



RESOURCE DEVELOPMENT COUNCIL

Growing Alaska Through Responsible Resource Development

December 7, 2023

Submitted electronically via: <https://www.regulations.gov/commenton/BLM-2023-0006-0001>

Department of Interior
Director, Bureau of Land Management
1849 C St. NW, Room 5646
Washington, DC 20240

Re: BLM Proposed Rule for the Management and Protection of the National Petroleum Reserve in Alaska
43 CFR Part 2360
RIN 1004-AE95

Dear Director:

The Resource Development Council for Alaska, Inc. (RDC) submits the following comments to the Bureau of Land Management's (BLM) proposed rule for the "Management and Protection of the National Petroleum Reserve in Alaska (NPR-A)" originally published on September 8, 2023 (FR 62025). This proposed rule reflects a sea change to management of the NPR-A as it was originally intended. The rule is unnecessary, overly burdensome, fails to comply with current law. For the reasons that follow, at a minimum, this proposed rule should not be adopted.

Who We Are: The RDC is a statewide, not for profit, trade association comprised of individuals and companies from Alaska's fishing, tourism, forestry, mining, and oil and gas industries. RDC's membership includes all the land-owning Alaska Native regional corporations as well as village corporations, local communities, including the North Slope Borough, organized labor, and industry support firms. RDC's purpose is to encourage a strong, diversified private sector in Alaska and expand the state's economic base through the responsible development of our natural resources. The industries RDC represents are historically significant economic drivers for Alaska's economy. Combined, these industries employ or support employment for the majority of the more than 730,000 Alaskans who call Alaska home. For more than 48 years, RDC has proud history of balancing the need for a diverse economy with the need for the responsible development of our natural resources. The proposed rule threatens to reverse that.

Comment Period Should Have Been Extended: The comment period should be extended to allow for full participation of all Alaskans, in particular, the communities of the North Slope who are most impacted by this proposed rule. This proposed rule was published on September 8, 2023, with an original public comment period deadline of November 7, that has since been extended twice to the current deadline of December 7, 2023.

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Notwithstanding these extensions, more time is needed to assess and analyze the substantive and technical changes proposed by this rule. The agency should not be rushing this process that has the effect of creating a presumption against oil and gas development in the NPR-A. RDC is not suggesting environmental standards and protections should be reduced for the Special Areas designated within the NPR-A. However, this is a major change to the long established management program for the NPR-A that needs sufficient time to assess impacts.

Further, it appears that the agency is trying to rush this process through for its own political purposes, which is an improper reason for fast-tracking such a major proposed rule. It has been reported that a representative of the agency stated during a public meeting that an extension of time was not possible because the agency had to consider timing under the Congressional Review Act (CRA). Using the CRA timeline to avoid a possible reversal in the next congress is a political maneuver that does not justify short circuiting the public process.

Failed Consultation: The proposed rule spends considerable time pointing to the importance of subsistence and the needs for Alaska's Native peoples and the North Slope communities who rely on subsistence hunting and fishing to justify this proposed rule. RDC does not dispute that subsistence is an important and critical practice for all Alaskans, including Alaska Native peoples and their communities. However, despite this focus, the BLM ignores the needs of our Alaska Native peoples during this rulemaking process. BLM published this proposed rule during a critical subsistence period for the communities on Alaska's North Slope: the fall whaling season. RDC has been told that little to no consultation has occurred between the Alaska Native entities of the North Slope, the North Slope Borough, and other key stakeholders. What little consultation or public meeting process did occur was hastily convened with little to no opportunity for local communities to receive timely notice.

Although the proposed rule claims to comply with E.O. 13175, requiring consultation and coordination with Indian Tribal Governments, including Alaska Native Tribes and ANCSA Alaska Native Corporations, the record does not support that. Sending one letter informing these stakeholders of a rulemaking effort followed by a lack of adequate consultation and doing so during an importance subsistence harvest period without granting numerous extensions of time requests from these same stakeholders fails to comply with the law and department policy. The BLM Management should not fail in its responsibility to consult with Alaska's federally recognized Tribes and Alaska Native corporation. Meaningful consultation is required by E.O. 13175 (November 6, 2000), POTUS Memo on Tribal Consultation and Nation-to-Nation Building (January 26, 2021) and DOI 512 DM 4 (2015), and DOI 512 DM 5.

The Proposed Rule Exceeds BLM Authority: This proposal creates a new, burdensome, and time-consuming administrative process for reviewing oil and gas related development activities that are contrary to the needs and purposes of the NPR-A. The proposed rule takes the instruction of maximizing protection of Special Areas under the federal NPR-A Act (NPRAA) to an extreme that is not warranted and fails to balance the need for oil and gas development to occur for the nation's energy security and independence. BLM potentially exceeds its authority by

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incorporating the Integrated Activity Plan of 2022 (IAP) into the NPR-A regulations when the NPR-A is specifically exempt from the Federal Land Management Planning Act (FLPMA) planning requirement. BLM acknowledges this in the proposed rule but goes on to say that it “nonetheless” intends to do so. In another example, BLM proposes to change the authority of officers making oil and gas related decisions from what currently must be exercised consistent with current law and after consultation with federal, state, local agencies and Native organizations to now “regardless of any existing authority.” Agencies cannot simply grant themselves the power to make decisions “regardless of any existing authority;” that is simply not how our democratic process works. If anything, this proposed change is less than clear and needs additional time for review.

Presumption Against Oil & Gas Development Violates the NPRAA: The proposed rule specifically explains, under section 2361.10, that BLM will now have the authority to delay or deny, without setting a timetable, on any activities it determines will have significant adverse effects on surface resources. This is overly broad and restrictive. Further, the proposed rule states it will “***presume ... that that oil and gas leasing or infrastructure on lands allocated as available for such activities ‘should NOT be permitted’... .***” (Emphasis added.) This directly contravenes the purpose and intent for which the NPR-A was established. The NPRAA directed DOI to be administered for domestic energy production through an oil and gas leasing program. BLM cannot create a presumption by rulemaking that it will not permit activity directed by Congress.

Further, the rule states it will not impact any current leasing approvals or permitted activity. This is not true. The proposed rule threatens harm to existing lease contracts given its clear conflict with NPR-A’s original purposes when created in 1923 and as directed by Congress through the NPRAA.

Flawed Economic Assessment: The proposed rule summarily concludes it will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act and only affects businesses in the oil and gas industry operating in the NPR-A. This is simply wrong.

The DOI’s analysis in support of the proposed rule did not account for the significant economic benefits delivered to local Alaska communities (including Alaska Native organizations) from NPR-A development. Federal law mandates that 50% of lease revenue from NPR-A projects go towards a unique grant program that prioritizes improvement projects that will deliver social and environmental justice benefits to impacted communities, many of which are Alaska Native communities. The economic analysis fails to consider the impact of local communities losing these benefits. The economic analysis also wholly fails to consider the social implications of eliminating or dramatically restricting future development in the NPR-A that would remove jobs and a substantial portion of the tax base.

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Responsible development on the NPR-A creates enormous economic benefits. The economic analysis the DOI used ignores benefits like the NPR-A Impact Mitigation Grant program. This grant program creates a legal requirement for local communities to receive generous revenues from projects. If project development is slowed or halted by the new rule, Alaska Native communities will lose enormous revenues for public services, health facilities and educational resources—to name a few impacted areas.

Further, the proposed rule will stifle any future development in currently approved areas of the NPR-A as companies will be wary to invest into developments in areas where the government can seemingly outlaw further development without cause. This chilling effect will have a dramatic economic impact.

Alaska's North Slope (ANS) energy production and infrastructure has had significant economic impact and contribution to Alaska's economy and our nation's energy security. In 2022, ANS produced an average of 482,000 bpd. Since the Trans Alaska Pipeline Systems (TAPS) was created, ANS has produced over 18.5 billion barrels of oil. In 2022, this support 69,250 jobs in Alaska, or 16% of employment in Alaska and accounting for \$5.9 billion in wages, or 17% of wages in Alaska. Alaska's oil and gas industry contributed \$4.5 billion in revenue to state and local governments, comprising 47% of state revenue in 2022. Over time, since statehood in 1959, the oil and gas industry has produced \$274 billion in petroleum revenues to the State. This is a significant economic impact that is threatened by this proposed rule if implemented.

Failed Unfunded Mandates Reform Act Assessment: Similarly, the proposed rule concludes without explanation that it would not have a significant or unique effect on State, local, or Tribal governments. This is also simply false. Diminished oil production from the NPR-A would result in diminished production tax and ad valorem tax revenue for the State and local governments in Alaska. This means less revenue for the State of Alaska to provide services to all Alaskans. The BLM's reasoning in this regard also likely violates its conclusion that this does not have federalism implications under E.O. 13132.

The Proposed Rule is a Direct Threat to America's Energy Security: The proposed rule concludes it will not adversely affect our national energy security in contravention of E.O. 13211. In almost the same breath, the agency states the proposed rule will **"presume ... that that oil and gas leasing or infrastructure on lands allocated as available for such activities 'should NOT be permitted'..."** (Emphasis added.) There is no way to explain the logic of this assessment. A presumption against approving oil and gas leasing absolutely equates to less development of oil and gas energy resources.

Analysis from the U.S. Geological Survey estimates there are 8.7 billion barrels of undiscovered oil in the NPR-A, an area set aside by the Federal government specifically for petroleum development. By denying or dramatically restricting development in the region, the Administration is denying Alaskans—and all Americans—reliable,

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affordable energy, as well as billions of dollars in revenues. We cannot afford to further limit U.S. production, which will only increase our reliance on foreign nations, including adversarial nations, amid rising geopolitical threats. At a time when oil prices are rising and global supply can be easily constricted by foreign governments, investing in domestic oil production is a matter of national and energy security. During a time of high inflation across the country, this misguided rule will almost certainly lead to higher energy prices for working class families across America. Restricting access to energy development limits consumers' access to affordable, reliable energy.

Furthermore, oil production on the North Slope and in the NPR-A contributes to the Trans-Alaska Pipeline System (TAPS), a vital piece of U.S. infrastructure. Oil produced in the NPR-A will keep TAPS economically viable and capable of providing oil to the rest of the United States and beyond. Restricting future development of the NPR-A by creating a presumption against permitting the uses for which the NPR-A was specifically developed directly threatens our energy security.

Conclusion: As indicated above, this process is being fast-tracked, lacks transparency, possibly exceeds the agency's legal authority, and lacks proper consultation as required by department policy. At the very least, the complexity of the new proposal warrants additional time for public review and scrutiny and, importantly, meaningful consultation with the Alaska Native tribal entities, corporations, and communities most impacted by these decisions.

Thank you for your consideration of these comments.

Sincerely,

Leila Kimbrell
Executive Director



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