

*Director's Protest Resolution Report*

**Delta River Special  
Recreation Management  
Area Plan and East Alaska  
Resource Management Plan  
Amendment**

December 9, 2011



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## Reader's Guide

### *How do I read the Report?*

The Director's Protest Resolution Report is divided into sections, each with a topic heading, excerpts from individual protest letters, a summary statement (as necessary), and the Bureau of Land Management's (BLM's) response to the summary statement.

### **Report Snapshot**

**Issue Topics and Responses**  
NEPA

**Topic heading**

**Submission number**

**Issue Number:** PP-CA-ESD-08-0020-10  
**Protest issue number**

**Organization:** The Forest Initiative  
**Protesting organization**

**Protester:** John Smith  
**Protester's name**

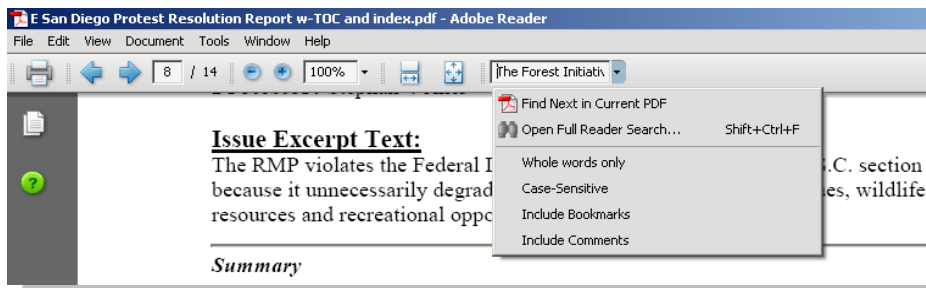
**Issue Excerpt Text:**  
Rather than analyze these potential impacts, as required by NEPA, BLM postpones analysis of renewable energy development projects to a future case-by-case analysis.  
**Direct quote taken from the submission**

**Summary**  
General statement summarizing the issue excerpts (optional).  
There is inadequate NEPA analysis in the PRMP/FEIS for renewable energy projects.

**Response**  
BLM's response to the summary statement or issue excerpt if there is no summary.  
Specific renewable energy projects are implementation-level decisions rather than RMP-level decisions. Upon receipt of an application for a renewable energy project, the BLM would require a

### *How do I find my Protest Issues and Responses?*

1. Find your submission number on the protesting party index which is organized alphabetically by protester's last name.
2. In Adobe Reader search the report for your name, organization or submission number (do not include the protest issue number). Key word or topic searches may also be useful.



## List of Commonly Used Acronyms

ACEC	Area of Critical Environmental Concern	NHPA	Act of 1969 National Historic Preservation Act of 1966, as amended
APD	Application for Permit to Drill	NOA	Notice of Availability
ASLW	Assistant Secretary for Land and Water	NOI	Notice of Intent
BA	Biological Assessment	NRHP	National Register of Historic Places
BLM	Bureau of Land Management	NSO	No Surface Occupancy
BMP	Best Management Practice	OHV	Off-Highway Vehicle (has also been referred to as ORV, Off Road Vehicles)
BO	Biological Opinion	ORV	Outstandingly Remarkable Value
CAA	Clean Air Act	RFDS	Reasonably Foreseeable Development Scenario
CEQ	Council on Environmental Quality	RMP	Resource Management Plan
CFR	Code of Federal Regulations	RMZ	Recreation Management Zone
COA	Condition of Approval	ROD	Record of Decision
CSU	Controlled Surface Use	ROW	Right-of-Way
CWA	Clean Water Act	SA/DEIS	Staff Assessment/Draft EIS
DM	Departmental Manual (Department of the Interior)	SHPO	State Historic Preservation Officer
DOI	Department of the Interior	SO	State Office
DR	Decision Record	SRMAP/PA	Special Recreation Management Area Plan/Plan Amendment
EA	Environmental Assessment	T&E	Threatened and Endangered
EIS	Environmental Impact Statement	USC	United States Code
EO	Executive Order	USDA	United States Department of Agriculture
EPA	Environmental Protection Agency	USDI	United States Department of Interior
ESA	Endangered Species Act	USGS	U.S. Geological Survey
FEIS	Final Environmental Impact Statement	VRM	Visual Resource Management
FLPMA	Federal Land Policy and Management Act of 1976	WA	Wilderness Area
FO	Field Office (BLM)	WHMA	Wildlife Habitat Management Area
FR	Federal Register	WSA	Wilderness Study Area
FWS	U.S. Fish and Wildlife Service	WSR	Wild and Scenic River(s)
GIS	Geographic Information Systems		
IB	Information Bulletin		
IM	Instruction Memorandum		
MOU	Memorandum of Understanding		
NEPA	National Environmental Policy		

*Protesting Party Index*

<b>Protester</b>	<b>Organization</b>	<b>Submission Number</b>	<b>Determination</b>
John Burns	State of Alaska Attorney General	PP-AK-DeltaRiver- 11-01	Denied—Issues, Comments
Stan Leaphart	State of Alaska Citizens' Advisory Commission on Federal Areas	PP-AK-DeltaRiver- 11-02	Denied—Issues, Comments

## Public Participation

**Issue Number:** PP-AK-DeltaRiver-11-01-32

**Organization:** State of Alaska Attorney General

**Protester:** John Burns

### Issue Excerpt Text:

We protest both the lack of public review of the Wilderness Characteristics Inventory included in the Plan and potential ramifications that this after-the-fact analysis will apparently have on proposed and future management actions, including the Plan's adaptive management strategy. The Wilderness Characteristics Inventory was not included or referenced in the March 23, 2010 draft plan, and was not subject to public comment. Though labeled "Appendix 8.5," the Inventory was not included in the Plan itself. The Plan references the availability of the inventory in the planning record (see page 84, Sec. 3.2.13) and significantly revises Sections 3.2.13 and 4.3.13 to incorporate what appears to be new information. This new information was not made available to the public for review and comment.

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**Issue Number:** PP-AK-DeltaRiver-11-02-13

**Organization:** State of Alaska Citizens' Advisory Commission on Federal Areas

**Protester:** Stan Leaphart

### Issue Excerpt Text:

The deficiencies in the BLM's approach to the public process for this planning effort are further exemplified by the manner in which the wilderness characteristic issue was addressed. After the issue was basically dismissed in the scoping report, the draft EA contained very little information related to wilderness characteristics within the Delta WSR corridor. Consequently, the public had little information on which to base comments or assess the connection between management decisions and potential wilderness characteristics.

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**Issue Number:** PP-AK-DeltaRiver-11-02-2

**Organization:** State of Alaska Citizens' Advisory Commission on Federal Areas

**Protester:** Stan Leaphart

### Issue Excerpt Text:

Despite agency claims to the contrary, the opportunities for public participation during the review period for the draft environmental assessment were inadequate. The original public comment period was limited to 30 days. It was extended to 45 days only after this Commission and others made requests

for additional time. Even then we were advised of the decision to extend only 2 days prior to the end of the original 30 day comment period. No public meetings were held during the comment and review period, further reducing the public's opportunity to comment. The Commission's request to the Glennallen Field Office manager and the Anchorage District Office manager that public meetings be held was denied.

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**Issue Number:** PP-AK-DeltaRiver-11-02-5

**Organization:** State of Alaska Citizens' Advisory Commission on Federal Areas

**Protester:** Stan Leaphart

### Issue Excerpt Text:

While the agency maintains that minimum NEPA public participation guidelines were met with regard to this environmental assessment and plan amendment, an examination of the overall picture clearly demonstrates the deficiencies in this planning effort.

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**Issue Number:** PP-AK-DeltaRiver-11-02-50

**Organization:** State of Alaska Citizens' Advisory Commission on Federal Areas

**Protester:** Stan Leaphart

### Issue Excerpt Text:

Through its actions on the wilderness inventory, it appears the BLM considers the process to be an internal one. This Commission, even though we had participated in the review of the draft EA and had asked to be kept informed of any developments in the plan, was not advised that an inventory was being conducted. To our knowledge none of the other State of Alaska agencies were notified. No notice to the public was made of the agency's intent to conduct the inventory using any of the methods listed by the BLM for its public outreach program on the development of the draft EA and plan. Given the considerable controversy over the issue of Wilderness Characteristics, Wilderness Inventories and the ill-conceived BLM Wild Lands Program, the BLM must reconsider its approach on conducting future wilderness inventories and provide for public participation in the inventory process.

The BLM maintains the provisions of Sections 201 and 202 of the Federal Land Policy and Management Act require it to conduct and maintain wilderness characteristics inventories. The agency should not have to be reminded that those same sections require it to provide State and local governments with data

from the inventory and to involve the public in the development, maintenance and revision of land use plans for the public lands under its management. The agency should have provided notice to the State of Alaska, local communities, tribal governments and the general public when it initiated the wilderness characteristics inventory. It also should have provided the opportunity for all interested parties to participate in the process and to review the inventory.

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**Issue Number:** PP-AK-DeltaRiver-11-02-7  
**Organization:** State of Alaska Citizens' Advisory Commission on Federal Areas  
**Protester:** Stan Leaphart

**Issue Excerpt Text:**

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***Summary***

The BLM failed to provide an adequate opportunity for public participation and comment in the land use planning process, particularly with regards to the wilderness characteristics inventory.

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***Response***

The BLM has fully complied with public participation requirements provided in BLM planning regulations (43 CFR §§ 1601-1610), and NEPA regulations promulgated by CEQ (40 CFR §§ 1500-1508). Although the CEQ regulations do not require agencies to make EAs available for public comment, the regulations direct agencies to encourage and facilitate public involvement in the NEPA process to the fullest extent possible (40 C.F.R. 1500.2(d); 40 C.F.R. 1506.6). This means that while some involvement is required in the preparation of the EA, the agency has the discretion to determine how much, and what kind of public involvement works best for each individual EA (BLM Land Use Planning Handbook, H-1601-1, p. 28; BLM NEPA Handbook, H-1790-1, p. 76).

The BLM provided appropriate opportunities for public participation in the development of the proposed Special Recreation Management Area Plan/Plan Amendment (SRMAP/PA). The opportunities for public participation are detailed in Section 1.9 of the SRMAP/PA. A Notice of Intent to initiate the planning process was published in the *Federal Register* on April 10, 2008. Scoping comments were accepted for 60 days, beginning July 15, 2008, and ending on September 15, 2008. The BLM elected to provide a 45-day public comment period on the Draft EA. The BLM incorporated the public's comments into the proposed SRMAP/PA. Responses to the public's comments can be found in Section 8.4 of the proposed SRMAP/PA.

As required by FLPMA (see 43 U.S.C. § 1711(a) and Washington Office Instruction Memorandum 2011-154), the BLM prepared and maintained a wilderness characteristics inventory for the planning area. The BLM prepared the inventory after the release of the Draft EA. The inventory confirmed the presence of wilderness characteristics that were previously identified in Section 3.2.13 of the Draft EA, and did not identify any new areas with wilderness characteristics. The inventory was incorporated by reference into the proposed SRMAP/PA and was used to provide a more robust analysis of impacts to wilderness characteristics. The BLM

And, as noted above, no public meetings were held during the 2010 comment period for the draft EA and plan.

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**Issue Number:** PP-AK-DeltaRiver-11-02-9  
**Organization:** State of Alaska Citizens' Advisory Commission on Federal Areas  
**Protester:** Stan Leaphart

**Issue Excerpt Text:**

The agency has held no meeting, workshop, or open house at which the general public could discuss the draft plan and its alternatives with agency staff, ask questions or present comments.

made the inventory available in the Administrative Record located at the BLM Glenallen Field Office (SRMAP/PA p. 84). The BLM will also include the inventory as an appendix to the Decision Record (DR) and final SRMAP/PA.

The BLM is not required to provide an opportunity for the public to participate in the wilderness characteristics inventory process. Preparing and maintaining the wilderness characteristics inventory is a BLM responsibility separate from the BLM's consideration of wilderness characteristics through the land use planning process; it does not, of itself, change or prevent change of the management or use of the public lands (43 U.S.C. § 1711(a)).

As noted above, however, BLM planning regulations do direct the BLM to provide for public involvement in the development and amendment of resource management plans (43 CFR § 1601.0-8; 43 CFR § 1610.2(a)). With respect to wilderness characteristics inventory, the BLM fulfills this obligation by accepting, reviewing, and analyzing technical information submitted by the public regarding wilderness characteristics. Members of the public, which includes officials of State, local, and Indian tribal governments, may not be on BLM inventory teams, but may choose to submit wilderness characteristics inventory information for consideration by the BLM in the inventory process (Washington Office Instruction Memorandum 2011-154, Attachment 1).

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### *Fish, Wildlife, Plants, and Special Status Species*

**Issue Number:** PP-AK-DeltaRiver-11-01-23

**Organization:** State of Alaska Attorney General

**Protester:** John Burns

recognize this provision in ANILCA, or the State's general authority to manage its fish and wildlife resources.

#### **Issue Excerpt Text:**

Section 1314(a) of ANILCA specifically recognizes and protects State authority for managing fish and wildlife on all lands in Alaska: Nothing in this Act is intended to enlarge or diminish the responsibility and authority of the State of Alaska for management of fish and wildlife on the public lands except as may be provided in title VIII of this Act, or to amend the Alaska constitution. As written, the Plan does not

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**Issue Number:** PP-AK-DeltaRiver-11-01-53

**Organization:** State of Alaska Attorney General

**Protester:** John Burns

#### **Issue Excerpt Text:**

Sec.2.2.1.5 ORV-Wildlife, Management Objectives: Ensure sound wildlife management (BLM is not the wildlife manager).

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### ***Summary***

The proposed SRMAP/PA establishes wildlife management objectives that are inconsistent with the State of Alaska's authority to manage fish and wildlife resources.

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### ***Response***

The proposed SMRAP/PA does not establish management objectives that are inconsistent with the State of Alaska's authority to manage fish and wildlife resources on all lands in Alaska under Section 1314(a) of ANILCA.

The proposed SRMAP/PA states that "wildlife habitat management will be consistent with Federal and Alaska Department of Fish and Game (ADF&G) objectives and mandates"



(SRMAP/PA p.5). In response to the State of Alaska Department of Natural Resources' comments on the draft EA, the BLM also specifically clarified that "references in the text to a Federal subsistence hunting area does not preclude these [fish and wildlife] responsibilities of the State, but rather, highlights the availability of such areas where Federally-qualified rural residents may take subsistence resources using a Federal subsistence permit." (SRMAP/PA p. 193).

To provide further clarification, the BLM will include a statement in the DR and final SRMAP/PA that the management of fish and wildlife will be in accordance with the Master Memorandum of Understanding between the Alaska Department of Fish and Game and the Bureau of Land Management, dated August 3, 1983 (AK-950-MU3-11). The Master Memorandum of Understanding will also be included as an appendix to the DR and final SRMAP/PA.

Specifically, the Master Memorandum of Understanding establishes that the BLM will:

- recognize the Department [of Fish and Game] as the primary agency responsible for management of use and conservation of fish and wildlife resources on Bureau lands;
- recognize the Department [of Fish and Game] 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;
- manage Bureau lands so as to conserve and enhance fish and wildlife populations. (Master Memorandum of Understanding, p. 2-3)

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### *Travel Management*

**Issue Number:** PP-AK-DeltaRiver-11-01-13  
**Organization:** State of Alaska Attorney General  
**Protester:** John Burns

**Issue Excerpt Text:**

Tangle Lakes Zone 1 Page 18 -Outcomes to be avoided: Motorized boating, Airplane Landings.

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**Issue Number:** PP-AK-DeltaRiver-11-01-18  
**Organization:** State of Alaska Attorney General  
**Protester:** John Burns

**Issue Excerpt Text:**

Delta River Zone 4 Page 32 -Outcomes to be avoided: Motorized boating, Airplane landings.

**Issue Number:** PP-AK-DeltaRiver-11-01-51  
**Organization:** State of Alaska Attorney General  
**Protester:** John Burns

**Issue Excerpt Text:**

ANILCA 1110(a) explicitly permits motorized boating and airplane landings in conservation system units (CSUs) in Alaska, subject to reasonable regulation to protect the resource values of the CSU. Motorized boating and airplane landings may only be prohibited after notice and hearing and a specific finding by the Secretary that such use is detrimental to the resource values of the CSU.

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### *Summary*

The proposed SRMAP/PA establishes motorized boating and airplane landings as "outcomes to be avoided" for Tangle Lakes Zone 1 RMZ and Delta River Zone 4 RMZ. This is inconsistent with ANILCA §1110(a).

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***Response***

The proposed SRMAP/PA does not establish “outcomes to be avoided” that are inconsistent with ANILCA §1110(a) and its implementing regulations.

Land use plans must identify desired outcomes expressed in terms of specific goals and objectives. Desired outcomes direct the BLM’s actions in most effectively meeting legal mandates, regulatory responsibilities, national policy, State Director guidance, and other resource or social needs (BLM Land Use Planning Handbook, H-1601-1, p. 12).

The identification of motorized boating and airplane landings as “outcomes to be avoided” in the Tangle Lakes Zone 1 and Delta River Zone 4 RMZs provides management direction that supports the unique recreation values of the Delta River SRMA (SRMAP/PA p. 18, 32). It does not authorize or prescribe any specific, on-the-ground action. Therefore, the BLM is not required to conduct ANILCA §1110(a) closure procedures as specified at 43 CFR § 36.11(h).

The BLM, however, has decided to remove motorized boating and airplane landings as “outcomes to be avoided” for the Tangle Lakes Zone 1RMZ and Delta River Zone 4 RMZ. Since the BLM has found that the current level of motorized boating and airplane landings do not warrant an ANILCA closure (SRMAP/PA p. 175), removing these activities as “outcomes to be avoided” will eliminate confusion regarding allowable activities and access to these RMZs. This change will be reflected in the DR and final SRMAP/PA.

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***Wild and Scenic Rivers***

**Issue Number:** PP-AK-DeltaRiver-11-01-28

**Organization:** State of Alaska Attorney General

**Protester:** John Burns

**Issue Excerpt Text:**

We protest the process and subsequent designation of ORVs for the Delta Wild and Scenic River. BLM has not defined an area, region, or scale of comparison for the various values proposed. Nor has BLM explained how each value is a unique, rare, or exemplary feature that is significant at a comparative regional or national scale...ORVs are likely to be used to justify more restrictive management.

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***Response***

The BLM identified outstandingly remarkable values (ORV) for the Delta Wild and Scenic River (DWSR) through a study process to determine what values or characteristics make the DWSR worthy of special protection (SRMAP/PA p.11). The determination of whether an area contains an ORV is a professional judgment on the part of the agency’s study team (USDI-USDA Final Revised Guidelines for Eligibility, Classification, and Management of River Areas, 47 FR 39457). The BLM documented the process for identifying ORVs in Section 2.2.1 and Section 8.4 of the SRMAP/PA. A summary of this process is provided below:

In 2007, in cooperation with the State of Alaska, the BLM researched the ANILCA legislative history to determine if ORVs for the DWSR were established by legislation. The BLM concluded that ORVs for the DWSR were not identified in the designating legislation, Public

Law 96-487. Upon further inspection of the original WSR eligibility and suitability studies for the Delta River (“Delta River: A Wild and Scenic River Analysis”, Bureau of Outdoor Recreation, March 1976; “Draft Environmental Statement: Proposed Designation of the Delta River as an Element of the National Wild and Scenic Rivers System”, Heritage Conservation and Recreation Service, 1978; and “Delta River: A Wild and Scenic River Analysis”, Heritage Conservation and Recreation Service, February 1978), the BLM found numerous references to “outstanding values”, including scenic, fish, wildlife, recreational, archeological, and geologic values.

The BLM reviewed the context of the “outstanding values” referenced in the original WSR eligibility and suitability studies for the Delta River and subsequent DWSR documents, and compared those values to the criteria for identifying ORVs provided by the Interagency Wild and Scenic River Coordinating Council (SRMAP/PA p. 11). As a result of this review, the BLM concluded that recreation, scenic, cultural, fisheries, and wildlife values met the criteria for ORV designation for the Delta WSR.

Section 10(a) of the Wild and Scenic Rivers Act requires the responsible agency to manage WSR segments to protect and enhance the values for which the river was designated (USDI-USDA Final Revised Guidelines for Eligibility, Classification, and Management of River Areas, 47 FR 39458). The BLM fulfills this obligation by establishing appropriate management guidelines and standards that enhance ORVs and protect them from degradation. Detailed descriptions and management objectives for the recreation, scenic, cultural, fisheries, and wildlife ORVs can be found in Sections 2.2.1.1, 2.2.1.2, 2.2.1.3, 2.2.1.4, and 2.2.1.5 of the proposed SRMAP/PA, respectively.

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