STATE OF ALASKA

SEAN PARNELL,
Governor

CITIZENS' ADVISORY COMMISSION
ON FEDERAL AREAS

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May 6, 2010

Ms. Beth Maclean
Glennallen Field Office
Delta River Special Recreation Management Area Planning
Bureau of Land Management
Glennallen Field Office, P.O. Box 147,
Glennallen, AK 99588

Dear Ms. Mclean:

The Citizens' Advisory Commission on Federal Areas has reviewed the *Environmental Assessment for the Delta River Special Recreation Management Area Plan and East Alaska Resource Management Plan Amendment*. We offer the following comments for your consideration.

Public Participation

We appreciate the previous efforts by the Bureau of Land Management to involve the public in the planning process for the Delta River Special Recreation Management Area (SRMA). The scoping phase of plan development is an important component in the planning process, particularly for one as relatively new and esoteric as Benefits Based Management (BBM) Planning. We understand that a series of focus group meetings on the BBM were held in Spring 2007 during preparation of the East Alaska Resource Management Plan/ Environmental Impact Statement. However, while the BLM made an outreach effort through a mailing list and via its website, no public meetings, open houses or workshops were held during the 60 day scoping period in 2008. The scoping report notes that at least one organization submitted comments critical of the lack of opportunities for public participation during the scoping process. The report further notes that only 20 scoping comments were received.

Given that 3 years have passed since the 2007 BBM focus group meetings and nearly 2 years since the scoping period, the Commission is disappointed that the BLM initially provided only a 30 day public comment period for review of this EA and draft management plan.

Even more disappointing is the fact that no public meetings or open houses were held. Public meetings would have given the BLM the opportunity to explain the plan and its alternatives and to answer questions from the public. Preliminary scoping and planning meetings are useful and necessary to provide the public with information and for gathering input from user groups. However, experience has demonstrated that the public provides more meaningful input and feedback when responding to specific management or regulatory proposals. The general public is also more inclined to give testimony or make comments at a public meeting than to submit written comments.

We understand that this plan attempts to accommodate, in some magnitude, all of the user groups identified during the focus group phase of the process. The intentions of the plan seem good. However, we have concerns regarding the overall complexity of the plan and how that may decrease the public's ability to understand and be involved and informed about management decisions. We are especially concerned with the lack of public input opportunities because this is a new planning methodology with outcomes measured and defined based on very subjective parameters.

If BBM is to be the standard approach for future management decisions, the BLM must go beyond current minimum requirements for public involvement. At the same time equal consideration and representation must be given to each of the different user groups throughout the process. While it is impossible to represent every opinion of a good or bad experience, this would expand the range of considerations and increase perceived credibility in a subjective process.

We do note that BLM did meet with a group in the Paxson area to discuss the EA and plan amendment and eventually agreed to extend the comment period for an additional two weeks. While we appreciate the short extension, a 45 day comment period with no public meetings is inadequate for this or any management plan.

Implementation Framework Decisions

Under the proposed action alternative (pg. 19) the EA states:

> "Special rules for the river corridor will be developed in accordance with 43 CFR 8351.2-1 to address restrictions on travel management, group size, occupancy and use, chainsaw use and firewood gathering, recreational shooting, fireworks, supply caching, and disposal of human waste."

This section of the general BLM regulations authorizes the authorized officer to issue written orders which close or restrict the use of lands and water surface administered by the BLM within the river corridor of the Delta Wild and Scenic River. However, the regulations in this section are not the proper authority for regulating travel management within the river corridor.

As you are aware, within Alaskan conservation system units, including wild and scenic rivers, ANILCA Section 1110(a) permits, "(t)he use of snowmachines (during periods of

adequate snow cover, or frozen river conditions in the case of wild and scenic rivers), motorboats, airplanes and nonmotorized surface transportation methods for traditional activities and for travel to and from villages and homesites. Such use shall be subject to reasonable regulations by the Secretary to protect the natural and other values of the conservation system units, national recreation areas, and national conservation areas, and shall not be prohibited unless, after notice and hearing in the vicinity of the affected unit or area, the Secretary finds that such use would be detrimental to the resource values of the unit or area."

The regulations at 43 CFR Part 36.11 implement Section 1110(a) regarding the use of snowmachines, motorboats, nonmotorized surface transportation, aircraft, as well as off-road vehicle use. These regulations also provide closure procedures for restricting their use. Specifically, 36.11(h) outlines the closure procedures that must be followed:

> *Closure procedures.* (1) The appropriate Federal agency may close an area on a temporary or permanent basis to use of aircraft, snowmachines, motorboats or nonmotorized surface transportation only upon a finding by the agency that such use would be detrimental to the resource values of the area.
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> (2) *Temporary closures.* (i) Temporary closures shall not be effective prior to notice and hearing in the vicinity of the area(s) directly affected by such closures and other locations as appropriate.
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> (ii) A temporary closure shall not exceed 12 months.
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> (3) Permanent closures shall be published by rulemaking in the FEDERAL REGISTER with a minimum public comment period of 60 days and shall not be effective until after a public hearing(s) is held in the affected vicinity and other locations as deemed appropriate by the appropriate Federal agency.
>
> (4) Temporary and permanent closures shall be: (i) Published at least once in a newspaper of general circulation in Alaska and in a local newspaper, if available; posted at community post offices within the vicinity affected; made available for broadcast on local radio stations in a manner reasonably calculated to inform residents in the affected vicinity; and designated on a map which shall be available for public inspection at the office of the appropriate Federal agency and other places convenient to the public; or
>
> (ii) Designated by posting the area with appropriate signs; or
>
> (iii) Both.

Any restriction or closure of lands or waters within the Delta Wild and Scenic River corridor to the use of snowmachine, motorboat, aircraft or nonmotorized surface transportation must follow these procedures. Such closures cannot be legally implemented through adoption of a

final plan or plan amendment. Neither the statute nor the regulations allow an agency the discretion to implement closures or restrictions to authorized uses prior to notice and hearing.

Section 36.11(g) *Off-road Vehicles*, in accordance with Executive Order 11644, regulates use and permitting of off-road vehicles within conservation system units.

One point that must be clarified in the final EA and plan amendment is that the "traditional activity" standard does not apply to access via motorboats, airplane and nonmotorized surface transportation. The regulations in Sections 36.11(d, e & f) do not restrict use of motorboats, airplanes and nonmotorized surface transportation only for traditional activities or travel to and from villages and homesites. The Department of the Interior addressed this in the supplementary information accompanying the Title XI regulations when they were published in the *Federal Register* in 1986:

> "Some commenters criticized the proposed regulations on motorboats and aircraft used within areas, in that those uses are not restricted to traditional activities and travel to and from homesites as in the statutory authorization. These commenters preferred the more restrictive language of the statute. Interior is of the view that it has the discretion to broaden the authorization beyond that required in the statute in light of other authorizations. Executive Order 11644 (EO 11644), on off-road vehicles (ORV) does not apply to motorboats or aircraft, so Interior is not limited by its requirements in authorizing these uses. After review of the impacts of these uses on the areas, including a review of the experience of the NPS and the FWS with their current regulations which are identical in addressing motorboat and aircraft uses, it was decided that deleting the limiting language of the statutory authorization would not significantly increase the use of areas by motorboats and airplanes. Such use would not be in the derogation of the values and purposes for which these areas were established, and would provide for greater enjoyment of these areas by visitors. Accordingly, to allow for access to the areas, the restrictions on motorboat and fixed wing aircraft use have not been increased in the final regulations." (51 FR 31626)

The final EA and plan amendment should be revised to reflect that use of motorboats, aircraft and nonmotorized surface transportation are not restricted to "traditional activities" or for access to villages or homesites.

Additionally, we must question whether or not the ANILCA 1110(a) standard of "detrimental to the resource values of the area" has been met for restricting motorboat or airplane use in any of the management zones. While the BBM focus groups addressed the issue of motorized access, there was considerable disparity in the views expressed regarding continued use or desired outcomes. The EA does not present any findings or determinations, as required by statute and regulations, that resource values of the Delta WSR are being impacted to the point where even seasonal restrictions to access by motorboat or aircraft are justified.

While we acknowledge that we are unfamiliar with the BBM concept, we must question whether or not its use is appropriate, particularly for providing justification for restricting allowed uses within ANILCA conservations system units. Public uses allowed by ANILCA within conservation system units in Alaska include a range of subsistence activities, motorized and non motorized access, sport hunting and fishing, as well as other recreational and traditional activities. These uses often overlap. As we understand it, the BBM was designed to manage recreational uses and not the range of allowed uses within conservation system units such as the Delta Wild and Scenic River. We would suggest that the BBM can complement, but not replace the standards or criteria for managing or restricting uses authorized under ANILCA.

Definition of Semiprimitive Nonmotorized

In the Environmental Assessment, the *semiprimitive nonmotorized* resource opportunity spectrum to be managed for is defined as:

> Area is characterized by a high degree of naturalness. Concentration of users is low to moderate, but solitude is still possible. Area is free of motorized roads and trails, but some motorized boating use is present, limited by physical terrain features. Vegetation and soils are predominantly natural, but some impacts exist at campsites. Management presence is subtle and limited, absent of any facilities.

This definition implies that areas classified for this type of experience are open to motorized boating except where the physical terrain features are limited, yet later parts of the document indicate otherwise. In alternative 2, *Recreation Management Zone* 1 is classified as *semiprimitive nonmotorized*. Under the *Outcomes to be Avoided* section, an activity to be avoided is "motorized boating during June and July". Also, in the *Implementation Framework Decisions* section, under *Travel Management*, the document states "[d]uring June and July motorized boating and airplane landings will be prohibited." The definition is not consistent with the rules for this alternative and zone and could be confusing to the user. Please clarify the definition. Justification for this seasonal closure should also be included in this section of the document.

Delta River Recreation User Survey and Visitor Usage Interpretations

Parts of the Environmental Assessment (EA) use the Delta River Recreation User Survey and visitor usage numbers as supporting evidence for identified issues and ultimately to justify the imposed limitations and restrictions (i.e. 3.2.6.5.7, 4.2.5.1, 4.2.6.2, 4.2.6.4). Although the methods and analysis used in the river survey appear to be of high quality, we find some of the management decisions derived from that information in the EA to be stretching beyond the limit of extrapolation. Basically, we do not agree that the need for proposed restrictions and separation of user groups can be justified with this data.

In section 3.2.6.4 of the EA, *Visitor Use Trends*, a chart depicts historical visitor use data from different segments of the wild and scenic river corridor. The chart lists the number of reported annual visits by year and by river segment. The table shows relatively stable usage

through the years with numbers essentially the same or less than those from 20 years earlier. While the summary explains that some of the earlier data collection methods were thought to overestimate actual numbers, the data from the past ten years shows the same trend where use is stable and in some cases decreased.

Under section 3.2.6.5.1 Group Sizes (page 60) it reads:

> Regardless of the fluctuation in estimated visitor use figures since 1983, there is evidence of an increase in both state population and out-of-state visitation over the past two decades. Most importantly, some of the data shows that on some segments of the river, current use levels are causing unacceptable change to the experience of the user and impacting the natural and primitive character of the river (refer to Figure 2).

Figure two shows that the mean reported largest group size was 7.8 while the mean largest tolerable group size was 8.1. Further, the median reported group size was 5 and the median largest tolerable group size was 7. This data suggests that group size has not exceeded the tolerable level and 50% of the time, the largest group observed was five people. Based on the polarity of the groups targeted in this survey (non-motorized user and motorized users), this is the type of result that would be expected when two generally opposing viewpoints are represented. Also, these statistics do not indicate unacceptable change in the natural and primitive character of the river and cannot be said to indicate change of experience unless there is a similar survey against which these data may be compared. The visitor use trends (section 3.2.6.4) would indicate that use levels have not changed since 1983, but essentially have remained the same.

On page 62, results from the river user survey are also discussed. The survey asked for actual encounters (the number of contacts with other groups per day), preferred encounters, and tolerable encounters. The discussion states that "[f]or the lake segments, reported encounters were higher than preferred encounters. For the river segments reported encounters were nearly equal to preferred encounters, indicating that encounters on the river segments are approaching a point that is not desirable." If tolerable encounters were less than reported encounters, one could infer that this number is approaching a point that is not desirable, but not based on the preferred and reported categories. One might presume that the preferred encounters would always be less than the reported encounters, no matter how satisfied people are. The conclusions listed in the River User Survey (page 33) do not suggest that encounters on the river are approaching a point that is not desirable.

On page 57 of the Environmental Assessment (in reference to the River User Survey), it states that "[motorized and non-motorized users] rated being with friends and family very important, but the least important attribute among both groups was meeting other river users, which suggests that while friend and family groups are acceptable, minimizing interaction and competition between other user groups is desired." In the survey, users are asked to rate a list of reasons for taking a trip as not important, somewhat important, important, very important or extremely important (*Delta Wild and Scenic River User Survey*, page 88).

Because users rated "meeting other river users" as "not important" this does not infer that interactions with others are undesirable, it could also mean that it was simply not a priority or the reason for the trip.

Please also consider these types of excerpts from the River User Survey in the analysis:

> For all respondents taken together (Table 11), no segment is "over capacity," and only the Lower Tangle Lakes are in the "high normal" category. In general, both the Delta and Tangle Lakes are generally un-crowded resources, and crowding scores are well below those of nearby rivers such as the Gulkana and several Susitna Basin rivers.
>
> The Upper and Lower Delta River segments have particularly low crowding ratings, suggesting they offer relatively unique low density opportunities. [Page 27]

> Analysis of crowding ratings by years revealed no pattern of higher scores in more recent years. However, there were some patterns among crowding ratings for various segments by month (Figure 9). In general, lake segments are higher during the subsistence hunting seasons in August and September, although the Lower Tangles also sees relatively high ratings in July. River segments remain low through the entire recreation season, but Lower Delta ratings are slightly higher in hunting season. Results are consistent with anecdotal information about how hunters use the lakes and lower river by setting up long term camps and traveling via powerboats in search of game, which might lead to slightly higher crowding scores. [Page 30]

> Majorities of all groups indicated that the Delta / Tangles had stayed the same or improved, with slightly higher percentages for motorized and lake users. However, 44% of non-motorized and 45% of river users reported some decline (although most reported a slight decline).
>
> It is difficult to assess whether a perceived decline is related to actual changes in conditions or a general human response that "things aren't like they used to be." If memories of negative conditions fade sooner than memories of positive ones, it may be difficult for any recent trip to compare to previous ones. Nonetheless, impacts **may** have increased in recent years, and these data **may** reflect some of those changes. [Emphasis added] [Page 39]

> Figure 36 indicates that the highest use levels in the system occur at Tangle Lakes Campground and Tangle Lakes Wayside interpretive site. Lower boat launch use, in contrast, suggests fewer visitors to the corridor take boats on the water; of those that do, more use is associated with the Upper Tangles launch (where all upper lake trips start and finish) than the Lower Tangles launch (perhaps because "through trips" put-in here but take-out elsewhere). **For all four facilities, there is no trend over time; data instead suggest year-to-year variation that is probably due to factors such as weather, fires in the area, flow levels, etc**. [Emphasis added] [Page 82]

The EA utilizes the River User survey to support the need for complex management, but parts of the survey could be interpreted to suggest that increased management and imposed restrictions are ***not*** necessary for the current level of usage. It appears that river users were divided on whether some form of management change is needed, which could be attributed to the selection of the survey group and their representative opposing worldviews. While

other, more frequently used rivers may benefit from the type of management proposed in this EA, more compelling evidence is needed to suggest necessity here. The information provided does not suggest a strong desire from the public for complex management and usage restrictions on the Delta River.

Marketing

While we fully support providing opportunities for public use of conservation system units such as the Delta Wild and Scenic River, the focus of the entire plan appears inconsistent with the concept of "marketing" the area. The plan seems to push for minimal usage of the area, while the purposes of marketing are to increase awareness and ultimately increase desire to visit the river area. As we point out above, the 2006 user survey indicates that public use has remained relatively unchanged since the early 1980's. Marketing the Delta will likely increase public use, resulting in additional restrictions and use limitations necessary to achieve the "desired outcomes" proposed for the various zones under the BBM concept or to avoid perceived conflicts between various user groups. The final EA and plan amendment must address this obvious contradiction.

River Miles

It would be useful to have the total number of river miles by classification and within each zone. Specifically, it would be helpful to include those mileage numbers next to the acreage figures in Tables 1 and 2.

Navigability

According to the EA, the BLM completed a navigability determination in February 2010. More information regarding this determination should be included in the final plan. Specifically, we would like to see details on why the State was not consulted more closely or involved in this determination. The final plan should also discuss the changes in management strategies that would occur should the State find it necessary to assert its ownership through a quiet title action. Section 3.2.2.1 indicates that archeological surveys from 07-08 "hint at the importance of the region for past subsistence and long distance travel". If new evidence is available to suggest the river was used for travel, trade and commerce, what was the basis for determining non-navigability? Would a new evaluation occur if new or additional information becomes available? Please include this information in the final Environmental Assessment.

Conclusion

We appreciate the opportunity to comment on the EA and the various management proposals for the Delta River. Unfortunately, based on our review of the EA and proposed Special Recreation Management Area Plan and East Alaska RMP Amendment, our recommendation to Governor Parnell will be to find them inconsistent with the State's plans, policies and programs unless revisions are made.

Before finalizing either the river plan or the RMP amendment, we strongly recommend that the EA be revised and expanded and an additional public comment period be provided. Additionally a series of public meetings should be held in the affected area, as well as in Anchorage and Fairbanks. Although we do not believe that there is sufficient justification for such actions, selection of any plan alternative that involves closures or restrictions to ANILCA 1110(a) access requires the BLM to publish proposed regulations, provide opportunity for public comment and hold public hearings as required by law and the regulations at 43 CFR Part 36 before closures or restrictions can be implemented. Even where not specifically required, we would encourage similar public meetings and opportunity for public comment for any public use limits or restrictions made under other BLM authorities.

If you have questions about any of our comments or if we need to clarify anything, please contact our office.

Sincerely,

Stan Leaphart

Stan Leaphart
Executive Director

Cc: Gov. Sean Parnell