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President

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September 16, 2024

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U.S. Department of the Interior
Bureau of Land Management
222 University Avenue
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Submitted via email: BLM_NPRA_SpecialAreas@blm.gov

Subject: RFI: Special Areas in the National Petroleum Reserve in Alaska

Dear Ms. McIntosh:

ConocoPhillips Alaska, Inc. (“ConocoPhillips”) submits the following information in response to the BLM’s notice “seeking written feedback and information from the public to inform whether to initiate a process to consider changes to the Special Areas identified in the current IAP.”¹

The RFI is a continuation of BLM’s recent efforts to shift the NPR-A away from oil and gas leasing and energy production. Those efforts conflict with governing law, reduce public involvement and transparency, fail to serve the public interest, and erode the balanced and durable approach to regulating activities in the Petroleum Reserve that previously existed.

The five existing special areas are the product of the NPR-A Integrated Activity Plan (“IAP”), which was most recently updated in 2022 under Secretary Haaland. Although ConocoPhillips did not support the current IAP, BLM should adhere to it unless and until a new IAP is adopted following a transparent public process in which affected Alaska communities and other stakeholders have an opportunity to review and comment on specific proposals.

¹ Special Areas Within the National Petroleum Reserve in Alaska, 89 Fed. Reg. 58,181, 58,182 (July 17, 2024).

ConocoPhillips holds 156 federal NPR-A leases, 82 of which are in special areas. ConocoPhillips currently produces oil from the NPR-A through wells in the Greater Mooses Tooth Unit and the Colville River Unit, and we plan additional production in the future from the Bear Tooth Unit, where infrastructure is currently under construction.

1. BLM's process conflicts with the law.

This RFI is not a neutral and isolated request for information. BLM announced the RFI in a press release on July 12, 2024, six days after the effective date of BLM's controversial new regulations² that "revise[] the framework" for the NPR-A by establishing "new standards and procedures" for special areas. In those new regulations, BLM purports to change the management priority for special areas to "maximum protection,"³ impose a presumption against oil and gas activities special areas,⁴ and impose "interim measures"⁵ in areas that are under consideration for potential future designation as special areas.

The steps that BLM will take under its new approach to special areas are stated in the new regulation:

This includes, but is not limited to, conditioning, delaying action on, or denying proposals for activities, either in whole or in part, and ensuring that leasing and production is approved only subject to the provisions of this section.^[6]

The new regulations purport to allow for activities "necessary to comport with the terms of a valid existing lease,"⁷ but BLM has declined to provide any clarification of what that means.

The new rule conflicts with Congress's governing law for the NPR-A, including the mandate that BLM "shall conduct an expeditious program of competitive leasing of oil and gas in the Reserve in accordance with the Act."⁸ This conflict is one reason that five complaints have been filed in federal court to challenge the regulation, including complaints from VOICE of the Arctic Iñupiat, The State of Alaska, the North Slope Borough, ConocoPhillips Alaska, and North Slope Exploration. These complaints are from diverse perspectives, and state a

² Management and Protection of the National Petroleum Reserve in Alaska, 89 Fed. Reg. 38,712 (May 7, 2024).

³ 43 C.F.R. § 2361.40.

⁴ 43 C.F.R. § 2361.40(f).

⁵ 43 C.F.R. § 2361.30(b)(4).

⁶ 43 C.F.R. § 2361.40(a).

⁷ 43 C.F.R. § 2361.40(f).

⁸ 42 U.S.C. § 6506a(a).

variety of claims establishing the unlawfulness of the new regulations. It is premature for BLM to take any further actions under those regulations—including designation of new or expanded special areas—until those claims are resolved.

2. Special areas are not intended to preclude oil and gas activities.

The RFI's call for special area expansion recommendations, in conjunction with the new regulations, has the effect of undermining a viable oil and gas leasing program. Under the new regulations, special area designation creates significant additional regulatory impediments to exploration, development, and production. That undermines the private investment in oil and gas leases that Congress sought to foster by adopting a leasing program. Using special areas to impede development is not necessary for the reasonable regulation of oil and gas activities,⁹ and it is not consistent with Congressional intent or BLM past practice.

It was clear from the first special area designation in 1977 that special areas are not intended to preclude oil and gas activities: "Maximum protection of designated special areas does not imply a prohibition of exploration or other activities."¹⁰ Courts have upheld that view as correctly following the law established by Congress:

Although Congress directed 'maximum protection' be accorded to significant surface values in the [Teshekpuk Lake] and other Special Areas while undertaking oil and gas activities in the NPR-A, it still clearly envisioned that [Special Areas] would be developed for oil and gas production.^[11]

BLM now presumes that oil and gas activities will not be allowed in special areas, and claims authority to impose restrictions even in areas that are subject to an "internal or external recommendation" for future designation as a new special area.¹² In other words, the mere idea for a new or expanded special area – such as might be presented in response to the RFI – can result in BLM asserting additional restrictions on economic development opportunities, potentially even on lands that have already been leased in the Petroleum Reserve.

⁹ BLM has authority to impose reasonable mitigation measures entirely independent of special areas. See 42 U.S.C. § 6506a(b).

¹⁰ National Petroleum Reserve in Alaska, Designation of Special Areas, 42 Fed. Reg. 28,723 (June 3, 1977).

¹¹ *Sovereign Inupiat for a Living Arctic v. Bureau of Land Mgmt.*, 701 F. Supp. 3d 862, 880 (D. Alaska 2023) (emphasis added).

¹² 43 C.F.R. § 2361.30(b)(4).

Further, BLM has committed to a full public process only when there is a proposal for reduction or elimination of a special area, as opposed to expansion or creation of a special area,¹³ so interim measures could be asserted without ever having invited public comment on a specific proposal. That is entirely inconsistent with past practice and applicable law. BLM should not forge ahead with special area expansions or the imposition of interim measures. Doing so would only compound the errors that BLM has made in the new, disputed regulations, as well as violate the Administrative Procedure Act by failing to comply with notice-and-comment rulemaking requirements.

3. BLM should adhere to the IAP process for transparency and public involvement.

The new regulations make no mention of an RFI process, and BLM has declined to provide any assurance about what might happen after the RFI closes. BLM's RFI notice says only that it will follow a process that allows "applicable opportunities" for public engagement.

BLM's concept of an opportunity to participate is suspect in light of the outrage expressed over BLM's adoption of the new NPR-A regulations. VOICE of the Arctic Iñupiat, for example, representing its membership of Alaska Native communities, tribes, and other North Slope organizations, has this to say in their legal challenge to the new regulation:

VOICE files this complaint to give effect to the voices of the North Slope Iñupiat and their elected leaders who overwhelmingly oppose the Final NPR-A Rule and who have been ignored throughout this entire process The Final NPR-A Rule fails to recognize the complex but critically important role that oil and gas plays in advancing the interest of all people on the North Slope.^[14]

To avoid perpetuating the error of ignoring affected stakeholders, BLM should return to its IAP process. In the new regulation, BLM allows for the possibility of following the IAP process for special area modification but makes no commitment.¹⁵ Nothing in the RFI

¹³ Compare 43 C.F.R. § 2361.30(c)(2) (BLM will provide "the public and interested stakeholders with the opportunity to review and comment on the proposed determination" to decrease special areas) with 43 C.F.R. § 2361.30(a)(2) (BLM will provide only opportunity to "participate in . . . the evaluation process").

¹⁴ Compl. for Declaratory and Inj. Relief at 5, *VOICE of the Arctic Iñupiat v. Bureau of Land Mgmt.*, No. 03:24-cv-00136 (D. Alaska June 28, 2024).

¹⁵ 43 C.F.R. § 2361.30(b)(2) ("The authorized officer may, but is not required to, conduct the evaluation and otherwise designate and amend Special Areas through amendment of the IAP.").

indicates that BLM intends to follow the IAP process. It appears, thus, that BLM is abandoning the IAP process without explaining its reversal of position.

The IAP process is rooted in the Final Environmental Impact Statement on Oil and Gas Leasing in the National Petroleum Reserve in Alaska, released in February 1983. As stated in that EIS, the process is focused on informing decisions to be made about when and where to lease lands for oil and gas (as directed by Congress), and how to manage oil and gas activities in the areas selected for leasing.¹⁶ The preferred alternative in that EIS was Alternative C, a balanced approach that supported economic development opportunity with measures to reduce environmental risk. The 1983 EIS recognized the potential of oil and gas development in the NPR-A, carefully planned in consultation with affected communities, to have a “net beneficial effect on the quality of life” for North Slope residents.¹⁷

In 1998, BLM made modifications to special areas in the IAP / EIS for the Northeast NPR-A. The record of decision for that IAP clearly contemplated that the integrated activity plan for the NPR-A is the proper document for defining special areas: “The management plan [IAP] itself sets management direction for Special Areas so new regulations are not necessary.”¹⁸ BLM designated the Kasegaluk Lagoon Special Area in the 2005 Northwestern NPR-A IAP, and the Peard Bay Special Area in the 2013 NPR-A IAP.

Since the first IAP in 1983, any time BLM has chosen to modify a special area designation or designate a new special area, it has done so through the IAP process. Nothing in the new rule or the RFI explains why BLM is, apparently, changing its policy on the use of the IAP process to designate or modify special areas.

BLM should adhere to the process that it has already established as a matter of law and precedent, and to serve the value of transparency. Any modification to NPR-A special areas should be made in the context of an IAP process with specific alternatives for consideration, analysis of the environmental and socio-economic impacts, and full opportunity for public engagement, including the legal right to review and comment on specific proposals.

¹⁶ Bureau of Land Mgmt., *Final Environmental Impact Statement on Oil and Gas Leasing in the National Petroleum Reserve in Alaska* 8 (March 1983) (“1983 EIS”).

¹⁷ *Id.*

¹⁸ Bureau of Land Mgmt., *Northeast National Petroleum Reserve – Alaska Environmental Integrated Activity Plan / Environmental Impact Statement Record of Decision* 24 (October 1998).

Conclusion

BLM's new regulations are unlawful, as is the process BLM apparently envisions with the RFI. It has strayed from the law and the IAP, diminished public engagement, and upset the balance that supports the leasing program and serves the public interest. BLM should take no further action on NPR-A special areas until the pending lawsuits are resolved. Ultimately, BLM should restore a balanced and transparent approach to NPR-A administration that follows the law and the IAP process.

Sincerely,

A handwritten signature in blue ink, appearing to be "E. Isaacson", followed by the word "for" written in a cursive script.

Erec S. Isaacson