

STATE OF ALASKA

CITIZENS' ADVISORY COMMISSION ON FEDERAL AREAS

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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 chose 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,



Stan Leaphart
Executive Director