STATE OF ALASKA

ANILCA IMPLEMENTATION PROGRAM
Office of Project Management and Permitting

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Robert Abbey, Director (630)
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U.S. Department of Interior
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Attention: 1004-AE19

To whom it may concern:

The State of Alaska reviewed the final interim and proposed permanent regulations that amend 43 CFR 2090 and 2800, which would allow the Bureau of Land Management (BLM) to segregate lands with wind and solar energy development potential from appropriations under the public land laws, including location under the Mining Law of 1872. The State of Alaska understands the value of and need for regulations. At the same time we offer the following consolidated comments of the State's resource agencies that address Alaska's interests.

The lack of specificity in the proposed rules raises many questions on how implementation will impact public lands in Alaska and elsewhere. While the actual potential for major (large-scale) solar and wind energy development on BLM lands in Alaska is limited due to remoteness, transmission capabilities, and energy resources, if BLM endeavors to segregate any or all lands with renewable energy *potential*, regardless of the practicality of actual development, millions of acres of BLM land in Alaska could be affected. Additionally, we note that the Federal Land Policy and Management Act (FLPMA) limits the Secretary's authority to segregate land to situations where an actual application for withdrawal has been received or the Secretary has made a withdrawal proposal. The interim and proposed regulations should clarify that the Secretary must make an actual withdrawal proposal upon initiating segregation of public lands.

Currently, the State of Alaska is working with developers of wind energy projects on state lands to resolve issues with competing mining claims. Instead of segregating or closing state lands to other development projects, state regulations require competing interests to resolve issues through negotiation and mitigation. This strategy has shown to be mutually beneficial to Alaska energy projects, community needs, and other developments. Alaska Native corporations are also using similar methods for wind and mineral resources on their private lands. We encourage BLM to similarly work in this

cooperative manner to accommodate mining and renewable energy uses on BLM lands, either prior to or after the initial segregation, to minimize the scope of any ultimate withdrawal.

Areas for potential Wind and Solar ROWs
The regulations provide that BLM will identify lands to temporarily segregate from appropriation under most public land laws for future wind and solar energy development sites. How these lands will be evaluated and what standards will be employed to assess renewable energy development potential is unclear. Wind energy developers invest millions of dollars to evaluate site feasibility by studying possible wildlife impacts, construction access and transmission capabilities, and wind resources. Decisions on constructing wind and solar facilities are not based simply upon reviewing wind resources maps and identifying property owners. BLM needs to provide guidance on how a potential wind or solar right-of-way (ROW) site will be identified. Often, areas where wind or solar resource conditions appear optimal on the surface may be located within migratory flyways or important avian habitat, or adequate transmission may not be available to transport electricity generated, or the terrain may not allow for transportation of massive wind turbine blades and towers to the installation sites. Any of these factors could render a project not feasible. To alleviate the perception that the regulations are being used to block mining claims, BLM should, whenever possible, first identify future renewable energy ROW lands with rigorous standards, public input, and industry assistance, which will limit segregated lands and help streamline and assist renewable energy development on qualifying lands.

We presume the proposed regulations will not lead to repeated segregations exceeding a total of 4 years, and that segregation will not occur unless there is a very high likelihood that the withdrawal process will occur within the initial two years of the segregation. Please clarify this point, otherwise there is potential for abuse of this "temporary" segregation process.

ROW Applicants
If BLM proceeds with the segregation of lands, each ROW applicant must be heavily scrutinized. The process for installing a major wind or solar energy facility includes many obstacles for developers. From securing financing and wind turbines to extensive permitting requirements, developing wind and solar facilities demands an experienced, financially-secure entity to lead each phase of development. We are concerned that ROW applications filed by unfit developers may close lands to legitimate mining claims for up to four years. This is especially troublesome for closures to high mineral potential lands. The interim and proposed rule discusses complexities with resolving legitimate and potentially illegitimate mining claims in areas where renewable energy ROW applications are being filed. Similar concerns could be levied by mining claim holders withheld from their claims by unfit ROW applicants. Therefore, we request BLM issue field office forward guidance for evaluating ROW applications during pre-application meetings and the application process.

Rare Earth Elements
The Obama administration has recognized the vital need to rapidly secure a domestic supply chain of rare earth elements (REE). The United States Department of Energy (DOE) issued a Request for Information regarding Critical Minerals Strategy in 2011. States are in the process of evaluating their critical mineral resources for the DOE. It is important for BLM to consider areas identified with REE potential when evaluating areas for wind and solar energy production potential and ROW applications. We suggest that with the increasing significance of REEs that BLM remove the areas identified with high REE potential from wind and solar rights-of-way consideration. We also suggest that BLM provide for completion of states' REE evaluations before identifying areas to set aside land for future renewable energy ROWs.

Lands with Wilderness Characteristics and recommended Wilderness
On June 1, 2011, the US Department of the Interior announced it would not implement its Wild Lands policy (Order 3310) on BLM lands. However, BLM will continue to identify lands with wilderness characteristic and is soliciting input from Congress, state and local officials, tribes, and federal land managers to identify BLM lands that may be appropriate for Congress to designate as Wilderness. Where lands are segregated for wind and solar energy development, wilderness protection would be incongruent. BLM Policy 6300-2.12 (B) and (C) outline factors to be considered when evaluating Lands with Wilderness Characteristics. These factors include manageability and resource values of the land. With the promulgation of the renewable energy segregation of lands, BLM will evaluate its lands for areas with potential wind and solar energy development. Identifying segregation lands for renewable energy should remove said lands from consideration as LWCs or recommended Wilderness due to the presence of other resources and development potential (BLM Policy 6300-2.12(C)(1) and (2)).

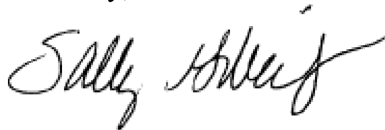
Withdrawals and ANILCA
We understand that BLM has statutory authority under FLPMA to segregate land while withdrawals are considered; however, ANILCA §1326(a) states that the executive branch shall not withdraw more than 5,000 acres in the aggregate of public lands within Alaska unless notice is provided in the Federal Register and to both Houses of Congress. At such point, the withdrawal shall "*terminate unless Congress passes a joint resolution of approval within one year after the notice of such withdrawal has been submitted to Congress*." Large wind energy facilities typically require tens of thousands of acres. Segregating lands for renewable energy development will approach and possibly exceed the withdrawal threshold stated in ANILCA. The BLM must be mindful of ANILCA's stricter requirements when considering the applicability of the interim and proposed regulations in Alaska.

State Top-Filings
ANILCA §906(e) allows the State of Alaska to file future selection applications and amendments ("top-filings") thereto pursuant to Section 6(a) and (b) of the Alaska Statehood Act. While BLM lands selected for conveyance to the State are already segregated from appropriation under public land laws, top-filed selections are not segregated. Segregation would impede selection status for these lands once they become

available to the State. Alaska has over 11 million acres of top-filed lands awaiting resolution for future selection. If BLM identifies lands in Alaska for segregation for renewable energy ROWs, we request BLM review the Alaska Land Information System and/or the Master Title Plats to avoid areas where the State has top-filings. Additionally, if renewable energy ROW applications are received for state-selected or top-filed lands, BLM must request the State's concurrence to ROW action pursuant to ANILCA §906(k)(1).

Thank you for the opportunity to provide these comments. If you have any questions, please contact Sue Magee at 907-269-7477 or Susan_Magee@alaska.gov.

Sincerely,



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