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Re: The National Petroleum Reserve—Alaska & the Urgent Need for New Regulations

Dear Mr. Beaudreau and Ms. Daniel-Davis:

Thank you again for the opportunity to meet with you to discuss the National Petroleum Reserve—Alaska (Reserve). We appreciate President Biden's and the Department of the Interior's (DOI) actions taken thus far to address the climate change and biodiversity crises and environmental justice concerns in the Reserve, including by initiating a review of the Reserve's flawed 2020 Integrated Activity Plan (IAP). As detailed in the attached white paper, significant threats to this landscape remain, but there are also tremendous opportunities for this Administration to shift the management of the Reserve to urgently and aggressively address climate, biodiversity, and environmental justice.

We call on the Biden Administration to set a new management direction for the Reserve through the promulgation of regulations that will provide more durable protections and improved management for this important landscape. We encourage you to expeditiously move to initiate a rulemaking that aligns the Reserve's management with the administration's climate and biodiversity goals based on a robust public process, meaningful consultation with tribal governments, and the best available information, and to begin that process ideally by the end of this year.

Recent landmark reports from the Intergovernmental Panel on Climate Change and the International Energy Agency exemplify the need for management of federal lands and resources in line with climate and conservation imperatives. Home to over one-third of U.S. federal land, the bulk of the United States' intact wildlands, and 62 percent of the country's terrestrial ecosystem carbon stocks, Alaska must play a prominent role in this effort, and in particular because a disproportionate share of the impacts of climate change are already being felt in the state. The Reserve, with an estimated 8 billion barrels of oil and 2.6 million acres of active leases, is perhaps the single most important federal landscape on which to address greenhouse gas emissions. New regulations should establish a modern management regime for the Reserve that is compatible with national climate goals and international commitments, most notably a pathway to limiting warming to 1.5°C above pre-industrial levels.

On top of the mounting climate threat, development and exploration projects pose real, on-the-ground threats to communities' subsistence resources and practices, food security, and traditional lifeways. Meaningful and robust tribal consultation must be prioritized. The early involvement of local communities and stakeholders in identifying options is likely to result in stronger, more durable outcomes and a more socially just approach. Traditional Indigenous knowledge and stewardship practices of Indigenous peoples can offer pathways for conservation and resource management that foster ecosystem integrity and human well-being, prioritizing water and food security and economic and educational opportunities for resource users. This Administration should work simultaneously to take meaningful steps to recognize the overarching environmental justice concerns of the region, and to ensure a fair transition away from a fossil fuel dependent economy.

We look forward to engaging with DOI on this necessary rulemaking process to urgently advance meaningful climate policy and provide more durable protections for the internationally recognized wildlife and wildlife habitats, cultural resources, and wilderness values in the Reserve.

Sincerely,

Alaska Wilderness League
Alaska Soles Broadband, Great Old Broads for Wilderness
Audubon Alaska
Conservation Lands Foundation
Defenders of Wildlife
Native Movement
Northern Alaska Environmental Center
Sierra Club
The Wilderness Society
Trustees for Alaska

THE PRESSING NEED FOR MORE DURABLE PROTECTIONS AND UPDATED REGULATIONS FOR THE NATIONAL PETROLEUM RESERVE–ALASKA

At approximately 23-million acres — an area roughly the size of Indiana — the National Petroleum Reserve–Alaska (Reserve) is the largest contiguous block of public land in the country. The lands and waters of the Reserve are globally unique ecosystems and culturally irreplaceable for the Alaska Native communities who live within the region and rely on its resources. As the Biden Administration looks to fulfill its ambitious, yet necessary domestic and international commitments toward environmental justice, climate action, and the protection of biodiversity, the Reserve offers a tremendous opportunity.

For decades, Integrated Activity Plans (IAP) have been the primary vehicle for directing management in the Reserve. Throughout that time, management under these plans has been continually uprooted every few years under different Administrations, undermining the durability and effectiveness of protections for important areas and values. At the same time, Reserve-specific regulations and statutory provisions have remained stagnant over years of a changing energy landscape and climate reality. Currently, regulatory guideposts provide little, if any, detail on how protection of surface resources and management should be accomplished in the Reserve and provide very little substantive protections. Yet, the Reserve’s statutory provisions, which grant very broad discretion to the Secretary of the Interior, provide an opportunity to refocus management in the Reserve toward conservation, furthering this Administration’s goals around protecting lands, waters, wildlife, and communities consistent with the America the Beautiful Initiative, while prioritizing the existential threat of climate change. New regulations, directing and informing science-based land management planning, would effectively position the Reserve for a new era of management.

This white paper provides background on the Reserve and its current statutory and regulatory provisions and sets out ideas for how the regulations could be updated to shift toward a more proactive management framework in the Reserve that aligns with the Administration’s policy goals.

Background

The Reserve has outstanding conservation and cultural values. The Reserve is the traditional homeland for a number of Alaska Native communities and contains areas of cultural and subsistence importance, including Teshekpuk Lake, a place of spiritual practice since time immemorial. The Reserve is home to the Western Arctic, Teshekpuk, and Central Arctic Caribou Herds, which are key subsistence resources to numerous communities in the Reserve and across northwest Alaska. The area provides essential wildlife habitat for globally significant densities of raptors; millions of migratory birds; large concentrations of marine mammals; healthy populations of predators, including grizzly bears, wolves, and wolverines; critical habitat for imperiled species such as polar bears, and Steller’s and spectacled eiders; vast wilderness landscapes; wild rivers; and rich geological, scientific, and archaeological sites. The Teshekpuk Lake Special Area comprises one of the most ecologically rich wetlands in the circumpolar Arctic, teeming with birds and wildlife. The Utukok Uplands Special Area provides key calving habitat for the Western Arctic Caribou Herd, which in turn helps sustain over 40 communities across northwest Alaska.

Significant fossil fuel leasing and development activities have already occurred in the Reserve, with over 2.6 million acres leased and several oil developments already built. Oil and gas exploration occurs nearly every winter, including both seismic exploration and exploratory drilling. Although leasing has occurred in the Reserve for some time, actual development projects did not appear until fairly recently and have been very impactful.

Oil development and production is already causing serious impacts to subsistence and other resources in the Reserve, particularly around the community of Nuiqsut. When authorizing development at Greater Mooses Tooth 1 in 2015, the first development project on federally managed lands within the Reserve, BLM found there would be significant sociocultural and subsistence impacts to Nuiqsut that were not adequately addressed by existing mitigation measures. Additional development has been authorized and is under construction nearby at Greater Mooses Tooth 2, and the massive Willow Development project, if ultimately authorized, would further exacerbate these impacts. These development activities have occurred in a compressed timeframe, all while annual lease sales have also been occurring. This has resulted in intense impacts during that short timeframe that will continue and compound in the future, particularly if projects like ConocoPhillips' Willow project move forward.

Despite these serious impacts, the Trump Administration adopted a revised Integrated Activity Plan in 2020 that opened over 18 million acres of the Reserve — 82% — to oil and gas leasing. That plan also rolled back protections for designated Special Areas and high-value resources, even going so far as to completely eliminate the Colville River Special Area.

Continuing to manage the Reserve as an oilfield would be disastrous from a climate perspective. Development of even a portion of the 2.6 million acres of existing leases would cause significant, irreversible impacts. Because the Reserve is a remote area, development there requires massive new investments in infrastructure. That new infrastructure will lock us into decades of entirely avoidable carbon emissions: If produced, the estimated 8.7 billion barrels of oil and 25 trillion cubic feet of natural gas in the Reserve have the potential to release over 5 billion metric tons of CO₂ — the equivalent of more than 1 billion passenger cars driven in a year. Additionally, black carbon, typically associated with respiratory and other health impacts, will cause adverse local impacts by falling on and then melting nearby snow and ice.

Climate change is being acutely felt in Alaska, where parts of the Arctic are warming at three times the rate of the rest of the world. In the 2020 approved plan, the agency recognized that the impacts of climate change are greater in the Arctic.¹ Threats to food security are increasing, animal migration patterns and abundance are shifting, and there are numerous unpredictable conditions, such as thawing permafrost, coastal erosion, and melting sea ice, that are already having serious repercussions. The Reserve's globally significant habitat and polar bears, caribou, millions of migratory birds, and numerous other species are already being impacted by climate change and could be further adversely impacted by oil and gas development and infrastructure. Impacts to villages and subsistence, particularly the community of Nuiqsut, are already occurring as oil development has expanded across the region and present serious environmental justice concerns.

Unique Legal Tools & Opportunities in the Reserve

The Naval Petroleum Reserves Production Act (NPRPA) sets out independent legal authorities for the Reserve.² The NPRPA provides the Secretary with broad authority to promulgate rules and regulations for “the protection of environmental, fish and wildlife, and historical or scenic values” and related to the oil and gas program in the Reserve.³ The NPRPA sets out that BLM is to “conduct an expeditious program of competitive leasing of oil and gas in the Reserve,” but it does not contain any specific requirements for when, where, or whether BLM needs to lease for oil and gas.⁴ The Reserve is not subject to the Mineral Leasing Act or that statute’s lease sale provisions.⁵ This provides BLM with broad discretion over how the oil and gas program is implemented in the Reserve and whether to lease at all. The provisions related to competitive leasing of oil and gas make it clear that the Secretary has broad authority to mitigate impacts from oil and gas to the ecological resources in the Reserve: “Activities undertaken pursuant to this Act shall include or provide for such conditions, restrictions, and prohibitions as the Secretary deems necessary or appropriate to mitigate reasonably foreseeable and significantly adverse effects on the surface resources of the [Reserve].”⁶

The NPRPA also gives the Secretary the ability to designate Special Areas within the Reserve and directs the Secretary to provide “maximum protection[s]” for those areas. The NPRPA specifically states that “[a]ny exploration within the Utukok River, the Teshekpuk Lake areas, and other areas designated by the Secretary of the Interior containing any significant subsistence, recreational, fish and wildlife, or historical or scenic value, shall be conducted in a manner which will assure the maximum protection of such surface values of the extent consistent with the requirements of this Act for the exploration of the Reserve.”⁷ Any oil and gas production and exploration must be consistent with that protective provision.⁸

BLM has a limited set of regulations outlining the procedures for protecting the environmental, fish and wildlife, historical, and scenic values in the Reserve.⁹ The regulations require BLM to take actions, including monitoring, “deem[ed] necessary to mitigate or avoid unnecessary surface damage and to minimize ecological disturbance throughout the reserve to the extent consistent with the requirements of the Act for the exploration of the reserve.”¹⁰ The regulations also specify that “[m]aximum protection measures shall be taken on all actions within the [Utukok] River Uplands, Colville River, and Teshekpuk Lake special areas, and any other areas identified by the Secretary as having significant subsistence, recreational, fish and wildlife, or historical or scenic value.”¹¹ The regulations indicate these maximum protections include, but are not limited to, requirements for when and where activities take place, restrictions on the types of vehicles and loadings, limits on the types and use of aircraft, and provisions related to fuel handling.¹² BLM is also able to “limit, restrict, or prohibit use of and access to lands within the Reserve, including special areas.”¹³ These measures can be taken to “protect fish and wildlife breeding, nesting, spawning, lambing of calving activity, major migrations of fish and wildlife, and other environmental, scenic, or historic values.”¹⁴

BLM also has regulations to guide its implementation of the NPRPA oil and gas leasing program.¹⁵ Those regulations lay out the process for how BLM conducts lease sales, but — similar to the NPRPA — do not set out when or whether BLM needs to hold lease sales.¹⁶ Under those regulations, BLM also has the authority to prevent adverse impacts to surface resources. BLM is required to “develop measures to mitigate adverse impacts, including lease stipulations

and information to lessees.”¹⁷ When issuing leases, BLM has the authority to incorporate special stipulations into the lease to mitigate reasonably foreseeable and significant adverse impacts on surface resources.¹⁸ BLM can also impose additional stipulations to protect surface resources and special areas when approving a lessee’s surface use plan and permit to drill.¹⁹

While the NPRPA has a provision that removes it from operation of Section 202 of the Federal Land Policy and Management Act of 1976 (FLPMA) — the land use planning provision of FLPMA²⁰ — that exemption only means that BLM is not bound by the statutory requirements and regulations related to the preparation of resource management plans. Neither the NPRPA nor BLM’s regulations contain provisions setting out how BLM is to develop or amend the IAP. As a result, BLM has historically developed and adopted IAPs through a NEPA process, where it weighs various management alternatives consistent with its mandates under the NPRPA and captures those management decisions and other provisions, such as lease terms and required operating procedures, as part of the IAP.²¹ Finally, all other important provisions of FLPMA apply broadly to the Reserve, including BLM’s obligation to better manage greenhouse gas emissions and “take any action necessary to prevent unnecessary or undue degradation of the lands.”²²

How Updating the Regulations Can Achieve Greater Protections in the Reserve

The Department has broad authority to draw on under the NPRPA and FLPMA to protect surface resources and areas in the Reserve and to regulate oil and gas activities. The following outlines some of the different approaches and ways regulations could be used to help achieve the Administration’s climate, biodiversity, and environmental justice priorities and provide more durable protections.

Future Leasing: BLM has broad discretion to conduct or not conduct lease sales for the Reserve. Additional considerations related to how and whether to conduct lease sales could be added to the regulations. For example:

- The regulations should add a framework for how decisions to hold lease sales are made in the first instance, which should include consideration of climate concerns and energy needs, as well as impacts on surface values, subsistence, or other criteria. For example, the area should be treated as a true “Reserve” where future lease sales are conditioned on the directive that additional production from the Reserve is “regulated in a manner consistent with the total energy needs of the Nation”²³ — meaning, leasing considerations should align with climate targets.
- Drawing on its authority and obligation to provide “maximum protection” for Special Areas, BLM should include strict limitations on leasing, exploration, and development in Special Areas and other currently unleased areas as part of the regulations.

Protection of the Reserve’s Surface Values Through Stronger and More Robust Special Area Designations: The Department has a unique set of legal tools that it can draw on to protect the Reserve, address impacts, and provide protections for designated Special Areas. Based on the authority provided in the NPRPA, the Department should adopt regulations that provide more durable protections for areas with important habitat, wildlife, or subsistence values. Examples include:

- The regulations should provide for subsistence-focused Special Areas or further set out mechanisms for defining and protecting areas that are particularly important for subsistence use and subsistence resources.
- The regulations should incorporate the boundaries and purposes of Special Areas and include mechanisms for identifying important resources and creating new or expanding existing designated Special Areas.
- The regulations should set out expressly how Special Areas are defined and protected, including identifying specific factors that should be considered when they are designated. The regulations should also add a requirement that any changes to Special Areas be based on best available science or subject to other clearly delineated standards.
- The regulations should further define what constitutes “maximum protection” for Special Areas. This should include requiring any activities in Special Areas not undermine the purposes for which they were designated, with a process and finding of consistency similar to National Wildlife Refuge system compatibility determinations.

Lessening the Impacts of Existing Activity: Regulations should set out how BLM will manage existing oil and gas activities to align them with climate goals and the need to protect subsistence resources and other values from existing development. Examples include:

- The regulations should require a more detailed analysis of oil activities and mandate reduced impacts from existing leases, with an eye towards alignment with national climate and environmental justice goals. The regulations should include specific operating procedures, buffer requirements, and adaptive management stipulations to ensure that resources and values are meaningfully protected.
- The regulations should better define the procedures for relinquishment and termination of non-producing leases to bring overall lease holdings in line with energy and climate needs.
- Reclamation and bonding requirements should be strengthened to ensure that the public is not burdened with the costs of clean up.

More broadly, and as alluded to above, the regulations should further define the specific process and steps for how the agency adopts and revises IAPs for the Reserve. Here, the rule could shift the focus of those plans toward being more protective of surface values by requiring the use of the best available climate and conservation biology science.

Conclusion

There is significant potential and need, given the breadth of BLM’s legal authorities and stated commitments to climate action, for the Reserve to be a key part of the Administration’s climate, biodiversity, and environmental justice solutions. Moving quickly to adopt stronger regulations has the potential to increase the durability of protections in the Reserve and to shift management toward addressing climate change and protecting sensitive resources and areas from significant and irreversible harm.

¹ 1 Bureau of Land Mgmt., National Petroleum Reserve in Alaska: Final Integrated Activity Plan and Environmental Impact Statement at 3-2 (2020).

² 42 U.S.C. §§ 6501–6507.

³ *Id.* §§ 6503(b), 6504a(o).

⁴ *Id.* § 6506a(a).

⁵ *See id.* § 6502.

⁶ *Id.* § 6506a(b).

⁷ *Id.* § 6504(a).

⁸ *Id.* § 6506a(n)(2).

⁹ 43 C.F.R. §§ 2361.0-1 to 2361.3.

¹⁰ *Id.* § 2361.1(a).

¹¹ *Id.* § 2361.1(c).

¹² *Id.*

¹³ *Id.* § 2361.1(e)(1).

¹⁴ *Id.*

¹⁵ *See id.* §§ 3130.0-1 to 3138.12.

¹⁶ *Id.* pt. 3131.

¹⁷ *Id.* § 3131.2(b).

¹⁸ *Id.* § 3131.3.

¹⁹ *Id.*

²⁰ Pub. L. 96-514 (Dec. 12, 1980).

²¹ *See, e.g.*, 1 U.S. Bureau of Land Mgmt., National Petroleum Reserve–Alaska: Final Integrated Activity Plan/Environmental Impact Statement 6 (2012).

²² 43 U.S.C. § 1732(b). The Reserve is withdrawn from FLPMA’s land use planning provisions, but otherwise subject to FLPMA.

²³ *Naval Petroleum Production Act of 1976*, Pub. L. 94–258, Apr. 5, 1976, 90 Stat. 303.