abandoned will be disposed of in accordance with Service policy.

We have no specific information on the present status of cabins or cabin permits on the Arctic Refuge. We do understand that there are fewer cabins being used or under permit than when the original CCP was adopted. The revised CCP should include the results of the cabin inventory and the current status of cabins on the Arctic Refuge. The original CCP states that the Service has no plans for constructing or designating new public use cabins, but points out that cabins may be constructed or designated if necessary for refuge management and or public health and safety. We suggest inclusion of at least one alternative that would allow either the designation of existing cabins or construction of new cabins for public use in the non-wilderness portions of the

refuge. Consistent with ANILCA Section 1315(d), the need for public use cabins or shelters for public health and safety purposes within the designated wilderness portion of the refuge should also be considered in the alternatives. There is a significant segment of the public that considers public use cabins within conservation system units as both appropriate and desirable.

Again, the Commission appreciates the opportunity to provide these comments. We look forward to working with the refuge staff on the development of this plan revision and the environmental impact statement. We would welcome the opportunity to participate in planning team meetings along with other State personnel, if appropriate and if you think that participation would be helpful. When convenient, we also encourage you to provide updates that can be included in our monthly newsletter. Please contact us if you have questions or if we can clarify any of our comments.

Sincerely,

A handwritten signature in cursive script that reads "Stan Leaphart".

Stan Leaphart
Executive Director

STATE OF ALASKA

CITIZENS' ADVISORY COMMISSION ON FEDERAL AREAS

SEAN PARNELL, Governor

3700 AIRPORT WAY
FAIRBANKS, ALASKA 99709

PHONE: (907) 374-3737

FAX: (907) 451-2751

November 12, 2010

Richard Voss
Refuge Manager
Arctic National Wildlife Refuge
101 12th Avenue, Room 236
Fairbanks, AK 99701-6237

Dear Mr. Voss:

In scoping comments on the revision of the Comprehensive Conservation Plan (CCP) for the Arctic National Wildlife Refuge, the Citizens' Advisory Commission on Federal Areas expressed its opposition to the review of rivers within the refuge for possible recommendation for inclusion in the National Wild and Scenic River System. At our regular meeting in Anchorage on October 21 & 22, 2010, Commission members voted unanimously to reaffirm that opposition. We offer the following comments on the *Draft Wild and Scenic River Eligibility Report* by way of explanation for our action.

As we have stated in our scoping comments, existing statutory and regulatory authorities are more than adequate to protect all rivers and waters within the refuge. A primary purposes of the refuge is to ensure "water quality and necessary water quantity within the refuge." (ANILCA Section 303(2)(B)(iv)). This overlying statutory purpose, coupled with the fact that at least portions of 7 of the ten rivers and lakes determined to be eligible are located within designated wilderness, makes any additional designation redundant and unnecessary.

Our objections to the conduct of any studies for the purposes of developing recommendations for additional wild and scenic river designations are based on a clear reading of ANILCA Section 1326(b) which states: "*No further studies of Federal lands in the State of Alaska for the single purpose of considering the establishment of a conservation system unit, national recreation area, national conservation area, or for related or similar purposes shall be conducted unless authorized by this Act or further Act of Congress.*"

By definition, a wild and scenic river is a conservation system unit and any study of rivers within the Arctic Refuge for possible designation is a violation of Section 1326. We are aware that federal agencies have circumvented this prohibition on further studies by including them as part

of various plan revisions such as the current effort for the ANWR CCP. Nevertheless, such actions violate both the letter and the intent of this section of ANILCA and should be abandoned.

The Commission particularly objects to the inclusion of the Porcupine River in this current study effort. The Porcupine River was designated for study by Section 604(a) of ANILCA. As the current *Eligibility Report* (pg. 2) acknowledges, the National Park Service completed an eligibility and suitability report for the Porcupine River from its confluence with the Yukon River upstream to the Canadian – United States border. In that report, the entire river segment was found to be eligible, but not suitable. The Porcupine River was determined unsuitable largely because the 1985 report recognized that it was a legally defined navigable river. As such, the lands compromising the riverbed and both banks below the ordinary high water marks are owned by the State of Alaska.

This ownership was confirmed on May 9, 2005 when the Bureau of Land Management issued a Recordable Disclaimer of Interest (Serial No. AA-85085) for “*The lands underlying the Porcupine River between the lines of ordinary high water marks on its banks, from its confluences with the Yukon River upstream approximately 214 river miles to the 60-foot wide neutral strip from the United States – Canada International Boundary.*” It is disappointing to note that the current eligibility report does not include this information or even recognize State ownership.

The final study report was submitted by President Reagan to Congress on April 26, 1985 as required by ANILCA 604(b) and the Wild & Scenic Rivers Act Section 5(b)(5). The required study for the Porcupine River is complete and no further action on the part of the U.S. Fish & Wildlife Service is necessary unless or until such time as Congress may choose to act on the previously prepared study. The U.S. Fish & Wildlife Service is exceeding its authority under both ANILCA and the Wild and Scenic River Act to conduct any further examination of this river as part of the CCP revision or any other planning process.

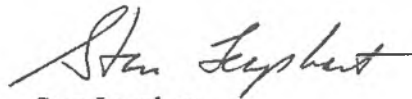
It is also inappropriate for the U.S. Fish & Wildlife Service to conduct a study of a State owned river. As the Service is aware, there is a mechanism under Section 2(a) of the Wild and Scenic Rivers Act by which a river, which has been designated as a wild, scenic or recreational river pursuant to an act of a state legislature, can be added to the federal system. The Commission suggests that if the Service feels there is a compelling need for the Porcupine River to be included in the Wild and Scenic River System, the agency, through the Secretary of the Interior, should petition the Alaska State Legislature for state designation.

Two lakes, Peters Lake and Schrader Lake, (collectively know as the Neruokpuk Lakes) have been determined to be eligible for designation. Section 16(a) of the Wild and Scenic Rivers Act defines the term river “*as a flowing body of water or estuary or a section, portion, or tributary thereof, including rivers, streams, creeks, runs, kills, rills, and small lakes.*” (emphasis added) The *Eligibility Report* (Table 3-1, pg. 12) describes these lakes as “*the two largest and most northern arctic alpine lakes in North America. The two large, deep, connected lakes are surrounded by steep slopes.....*” (emphasis added).

While the Wild and Scenic Rivers Act offers no clarification of what constitutes a “small” lake, the Neruokpuk Lakes do not qualify under the statutory definition of “river” for the purposes of eligibility, based on the report’s description of them as the two “largest” alpine lakes in North America. Consequently, they should be dropped from further consideration.

In conclusion, we again urge the Service to discontinue any further study efforts for the purpose of making recommendations for additions to the Wild and Scenic River System within the Arctic National Wildlife Refuge. Our review of the summary of public scoping comments submitted indicates that there are many important management and resources related issues more deserving of attention in this plan revision and subsequent implementation. We appreciate the opportunity to comment. Please contact our office if you have questions or if we need to clarify any of our comments.

Sincerely,

A handwritten signature in cursive script that reads "Stan Leaphart".

Stan Leaphart
Executive Director



ANWR:

**JOBS AND
ENERGY
FOR AMERICA**

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Support for H.J.R. 11 27th Alaska State Legislature 1st Session

Arctic Power strongly supports House Joint Resolution 11 introduced to the Alaska State Legislature Jan 21, 2011.

At the opening of each Congress for the past ten years, bills have been introduced to declare the 10-02 area of ANWR "wilderness lands" as defined by the National Wilderness Act of 1964. To date not a single measure has gained support and most have died in committee. Additionally letters have been drafted by Congressmen to the President to either declare the 10-02 as wilderness or, in one case, ban all development of any kind north of the Brooks Range. These letters are often signed by 50-80 congressmen and women and are sent off to the White House. None have yet gained enough traction to cause passage of legislation.

Despite the lack of success in these measures, and that many on Capitol Hill brand these attempts as politically "dead-on-arrival", the fact remains that up to a third of the US Senate and a quarter of the US House actually believe that locking up Alaskan lands is a good thing and Alaskans simply do not know what is best for themselves when it comes to land management. Sadly, very few of those who sign these letters or bills have actually been to Alaska, let alone ANWR, and many support these bills purely on political grounds. As a fact we at Arctic Power know that very few Congressmen or women actually know the issues, the lands, or the history of Arctic oil and gas exploration at all.

As ANWR is the single most legislated energy issue of the modern era, HJR 11 will be a extremely important voice for the people of Alaska in responding to the misguided wishes of certain members of Congress keen on Federal land grabs. It is the voice of the people of Alaska that is often not heard in the Halls of Congress and deliberately left of out the ANWR "wilderness" letters sent to the White House. HJR 11 will be an official message that we, as residents of this state, can take to Washington to help assure our voices are heard.

After ANILCA passed in 1980, Alaska was given reason to breathe a sigh of relief, though at a cost of 105 million acres of our state's land. Today 61% of our state is controlled by Washington and fully 1/3rd of all Federal lands nationally lie in Alaska. Over half of all national wilderness lands or fifty-eight million acres exist in Alaska including 8 million acres (42%) of ANWR itself. Alaska also contains 70% of the nation's national parks and 80% of all the nation's wildlife refuge land. One must ask when is enough enough? Regardless of the rule of law of ANILCA itself, we simply do not need more protected lands.

Demands for wilderness designation of the 10-02 area by anyone inside or outside of Alaska completely and deliberately ignores that Alaskans, both individually and through laws put in place by their elected officials, have acted responsibly and practiced careful conservation and protection of the ecology for 30 years across the entire Arctic. The environmental Armageddon many environmental groups preached never happened. But still, those in favor of 10-02 wilderness designation artfully ignore the now 66,000 strong Central Arctic Caribou Herd migrating, calving and feeding within the largest oil field on the North American continent. A situation which was deemed impossible by the environmental lobby and their supporters in 1972.

Apart from the basic fact that ANILCA specifically did not designate the 10-02 as wilderness lands, ANILCA also states that the Federal Government's fill of claims to Alaskan lands have been met and that no Alaskan land, anywhere in the state, may be taken out of public use without a specific decision by Congress. In 1987, the Department of Interior carried out the letter of the law of ANILCA and recommended opening the 10-02 to oil exploration and development, and; in 1995, Congress fulfilled ANILCA by voting to do so. What has changed since then with regard to ANWR land is almost nothing at all. The Porcupine Caribou Herd fluctuates, as it always has and will, the local governments still strongly support development and overall statewide public support remains at a high 78%. Yet Alaska, year in year out, must battle against bill after bill, letter after letter, campaign after campaign the attempts of environmentalists and misguided US Congressmen and women to keep open the option to responsibly use our lands. Even the current Comprehensive Conservation Plan by the US Fish and Wildlife Service will most likely break the ANILCA law and, in April, come out with a recommendation for a wilderness designation of the 10-02 area. It is our great wish that this effort be stopped, that the US Fish and Wildlife Service know through HJR 11 and the force of law that this is not only not the wish of Alaskans, but it is also against the law of the land.

We at Arctic Power do not agree with those in the US Congress who want wilderness designation for the 10-02 area. We strongly believe they do not fully understand the issue and many are completely unwilling to listen to the voices of the people of Alaska.

We at Arctic Power do believe Alaskans know what is best for Alaskans and that a vast majority of Alaskans support passage of HJR 11 and responsible development of the 10-02 area of ANWR. We strongly support this resolution and recommend its passage.

Sincerely

Mike Navarre Co-Chair ARCTIC POWER

Eric Helzer Co-Chairman ARCTIC POWER



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Senator Lisa Murkowski

Congressman Don Young

Governor Sean Parnell

February 2, 2011

Representative Eric Feige and Representative Paul Seaton, Co-Chairmen
House Resources Committee

Alaska State Legislature

State Capitol

Juneau, AK 99801

Re: HJR 11, Urging the U.S. Congress to oppose new Wilderness designations on
the Coastal Plain of ANWR

Dear Representative Feige and Representative Seaton:

The Resource Development Council for Alaska (RDC) is writing to support HJR 11,
which opposes new Wilderness designations in the Arctic National Wildlife Refuge
(ANWR).

RDC is an Alaskan business association comprised of individuals and companies
from Alaska's oil and gas, mining, forest products, tourism, and fisheries industries.
Our membership includes all of the Alaska Native Regional Corporations, local
communities, organized labor, and industry support firms. RDC's purpose is to
expand the state's economic base through the responsible development of our
natural resources.

RDC is not only strongly opposed to the expansion of Wilderness areas in ANWR,
we support opening the "1002 area" of ANWR's coastal plain to oil and gas
development. At a minimum, the option of future energy development in the 1002
area should be kept open, considering national economic and energy security
imperatives. However, a Wilderness designation over the 1002 area would forever
close what is considered America's best onshore prospect for major oil and gas
discoveries.

RDC is advocating for the State of Alaska's and, indeed, our nation's interests in
recommending the 1002 area be opened to responsible oil and gas exploration and
development, as was recommended by the Department of Interior and Congress in
the 1980s and 1990s. RDC is strongly opposed to new federal Wilderness
designations in ANWR and the mere implication of such consideration is
inconsistent with promises that were made in the Alaska National Interest Lands
Conservation Act (ANILCA).

The 1002 area was excluded from the Wilderness designation in a compromise struck under ANILCA over 30 years ago. In exchange, Congress doubled the size of the refuge and designated eight million acres outside the 1002 area as Wilderness. In recognizing the 1002 area's enormous oil and gas potential, Congress mandated a study of the 1002 area's petroleum resources, as well as its wildlife and environmental values. In 1987, the Department of the Interior recommended the 1002 area be opened "to an orderly oil and gas leasing program." A 1987 Environmental Impact Statement (EIS) noted in its summary that impacts from "exploration and development drilling were minor or negligible on all wildlife resources on the 1002 area" and that production would directly "affect only 0.8 percent of the 1002 area." In 1995, Congress voted to open the area to responsible oil and gas development, but President Bill Clinton vetoed the bill. ANILCA Section 1001(e) specifically limited the study period for Wilderness considerations in ANWR's coastal plain to eight years from the date of signing the act. The 1987 EIS addressed the issue and rejected Alternative E, Wilderness designation of the 1002 area. The EIS pointed out that "such a designation is not necessary to protect the 1002 area environment and is not in the best interest of the nation."

Moreover, Section 101 states that the need for future Conservation System Units (CSUs) in Alaska has been obviated by the ANILCA withdrawals (105 million acres statewide) and Section 102(4) includes Wilderness in the definition of a CSU. In addition, Congress recognized that for Alaska to "satisfy the economic and social needs of the State of Alaska and its people" access is essential.

Alaska already contains 58 million acres of federal Wilderness. This is larger than New York, New Jersey, Connecticut, Rhode Island, Massachusetts, Vermont and New Hampshire combined. In fact, Alaska accounts for 53 percent of America's federal Wilderness areas. We don't need more Wilderness in Alaska, we are already sufficiently protected. This point is acknowledged in Section 1326(a), which states that administrative closures, including the Antiquities Act, of more than 5,000 acres cannot be used in Alaska. Section 1326(b) adds emphasis to the "No More" clause in noting that federal agencies must first seek the permission of Congress before even studying lands in Alaska for Wilderness consideration.

In conclusion, the 1002 area of ANWR should not only continue to be excluded from Wilderness designation, it should be opened up to responsible onshore oil and gas exploration and development. Our national security and Alaska's economy depend on it. Moreover, we can have oil and gas development in a very small area of ANWR while maintaining the special values of the refuge. Given the majority of Alaskans support oil and gas development in ANWR and are opposed to a Wilderness designation over the 1002 area, RDC strongly encourages the passage of HJR 11.

Sincerely,



Carl Portman
Deputy Director

YOUNG Introduces Pro ANWR HR.49

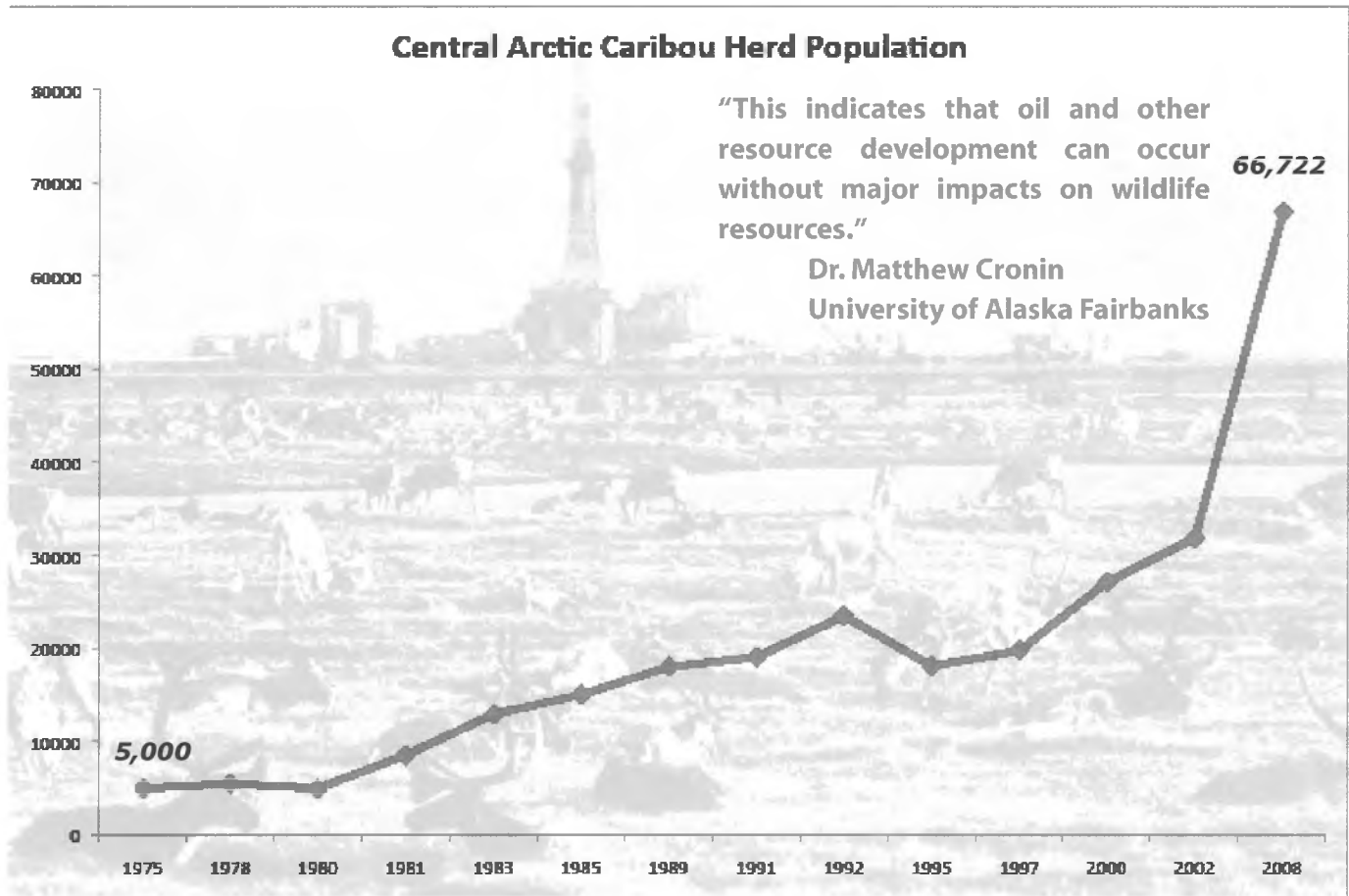
Washington – Representative Don Young of Alaska introduced the American Energy Independence and Price Reduction Act H.R.49 named after his home state. The act calls for the opening of the 10-02 Area of ANWR to oil and gas exploration and gives the Secretary of Interior permission to lease a minimum of 200,000 acres of the 1.5 million acre coastal plain area 22 months after presidential signatures of passage. The act also limits surface footprint of development to 2000 acres out of the 1.5 million which would include airfields, roads, drill pads, oil pumping facilities, and even pipelines supports.

2000 acres is equivalent to 3.1 square miles yet would not be contiguous. The proceeds from any lease sales or production taxes would be split 50/50 between the State of Alaska and the Federal Government. The Federal Governments monies must be used to fill an “ANWR Alternative Energy Trust Fund” to promote alternative energy projects from the Energy Policy Act of 2005 and the Energy Independence and Security Act of 2007. H.R. 49 would also provide a trust fund holding up to 11 million dollars in assistance for native communities impacted by the development. Lands owned by the Kaktovik peoples and subsurface rights of Arctic Slope Regional Corporation (total of 110,000 acres) would be honored and not subject to a split with the State or Federal Government. All lands would be subject to development using only the best available technologies and environmental protection permits. All facilities would also be required to be removed after production ceased. The bill further states that a noncontiguous 45,000 acres of the 10-02 can be specifically selected by the Secretary as “Special Area” due to cultural or scenic or scientific importance. Those special areas would be exempt from drilling infrastructure but subsurface directional drilling from adjacent leases would be allowed.

Overall the bill is nearly identical to bills Young has offered in the previous Congress. Since debate began in 1980 hundreds of pro ANWR bills have been introduced 16 bills promoting ANWR development in the last Congress alone. None managed to pass. The overall trend of ANWR legislation has been to incorporate alternative energies into bill language with a tie to a production tax fed trust fund as is the case with HR 49. Other bills include provisions to directly promote nuclear, coal, wind and solar energy or an “all of the above” approach. Pro ANWR bills, all of which have passed under Representative Young’s watch, number 12 successful votes, while the Senate has only mustered 3 successful votes. The bill will now be passed onto the Natural Resources Committee where it will be debated and voted upon. It is likely the bill will successfully reach the floor sometime this spring and the House will vote and pass the measure under Speaker Boehner who is strongly supportive of the measure. Because of the partisan nature of the issue and Democratic control of the Senate, the bill will not likely pass there. President Obama has also been decidedly against oil and gas exploration in the State and in ANWR in particular. His veto is almost certain. So far 7 co-sponsors have signed on to the bill. Reps: Bartlett (MD-6), Carter (TX-13), Culberson (TX-7), Duncan (TN-2), Long (MO-7), Miller (MI-10), Ross(FL-12).

You can view the bill on the Library of Congress’s THOMAS web site here:
[http://www.thomas.gov/cgi-bin/query/z?c112:H.R.49:](http://www.thomas.gov/cgi-bin/query/z?c112:H.R.49)

Co-existing with oil development, Central Arctic caribou herd thrives, population at record high



The Alaska Department of Fish and Game has reported that the Central Arctic caribou herd, which occupies summer ranges that include the Prudhoe Bay and Kuparuk oil fields, grew sharply in numbers between 2002 and 2008.

The herd included approximately 67,000 animals in summer 2008, compared to 32,000 in 2002. The herd had less than 5,000 animals in 1975, several years before North Slope oil production commenced.

The Teshekpuk Lake herd to the west of Kuparuk also increased in population to 64,000 animals in 2008, up from 45,000 in 2002. The two herds are the only ones in the Arctic known to be increasing at this time, the Department said. The other two Alaskan Arctic herds, the Western Arctic herd, whose

range is west and south of the Teshekpuk Lake herd, and the Porcupine herd, with a summer range in Arctic National Wildlife Refuge east of Prudhoe Bay and winter ranges in the Brooks Range and Canada, are decreasing, as are many herds across Canada.

The department has not yet determined the causes of the changes in numbers in the different herds, but believes good reproduction rates, good weather, low predation and good habitat have combined to allow the Central Arctic and Teshekpuk Lake herds to increase rapidly. Movement among the herds may also account for some of the relative increases and decreases in numbers.

The increase in population is good news for many North Slope communities that hunt caribou. The Teshekpuk herd is an important

subsistence resource for Barrow and villages in the region while the Central Arctic herd is commonly hunted by Alaskans from all over the state.

“Although some local disturbance impacts may occur, North Slope oil field developments have not resulted in decreased numbers of caribou,” noted Dr. Matthew Cronin, a specialist in animal genetics and a research associate professor at the University of Alaska Fairbanks School of Natural Resources and Agricultural Sciences in Palmer. “This indicates that oil and other resource development can occur without major impacts on wildlife resources,” Cronin added. “The North Slope oilfields and caribou herds are a good example of achieving multiple use management.”



THE ALLIANCE

...for responsible development of Alaska's Oil, Gas & Mineral Resources

February 1st, 2011

Honored Members of the House Resources Committee:

Please accept this letter on behalf of the Alliance's 500 members and their 35,000 employees.

Our organization fully supports HJR 11- a resolution urging Congress to refrain from passing legislation that designates land in ANWR as wilderness.

Jobs are our future. Any attempt to thwart responsible resource development in Alaska is a threat to our member companies and to their employees.

Please support HJR 11.

Respectfully,

Rebecca Logan

General Manager

The Alliance



Seafarers
International
Union of
North America,
AFL-CIO

Michael Sacco
President

5201 Auth Way
Camp Springs, MD
20746

301-899-0675

FAX: 301-899-7355

January 21, 2011

The Honorable Barack Obama
1600 Pennsylvania Avenue, NW
Washington, DC 20500

RE: Monument Designation for ANWR

Dear Mr. President:

I am aware of an ongoing effort by some environmental organizations and members of Congress to encourage you to declare the Arctic National Wilderness Area (ANWR) a national monument. The Seafarers International Union is opposed to such a designation and, respectfully, we urge you not to consider such an action. Doing so would close off a vital resource that has the potential for creating thousands of good paying jobs, especially seafaring jobs, that our economy desperately needs.

Our membership has been safely moving oil on tankers from Valdez to the Lower 48 and Hawaii for decades. We are confident that, if given the chance, our members will do the same with oil extracted from ANWR. We have been working with our contracted companies, including our leading tanker operator Alaska Tanker Company (ATC), to ensure that all oil moved is done so as safely and cleanly as possible. ATC's safety record for responsibly transporting this oil is unblemished – with over 14 million man-hours of transfers without a lost-time injury. And in the last eight years, ATC has moved nearly 1.3 billion barrels of oil without losing a single drop.

Mr. President, like you, we are committed to creating good paying jobs for middle class Americans. We view the opening of ANWR for responsible drilling as a way to create good paying jobs for Americans while at the same time helping to reduce our dependence on foreign sources of energy. Having played a key role in the cleanup of the BP oil spill, we recognize the concerns many have about safe and responsible drilling, but we are confident that the resources available in ANWR can be extracted and transported safely – because we've been doing it for decades. Our membership believes that a national monument designation for ANWR is a bad policy decision and one that would have a direct, harmful impact on our members and their families.

We look forward to continuing to work with you and your administration to strengthen job opportunities for working families across America.

Sincerely,

Michael Sacco
President



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Governor Sean Parnell
STATE OF ALASKA

January 26, 2011

The Honorable Kenneth L. Salazar
Secretary
United States Department of the Interior
1849 C Street, NW
Washington, DC 20240

Dear Mr. Secretary,

I have grave concerns about Secretarial Order 3310 and associated policies, which appear to allow the Bureau of Land Management (BLM) to create de facto wilderness in a state without Congressional oversight. My concerns center on how the Order imposes a new "Wild Lands" designation for BLM to administer, and on the Interior's intention to conduct wilderness reviews in the BLM planning process.

The new "Wild Lands" designation places a higher priority on protection of "wilderness characteristics," as defined by the Wilderness Act, which effectively trumps most other land uses. Putting such a sweeping initiative in place overnight, with no Congressional direction and no advance consultation with affected states or the public, is unfathomable. This approach not only runs counter to President Obama's January 21, 2009 Memorandum entitled *Transparency and Open Government* and similar supplemental directives, but federal law as well.

The following outlines my specific concerns with Order 3310 and accompanying planning guidance:

- By designating "Wild Lands," Order 3310 usurps congressional authority where the Interior improperly acted as an administrative surrogate for Congressionally-designated Wilderness;
- In Alaska, where most of BLM's 86 million acres retain their wilderness values, the heavily-weighted default protection of wilderness characteristics could easily render most BLM lands de facto wilderness areas absent BLM's multiple-use direction. This would have a devastating effect on Alaska's people, economy, and land use and access. Thus, the Order directly conflicts with the "no more" clauses in the Alaska National Interest Lands Conservation Act (ANILCA) as well as the Federal Land Policy and Management Act (FLPMA);
- The Order is, for all practical purposes, an end-run around ANILCA, which I predict will lead to egregious social and economic consequences for Alaskans. Without the explicit provisions of ANILCA that apply to conservation system units, BLM Wild Lands will likely

be managed *more restrictively* in Alaska than ANILCA-designated Wilderness managed by the National Park Service, Fish and Wildlife Service, or Forest Service;

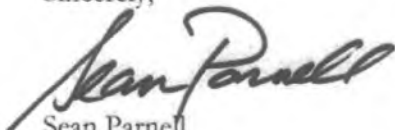
- The Order purports to seek “balance” between responsible resource development and protection of wilderness characteristics; yet there is a strong presumption in favor of wilderness-style protection. For that reason, this Order will have a severe chilling effect on future proposals designed to create jobs in resource development once an area is designated Wild Lands. This approach also contradicts BLM’s multiple use mandate under FLPMA;
- BLM managers’ discretion to determine where and when “impairment” of wilderness characteristics is “appropriate” is subject to undue scrutiny and approval in Washington DC, where decisions tend to be political and knowledge of local conditions, issues, and needs is diluted, at best;
- Last, but certainly not least, BLM has no authority whatsoever to apply this policy to the National Petroleum Reserve-Alaska because it is not subject to FLPMA.

These and other key issues are discussed in more depth in an attachment.

I know other western states are similarly concerned, if not appalled, by this new policy. Our state, and likely many others, would be best served by the former policy regarding wilderness reviews and recommendations that respected the preferences of State and local elected officials. Barring that, any new policy and associated planning direction must first undergo formal State and public review and compliance with the National Environmental Policy Act, and as appropriate, the Administrative Procedure Act.

In addition, no such policy should be applicable to the National Petroleum Reserve-Alaska. I urge you to work with the State Director of BLM in Alaska to ensure Secretarial direction does not run counter to the “balance” already established by ANILCA for Alaska.

Sincerely,



Sean Parnell
Governor

cc: The Honorable Lisa Murkowski, United States Senate
The Honorable Mark Begich, United States Senate
The Honorable Orrin Hatch, United States Senate
The Honorable Don Young, United States House of Representatives
The Honorable Mike Simpson, Chair, Interior Appropriations Committee, United States House of Representatives
The Honorable Rob Bishop, Chair, Natural Resources Subcommittee on National Parks, Forests and Public Lands, United States House of Representatives,

The Honorable Jan Brewer, Governor, State of Arizona
The Honorable Matt Mead, Governor, State of Wyoming
The Honorable Butch Otter, Governor, State of Idaho
The Honorable Brian Sandoval, Governor, State of Nevada
The Honorable Gary R. Herbert, Governor, State of Utah
The Honorable Mark Shurtleff, Attorney General, State of Utah
The Honorable Tom Home, Attorney General, State of Arizona
The Honorable Bruce Salzburg, Attorney General, State of Wyoming
The Honorable Lawrence Wasden, Attorney General, State of Idaho
Tom Strickland, Assistant Secretary, Fish, Wildlife and Parks, United States Department of
the Interior
Kim Elton, Interior Director of Alaska Affairs, United States Department of the Interior
Pat Pourchot, Special Assistant to the Secretary for Alaska Affairs, United States
Department of the Interior
Robert Abby, Director, Bureau of Land Management
Bud Cribley, State Director for Alaska, Bureau of Land Management
John W. Katz, Director of State/Federal Relations and Special Counsel, Office of the
Governor
Greg Conrad, Interstate Mining Compact Commission
Western Governors Association
Conference of Western Attorney Generals
Alaska Miners Association
Resource Development Council
Association of Fish and Wildlife Agencies
Western Association of Fish and Wildlife Agencies

Attachment to Governor Sean Parnell's Letter Regarding Interior Secretarial Order 3310

The Alaska National Interest Lands Conservation Act (ANILCA)

The Order Inventory and Planning Guidance Questions and Answers (Q&A) relies on several provisions of ANILCA to justify application in Alaska; however, the Order fails to recognize the full context of the law and the many other provisions that contributed to the "proper balance" referred to in Section 101(d) of ANILCA. Specifically, the Q&A document claims that Section 1320 of ANILCA "invites" BLM to designate wilderness in Alaska. We agree ANILCA Section 1320 provides BLM the authority to make wilderness recommendations to Congress; however, contrary to the Order, Section 1320 specifically prohibits the presumptive management of land for its wilderness characteristics without Congressional action. While the Order distinguishes between recommending designated wilderness and administratively designating Wild Lands, there is a very fine line between the two, as the basis for both is the Wilderness Act, and any lands set aside as Wild Lands will be managed to preserve the wilderness characteristics as defined by Section 2(c) of the Wilderness Act. In addition, ANILCA Section 1326(b) states:

No further studies of Federal lands in the State of Alaska for the single purpose of considering the establishment of a conservation system unit, national recreation area, national conservation areas or for related or similar purposes shall be conducted unless authorized by this Act or further Act of Congress. [emphasis added]

The underlined language broadens the scope of the provision beyond defined conservation system units (CSUs). Wild Lands are essentially administrative CSUs. Choosing to preserve wilderness character and administratively designating Wild Lands circumvents both Congress and the statutory intent behind ANILCA Sections 1320, 1326(b), and 101(d). In addition, the on-the-ground effects of a Wild Lands designation will likely resemble the administrative "withdrawal" that Congress prohibits in Section 1326(a), and thus are inappropriate.

The Order also ignores ANILCA's hard-fought provisions that protect access for traditional activities and to resources that are the bedrock of Alaska's economy. In contrast to Congressionally-designated conservation system units (CSUs), including Wilderness and Wilderness Study Areas, many of ANILCA's essential provisions would not apply to designated Wild Lands on general BLM lands. These provisions include, but are not limited to:

- Section 1102 Title XI transportation and utility systems;
- Section 1110(a) motorized access for traditional activities and for travel to and from villages and homesites;
- Section 1110(b) inholder access (vs. Section 1323(b) that currently applies);
- Section 1111 temporary access;
- Section 1310 navigation and communication facilities;
- Section 1314(c) taking of fish and wildlife; or
- Section 1315(c) and (d) new and existing cabins.

The importance of these provisions cannot be over-emphasized. For example, the Title XI process for considering transportation and utility systems is critical in Alaska where there are few roads. Congress assumed general BLM lands would remain available for this purpose. While we understand such corridors are not automatically prohibited in designated Wild Lands, we have little doubt that once wilderness characteristics have been identified as warranting protection, applicants would be forced into an excessively costly process or to utilize alternate routes that could end up precluding a legitimate access need.

In another example, ANILCA purposefully differentiated Section 1110(b) inholder access requirements for CSUs (including Wilderness areas) and Section 1323(b) inholder access provisions that apply to general BLM land. Section 1110(b) gives inholders a stronger right of access in areas designated for more restrictive management (CSUs). The stronger inholder access guarantee would not apply to inholdings within Wild Lands on general BLM lands, which could be highly problematic for individual land owners.

These differences, among others, illustrate that Congress understood the importance of balancing conservation objectives with special accommodations for Alaskans.

In addition, the "proper balance" referenced in Section 101(d) is further predicated on continued multiple use management on BLM lands in Alaska. The Order also speaks of the need to protect "rare opportunities for solitude..." as a basis for the new policy. This objective is apparently reflective of "Lower 48" circumstances where remote and primitive areas are the exception ("rare"), not the norm. As we have seen many times over the last several decades, cookie cutter federal land management policies do not fit in Alaska.

The Q&A (Page 6) claims "*There has never been a statewide wilderness inventory in Alaska.*" This assertion is offensive to those Alaskans who lived through the lengthy studies and deliberations leading up to ANILCA. Contrary to the Q&A claim, numerous reviews, inventories and studies were conducted pursuant to the Section 17(d)(1) and (d)(2) withdrawal processes initiated by the Alaska Native Claims Settlement Act (ANCSA). Virtually all these studies focused on BLM lands, and those deemed by Congress to have the highest national interest for conservation purposes eventually ended up in over 100 million acres of conservation system units, including 57 million acres of designated Wilderness. The BLM Kobuk-Seward Resource Management Plan adopted in 2008 documents this history (Page 14):

Alaska lands were inventoried, reviewed, and studied for their wilderness values under the Wilderness Act criteria beginning in 1971 when Congress enacted ANCSA. For eight years thereafter, the Department evaluated national parks, forests, wildlife refuges, wild and scenic rivers, and other lands for potential designation as wilderness.

Subsequently, Congress passed ANILCA, which preserved more than 150 million acres in specially protected conservation units. This represents more than 40% of the land area of the State of Alaska, and about 60% of the Federal land in Alaska. Pursuant to ANILCA, more than one-third of the lands preserved in conservation units, or 57 million acres, were formally designated as wilderness.

Examples of such pre-ANILCA studies include a 28-volume EIS completed in 1974 and another EIS signed by Secretary Cecil Andrus in 1978.

National Petroleum Reserve – Alaska (NPRA)

The State is especially alarmed by the extension of the Order to the National Petroleum Reserve – Alaska (NPRA). The Q&A document does not disclose the authority under which the Department of the Interior believes BLM may designate Wild Lands in NPRA. It simply states the BLM “*must inventory lands in the NPR-A and may designate Wild Lands in the NPR-A as part of its integrated activity planning for the area.*” The State strongly disagrees that BLM has such authority. Federal law prohibits BLM from exercising its land use planning authority under Section 202 of FLPMA in the Reserve, and also prohibits wilderness designation recommendations under Section 603 of FLPMA. In particular, land use planning and management in the Reserve is subject to the requirements of the Naval Petroleum Reserves Production Act of 1976, as amended. The Production Act provides no authority for applying the Wild Lands Order to NPR-A, and BLM is therefore prohibited from doing so.

De Facto Wilderness

Secretarial Order 3310 and the associated policies provide BLM with the ability to create de facto wilderness without Congressional oversight. The Order is largely based on authorities, values, and definitions in the Wilderness Act of 1964. In debates leading up to passage of the Wilderness Act, Congress struggled with how far to extend their new mandate. They considered automatically including “primitive” lands, roughly equivalent to the new “Lands with Wilderness Characteristics;” but in the end developed Section 3(b) of the Act, which established a suitability process that ended with Congressional approval. Below are some relevant remarks by Senator Peter Dominick from the Congressional record (Senate Bill 4) leading up to passage of the Wilderness Act:

... the difficulty is that we are grouping together and putting into one system, without any particular legislative scrutiny, a vast area of land known as primitive lands, which have not been classified by the executive department or reviewed by Congress, to see whether this is the most useful purpose for that particular group of public lands.

... Congress, should have the right to determine, after recommendation by the executive department, which of these primitive lands or which group of these primitive lands should be brought into the wilderness system, and that they should not all be blanketed in at the same time. [Congressional Record 109 (1963) pg. 5890]

Congress clearly rejected the option to delegate the creation of wilderness areas to the Executive branch; yet the creation of a new system of BLM Wild Lands is a thinly veiled effort to do just that. Department officials argued during the press conference that since a Wild Lands designation is not permanent, they are not “locked up.” Yet conventional wisdom and experience show that once an area is placed in a formalized protective status through a plan, altering that status or accommodating competing uses becomes much more difficult, especially since plans are only updated every 15-20 years, sometimes less often.

The single-minded approach to wilderness characteristics is explicitly illustrated in the Order (Section 4 Policy): “Where the BLM concludes that protection of wilderness characteristics is appropriate, the BLM shall designate these lands as “Wild Lands” through the planning process.” [emphasis added] BLM has additional or alternative tools to maintain opportunities for primitive recreation in combination with other public use and/or reasonable development without applying a Wild Lands designation. Furthermore, the policy provides no standards to determine when BLM shall conclude that “protection of wilderness characteristics is appropriate.”

Also, just as Wild Lands are essentially de facto Wilderness areas, they also mimic Wilderness Study Areas – even though the Q&A (Page 3) attempts to dismiss the similarities. The draft planning Chapter 6300-2 (.3) describes a process whereby the State Directors will determine whether they will “...develop a recommendation for Congress to designate Wild Lands as units within the National Wilderness Preservation System.”

“Balance” is Not Achieved

The Order and policies purport to seek “balance” between responsible resource development and protection of wilderness characteristics. As stated in the Q&A document: “Balance will be achieved through a public process where lands with energy potential and lands with wilderness characteristics will be identified, evaluated, and managed in accordance with the new policy and the BLM’s multiple use mandate.” Yet if “balance” is the goal, the planning policy need only require an improved inventory of all resources and values, including wilderness characteristics. Area managers would then retain the discretion to do the local “balancing” within the context of a plan. Instead, the policy imposes a default decision to protect wilderness character, unless the local manager can make a proactive determination that impairment of wilderness characteristics is appropriate. Making wilderness character a higher priority than other land uses is not “balance,” nor is it consistent with FLPMA’s multiple use mandate.

Parenthetically, we note that the Q&A quote above, while referencing “lands with energy potential,” is curiously silent regarding mineral resources. We understand that mining is not necessarily precluded by the presence of wilderness characteristics; but the lack of recognition of mineral potential in this context may be indicative of bias against mining.

To avoid a Wild Lands designation, or authorize a development project, or use that could affect wilderness character, BLM must determine that “impairment” of such wilderness characteristics is “appropriate.” These terms set a high bar, and force BLM to make determinations in a negative context, rather than weighing all the options and making a positive choice toward a desired condition. This negative context adds built-in bias to the deliberative process.

Furthermore, it appears any attempt to steer away from wilderness protection at the State level must be approved in Washington DC by individuals far removed from local issues and control. This is especially problematic for Alaska where an understanding of Alaska’s geography, economy, culture, infrastructure, resource development potential, and laws such as ANILCA seem to be poorly understood in Washington DC.

Unfunded Mandate

The Order also represents an unfunded mandate to BLM. Environmental organizations are poised to provide inventory information about wilderness characteristics. According to an

Anchorage Daily News article published on November 6, 2010, the Washington DC based conservation group, the Wilderness League, opened an office in Fairbanks, Alaska. The article quotes the League's stated purpose as "...securing wilderness designations in the National Petroleum Reserve-Alaska...and on other BLM lands in eastern Interior." We are concerned BLM will have insufficient resources to review and either confirm or invalidate wilderness characteristics "nominated" by pro-wilderness interest groups, leading to excessive protection in areas where wilderness characteristics are already compromised. Also, based on the date of this article, we are disappointed the administration apparently engaged in informal consultation with environmental groups who seemed to be aware of the content of this policy before anyone else.

Affect on State Administrative Activities

The effects of a Wild Lands designation on State fish and wildlife management activities is not clear. For example, the use of motorized or mechanical transport and equipment is restricted in designated Wilderness; however, the new policy does not clarify whether similar restrictions would apply to public use or State management activities in administratively designated Wild Lands. The State of Alaska holds primary authority, jurisdiction, and responsibility to manage, control, or regulate all fish and wildlife within federal lands, including uses thereof, unless specifically preempted by federal law. Nothing in the Wilderness Act, FLPMA, or Order 3310 should be construed as an expansion of federal authority or oversight over this traditional State responsibility.

Policy is Confusing and Contradictory

The Order and accompanying direction to BLM are confusing and potentially contradictory – enabling abuse by those seeking a back door way to pursue wilderness protection at the expense of other legitimate uses. For example, the Q&A issued with Order 3310 indicates that "*BLM will consider wilderness values among the broad range of other potential resource values and uses for the public lands in accordance with its multiple-use mission, and make a decision about whether and to what extent to protect those wilderness characteristics.*" However, the Order directs all BLM offices to "*protect those inventoried wilderness characteristics when undertaking land use planning and when making project-level decisions by avoiding impairment of such wilderness characteristics unless BLM determines that impairment of wilderness characteristics is appropriate and consistent with applicable requirements of law and other resource considerations.*" The Order instructs BLM to place a higher priority on protection of wilderness characteristics than other uses contemplated by FLPMA's multiple use mandate.

BLM cannot manage land based on an inventory alone. Land management decisions may only be made in accordance with an adopted plan. This intent is appropriately represented in the Q&A document, which states "*When the BLM decides to protect LWCs through a land use plan decision, it will designate these areas as "Wild Lands." This determination will be made through a public land use planning process...."* (emphasis added) The Order, however, states "*Where the BLM concludes that protection of wilderness characteristics is appropriate, the BLM shall designate these lands as "Wild Lands" through the planning process,*" which essentially directs BLM to make an either/or choice between "protection" and "impairment" before the formal planning process has even begun. This pre-planning decision process is also mirrored in the policy Section (.06) of the draft BLM Manual 6300-2; however, the section entitled "Procedures for Considering LWCs in Land Use Planning" is more consistent with direction in

the Q&A document. These differences need to be reconciled to ensure that any management decisions concerning LWC's occur within a planning process, following public review.

Many questions also arise from the Order and associated documents, including:

- What flexibility will managers and State Directors have in determining Lands with Wilderness Characteristics and deciding which lands are appropriate for Wild Lands designation?
- How would the presence of inholdings, mining claims, rights-of-way, and other valid existing rights affect the inventory of wilderness characteristics and the likelihood of a Wild Lands designation?
- How will the Order affect the future of outdated ANCSA Section 17(d)(1) withdrawals?
- Will BLM conduct a "minimum requirements analysis" on State or federal administrative activities on Wild Lands?
- Have you considered that ANILCA Section 811 significantly constrains BLM's options to restrict access for subsistence purposes, including off-highway vehicles?
- How will long-standing recreational use of airplanes, snowmachines, and off-highway vehicles be addressed?
- What is the relationship between a Wild Lands designation, Areas of Critical Environmental Concern, the National Landscape Conservation System, and other classifications of land with conservation objectives?

Lack of State Consultation and Public Review

In conclusion, Secretarial Order 3310 is a dramatic departure from all previous approaches to BLM management, especially in Alaska. As these comments illustrate, the Order sets entirely new standards, challenges conventional wisdom regarding management of multiple use lands, and raises legal and policy questions. As such, much more rigorous justification and analysis of consequences and impacts are essential; along with an opportunity for formal State and public review. Compliance with the National Environmental Policy Act is also required – most likely through an environmental impact statement given the potential foreseeable impacts.

A rigorous public review process is consistent with

- President Obama's January 21, 2009 Memorandum entitled *Transparency and Open Government*.
- Open Government Directive from the Office of Management and Budget directing all executive departments and agencies to take specific actions to implement the principles stated in the President's memorandum.
- The Department of the Interior's own Open Government Plan assembled by a multi-functional team from across the Department.
- The Federal Land Policy and Management Act (FLPMA) and BLM planning regulations regarding State and public involvement.

The above policies, directives, regulations, and laws require rigorous public discourse.