

STATE OF ALASKA

DEPARTMENT OF NATURAL RESOURCES
OFFICE OF PROJECT MANAGEMENT & PERMITTING

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May 6, 2010

Beth Maclean, Field Manager
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Dear Ms. Maclean:

The State of Alaska reviewed the Draft Environmental Assessment (EA) for the Delta River Special Recreation Management Area (SRMA) Plan and East Alaska Resource Management Plan (RMP) Amendment. The following comments represent the consolidated views of state agencies.

The Delta River corridor offers outstanding scenic views, contains historic and cultural resources and is a valued destination for fishing, hunting and other subsistence and recreational opportunities. In addition, two major trails cross the Delta River, providing access within and adjacent to the corridor, as well as to mineral resources and mining activities on state-owned and selected lands west of the corridor.

The State anticipated a cooperative working relationship with the Bureau of Land Management (BLM) on this plan to address recommendations included in the East Alaska RMP as well as other planning issues. The Delta River is both a conservation system unit established by the Alaska National Interest Lands Conservation Act (ANILCA) and a navigable waterway; therefore, the State has both an interest in and responsibility to cooperatively work with BLM on this planning effort. The East Alaska RMP gave the public and the State the impression the Delta River Plan would be a cooperative effort based on the presence of state waterways in the planning area. While BLM initially indicated an intention to – and did – cooperatively involve the State, as the process progressed, state involvement became more limited, ultimately resulting in minimal dialogue on issues and decreasing regard for the state authorities, recommendations, and expertise on the implementation of ANILCA. We are disappointed by this declining cooperation and responsiveness to state interests during the development of this plan and, for various reasons, unable to support the majority of proposals.

Our review illustrates the following problems, among others:

Planning Process

- Lack of compelling issues requiring a management response
- Insufficient justification (e.g., Benefits Based Management) for public use restrictions
- Inappropriate use of the Gulkana River planning outcomes
- Multiple planning layers/tools that are difficult to synthesize
- Public involvement and difficulties understanding the new planning process

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

Consistency with ANILCA

- Implementation of national planning requirements is not consistent with ANILCA
 - Administrative policy cannot override statutory direction
 - Recreation management (BBM) not sufficient to limit other public uses
- Inadequate standards for restrictions
- Inadequate ANILCA closure process
- Misuse of Section 1110(a) “traditional activities”
- Undefined and/or inappropriate application of “qualified rural resident” and “other means of surface transportation” under Section 811
- Section 810 Analysis minimizes or ignores affects
- The State’s role regarding fish and wildlife management needs clarification.

From a planning and NEPA perspective, most of these concerns are considered major issues of significance. If BLM intends to retain the bulk of the management intent, at a minimum a revised and expanded EA is warranted. Furthermore, if unresolved, we anticipate the plan will not meet the standards of the Governor’s Consistency Review. We request discussions between State and BLM representatives to determine how to move forward in light of the above difficulties.

PLANNING PROCESS

Lack of Compelling Issues

Compared to other land management plans in Alaska, the Delta plan contains a broad array of proposed public use restrictions, including seasonal motorboat and airplane restrictions; subsistence permits, restrictions on pack animals, biking, dog-mushing, chainsaws, discharge of weapons, and supply caching; camping group size limits, and temporal camping limits. Compared to other wild and scenic river corridors in Alaska, the number and degree of proposed public use restrictions for the Delta imply extensive public use, substantial user conflicts, and/or significant resource impacts. Yet, as the EA acknowledges, the Delta River corridor is characterized by “*relatively low use areas*” (page 58), “*relatively stable use patterns*” (page 59), “*high quality of fish habitat*” (page 51), and “*traces of use are minimal*” (page 55). We agree there are few actual problems on the Delta River and, therefore, conclude that most of the proposed restrictions are either unnecessary or premature.

We recognize Section 1.9 lists “issues,” but these are included to gauge the effects of a proposed management decision on a resource. These “issues” do not appear to be typical resource concerns that would normally drive the development of proposed alternatives. For example, in Section 1.9.10 *Travel Management*, proposed management decisions appear to be creating issues rather than resolving them. Planning processes normally identify an issue; consider user experiences, benefits and conflicts; and then arrive at a proposed management decision. The public is generally more supportive of management decisions when there is a clear rationale for the proposed action.

Insufficient Justification

Related to the lack of issues is a corresponding lack of justification for the proposed management intent. While the Draft EA and SRMA Plan have recreation as a focus, it is unclear how, within a Wild and Scenic River corridor, a planning process can be implemented without consideration for the resource values supporting the recreational experiences, activities and benefits. The plan does not make a clear connection between management prescriptions and the resource values upon which all use depends. It appears the public use restrictions are either BBM based (i.e., “*Motorized boating and airplane landings will be seasonally restricted within the zone to help preserve the beneficial outcomes and setting character decisions*”) or something altogether undisclosed (e.g., no site specific resource concerns are provided to justify limits or prohibitions on camping group size, camping timeframe, chainsaws, vegetation cutting, recreational discharge of weapons, fireworks and supply caching).

While the Affected Environment and Environmental Impacts chapters *generally* discuss *potential* impacts and benefits from proposed management actions on resources and user conflicts, no specifics are provided that demonstrate a need to limit public use, nor is it clear why such restrictions are imposed prior to using less restrictive management tools. Also, the over-reliance on recreation-based BBM is problematic for a plan that affects more than recreational use. See the ANILCA section below for additional concerns about justification in the context of ANILCA.

Inappropriate Use of the Gulkana River Planning Outcomes Without an LAC Process

Many of the management proposals as well as the standards and indicators included in the Delta Plan appear to be adopted, in large part, from the Gulkana River Management Plan. The Gulkana River Management Plan was developed through a comprehensive Limits of Acceptable Change (LAC) process specifically tailored to the Gulkana River and guided by intensive State and public involvement. The Delta River planning process did not include a similarly comprehensive LAC process. Without this rigorous process, the Delta Plan lacks a reasonable basis for the standards, and by extension, the management prescriptions to meet those standards.

In addition, while public use limits (such as group size) may achieve BLM's desired outcomes, we first request consideration of less restrictive measures. Less restrictive means may accomplish the goals of the plan with less burden on the public. For example, better enforcement of existing rules regarding Leave-No-Trace and waste disposal may be just as effective as new rules and should be tried before imposing new limits on the public. Voluntary registration/orientation is another alternative, which could also supplement data gathering efforts. Information made available to the public during voluntary registration will assist those who want to avoid encountering other groups in the area. Educating visitors can have other major benefits. For example, knowledgeable and experienced larger groups can have far less impact than smaller groups unversed in outdoor etiquette or who may be unfamiliar with the area. We therefore urge BLM to revise the proposed implementation framework decisions to phase in proposed restrictions incrementally as adaptive management actions.

Multi-Layered Plan is Difficult to Synthesize and Understand

The plan contains too many independent layers, making it difficult for the public to understand how the proposed decision layers affect one another and how the Plan will ultimately affect future use. These layers include:

- three wild and scenic river classifications
- five proposed outstandingly remarkable values (ORVs) that correspond with the wild and scenic river classifications
- five BBM recreation management zones (RMZs)
- recreation opportunity spectrum (ROS) classifications that correspond with each of the five RMZs

Next, the reader is tasked with tracking three action alternatives that include:

- proposed management actions that vary in each of the five RMZs
- proposed adaptive management actions that include up to four phases.

At a minimum, this plan needs to include a comprehensive table that synthesizes and integrates all this information so that each alternative can be viewed and described as one consolidated layer in direct comparison to the other action alternatives. In addition, given the plan's limited, one paragraph narrative description of the no action alternative, the table also needs to include specifics on current management to provide a baseline for comparison purposes.

Public Involvement and Difficulties Understanding the New Planning Process

We have several concerns related to public involvement with this plan and the Benefits Based Management planning process in general. First, the initial outreach seems to have targeted select stakeholder groups to take advantage of BLM's national mandate to include BBM in the planning process. We question whether all potentially affected stakeholders were equally aware of the opportunity to participate, or if they were aware, did they understand the potential impact of not participating. We are concerned that BBM is a recreational planning tool affecting non-recreational uses as well and that the public was not adequately informed about how the BBM process would be used. These concerns are further exacerbated by the lack of public meetings on this draft plan that would not only help the public understand the various layers and proposed management prescriptions for the Delta specifically, but also help the public be fully informed on how this new planning process is implemented from beginning to end.

In addition, the requirements for RMZs seem unnecessarily excessive. According to Appendix 7.1, the defining characteristics for an RMZ require that each zone take on a recreational identity of its own – each RMZ must have a different recreation setting character, serve a different recreation niche; and provide different opportunities, experiences and outcomes. Also, each RMZ requires a different set of recreation provider actions to align with “*the strategically-targeted primary recreation market demand.*” By artificially forcing a different experience in each RMZ of an SRMA, the BBM process risks imposing excessive or unwarranted management prescriptions. Also, since the purpose of BBM is recreation management, concessions for subsistence and other uses protected by ANILCA must be made, which also trends toward unnecessarily burdening the public with more management prescriptions.

Lastly, creating “*marketing strategies*” for each RMZ is unusual for land management planning, especially one that proposes public use limits, and thus appears counterintuitive. For example, in Tangle Lakes Zone 1, where motorboats and airplanes are seasonally prohibited (see Alternative 2 on page 18), the target audience for marketing is nonmotorized lake boaters. By increasing marketing for a specific zone, more people will visit that zone – potentially exacerbating user conflicts; while scaled-back marketing efforts would more likely stabilize visitation and, hence, reduce user conflicts and impacts on the zone. (Also, motorboat restrictions in this zone appear unnecessary due to the natural barriers that already inhibit use of motorboats.) It seems pointless to encourage growth and simultaneously restrict use because of increasing impacts. Based on scoping comments from participants in the BBM working groups, this concept has already caught the attention of local residents concerned about marketing efforts to increase use.

ANILCA AND PUBLIC USE MANAGEMENT IN ALASKA

Many elements of the Delta River Plan are not consistent with ANILCA. In the understandable effort to conform to BLM's national planning standards and practices, it appears the agency has overlooked or misunderstood several essential statutory mandates in ANILCA concerning certain public uses and how those uses may be closed or restricted. As a federal law, ANILCA cannot be trumped by national or regional administrative practices. If planning tools conflict with ANILCA, the provisions of ANILCA must prevail. The most notable example of this concern is Benefits Based Management. BBM was designed outside of Alaska exclusively for managing recreation; yet in Alaska, recreation is often difficult or impossible to distinguish from subsistence or other traditional activities expressly provided for in ANILCA. Similarly, ANILCA and its implementing regulations dictate a specific process for restricting subsistence uses and traditional activities. ANILCA sets a higher bar for public use restrictions in Alaska and calls for a more rigorous implementation process. In this light, many of the proposed public use limits would be legally questionable in Alaska. The discussions that follow explore these challenges in more detail.

Inadequate Standards for Restrictions

ANILCA Section 811 states the Secretary *shall* ensure all rural residents engaging in subsistence activities *shall* have reasonable access to resources on public lands and *shall* permit [allow] snowmobiles, motorboats, and other means of surface transportation traditionally employed, subject to reasonable regulation. Similarly, ANILCA Section 1110(a) provides that the Secretary *shall* permit [allow] the use of snowmachines, motorboats, airplanes and non-motorized surface transportation on CSUs in Alaska, subject to *reasonable* regulation.

Section 1110(a) requires that applicable methods of access can only be restricted by reasonable regulation if the “*Secretary finds that such use would be detrimental to the resource values of the unit or area.*” This intent is further clarified in implementing Department of the Interior regulations at 43 CFR Part 36. While Section 1110(a) does not apply to most lands in Alaska managed by BLM, it does apply to the Delta Wild and Scenic River corridor as a designated conservation system unit. The Plan proposes restrictions on allowed uses without a finding that these uses are detrimental to resources or other values. Restricting use to preserve desired outcomes and subjective experiences is contrary to ANILCA’s intent to allow access to Alaska’s remote areas until resource values are threatened.

Following passage of ANILCA, BLM did not promulgate ANILCA Section 811 implementing regulations as did the U.S Fish and Wildlife Service (FWS) and National Park Service (NPS). At the time, BLM was not contemplating the need to restrict access for subsistence activities, so such regulations were not a priority. However, using the same basic standards for restricting subsistence access as specified in 50 CFR 36.12 and 36 CFR 13.460 would provide consistency among DOI agencies in implementing ANILCA and maintain a consistent approach for the public’s benefit. Both the FWS and NPS regulations state that routes and areas may be restricted or closed to the use of snowmobiles, motorboats, dog teams, and other means of surface transportation traditionally employed when “*such use is likely to cause an adverse impact on public health and safety, resource protection, protection of historic or scientific values, subsistence uses, conservation of endangered or threatened species, or the purposes for which the [area] was established.*” These long-established criteria have worked well for NPS and FWS. The overarching statutory guidance applies equally to all agencies, making it difficult to understand how BLM can justify a different approach. Emulating the NPS and FWS criteria would also serve BLM well, including minimizing the potential for legal challenges.

In summary, ANILCA imposes requirements regarding restriction of access under ANILCA Sections 1110(a) and 811(b). While it may be appropriate for BBM policy to inform the planning process, alone it does not serve as adequate justification to restrict public uses and access allowed for in statute. Restrictions without adequate justification pursuant to ANILCA constitute *unreasonable* regulation.

Inadequate ANILCA Closure Procedures

The plan indicates special rules will be developed in accordance with 43 CFR 8351.2-1 to address restrictions on travel management. As previously noted, access protected under Section 1110(a) can only be restricted by reasonable regulation if the Secretary determines such use would be detrimental to the resource values of the unit or area. Department of Interior (DOI) ANILCA regulations at 43 CFR 36.11(h) include a process for implementing restrictions to these allowed uses that is not reflected in 43 CFR 8351.2-1, including specific notice and hearing requirements, an added rulemaking, and a minimum sixty-day comment period for permanent closures. Restrictions on airplane use also require added notice in specific publications. The Supplementary Information included in the Final Rule dated September 4, 1986 states: “*Regulations providing for the closure of areas for reasons other than under the provisions of section 1110(a) include: For the NPS, 36 CFR 1.5; for the FWS, 50 CFR 25.21; and for the BLM, 43 CFR 8364.*” [Emphasis added] While 43 CFR 8351.2-1 may be appropriate to

implement other management actions, the appropriate regulation for implementing Section 1110(a) access restrictions is 43 CFR 36.11.

The process followed by the FWS and NPS for restricting subsistence access is specified in Section 811 implementing regulations at 50 CFR 36.12 and 36 CFR 13.460, respectively. The Preamble in the June 17, 1981 Final Rule for 50 CFR Part 36 relative to Section 36.12, Access for Subsistence Purposes (page 31824), states:

“All routes and areas are open to use of these vehicles for subsistence purposes except as specifically restricted or closed. The Refuge Manager will implement such closures or restrictions on the basis of criteria which are more limited than the criteria for closure to general recreation use. Basically, in order to impose a restriction, the Refuge Manager must determine that the use in question is causing or is likely to cause an adverse impact on public health and safety, resource protection, protection of historic or scientific values, subsistence uses, conservation of endangered or threatened species or the purposes and values for which the refuge area was established. The Refuge Manager will arrange notice and public participation concerning closure proposals in order to involve those affected to the fullest extent possible in the decision making.” [Emphasis added]

For consistency with the intent of ANILCA and for the public’s benefit, we request that BLM implement an equivalent public process when restricting subsistence access to meet the intent of ANILCA and avoid potential legal challenges.

Section 1110(a) “Traditional Activities”

The draft plan does not demonstrate an adequate understanding of the breadth and consequences associated with the term “traditional activities.” For example, under certain alternatives, the plan proposes to require a permit for those seeking access for traditional activities in zones 1 and 4 during June and July. Specifically:

During June and July, motorized boating and airplane landings will be prohibited. During the closed season, subject to reasonable regulations and with BLM authorization, qualified rural residents may be permitted to use motorized boats or other means of surface transportation traditionally employed for subsistence purposes (ANILCA Sec. 811). Similarly, access via motorboats, airplanes and nonmotorized surface transportation may also be permitted for traditional activities (ANILCA 1110). Authorization may be obtained in person, by mail, and by phone from BLM Glennallen Field Office. [Emphasis added]

We appreciate that BLM is attempting to create an allowance for such traditional activities; however, in practice the plan is creating a restriction. First, while ANILCA Section 1110(a) specifically authorizes the use of certain modes of access for “traditional activities,” the DOI implementing regulation at 43 CFR 36.11 broadens this authorization and does not require a “traditional activity” criterion for use of motorboats and airplanes. The Supplemental Information for the Final Rule states:

“Some commenters criticized the proposed regulations on motorboat and aircraft use within areas, in that those uses are not restricted to traditional activities and travel to and from villages and 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.....Accordingly, to allow for access to the areas, the restrictions on motorboat and fixed wing aircraft use have not been increased in the final regulation.”

Therefore, pursuant to 43 CFR 36.11, the reference to “*traditional activities*” is not necessary in this context. In addition, requiring a permit, regardless of how easily obtainable, is still a restriction (a burden on the public) and – as recognized by both NPS and FWS – the standard for 1110(a) access applies. As previously noted, BLM is required to first determine that such use would be detrimental to the resource values of the unit or area before restricting such use in accordance with the process established in 43 CFR 36.11.

Second, BLM’s use of the term “*traditional activities*” in the context of a restriction implies that BLM has either informally defined the term internally, and retains the right to not issue a permit on that basis; or is putting the burden upon the individual user to somehow define what use is traditional for BLM. Either way, this approach is problematic. The term was intentionally not defined by DOI in ANILCA or in Section 1110(a) implementing regulations at 43 CFR 36.11 with the expectation that the managing federal agency may define the term as needed on an area basis. The Supplemental Information for the Final Rule states:

Some commenters suggested that a definition of “traditional activity” should be included in these regulations....Because these regulations apply to a number of areas under the administrative jurisdiction of three agencies, it has been decided that it would be unwise, and perhaps impossible to develop a definition that would be appropriate for all areas under all circumstances. Exactly what “traditional activities” are must be decided on a case-by-case basis. Once the agencies have had the opportunity to review this question for each area under their administration, it may be possible to specifically define “traditional activity” for each area. Accordingly, these regulations do not contain a definition of “traditional activity.”

If BLM determines a need to define “*traditional activities*” as it applies to ANILCA Section 1110(a) access in the future, the definition needs to be established in regulation prior to implementing restrictions, as was done by the National Park Service for the definition as it applied to snowmachine use in the Old Park of Denali (36 CFR 13.950). The Forest Service is the only other federal agency that has defined “*traditional activities*” to date, and that definition was intentionally inclusive: “*Traditional activities include, but are not limited to, recreation activities such as fishing, hunting, boating, sightseeing, and hiking.*” (FSM 2300, Chapter 2320).

Section 811 “Qualified Rural Resident” and “Other Means of Surface Transportation”

The management prescription referenced in the previous section also allows “*qualified rural residents*” to obtain a permit to use motorized boats and other means of surface transportation traditionally employed for subsistence purposes as an exception to the seasonal closure of motorboats and airplanes. We understand BLM is attempting to define those users who will be eligible for a subsistence access permit; however, ANILCA Section 811(b) applies broadly to “*local residents.*” The term “*qualified rural residents*” only applies to consumptive use of fish and wildlife managed by the federal subsistence program. Other subsistence uses, such as berry picking, firewood and vegetation gathering, are not limited to “*qualified rural residents.*” Therefore this so called allowance is without basis and unenforceable. Furthermore, in order for the public to fully understand what this provision applies to, “*other means of surface transportation traditionally employed*” would also need to be defined. Similar to the discussion above on the definition of “*traditional activities,*” if left undefined, BLM is inappropriately putting the burden of proof on the public.

ANILCA Section 810 Analysis

It appears that conclusions about proposed actions generally under-disclose potential effects to subsistence uses and needs. ANILCA does *not* state that effects to subsistence uses may not be allowed. Instead it requires the federal agency to analyze and disclose potential effects; and where they

are expected to be significant, requires notice, hearing, and reasonable steps to minimize adverse impacts.

Despite substantial proposed changes to current subsistence practices, including permit requirements for OHV use, motorized boating, and campsite occupancy, this analysis concludes that none of the proposed management actions or alternatives will have *any* impact on subsistence uses and needs. These actions will have impacts that need to be acknowledged. Below are some specific examples of unreported impacts.

- Alt. 2, Wildlife: The analysis appropriately recognizes a permit requirement for certain OHV use as an “*additional burden*” but does not similarly characterize a permit requirement for motorized boat use. In both instances, the analysis concludes the proposed action “*will not have an effect on subsistence uses and needs,*” which ignores the fact that the permit requirement, by itself, will have an impact on users that are accustomed to obtaining subsistence resources freely, without first having to obtain “permission” from BLM.
- Alt. 2 and 4, Wildlife: Camping will be restricted to designated campsites in both alternatives and dispersed camping will be allowed when using “Leave No Trace” camping methods. Alternative 4 also establishes a mandatory camping permit system for the designated sites, but exempts subsistence users who camp away from designated sites. In all instances, the evaluation concludes that “*allowing dispersed camping for subsistence users will not have an effect on subsistence uses and needs.*” While we recognize allowing dispersed camping has a positive effect on subsistence use, the analysis ignores the potential negative effects of being limited to specific campsites, use of possibly unfamiliar camping methods, and having to compete with recreational users over designated sites.
- Alt. 4, Wildlife: Motorized boat engine size is limited and airboats and hovercrafts are prohibited, yet the Analysis states these limitations “*do not pose an added burden to subsistence users*” and “*...will not have an effect on subsistence uses and needs.*” At a minimum, these statements need to be supported as to why they do not create a burden or affect subsistence uses and needs.

Furthermore, it appears the analysis only addresses the potential impacts of proposed management prescriptions (i.e. Implementation Framework Decisions). It should also evaluate the Adaptive Management Actions, which include additional phased-in restrictions. We urge re-evaluation and full disclosure of the potential impacts of proposed management decisions to subsistence users, including the impact on access to subsistence resources.

Clarifying the State’s Role regarding Fish and Wildlife Management

The Alaska Department of Fish and Game (ADF&G) is responsible for the sustainability of fish and wildlife in the State of Alaska, regardless of land ownership, and is the primary management authority for fish and wildlife. Consistent with ANILCA Section 1314, ADF&G’s responsibilities include determining healthy populations and allocating fish and wildlife – including for subsistence purposes – unless specifically preempted by federal law. All BLM lands are open for harvest under state general hunting regulations unless the area is closed by the Federal Subsistence Board to the non-federally eligible. The State of Alaska currently provides for caribou take in Game Management Unit 13.

Narrative on pages 66, 70, and 77 imply that state regulations do not apply in the Delta Wild and Scenic River (DWSR) corridor. “*The DWSR corridor is a federal subsistence hunting area....*” We request acknowledgement of the State of Alaska’s underlying authorities regarding fish and wildlife consistent with the Master Memorandum of Understanding between BLM and ADF&G (attached under separate cover).

OTHER GENERAL COMMENTS

Flawed Navigability Determination

The State determined that the Delta River is navigable in fact from its confluence with the Tanana through Lower Tangle Lake (Navigability Report – Delta River, June 1994). We do not agree with BLM's recent navigability determination that the Delta River, with the exception of the stretch between Garrett Creek to Phelan Creek, is non-navigable. The State will assert its ownership by an action to quiet title, if necessary.

If subsequent decisions indicate this is a state-owned waterway, then BLM will not be able to implement some provisions of this plan, for example, the boat launch limits in phase IV as presented on page 38.

Management of Public Trust Resources

Without adequate justification, the State cannot support, nor would we implement, the proposed limits to public access to state resources (water) due to our responsibilities under the Public Trust Doctrine. Public use of natural resources, including the waters of the state, is protected in Article 8 of the Alaska State Constitution and in current statutes and regulations. Current public uses occurring on the Delta and Tangle Rivers and the Tangle Lakes are consistent with state statutes and regulations. Any impacts associated with such use on these waterbodies, at this time, are negligible and insignificant.

Outstandingly Remarkable Values

As acknowledged in the plan, outstandingly remarkable values (ORV) were not identified for any of the wild and scenic rivers designated by ANILCA and the current effort to identify ORVs for the Delta is conducted based on BLM guidance for evaluating a river's eligibility as a wild and scenic river. Since this process is usually done before designation, we reiterate our scoping comment that BLM should look primarily to legislative history for guidance on determining specific ORVs, which identified scenic, cultural and recreational values. We agree that these three values qualify as "*outstandingly remarkable*;" however, we question the necessity for the two additional ORV's: Fisheries and Wildlife. While the grayling fishery and the area's diverse wildlife are certainly important resources, they are not "*rare, unique or exemplary*" by Alaska standards and we request they be removed.

Mining as a Reasonably Foreseeable Future Action

The Plan is short on information about the future of mining in and adjacent to the planning area. Nevada Star Resource Corporation (U.S.)/Pure Nickel, Inc. holds 2,315 state mining claims encompassing 164,600 acres (257 sq. mi.) and 525 federal mining claims encompassing 10,500 acres (16+ sq. mi.). Mineral exploration has been conducted on these claims for the past five years. Access to federal mining claims is governed by the Utility Corridor Resource Management Plan and regulations in 43 CFR 3809. Mine operators are entitled access to their operations consistent with the mining laws. This plan cannot alter access to valid mining operations.

Nevada Star/Pure Nickel is planning another exploration program on their claims in 2010. Nevada Star/Pure Nickel acquired many of the claims from American Copper and Nickel Company, Inc. and located many more themselves. The mining claims are situated between the Maclaren River on the west and the Richardson Highway on the east, and they straddle both sides of the DWSR corridor. The Nevada Star/Pure Nickel website currently indicates nickel-copper-platinum group metals (Ni-Cu-PGM) of 15.4% Ni, 7.19% Cu, and 170 grams/ton PGM + Au and Ag over widespread areas on their mining claims. Most of the recent exploration has been located in the Amphitheater Mountains on either side of the DWSR corridor. Previous exploration was focused in the Fish Lake and Broxon Gulch areas. Under the Alaska Statehood Act, (PL 85-508), these mineral lands bordered by the Maclaren River (west), Richardson Highway (east) and Denali Highway (south) were selected by the

state for their base metal mineral potential. If a mine were ever developed in the areas indicated above, it would likely be an underground mine with road access from the Denali Highway to the south. However, large mining operations could occur in numerous areas bordering the WSRA. Drilling analysis from the west and east sides of Zone 4 offers evidence of rich mineral deposits trending toward a mineral resource band stretching through Zone 4 and the Delta River.

Any future large mining operations and mining facilities would likely have some visual and soundscape impacts to the Delta River WSRA near the Tangle Lakes and Zones 2 and 3. A large mining operation will involve considerable tractor-trailer traffic through the corridor along the Denali Highway and excavating machines and blasting will be audible in areas managed to preserve natural sounds and solitude. In light of future large mining operations in the area, the impacts of summer motorized boating and airplane landings would be negligible in comparison. Therefore, the restrictions on motorized activities in Zone 1 would be ineffective in preserving the desired outcomes.

In conclusion, we request more analysis about projected and potential mining activities in the region before making final decisions.

Recreational Gold Panning

Gold panning is not mentioned as a recreational use in the document. The Delta River and its tributaries drain a vast mineral-rich area. Some visitors enjoy panning in accessible streams and other water courses. We request the document address allowed activities and equipment with regard to recreational gold mining. We further request that any guidelines be consistent with generally allowed uses on state land. For example, hand versus motorized equipment, size of suction dredge, what materials may be processed (bank versus gravel bars).

PAGE-SPECIFIC COMMENTS

Page 6, last paragraph: This paragraph cites moose harvest figures from 1990 to 2009. We presume this information is provided because subsistence users rely on OHVs to retrieve meat from the harvest of these large animals. If so, we recommend such an explanation. If OHVs are also commonly used to retrieve caribou meat, we recommend addressing caribou as well.

Page 92, 4.2.9.1: Federal subsistence uses of fish and wildlife are not “protected” as implied by the first sentence of this section. Subsistence use of fish and wildlife are a “priority opportunity” amongst other consumptive uses and Congress, in Section 801(4), found it necessary to invoke constitutional authority to “. . . *protect and provide the opportunity for continued subsistence uses....*” (Emphasis added) Subsistence use of fish and wildlife can be closed “. . . *in order to protect the continued viability of such populations, or to continue such use....*” We request acknowledgement that the federal subsistence priority is a “priority opportunity” and any Congressional protection applies only to the opportunity to harvest, not actual harvest.

Page 101, 4.3.2.2 Fisheries: The following description of potential disturbance to fisheries excerpted from the EA is more fitting for placer mining operations than a large hard rock mining operation.

“Future activities associated with mineral development may have adverse effects on drainage patterns, water quality, and riparian vegetation, although this would depend upon the location and area of activity. Disturbance and displacement due to mineral development could be long-term. The removal of streamside riparian-wetland vegetation during mining would result in a loss or degradation of aquatic...”

There may be an undocumented cumulative impact from hard rock mining in the future; however, most federal and state permits issued for mining operations include stipulations to protect or mitigate damage to the environment. The final decision needs to take this into consideration.

Page 103, 4.3.2.7 Water Quality: The documents cited in the paragraph below, and in several other places in the EA, are not listed in the bibliography.

“Future development activities associated with mineral development would likely have adverse effects on drainage patterns and water quality, although this would depend upon the location and area of activity. Areas adjacent to the DWSR corridor that are disturbed due to mineral development could have long term impacts to water quality in the DWSR corridor. Depending on the level of disturbance, it could take decades to centuries before the structure and function of the original aquatic habitat could be reestablished (NCSU 1998; BLM and Montana Dept. of Environ. Quality 1996; BLM 1988).”

Examples of mines in Alaska where the water quality and aquatic habitat have been improved during and after mining operations include Red Dog and Fort Knox mines. This discussion is overly biased. The final decision should recognize that mining permits would include measures to avoid, minimize, or mitigate adverse affects due to mining activity.

Thank you for the opportunity to comment. Should you have any questions or concerns, we would be happy to discuss these issues further.

Sincerely,



Carol Fries
State RMP Project Coordinator

Attachment: Master Memorandum of Understanding between BLM and ADF&G

MASTER MEMORANDUM OF UNDERSTANDING

BETWEEN

THE ALASKA DEPARTMENT OF FISH AND GAME
Juneau, Alaska

AND

THE U.S. BUREAU OF LAND MANAGEMENT

DEPARTMENT OF THE INTERIOR

Anchorage, Alaska

This Master Memorandum of Understanding between the State of Alaska, Department of Fish and Game, hereinafter referred to as the Department, and the U.S. Department of the Interior, Bureau of Land Management, hereinafter referred to as the Bureau, reflects the general policy guidelines within which the two agencies agree to operate.

WHEREAS, the Department, under the Constitution, laws, and regulations of the State of Alaska, is responsible for the management, protection, maintenance, enhancement, rehabilitation, and extension of the fish and wildlife resources of the State on the sustained yield principle, subject to preferences among beneficial uses; and

WHEREAS, the Bureau, by authority of the Constitution, Laws of Congress, executive orders, and regulations of the U.S. Department of Interior has a mandated responsibility for the management of Bureau lands, and the conservation of fish and wildlife resources on these lands; and

WHEREAS, the Department and the Bureau share a mutual concern for fish and wildlife conservation, management, and protection programs and desire to develop and maintain a cooperative relationship which will be in the best interests of both parties, the concerned fish and wildlife resources and their habitats, and produce the greatest public benefit; and

WHEREAS, it has been recognized in the Alaska National Interest Lands Conservation Act (ANILCA) and subsequent implementing Federal regulations that the resources and uses of Bureau lands in Alaska are substantially different than those of similar lands in other states; and

WHEREAS, the U.S. Congress and the Alaska Legislature have enacted laws to protect and provide the opportunity for continued subsistence use of Alaska's fish and wildlife resources by rural residents; and

WHEREAS, the Department and the Bureau recognize the increasing need to coordinate resource planning, policy development, and program implementation;

NOW, THEREFORE, the parties hereto do hereby agree as follows:

THE DEPARTMENT OF FISH AND GAME AGREES:

1. To recognize the Bureau as the Federal agency responsible for multiple-use management of Bureau lands including wildlife habitat in accordance with the Federal Land Policy and Management Act, ANILCA, and other applicable law.
2. To regulate and manage use of fish and wildlife populations on Bureau lands in such a way as to maintain or improve the quality of fish and wildlife habitat and its productivity.
3. To consult with the Bureau in a timely manner and comply with applicable Federal laws and regulations before embarking on enhancement or construction activities on or which would affect Bureau lands.
4. To act as the primary agency responsible for management of all uses of fish and wildlife on State and Bureau lands, pursuant to applicable State and Federal laws.
5. To notify the Bureau of any animal damage control activities on Bureau lands; and to obtain Bureau approval for the use of pesticides, herbicides, or other toxic chemical agents in the course of animal damage control.
6. To provide all maintenance on facilities, structures, or other construction owned by the Department on Bureau lands; and to hold the Bureau harmless for liability claims resulting from these constructions, facilities, and/or structures.

THE BUREAU OF LAND MANAGEMENT AGREES:

1. To recognize the Department as the primary agency responsible for management of use and conservation of fish and wildlife resources on Bureau lands.
2. To recognize the right of the Department to enter onto Bureau lands at any time to conduct routine management activities which do not involve construction, disturbance to the land, or alterations of ecosystems.
3. To recognize the Department as the primary agency responsible for policy development and management direction relating to uses of fish and wildlife resources on State and Bureau lands, pursuant to applicable State and Federal laws.
4. To incorporate the Department's fish and wildlife management objectives and guidelines in Bureau land use plans unless such

provisions are not consistent with multiple use management principles established by FLPMA, ANILCA, and applicable Federal law.

5. To adopt the State's regulations to the maximum extent allowed by Federal law when developing new or modifying existing Federal regulations governing or affecting the taking of fish and wildlife on Bureau lands in Alaska.
6. To notify the Department of any portion of the Department's fish and wildlife management objectives, guidelines, or State regulations that the Bureau determines to be incompatible with the purposes for which Bureau lands are managed.
7. To manage Bureau lands so as to conserve and enhance fish and wildlife populations.
8. To inform the Department of proposed development activities on Bureau lands which may affect fish and wildlife resources, subsistence and other uses, and to provide or require appropriate mitigation where feasible.
9. To permit, under appropriate agreement or authorization, the erection and maintenance of facilities or structures needed to further fish and wildlife management activities of the Department on Bureau lands, provided their intended use is not in conflict with Bureau policy and land-use plans.
10. To recognize that the taking of fish and wildlife by hunting, trapping, or fishing on Bureau lands in Alaska is authorized in accordance with applicable State and Federal law unless State regulations are found to be incompatible with Bureau regulations.

THE DEPARTMENT OF FISH AND GAME AND BUREAU OF LAND MANAGEMENT MUTUALLY AGREE:

1. To coordinate planning for management of fish and wildlife resources on Bureau lands and adjacent lands having common fish and wildlife resources so that conflicts arising from differing legal mandates, objectives, and policies either do not arise or are minimized.
2. To cooperate in planning, enhancement, or development activities on Bureau lands which require permits, environmental assessments, compatibility assessments, or similar regulatory documents by responding in a timely manner with requirements, time tables, and any other necessary input.
3. To consult with each other when developing or implementing policy, legislation, and regulations which affect the attainment of wildlife resource management goals and objectives of the other agency.

4. To cooperate in the management of fish and wildlife resources and habitat (including planning, regulation, enforcement, protection, restoration, research, inventories, and habitat enhancement) on Bureau lands and adjacent lands having common fish and wildlife resources consistent with the species and habitat management plans and objectives of both agencies.
5. To develop specific plans for cooperative development and joint management of habitat areas determined to be essential to the continued productivity or existence of fish and wildlife populations.
6. To consult with the Department prior to entering into any cooperative land management agreements which could affect fish and wildlife resources.
7. To cooperate in the development of fire management plans which may include establishment of priorities for the control of wild-fires, or use of prescribed fires.
8. To make facilities, equipment and assistance mutually available on request for use in fish and wildlife work and habitat improvement consistent with Bureau and Department requirements.
9. Neither to make nor sanction any introduction or transplant of any fish or wildlife species on or affecting Bureau lands without first consulting with the other party and complying with applicable Federal and State laws and regulations.
10. To provide to each other upon request fish and wildlife data including subsistence and other uses, information, and recommendations for consideration in the formulation of policies, plans and management programs regarding fish and wildlife resources.
11. To cooperate in the preparation of announcements and publications and the dissemination of fish and wildlife information; any material obtained from cooperative studies may be published or reproduced with credit given to the agencies or organizations responsible for its acquisition or development. Any news release relating specifically to cooperative programs will be made only by mutual consent of the agencies.
12. To cooperate and coordinate in the issuance of permits to persons, industry, or government agencies for activities affecting designated anadromous fish streams on Bureau lands, in accordance with Alaska Statute 16.05.870 and to cooperate in the formulation of comments and recommendations on permits issued by other governmental agencies in accordance with the Fish and Wildlife Coordination Act, Clean Water Act and other applicable laws.

13. To resolve, at field office levels, all disagreements pertaining to the cooperative work of the two agencies which arise in the field and to refer all matters of disagreement that cannot be resolved at equivalent field levels to the State Director and to the Commissioner for resolution before either agency expresses its position in public.
14. To meet annually at the Director/Commissioner level and discuss matters relating to the management of fish and wildlife resources and their habitats on, or affected by, respective programs; to provide for other meetings at various administrative levels for discussion of law enforcement, educational programs, cooperative studies, research, fish and wildlife surveys, habitat development, hunting, fishing, trapping seasons, and such other matters as may be relevant to fish and wildlife populations and their habitats.
15. To develop such supplemental memoranda of understanding and cooperative agreements between the Bureau and the Department as may be required to implement the policies contained herein.
16. That this Master Memorandum is subject to the laws of the State of Alaska and the United States. Nothing herein is intended to conflict with current directives, laws or regulations of the signatory agencies. If conflicts arise or can be foreseen, this Memorandum will be amended or a new Memorandum of Understanding will be developed.
17. That this Master Memorandum of Understanding is subject to the availability of appropriated State and Federal funds.
18. That this Master Memorandum of Understanding establishes procedural guidelines by which the parties shall cooperate, but does not create legally enforceable obligations or rights.
19. That this Master Memorandum of Understanding supersedes all previous Master Memoranda of Understanding between the Bureau and Department and all supplements and amendments thereto.
20. That this Master Memorandum of Understanding shall become effective when signed by the Commissioner of the Alaska Department of Fish and Game and the State Director of the Bureau of Land Management and shall continue in force until terminated by either party by providing notice in writing 120 days in advance of the intended date of termination.
21. That amendments to this Master Memorandum of Understanding may be proposed by either party and shall become effective upon approval by both parties.

STATE OF ALASKA

U.S. DEPARTMENT OF THE INTERIOR

Department of Fish and Game

Bureau of Land Management

By Don W. Collinsworth

By Curtis V. McVee

Don W. Collinsworth

Curtis V. McVee

Commissioner

Director

Date 6-28-83

Date 8/3/83

Supplement to the
MASTER MEMORANDUM OF UNDERSTANDING
between
THE ALASKA DEPARTMENT OF FISH AND GAME
AND
THE BUREAU OF LAND MANAGEMENT
U.S. DEPARTMENT OF THE INTERIOR, ALASKA

SIKES ACT IMPLEMENTATION

This supplemental memorandum of understanding is pursuant to the Master Memorandum of Understanding between the Alaska Department of Fish and Game (ADF&G) and the Bureau of Land Management (BLM), Alaska, dated AUG 3 1983. Public Law 93-452, of October 18, 1974, 16 U.S.C. 670a et seq., commonly referred to as the Sikes Act, provides the broad authority to: 1) Plan and carry out fish and wildlife conservation and habitat rehabilitation programs on Bureau lands consistent with overall land use plans; 2) Protect significant habitat for threatened and endangered species; and 3) Enforce regulations to control off road vehicle (ORV) traffic or other public use of lands subject to conservation and rehabilitation programs conducted under the Act.

The Act in no way diminishes the authority of the State of Alaska to manage resident fish and wildlife populations.

It is the purpose and intent of this supplement to provide a working relationship and procedure for implementation of the Sikes Act on Bureau lands in Alaska between ADF&G and BLM.

Terms used in this supplement are defined as follows:

- 1) Conservation and rehabilitation program - Includes programs necessary to protect, conserve, and enhance wildlife resources to the maximum extent practicable on Bureau lands consistent with any overall land-use and management plans for the lands involved.
- 2) Habitat Management Plan (HMP) - BLM's intensive, detailed action plan for wildlife management on a specific geographic area of biological interest on Bureau lands. The HMP is a cooperative plan with the State Wildlife agency and is based on current public input. The HMP shall be the implementing document for the Sikes Act.
- 3) Bureau Lands - These are public lands under the jurisdiction of the Bureau of Land Management.

THEREFORE, BE IT RESOLVED THAT FOR THE PURPOSE OF IMPLEMENTING P.L. 93-452, ADF&G and BLM mutually agree to the following:

- 1) HMPs will be implemented for areas where land-use plans have been prepared, unless otherwise authorized by the State Director, BLM.
- 2) HMPs will be based on priorities within Alaska, as mutually selected by the Commissioner, ADF&G, and the State Director, BLM. Guidelines for establishing HMP priorities shall be based on the following:
 - a) The basic resource values which may be enhanced and benefits produced by implementation of active management programs and/or regulations.
 - b) The identification, through the BLM or ADF&G planning systems, of areas having a need for intensive wildlife management.
 - c) The potential for wildlife habitat to be altered by land use activities such as energy and industrial development, urban expansion, road construction, and ORV traffic.
 - d) The need to protect important and/or critical fish and wildlife habitat such as salmon spawning areas, moose winter range, or the habitats of endangered or threatened species.
- 3) Protection will be afforded to those fish and wildlife species designated as threatened or endangered by the Alaska Department of Fish and Game or by the Secretary of the Interior pursuant to Section 4 of the Endangered Species Act of 1973.
- 4) HMPs will specify fish and wildlife habitat improvements or modifications needed.
- 5) Rehabilitation of Bureau lands will be undertaken where necessary to support HMP recommendations and consistent with the availability of funds for that purpose.

- 6) Hunting, fishing, and trapping of resident fish and wildlife on HMP areas will be in accordance with applicable laws and regulations of the State of Alaska.
- 7) It is herein recognized that the Secretary of the Interior has the authority to promulgate regulations to control the public use of Bureau lands consistent with the HMP, including, but not limited to ORV use. BLM and ADF&G will coordinate federal land use and state hunting, fishing and trapping regulations during Sikes HMP development.
- 8) Funds authorized and appropriated for HMP implementation on Bureau lands in Alaska shall include, but not be limited to all activities associated with scientific resource management, such as the following: protection, research, census, law enforcement, habitat management, propagation, live trapping, transplanted, and regulated taking. Funds may be allocated for hiring of personnel, contractual services, physical habitat improvement projects, and grants to colleges. It shall be the joint responsibility of the Commissioner, ADF&G, and the State Director, BLM, to define areas and projects for priority funding under the Sikes Act. It shall be the responsibility of the State Director, BLM to secure funding through BLM's program funding procedures. Final disbursement of Sikes Act Funds shall be made through the State Director, BLM, after consultation with the Commissioner, ADF&G.
- 9) Plans and programs initiated on Bureau lands under the Sikes Act in Alaska shall not conflict with comprehensive plans required of the State under any Federal or State Acts.
- 10) BLM and ADF&G will discuss the following Sikes Act items during the course of their annual coordination meeting:
 - a) A progress report on the current status of HMP implementation.
 - b) The review of wildlife values produced under the existing conservation and rehabilitation programs.

- c) The priorities for HMP implementation.
- d) The program and budget recommendations for the upcoming and succeeding fiscal years.

This supplement shall become effective on the date when last signed and shall remain in force until terminated by mutual agreement, by amendment or abolishment of the Act by Congress, or by either party upon thirty days notice in writing to the other party of its intention to terminate upon a date indicated.

STATE OF ALASKA
Department of Fish and Game

By Don W. Collinsworth
Don W. Collinsworth
Commissioner

Date 6-28-83

U.S. DEPARTMENT OF THE INTERIOR
Bureau of Land Management

By Curtis V. McVee
Curtis V. McVee
State Director

Date 8/3/83