



THE STATE
of **ALASKA**
GOVERNOR SEAN PARNELL

ANILCA Implementation Program

OFFICE OF PROJECT MANAGEMENT AND PERMITTING

550 West Seventh Avenue, Suite 1430
Anchorage, Alaska 99501
Main: 907.269.8690
Fax: 907.269.5673

December 14, 2012

Andy Lorenger, Refuge Manager
Kenai National Wildlife Refuge
P.O. Box 2139
Soldotna, Alaska 99669-2139

Dear Mr. Lorenger:

The State of Alaska (State) reviewed the U.S. Fish & Wildlife Service (Service) Environmental Assessment (EA) for the Shadura 3D Seismic Project on the Kenai National Wildlife Refuge (Refuge) to consider authorizing inholder access this winter under a Special Use Permit (SUP). The following comments represent the consolidated views of the State's resource agencies.

The State is supportive of the proposed action to authorize access to Refuge lands for the purpose of surveying privately owned subsurface estate under §1110(b) of the Alaska National Interest Lands Conservation Act (ANILCA). Accurately noted on page 1-6, ANILCA §1110(b) and implementing regulations assure inholders "*adequate and feasible access* for economic and other purposes" (emphasis added). This is frequently characterized as "reasonable access" in the EA. As noted in our June 1, 2012 supplemental scoping comments on the proposed Shadura National Gas Development Project, it is essential that the exact wording in ANILCA is reflected in consideration of the alternatives and the subsequent Decision Notice to ensure Congressional intent in granting this important right of access is accurately supported.

The State supports authorizing the proposed activities through a SUP to provide for adequate and feasible access to valid inholdings through seismic imaging technology. The ability to image subsurface estate is a critical though novel type of "access" to inholdings made possible through technological advances. The proposed seismic program appears to be the least intrusive means of accessing subsurface inholdings considering its minimal surface disturbance both during the survey and any subsequent development, since the detailed images can promote optimal site placement. The project area includes a diverse mosaic of ownership and reserved rights, including state land, which is characteristic of the region. The project area naturally extends beyond the lease areas considering the nature of the seismic program, which requires a larger area of surface activity than the subsurface area being imaged. The State would agree that the expanded project area is necessary to provide adequate and feasible access to the subsurface estate for this reason.

The specific timing of some activities described in the EA is vague. For example, the project description includes some activity phases, which are or will be in the past once the Decision

Notice is issued. Further, when comparing the timeline to the project description precisely, it is unclear when some activities will occur, even though the EA analyzes the potential impacts assuming all project-related activities occur in three months during winter. Regardless, the proposed activities where timing is vague (e.g., avoidance area flagging, receiver node placement/recovery, debris clean-up and source point remediation) would likely have minor impacts, if any, year-round.

The EA often describes the proposed activities as access to inholdings, citing both ANILCA and implementing regulations. However, the Table listing major authorizing actions (Table 1-1 on page 1-7) only references the Refuge System Administration Act and the Refuge Recreation Act with regard to the SUP. While those statutes provide the authority to issue SUPs in general, ANILCA §1110(b) and 43 CFR 36.10 apply to the authorization, as well.

The Table also omits the required Fish Habitat Permits from the Alaska Department of Fish and Game (ADF&G). The EA states: “Project activities would occur when all areas of surface water would be frozen. In addition, source holes would not be drilled nor charges detonated in water or within resource protection buffer zones.” NordAq has agreed to a 200-foot setback for the Swanson River and a 100-foot setback for all other water bodies during the seismic survey. ADF&G has issued Fish Habitat Permit FH 12-V-0381 for activities in certain locations along the Swanson River, Stormy Lake Outlet Creek and two unnamed streams numbered 247-90-10020-2011 and 244-30-10010-2025-3041. ADF&G has also issued the 2012 general Fish Habitat Permit 12-V-0001-GP and has agreed to issue the 2013 general permit 13-V-0001-GP to authorize use of snowmachine travel on frozen water bodies. We ask that these permits be listed as required permits. For more information, please contact Ginny Litchfield at the Kenai River Center, (907) 260-4882, or via email at ginny.litchfield@alaska.gov.

Maps of the project area depict activities as occurring outside of the Captain Cook State Recreation Area. Unlike project-related activities occurring on general State lands covered under a Miscellaneous Land Use Permit from the Division of Oil and Gas, activities occurring within or impacting park lands would require a permit from the Division of Parks and Outdoor Recreation. For more information, please contact Pam Russell, (907) 714-2471, or via email at pamela.russell@alaska.gov.

The State appreciates the Service’s efforts to work with the applicant to help survey oil and gas resources in the region. Thank you for the opportunity to comment. If you have any questions, please contact me at (907)269-7529.

Sincerely,

s//s

Susan Magee
ANILCA Program Coordinator

cc: Peter Wikoff, USFWS