

STATE OF ALASKA

SARAH PALIN, Governor

ANILCA IMPLEMENTATION PROGRAM Office of Project Management and Permitting

550 W. 7TH AVENUE, SUITE 705
ANCHORAGE, ALASKA 99501
PH: (907) 269-7477 / FAX: (907) 334-2509
sally.gibert@alaska.gov

March 25, 2008

Cyndie Wolfe c/o
Yukon Flats EIS Project Office, ENSR
1835 S. Bragaw Street, Suite 490
Anchorage, AK 99508-3438

Dear Ms. Wolfe:

The State of Alaska received the January 2008 Draft Environmental Impact Statement (EIS) addressing the Proposed Land Exchange between the Yukon Flats National Wildlife Refuge (Refuge) and Doyon, Limited (Doyon). This letter represents the consolidated views of state resource agencies. The State appreciates the efforts of both the US Fish and Wildlife Service (Service) and Doyon to prepare this EIS to address a number of interests and concerns voiced by the various stakeholders and the public in general. While we have some technical comments that we request be addressed in the final EIS, the State is very supportive of the overarching purpose of the exchange.

Overview

From our perspective, this exchange is mutually beneficial for Doyon, the Refuge, and those that wish to maximize protection of refuge resources in light of the significant potential for oil and gas development within refuge boundaries.

This exchange offers a number of benefits:

- adds quality habitat to the Refuge, especially migratory waterfowl habitat,
- consolidates ownership patterns and reduces land management costs for both the Refuge and Doyon,
- net gain of land/habitat administered by the Refuge,
- increases opportunity for Doyon to end up with economically-viable development,
- additional refuge land acquisitions if oil and gas development takes place,
- local, regional and even statewide economic development potential, including job opportunities, and
- a potential source of valuable oil and gas resources for the Railbelt area.

Some critics of the proposed exchange object to this proposal as if it were a general referendum on oil and gas development on the basis that oil and gas activities are incompatible with the purposes of the Refuge. This is not an accurate portrayal of either the proposal or the process. Doyon already has surface and/or subsurface ownership interests on over 1 million acres of land

within the Refuge through the Alaska Native Claims Settlement Act (ANCSA). Activities on non-federal land are not subject to Service laws and policies concerning compatibility. These private lands, which pre-date the Refuge and may contain valuable oil and gas reserves, may be developed at Doyon's discretion, regardless of the exchange. Doyon also has rights under Title XI of the Alaska National Interest Lands Conservation Act (ANILCA) to adequate and feasible access (e.g., a pipeline and support road) across the Refuge in the event that recoverable quantities of oil or gas are found on their land. Therefore, this land *exchange* provides the Service with additional opportunities to work with Doyon to consolidate the development "footprint," increase the acreage of quality habitat for wildlife and conservation under refuge jurisdiction, and mitigate potential impacts of oil and gas development if it proves to be economic. This is not a refuge giveaway.

Both the Service and the public must also keep in mind that Congress understood that non-federal land within conservation system units would remain available for development and, therefore, included special provisions in ANILCA (such as Title XI) to accommodate this important economic need. In addition, ANILCA Section 101(d) includes an express acknowledgement of the balance between resource protection and development:

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 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 preservation of national conservation system units and those public lands necessary and appropriate for intensive use and disposition...

Through ANILCA Section 1302, Congress also specifically authorized land exchanges with willing participants within conservation system units. Given the checkerboard land status configurations resulting from ANCSA and ANILCA, and the fact that little was known about the resource values of many of the federal, state and Native-owned lands in 1980, land exchanges such as this one were clearly anticipated.

Subsistence Easement

Some of our concerns about retention of a subsistence easement previously expressed in our April 17, 2006 letter¹ remain unresolved. Doyon's interest is the long range protection of subsistence uses on these lands should Title VIII of ANILCA be repealed in the future (see page 4-182, 4.20.2). We are unaware of any attempts to repeal Title VIII and repeal could only be implemented by Congress, which is highly unlikely. Title VIII specifically applies to "all public lands in Alaska" and as such would apply to lands received by the Refuge in the exchange. Given this assessment and the unquestioned priority status of subsistence under ANILCA Title VIII, the subsistence easement is not necessary. No other land exchanges or acquisitions in Alaska have included such an easement. We strongly recommend removing this provision from the agreement.

¹ See: http://www.dnr.state.ak.us/opmp/anilca/pdf/06_04_17_YUFL_Doyon_EIS_Scoping.pdf

Project Location

Throughout the document, it is not always clear that oil and gas development activities and most of the potential associated impacts would be occurring on private lands within or near the exterior boundaries of the refuge, not on federally-owned and managed refuge lands. Based on our observation of media coverage about this exchange, we predict this confusion will bias many of the public comments. While some sections simply do not distinguish which lands are affected, it appears the confusion more often results from the manner in which various lands are referenced. For example, privately-owned Doyon lands are referenced as “*within*” or “*located in*” the Refuge, and the region is referred to as “*Yukon Flats*,” which is also the name of the Refuge. And while an explanation is provided on page 4-1 to clarify how the phrase “*the Refuge*” is applied in the Environmental Consequences chapter, referring to all lands within the planning area, regardless of ownership, as “*the Refuge*” makes it difficult to discern what impacts affect public vs. private land. The following page-specific examples are provided to illustrate this concern. Alternatively, positive examples where the affected lands are well clarified can be found in Table 2-5 on page 2-43 and page 2-46, under Birds and Mammals, Phase II.

Page ES-4 and ES-5, 1.8: While other sections of the document clarify seismic lines and drilling will not occur on federal refuge lands, the Phases I and II descriptions of impacts in the introductory “Executive Summary” do not clarify that the impacts described will occur on privately-owned Doyon land.

Page ES-5, 1.1.2: One of the impacts listed is a “*modification of wilderness values on some lands.*” This type of impact would have a very different meaning were it to occur on refuge lands rather than on private lands in the region.

Page ES-6, 1.9: The discussion of cumulative impacts refers to “*...oil and gas exploration and development in the Refuge*” and “*...development throughout the refuge...*” without distinguishing between federal refuge lands or privately-owned lands located within the exterior boundaries of the Refuge.

Page 1-14, 1.6.3, second sentence: This section indicates oil and gas development was identified as a major public concern. It would therefore be useful to clarify that, except for ANILCA Title XI transportation corridors; development will take place almost exclusively on private lands in the exchange area.

Page 2-35, Table 2-5: The introduction to this table needs to include an explanation that specifies that all activities, except where noted, will take place on private lands within the exchange area.

Page 2-41, Wetlands and Floodplains, Phase II and Cumulative, Proposed Action: “*30% of the Refuge*” actually means 30% of the lands within the exchange area. The discussion currently implies that gravel pads and mining would occur on refuge lands, which is not described in the Proposed Action.

Page 2-56, Visual Resources, Phase I, Proposed Action: Seismic surveys would only be conducted off the Refuge (page 2-48), therefore, only the visual resources of boundary areas may be affected. Also, unless documentation is provided elsewhere in the EIS that supports the reference to 230 years for vegetation recovery, we question this lengthy timeframe.

Exchange of Waterbodies

We appreciate the thorough discussion of submerged lands on pages 1-10 to 1-11. This discussion may be the clearest description of the effect of navigability on land ownership we have seen in a federal planning document.

Page 1-11, first full paragraph: We appreciate acknowledgement that the total acreages listed in the plan may include waterbodies which will not be included in the final exchange and/or transferred in perpetuity because they may be owned by the State. Later in the plan, however, acreages of lakes and rivers appear to be definitive in their detail and context. See pages 2-38, 2-42, 4-48 to 4-53, 4-86, 4-128, 4-131, to name a few notable sections. We would appreciate clarification to remind readers that these figures are estimates. An example of a solution may be seen on page 4-227, which states: “*The net gain would include **up to** 3,720 lakes...*” (emphasis added)

We also request that the FEIS include the April 11, 2007 letter submitted to Mr. Warren Keogh, Regional Water Rights Coordinator, Division of Realty, NWRS Alaska (attached), which outlines the determinations made by the State at that time. This will enable the reader and other interested parties to view the current position of the State with regard to navigability within the exchange area. We would also appreciate the inclusion of the “*BLM’s navigability determinations*” referenced in this paragraph to enable a public comparison of any differences. We also request that the last sentence clarify that “*either party*” refers specifically to the Service and Doyon (see also page 1-17, 1.6.4).

Page 4-128, 4.15.1.1, last full sentence on page: Please add the following additional sentence for clarification: “*If any of these river segments or lakes are navigable, and thus state-owned, they would already provide opportunities for public recreation, flight landing and boating opportunities, even if they are not adjacent to public uplands.*”

Glossary-10, “Navigable Waters”: Please amend this definition, in both the FEIS and any future documents, to accurately reflect the federal definition of navigability as set forth in the Daniel Ball decision, 77 U.S. (19 Wall.) 557, 563, (1870). The definition should be amended to read:

Those waters, rivers or lakes which are navigable in fact. And they are navigable in fact when they are used, or are susceptible of being used, in their ordinary condition, as highways of commerce, over which trade and travel are or may be conducted in the customary modes of trade and travel on water. Typically, these bodies of water are large enough to accommodate a boat, and include streams, creeks and wetlands that empty into larger river and lakes. The term does not include or apply to groundwater.

Fish and Wildlife Management and Harvest Levels

Several misconceptions about fish and wildlife management may be found throughout the document, some of which are undoubtedly inadvertent. For example, hunting and trapping cannot be limited by the private land owner (Doyon) except as Doyon exercises its ability to limit access to its lands. Also, state and federal regulatory agencies have the responsibility to adjust to changes in access and use patterns to insure healthy wildlife populations over time. Therefore, short-term changes will not lead to long-term population-level impacts on wildlife. Examples of various misconceptions:

Page 2-17, 2.3.2.1, first bullet, criteria (c): We have two concerns with this criterion. First, it incorrectly implies that fish and wildlife management is exclusively a federal or a state activity. Second, the phrase “(other than fishing)” incorrectly implies that the State has no subsistence management authority related to fishing. In reality, State regulations govern subsistence activities on non-federal lands, while on lands and waters under federal jurisdiction, state regulations may be superseded by federal subsistence regulations in some instances. We therefore suggest rephrasing (c) to read, “*subsistence activities would continue to be regulated by the State, except where state regulations have been superseded by federal subsistence regulations.*” The incorrect language also appears on page 2-27 and may occur elsewhere in the document. We recommend doing a Word search to target all the applicable locations.

Page 3-99, 3.3.5.1, first paragraph: The paragraph does not accurately portray the respective authorities for managing the harvest of fish and wildlife. We request that the paragraph be revised as follows, to among other things, remove references to “dual management”:

The Refuge is comprised of a mix of federal, state and private lands. For fish and wildlife management purposes, the harvest of fish and wildlife is regulated by the State of Alaska, except as superseded by federal subsistence regulations on federal public lands, as described by the Service as follows:

In the next full paragraph following the Service quote, we request the following revision to avoid the ambiguous term “Alaskan lands”: “*The Alaska Board of Fisheries and the Alaska Board of Game create regulations that are enforced by the State for subsistence fishing and hunting on all ~~Alaskan~~ lands and waters in Alaska, including those as well as lands conveyed to ANCSA ~~groups~~ corporations.*”

Page 4-105, fourth full paragraph, fourth sentence: Please revise sentence as follows: “*Hunting and trapping opportunities would be limited by ~~private ownership~~ public access restrictions on Doyon land, which ~~and~~ could be minimized and mitigated on Service or BLM lands by current and future state or federal harvest regulations.*” Then in the next sentence, please change “could mitigate” to “would mitigate.”

Page 4-107, 4.11.2.1, first paragraph, second to last sentence: Please remove the statement that “...mammal populations could benefit from Doyon ownership if subsistence take would be less than recreational take of mammals.” The statement itself is questionable and inappropriately implies that Doyon can regulate harvest.

Page 4-123, 4.14.1.2, Large Oil Field Development, first paragraph, second to last sentence: The potential of increased access that could lead to increased hunting and fishing, thus hindering the Service's ability to meet refuge purposes is not correct. Increased access and harvest does not mean the degradation of refuge purposes is inevitable, especially since hunting and fishing is a purpose of the Refuge. Instead it means that active and responsive management should be engaged. (Also referenced in Table 2-5 on page 2-51)

ANILCA Section 1008 and Title XI Transportation and Utility Corridors

Page ES-3, 1.6, first paragraph, second to last sentence: We suggest that the reasons why the transportation corridor would be "*excluded from any future wilderness designations*" be described to avoid any implication that it is part of the alternative. The sentence may be rephrased, similar to the last sentence in 2.3.3 on page 2-19, to state that "*the transportation corridor would not qualify as Wilderness and would be excluded from any future designation.*"

Page 1-9, 1.3.3.1, second paragraph: We recommend citing ANILCA Section 1008, which outlines the circumstances that would accompany oil and gas leasing on refuges in Alaska. We also recommend the Service cite or include the relevant portions of Management Policies and Guidelines for National Wildlife Refuges in Alaska (2007, excerpt attached). We also request that this section identify ANILCA Section 1110(b) that allows subsurface estate owners access to their resources, which may include surface infrastructure on refuge lands. A reference to section 1.3.5 on page 1-11 will also identify potential federal leases pursuant to drainage.

Page 1-9, 1.3.3.2, middle of paragraph: Please clarify that a right-of-way is allowed per ANILCA, even if it is not consistent with the Primitive classification. The Bureau of Land Management may choose to implement a plan amendment, but it is not "*required.*"

Page 2-11, first full paragraph: Please clarify that the EIS for the transportation and utility corridor will only address the potential *spillover* effects on public lands from the oil and gas development on private lands, not the full "*proposed development project.*"

Page 2-24, 2.4.1: We appreciate the Service including a summary of Section 1008 of ANILCA in its response to this scoping comment. We ask that the FEIS also recognize that, should these requirements be met, an amendment to the comprehensive conservation plan would be a part of the approval process to allow oil and gas development. See also the 2007 Management Policies and Guidelines for National Wildlife Refuges in Alaska.

Page 4-205, third paragraph: We recommend removing the second through the fifth sentences (starting with "*Section 1008...*" and ending with "*...Refuge purposes.*" The information is not necessary in this context, as the issues have already been taken up in other sections of the DEIS. As written, this paragraph does not encompass the breadth of requirements listed in ANILCA Section 1008, and also incorrectly paraphrases regional policy. To our knowledge, neither the referenced Memorandum of Understanding nor ANILCA require that compatibility determinations for oil and gas leasing on Alaska refuges pursuant to Section 1008 be made during the comprehensive conservation planning process. Consistent with the Management

Policies and Guidelines for National Wildlife Refuges in Alaska (2007), oil and gas leasing may only occur on lands in intensive management. This activity would also accompany a plan amendment, whereby lands subject to the lease would be likely placed into intensive management, regardless of their previous categorization. As an alternative to removing these sentences, appropriate language from the Management Policies and Guidelines addressing these concerns could be added.

Oil and Gas Development

The oil development scenarios in Chapter 4 appear to be based solely on primary production, which may not be realistic. Only injection of produced gas and water is mentioned. The large oil field scenario is based on the Alpine field and satellites (Colville River Unit, CRU) on the North Slope which has roughly 500 million barrels of recoverable oil and produces about 120,000 barrels per day. The operator is achieving that recovery rate because of massive water injection piped in from outside the unit. The CRU has produced about 277 million barrels of oil so far but this required the injection of about 271 million barrels of water into the reservoirs. The water is used for pressure maintenance and sweep and without it production would be much less efficient in both daily rate and ultimate recovery. Gas is also injected for the same purposes. For Doyon's large field scenario, if only water is used for pressure maintenance, 400 to 500 million barrels of water may be needed to replace produced oil.

Another analogous development would be the Swanson River Field on the Kenai Peninsula. This oil field has little in the way of local water for injection. Not long after production started the operator piped in large volumes of rented gas from other fields in Cook Inlet to enhance oil recovery. After the oil is produced, gas is returned or paid back to the original owner.

Gas exploration in the Yukon Flats could be critical for oil development unless a large supply of water can be obtained. Several hundred billion cubic feet (BCF) of gas would probably be needed for injection and fuel, which could be supplied locally if exploration is successful. Without some kind of secondary or enhanced recovery techniques oil production may not be economic. Therefore, gas may be much more valuable than indicated in the DEIS, even without the proposed Alaska gas pipeline and external market.

Well Blowouts

The State agrees that the likelihood of a well blowout, particularly one involving oil, is a rare and highly improbable occurrence (pages 4-65, 4-75, and 4-106). We suggest noting that a blowout resulting in an oil spill has never occurred in Alaska; however, natural gas blowouts have occurred. (If requested, we can provide information on the few natural gas blowouts that occurred in Alaska between 1962 and 1992.) More often than not, the only damage that occurs is limited to the rig itself. Industry employs numerous measures to prevent blowouts from occurring. The risk of a blowout is reduced significantly by identifying locations of over pressured sediments via seismic data analysis and then making appropriate adjustments during operations. If a blowout does occur, there are numerous well control methods that keep impacts to a minimum. In addition, new and expanding technologies are currently in place, such as real-time sensors that continuously monitor pressure, which significantly reduce the already remote chance of a blowout.

Requested Additions to Environmental Consequences

The following potential effects merit recognition in the Environmental Consequences section. To assist with your revision process, we offer the following italicized language that could be added to the existing discussions where noted:

- Page 4-89, Oil Spills: [Although the chance of an oil spill is very remote, especially one affecting waterbodies in the planning area, the following considerations are worth noting.] *The direct effect of oil on a bird is to clog the fine structure of its feathers, which is responsible for maintaining water-repellency and providing heat insulation. The loss of thermal insulation, especially in cold climates, results in greatly increased metabolic activity to maintain body temperature for overwintering birds. Birds also ingest oil in attempting to preen oil from their plumage. Some species, such as bald and golden eagles, could also encounter and ingest oil while preying on fish and oil-contaminated carcasses. Relatively small amounts of ingested oil can cause a temporary depression of egg laying and reduce the hatching success of those eggs that are laid. Even small quantities of oil deposited on eggs from feathers of the adults may have an adverse effect on hatching. The birds most susceptible to oiling are those that are gregarious, spend most of their time on the water, and those that dive rather than fly up when disturbed.*
- Page 4-105, to supplement second paragraph: *Both black and brown bears are attracted to food and garbage associated with human activity and could become conditioned to unnatural food sources. If this occurs, it could pose a safety threat and lead to a potential need to destroy problem animals. Additionally, encroachment into bear habitat may increase the potential for bear-human interactions and may lead to an increase in animal mortality due to defense of life and property.*

The following additional effects on fish and/or wildlife should be also addressed at some point in the analysis of this project. They could either be addressed in the FEIS or perhaps more appropriately in the permitting phase:

- Page 4-48: An additional impact from seismic surveys on water quality is snow removal and compaction. These can increase the depth of ice on surface waters and may, in turn, result in a potential increase in the salinity of unfrozen water in lakes and streams.
- Page 4-70: Overpressures of 30-40 pounds per square inch (psi) can result in fish mortality for species possessing swim bladders, and 3 to 4 psi can kill juvenile salmonids. Shockwaves from explosions may also jar fish eggs at sensitive stages of development.
- Page 4-71: We recommend the Service elaborate upon the effects of vibroseis on overwintering fish. This information will be required when applying to the State for a Fish Habitat Permit.
- Page 4-71: Withdrawal of water from lakes and ponds could have the potential to affect fish resources by entraining juvenile fish, lowering water levels in overwintering areas, and

stressing populations by increasing disturbance. Inadequate water levels in important streams may also impede the ability of fish to reach overwintering habitat.

- Page 4-73: Gravel extraction from streams may also result in upstream instability, and may possibly impact spawning habitat and fish migration.

Miscellaneous Page-Specific Comments

Page 1-20, 1.8.3, second paragraph, second sentence: Please clarify that a Fish Habitat Permit may be required for **any crossing or activity** within or impacting an anadromous waterbody, not just road or pipeline crossings. Also be aware that these permits will be under the authority of the Alaska Department of Fish and Game starting in July 2008. We realize that not all authorizations that may be required are listed here; however, a land use authorization issued by the Alaska Department of Natural Resources, Division of Mining, Land and Water for any use of state lands, including shorelands, is also a common permit necessary for these types of activities. (This comment also applies to page D-3)

Page 2-14, first bullet on page, last two sentences; and
Page 2-20, sixth bullet on page, last two sentences: We request that the FEIS include a description of where these public access easements will be reserved in each of the alternatives.

Page 2-28, 2.5.5, Beaver Creek Public Use Easement, first paragraph. The fourth sentence notes that Doyon may restrict public access on “*up to 1,000 acres within the easement.*” Please clarify if this must be contiguous parcel or whether Doyon has discretion to restrict multiple parcels as long as the cumulative acreage total does not exceed 1,000 acres.

Page 2-28, 2.5.5, last paragraph, first sentence: Please clarify that either one or two easements will be reserved depending on the alternative selected (see pages 2-14 and 2-20).

Page 2-52 through 2-53: We question why the relocation of ANCSA 12(b) selections to areas outside of the Refuge is not addressed in the effects to Land Use/Recreation. Although this relocation may make more lands available for public use within the Refuge, it may have a substantial impact on the status of public lands outside the planning area.

Page 2-56, Visual Resources, Phase II, Exchange Excluding White-Crazy Mountains: We assume this statement is incorrect as none of the alternatives indicate an oil field would occur in the White Mountains National Recreation Area.

Page 3-38, 3.2.5.1: We request the following corrections be made to Table 3-7:

- Dall River – chum salmon and Bering cisco have only been caught in the Yukon River near the Dall, never in the Dall River drainage.
- Birch Creek – northern pike are very common; chum salmon are a fish species present.

Page 3-39, first paragraph, third sentence: Arctic lamprey should be considered migratory rather than resident. The experimental commercial fishery depends on the fall spawning migration.

Page 3-41, third paragraph: This section contains incorrect information concerning salmon abundance in Beaver Creek and the surrounding area. The weir on Beaver Creek from 1996-2000 showed a decline in the numbers of Chinook and chum salmon, along with an increased proportion of male salmon. The authors report that females typically dominate Pacific salmon runs. Females do not typically dominate Chinook or chum salmon runs. Sex ratios can be quite variable depending on sampling techniques, run timing, and location. Because of the longer life span in Chinook salmon, males often return in higher numbers but at a younger age than females. (Bales, J. 2007. Salmon age and sex composition and mean lengths for the Yukon River Area, 2005. Alaska Department of Fish and Game, Fishery Data Series No. 07-04, Anchorage.)

Based on the four years of weir data here, Collin et al. (2000) speculated that the returns of these salmon would not continue and that “increased” subsistence and recreational harvests in Beaver Creek were somehow linked to the observed changes in the magnitude and sex composition of these runs. The decline of Chinook and chum salmon runs in 1999 and especially 2000 is well documented for the entire Yukon drainage as well as other western Alaska drainages (Joint Technical Committee of the Yukon River US/Canada Panel. 2007. Yukon River salmon 2006 season summary and 2007 outlook. Alaska Department of Fish and game, Division of Commercial Fisheries, Regional Report Series No. 3A07-01, Anchorage). The 2000 run was the lowest on record and all fisheries (subsistence, personal use, sport and commercial) were either severely limited or closed. In recent years the abundance of Chinook and especially chum salmon runs returning to the entire Yukon drainage has increased markedly. There is no evidence, as is suggested in the document, that the small returns of salmon to Beaver Creek are in danger of extirpation, and no evidence that subsistence or recreational uses have affected these runs. The Beaver Creek weir project should be considered an inventory project rather than an assessment project and stock status trends should not be associated with the weir data due to the fairly limited amount of data the project provides for evaluation.

Page 3-53, 3.2.6.3, Grouse, last sentence: Sharp-tailed grouse are discussed here as “rare,” when in actuality they should be considered “uncommon.” Because “rare” may have unintended connotations associated with endangered species, we recommend replacing “rare” with “uncommon” throughout the document. This is particularly relevant in the Yukon Flats Refuge since it is not known to have either threatened or endangered species.

Page 3-68, Revised Statute 2477 Rights-of-Way Claims: Please replace the word “assert,” and its variations, with the word “identify” throughout the section as appropriate. The term “asserted” has certain legal implications that do not apply to most or all of these routes.

Page 3-68, ANILCA Sections 1110(a) and (b) Access Requirements: For clarification in the first sentence, rather than stating “*certain types of access,*” we recommend the second sentence provide explicit reference to the access methods provided for in Section 1110(a), i.e., “*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.” In addition, the last sentence that paraphrases 1110(b) is incomplete. Please add “*within or*” before “*effectively surrounded by...*”

Page 3-102, 3.3.5.4, first paragraph, last sentence: It is unclear why the Title XI provision for general access was included in the subsistence access section. Although, as written, it implies that “traditional activities” and “travel to and from villages and homesites” are associated with subsistence activities, accompanying Title XI regulations at 43 CFR Part 36 specifically excludes access for subsistence purposes. We recommend removing this first sentence. (See previous comment regarding page 3-68, “ANILCA Sections 1110(a) and (b) Access Requirements” concerning the best place to address Section 1110(a).)

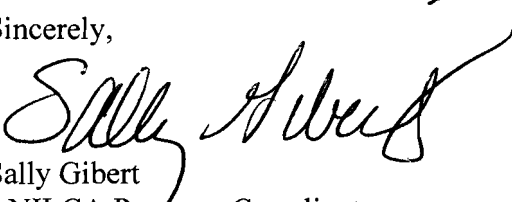
Page 4-2, Table 4-1, Footnote 5: This footnote needs clarification. To what part of Title XI (and to what lands) does this refer? Additionally, in the column regarding the Beaver Creek Public Use Easement, it seems like both the Service and Doyon would have a “Yes” in the Access box, since Doyon does not have exclusive control over maintenance of the easement.

Page 4-78, 4.10.1.1, last sentence in paragraph: Please clarify this sentence about 12(b) lands.

Page 4-231, 4.23.15.2, first paragraph, second sentence: Please clarify that there are currently no Congressionally-designated Wilderness Areas in the Refuge.

Thank you for your consideration of these comments. If you have any questions, please contact me at 907-269-7477.

Sincerely,



Sally Gibert
ANILCA Program Coordinator

cc: Tom Melius, Regional Director, US Fish and Wildlife Service
Robert Jess, Refuge Manager, Yukon Flats National Wildlife Refuge

STATE OF ALASKA

SARAH PALIN, GOVERNOR

DEPARTMENT OF NATURAL RESOURCES

DIVISION OF MINING, LAND & WATER
Public Access Assertion & Defense Unit

550 W. 7th Ave., Suite 1330
Anchorage, Alaska 99501-3514

PHONE (907) 269-8600
FAX (907) 269-5043

April 11, 2007

Mr. Warren Keogh
Regional Water Rights Coordinator, Division of Realty
National Wildlife Refuge System – Alaska
1011 E. Tudor Road
Anchorage, AK 99503

RE: Navigability request for Yukon Flats National Wildlife Refuge proposed land exchange
(RE/6228a.WK)

Dear Mr. Keogh,

The Alaska Department of Natural Resources and Department of Fish and Game have reviewed the list of water bodies provided by the US Fish and Wildlife Service (Service). The enclosed list specifies the State's perspective on navigability for those water bodies contained within the Service's request. The State believes the navigability assertions provided herein are reasonable and justified, however they are not final actions, nor do they preclude future assertions of navigability should more information become available. New evidence of navigability may or may not lead the State to assert title to additional water bodies. Under the Equal Footing Doctrine and the Alaska Statehood Act, the State was granted ownership to the submerged lands within the ordinary high water marks of navigable waters.

In addition to the water bodies outlined in the request, we would like to specify other water bodies within the boundaries of the proposed land exchange which the State of Alaska deems navigable:

- Beaver Creek
- Birch Creek (including the Upper and Lower Mouths)
- Black River
- Hodzana River
- Porcupine River
- The Forks
- Yukon River and its interconnecting sloughs

Those water bodies not defined in the Service's request, which connect two State asserted navigable water bodies, as identified above or on the enclosed list are also deemed to be navigable.

Finally, the Alaska Constitution provides that ownership of lands bordering public waters does not grant an exclusive right to use those public waters. The State has a responsibility to hold in the Public Trust, use of and access to waters for recreational uses or any other public purpose. Public use of these waters is consistent with the public trust.

“Develop, Conserve, and Enhance Natural Resources for Present and Future Alaskans.”

Thank you for the opportunity to provide the State of Alaska's perspective on the navigability of water bodies contained within the proposed land exchange.

Sincerely,

Scott Ogan
Natural Resource Manager, PAAD

CC: Tina Cuning, Co-Chair Alaska Inter-agency Navigability Team
Dick Mylius, Co-Chair Alaska Inter-agency Navigability Team

Enclosure: List of Water Bodies

List of Water Bodies:

Water bodies provided by the Service and the State of Alaska's perspective on their navigability:

Vicinity of Stevens Village

#	Water body	MTR provided	Nav Recommendation
1	Pat Creek	F15N7W & 8W; F16N6W & 7W	Yes
2	Little Dall River	F15N8W & 9W	Yes
3	Unnamed Lake	F15N8W (Sec 8,9,16,17,20)	Yes
4	Dall River	F15N8W, F16N8W (Sec 19 & 20)	Yes
5	Datkokan Ck	F15N8W	Yes, thru SW ¼ Sec36
6	Fishnet Lake	F16N6W	Yes
7	Unnamed Lake	F16N6W (Sec 9-11)	No
8	Unnamed Lake	F16N6W (Sec 11-14)	No
9	Gushiate Lake	F16N6W (Sec 18 & 19), F16N7W	Yes
10	Geese Lake	F16N8W & 7W	Yes
11	Unnamed Lake (near Geese Lk)	F16N8W (Sec 1, 2, 11, 12)	No
12	Unnamed Lake	F16N8W (Secs 21, 22, 27, 28)	No

Vicinity of Beaver

13	Unnamed Lake	F16N2E (Secs 1 & 2) F16N3E (Sec 6)	No
14	Unnamed Lake	F16N2E (Sec 12) F16N3E (Secs 7, 17, 18)	No
15	Mud Lakes	F17N3E	Yes, those that are interconnecting
16	Ed Berg Slough,	F17N3E	Yes
17	Fish Creek	F17N3E	Yes, thru Sec 35
18	Unnamed Lake	F16N4E (Secs 5, 8, & 9)	No
19	Unnamed Lake(s)	F16N4E (Secs 12-14, 24)	No
20	Olaf Lake	F16N4E	No

21	Victor Lake	F16N4E	No
22	Willow Lake	F16N4E	No
23	Stinking Lake	F16N5E	No
24	Nelson Lake	F19N1W	Yes
25	Long Lake	F19N1W	Yes

Vicinity of Birch Creek

26	Burman Lake	F14N8E (Secs 1,2,12,13) F14N9E (Sec 7) F15N8E (Secs 35, 36)	Yes
27	Unnamed Lake	F17N7E (Secs 1&2)	No
28	Unnamed Lake	F17N7E (Secs 3-5,8,9)	Yes
29	Unnamed Lake(s)	F17N7E (Secs 5-8)	Yes
30	Unnamed Lakes	F17N7E (W ½ Sec 7)	No
31	Unnamed Lake(s)	F17N7E (Secs 7,8,17,18,21)	Yes
32	Unnamed Lake	F17N7E (Sec 25, 35, 36)	No
33	Canvasback Lake	F18N6E & 7E	Yes
34	Scaup Lake(s)	F18N7E (Secs 22,23,25-27,34-36)	No

Vicinity of Chalkytsik

35	Little Black River	F19N19E	Yes
36	Vunle Lake	F19N19E (Secs 3,4,7,8,17)	No
37	Tiinkdhul Lake	F20N21E, 22E	Yes
38	Graveyard Slough	F22N16E	Yes
39	Unnamed Slough	F22N16E (Sec 7)	No
40	Unnamed Slough	F22N20E (Secs 19,20,29,30)	No
41	Unnamed Slough	F23N17E (Secs 3,4,9,10,16)	Yes
42	Black River Slough	F23N19E (Sec 6)	Yes
43	Scotty Lake	F23N19E (Sec 13) F23N20E (Sec 18)	No
44	Schrader Lake	F23N19E (Sec 18&19)	No

F23N18E (Sec 12-14,24)

Vicinity of Circle

45	Twenty Two Mile Slough	F14N16E	Yes
46	Unnamed Slough	F14N16E (Sec 7,18,19,20) F14N15E (Sec 1&2) F15N15E (Sec 36)	Yes, the interconnecting portion beginning NW4 Sec7 of F14N16E

Attachment 2

Excerpt from the Management Policies and Guidelines for National Wildlife Refuges in Alaska (2007)

Mineral Exploration and Development

Oil and Gas Assessment

Geological and geophysical studies, including subsurface core sampling and seismic activities, require special use permits with site-specific stipulations that ensure compatibility with refuge purposes and consistency with the management objectives of this plan. Decisions to allow exploration will be made on a case-by-case basis. These activities will not be allowed in designated Wilderness.

Oil and Gas Leasing

Oil and gas leasing may be allowed only in Intensive management areas. Oil and gas leasing will not be authorized until completion of the following:

- An assessment of potential
- A national interest determination
- A refuge compatibility determination, where applicable
- A comprehensive conservation plan amendment

During this process, the Service will seek the views of state and local governments and other interested parties, in accordance with Section 1008(b)(2) of ANILCA.

If leasing is authorized, lease holders will be subject to federal leasing regulations (43 CFR 3100) and appropriate state regulations. Leases will be subject to stipulations on access, seasonal use, and site restoration; operators would be required to use technology that minimizes impacts on fish, wildlife, and habitat. The refuge will work closely with leaseholders to minimize adverse effects of mineral exploration and extraction on refuge resources and recreation opportunities.

Sand, Gravel, and Other Common Variety (Saleable) Minerals

Common variety minerals—such as sand, gravel, stone, limestone, pumice, pumicite, cinders, and clay—may be sold pursuant to the Materials Act of July 31, 1947 (30 U.S.C. 601 and 602), as amended. Regulations are found at 43 CFR 3600. Disposal is also authorized under the Refuge Revenue Sharing Act (16 U.S.C. 715s). Also see 612 FW 1 of the Service Manual. Extraction may be authorized, where compatible, in Intensive and Moderate management areas to support construction and maintenance projects on or near refuge lands if no reasonable material sites exist off refuge lands.

Other Mineral Leasing

In general, mineral leasing is not allowed on refuge land. Geothermal leasing is not allowed on refuges under Section 1014(c) of the Geothermal Steam Act (30 U.S.C. 1014). Coal mining is also prohibited, subject to valid existing rights, under Section 16 of the Federal Coal Leasing Amendment Act of 1975 (30 U.S.C. 201 Notes) and the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1272; 43 CFR 3400.2). In specific cases of national need, however, mineral exploration, development, or extraction may be permitted under Section 1502 of ANILCA. The President must determine that the national need for the mineral activity outweighs the other public values of the land. Any recommendation by the President would take effect only after enactment of a joint resolution by Congress.