

August 4, 2025

Submitted via the Federal eRulemaking Portal

Kyle Moorman, Chief
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Re: Comments on the Proposed Rescission of the Management and Protection of the National Petroleum Reserve in Alaska Regulations, 90 Fed. Reg. 23507 (June 3, 2025)

Dear Mr. Moorman:

On behalf of the Attorneys General of Washington, California, Illinois, Minnesota, and Vermont, please accept these comments opposing the Bureau of Land Management's (BLM or Agency) proposal to rescind the 2024 Management and Protection Regulations of the National Petroleum Reserve–Alaska (Proposal).¹ BLM's Proposal is only the latest in this federal administration's attempts to promote oil and gas development at the expense of the environment and compliance with the law. The Management and Protection of the National Petroleum Reserve in Alaska Final Rule, published in May 2024 (2024 Rule or Rule) provided clear and necessary standards to help ensure BLM's management of the National Petroleum Reserve–Alaska (Reserve) is consistent with its statutory obligations to provide maximum protection for significant resource values in designated Special Areas and to fully mitigate the significant adverse effects of oil and gas in the Reserve.² By promulgating the 2024 Rule, BLM took meaningful steps to, among other things, consistently implement this congressional directive. Rescinding the Rule will reverse critical environmental protections, remove a presumption against oil and gas development in approximately 13 million acres of Special Areas, in contravention of statutory directive, and is likely to result in significant adverse effects to the Reserve's extraordinary resources BLM is tasked with protecting. Rescinding the Agency's purposefully crafted 2024 Rule is also likely to exacerbate climate change consequences in our states and globally. We urge BLM to withdraw its unlawful Proposal and leave the 2024 Rule in place to protect the Reserve's extraordinary conservation, subsistence, and wildlife values, which are more at risk now than ever before.

¹ Rescission of the Mgmt. and Prot. of the Nat'l Petroleum Rsrv. in Alaska Regulations, 90 Fed. Reg. 23507 (June 3, 2025).

² Mgmt. and Prot. of the Nat'l Petroleum Rsrv. in Alaska: Final Rule, 89 Fed. Reg. 38712 (May 7, 2024); *see also* Mgmt. and Prot. of the Nat'l Petroleum Rsrv. in Alaska: Proposed Rule, 88 Fed. Reg. 62025 (Sep. 8, 2023).

Attorneys General of Washington, California, Illinois, Minnesota, and Vermont

Thank you for considering these comments.

Sincerely,

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Enclosures

Comments on the U.S. Bureau of Land Managements' Proposal to Rescind the 2024 Management and Protection Regulations for the National Petroleum Reserve-Alaska on Behalf of the Attorneys General of Washington, California, Illinois, Minnesota, and Vermont

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I. THE RESERVE

Originally set aside by President Warren G. Harding in 1923 as a petroleum reserve for the U.S. Navy, the National Petroleum Reserve in Alaska (Reserve) was redesignated in 1976 through passage of the Naval Petroleum Reserves Production Act (NPRPA), which expressly recognizes the exceptional ecological values in the Reserve.³ Under the NPRPA, the Secretary of the Interior (Secretary) is required to conduct oil and gas leasing and development in the Reserve.⁴ The NPRPA also provides that the Secretary “shall assume all responsibilities” for “any activities related to the protection of environmental, fish and wildlife, and historical or scenic values” and authorizes the Secretary to “promulgate such rules and regulations as he deems necessary and appropriate for the protection of such values within the reserve.”⁵ In addition, the NPRPA contains special provisions that apply to any exploration or production activities within areas “designated by the Secretary of the Interior containing any significant subsistence, recreational, fish and wildlife, or historical or scenic value.”⁶ Based on this authority, in 1977 the Secretary designated three Special Areas within the Reserve in which all activities were to “be conducted in a manner which will assure the maximum protection of such surface values to the extent consistent with the requirements of this Act for the exploration of the reserve.”⁷

Managed for the “maximum protection” of the environment, fish and wildlife, and historical or scenic values, the Reserve is of major ecological and cultural significance. Encompassing approximately 23 million acres, the Reserve is the largest contiguous block of public land in the country and contains areas of cultural and subsistence importance, including the Teshekpuk Lake and Colville River Special Areas. Home to millions of caribou, a key subsistence resource for numerous communities in the Reserve and across Northwest Alaska, and a crucial nesting ground for millions of migratory birds, the Reserve also provides essential wildlife habitat for globally significant populations of raptors, molting geese, marine mammals (including beluga whales, spotted seal, and walrus), and apex predators (including grizzly bears, wolves, and wolverines). It also boasts vast wilderness landscapes; wild rivers; and rich geological, scientific, and archaeological sites.

The Teshekpuk Lake Special Area, which comprises one of the most ecologically rich wetlands in the circumpolar Arctic, teems with birds and wildlife. The Utukok River Uplands Special Area provides key calving habitat for the Western Arctic Caribou Herd, which in turn helps sustain over 40 communities across Northwest Alaska. The coast and barrier islands of the Reserve provide critical denning habitat for threatened polar bears, including the shrinking

³ 42 U.S.C. § 6501 et seq., as amended.

⁴ 42 U.S.C. § 6506a.

⁵ 42 U.S.C. § 6503(b). The NPRPA’s implementing regulations are found at 43 C.F.R. Part 2360.

⁶ 42 U.S.C. § 6504(a)).

⁷ 42 Fed. Reg. 28723 (June 2, 1977).

Southern Beaufort Sea population, which cannot afford the disturbance, displacement, and mortality that would occur from expanded oil development.

Since 1977, various Secretaries have upheld their responsibility to identify and protect Special Areas, including the Teshekpuk Lake, Utukok River Uplands, Colville River, Kasegaluk Lagoon, and Peard Bay Special Areas. Protections for these Special Areas are based on the best available science and the areas importance to the region's fish, wildlife, and other renewable resource values. The protections are consistent with BLM's obligation to provide maximum protection for Special Areas based on their significant subsistence, recreational, fish and wildlife, historical, and scenic values.

In 2024, to protect these and other remarkable natural values in the Reserve, BLM promulgated the Management and Protection of the National Petroleum Reserve in Alaska Final Rule (2024 Rule or Rule), enshrining protections for these and other areas—many of which have been in place for years. The 2024 Rule also established transparent, science- and Traditional-Knowledge-driven processes to ensure BLM is meeting its obligations to protect significant resource values and subsistence.

II. BRIEF SUMMARY OF OIL AND GAS ACTIVITIES ON THE RESERVE

Although leasing has occurred in the Reserve for some time—approximately 2.5 million acres are currently leased and oil and gas exploration, including seismic exploration and exploratory drilling occurs most winters—true development began only recently. In 2015, when authorizing the first development project on federally managed lands within the Reserve (Greater Mooses Tooth 1), BLM found there would be significant sociocultural and adverse effects on subsistence not adequately addressed by existing mitigation measures. Additional development has progressed at Greater Mooses Tooth 2 and now at ConocoPhillips' Willow Development— a massive, climate disrupting, oil drilling operation on federally protected land on the North Slope of Alaska's Brook Range. Oil and gas activities have already resulted in significant adverse effects that will compound if new development activities expand on Willow and ConocoPhillips has already submitted applications to BLM seeking to explore additional reservoirs. The proposed activities include drilling three exploration wells around the Bear Tooth Unit, including one only about 11 miles from Willow, drilling a fourth well in the Greater Mooses Tooth Unit, and conducting seismic surveys across 300 square miles to the south.⁸

BLM has acknowledged that Willow alone, if completed, would release an additional 9.2 million metric tons of carbon pollution into the atmosphere each year—roughly equivalent to the pollution generated by two million gas-powered cars. Nonetheless, due to ongoing pressure from fossil fuel companies to further open up this land for development, BLM seeks to rescind the very rule put in place to strengthen environmental protections in the Reserve. The 2024

⁸ Jennifer Dlouhy, *ConocoPhillips Seeks New Oil Drilling in Alaskan Arctic*, BLOOMBERG NEWS (July 14, 2025), <https://www.bloomberg.com/news/articles/2025-07-14/conocophillips-seeks-to-expand-oil-exploration-in-alaskan-arctic>.

Management and Protection Regulations of the National Petroleum Reserve–Alaska (2024 Rule) established a clear framework to help ensure BLM meets its legal obligations to assure maximum protection for significant resource values in Special Areas and to mitigate the adverse effects of oil and gas activities on the Reserve’s environmental, fish and wildlife, subsistence, historical, recreational, and scenic values.⁹ The 2024 Rule codified the five existing Special Areas and their significant resource values, incorporated many aspects of the 2022 Integrated Activity Plan (IAP),¹⁰ and set out procedures and standards BLM is required to follow to make any modifications to Special Areas and when making other oil and gas management decisions.¹¹ Now, in a corner of Alaska that’s already suffering from coastal erosion, melting sea ice, and thawing permafrost, BLM seeks to be unbound from these requirements.

III. BLM SHOULD NOT RESCIND THE 2024 RULE

A. THE 2024 RULE IS NECESSARY TO ADAPT TO CLIMATE CHANGE AND PROTECT SURFACE RESOURCES AND SUBSISTENCE ACTIVITIES

BLM promulgated the 2024 Rule to update the regulatory framework governing the management and protection of environmental, fish and wildlife, other surface resources, and Special Areas in the Reserve.¹² BLM acknowledged that the conditions throughout the Arctic had “changed dramatically” since the Agency promulgated the 1977 regulations governing management of the Reserve.¹³ Rapidly changing conditions, including the intensifying effects of climate change on the Reserve’s natural environment and Native communities, made it necessary and appropriate for the Agency to develop a new rule to “account for and respond to these changing conditions and that [would] require the BLM to regularly address changing conditions.”¹⁴ The implications of climate change for wildlife and migratory birds in the Arctic refuge are substantial, particularly for marine mammals and other species threatened by continued Arctic warming.¹⁵ Climate-fueled change to native plant communities, wildlife habitat, and migration corridors, particularly for caribou, are affecting the availability of and access to subsistence resources.¹⁶

Significantly, the 2024 Rule codified five Special Areas to ensure protection of their unique surface values and directs that on lands within Special Areas that are allocated as available for future oil and gas leasing or new infrastructure, BLM will presume that proposed oil and gas activities should not be permitted unless it can be clearly demonstrated that those

⁹ 89 Fed. Reg. 28712.

¹⁰ On April 25, 2022, the U.S. Department of the Interior signed a new Record of Decision (ROD), which reverted management of the Reserve to an earlier plan that included more protective lease stipulations and operating procedures for threatened and endangered species from the Trump administration’s 2020 IAP.

¹¹ 89 Fed. Reg. 28712.

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.* at 28713.

¹⁶ *Id.*

activities can be conducted with no or minimal adverse effects on significant resource values, or unless they are necessary to comport with the terms of a valid existing lease.¹⁷ Under the 2024 Rule, consistent with the NPRPA, approximately 11.8 million acres (52%) of the Reserve's subsurface estate available for oil and gas leasing.¹⁸ The remaining approximately 11 million acres (48%) of the Reserve, including the majority of lands within Special Areas and much of the coastal area of the Reserve along the Beaufort Sea, are closed to oil and gas leasing to protect and conserve important surface resources and uses in these areas.¹⁹ BLM's Proposal, which would reinstate the rule promulgated in 1977 despite BLM's recognition of the significantly changed conditions in the Reserve, would remove the presumption against development in Special Areas and roll back other critical environmental protections on millions of acres.

The 2024 Rule is also necessary to protect and maintain access to long-standing subsistence activities in and around the Reserve.²⁰ In promulgating the 2024 Rule, BLM recognized that protection of traditional lands, waters, and wildlife is "essential to maintaining cultural traditions, traditional knowledge, and identity" and that development could result in significant adverse impacts to subsistence harvesting, and other cultural practices central to people's spirituality and well-being.²¹ The effects of changing conditions on subsistence are occurring on the North Slope with greater frequency as development expands across the region. Oil and gas exploration and development, including seismic activity and oil and gas-related research, pipelines, and traffic, has already adversely affected caribou and other terrestrial species making the 2024 Rules protection of Special Areas that serve as critical habitats for subsistence resources, such as the Western Arctic Caribou Herd, critical.²² The Rule also requires BLM to evaluate lands within the Reserve for the presence of significant subsistence values, establishes a process for designating, de-designating, and changing boundaries of lands in Special Areas containing such values.²³ In addition, the Rule establishes a management framework to better protect subsistence uses within the Special Areas by directing BLM to ensure they are managed to protect and support fish and wildlife and associated subsistence uses and requires reasonable access to and within these Areas for subsistence purposes.²⁴ Finally, the 2024 Rule responds to changing conditions and the need for shared management of subsistence resources by directing BLM to seek opportunities to engage federally recognized Tribes in co-stewardship of Special Areas and subsistence resources, including co-management and tribally led stewardship.²⁵

¹⁷ 43 C.F.R. § 2361.40(f).

¹⁸ 89 Fed. Reg. 38713.

¹⁹ The majority of the area closed to oil and gas leasing was determined to be medium or low potential for discovery or development of oil and gas resources in the Reasonably Foreseeable Development Scenario in the 2020 NPR-A Final IAP/EIS.

²⁰ 89 Fed. Reg. 38724.

²¹ 88 Fed. Reg. 62030-31.

²² 89 Fed. Reg. 38714.

²³ 43 C.F.R. § 2361.30.

²⁴ 43 C.F.R. § 2361.50.

²⁵ 43 C.F.R. § 2361.60; 89 Fed. Reg. 38724

B. RESCISSION OF THE 2024 REGULATIONS WILL HARM OUR STATES' MIGRATORY BIRDS AND LIKELY EXACERBATE CLIMATE CHANGE

BLM's Proposal will harm our states' migratory birds and likely exacerbate climate change by unlawfully prioritizing oil and gas development over environmental protections.

Removing requirements that help to ensure maximum protection for surface values in the Reserve and mitigate the adverse effects of proposed oil and gas activities in the five Special Areas will threaten the population and diversity of birds that migrate between the Teshekpuk Lake, Kasegaluk Lagoon, and Peard Bay Special Areas and our states. BLM's Proposal is particularly concerning in the context of the recently passed budget reconciliation bill which amends the Reserve Act to require five lease sales.²⁶ Any new oil and gas development in the Reserve resulting from lease sales will increase greenhouse gas (GHG) emissions, exacerbate climate change and increase the resulting adverse effects, and frustrate our ability to meet state and international commitments to reduce GHG emissions.

1. BLM's Proposal will harm our states' migratory birds

The Reserve serves as an important breeding ground for migratory birds from all 50 states and every continent.²⁷ Birds from all four North American flyways migrate to the Reserve.²⁸ Brants arrive from the Pacific Flyway, Tundra Swans from the Atlantic Flyway, White-fronted Geese from the Mississippi Flyway, and Pintails from the Central Flyway. Several of the Special Areas serve as globally significant molting and breeding grounds for hundreds of thousands migrating waterfowl, seabirds, and shorebirds.²⁹ The Teshekpuk Lake Special Area is a significant wetland complex and provides important habitat for tens of thousands of migratory birds, including the highest density of shorebirds.³⁰ The Kasegaluk Lagoon Special Area has the highest abundance and diversity of bird life in all of the Arctic Alaska coastal lagoons and serves

²⁶ Pub. L. No. 119-21, § 50105, 139 Stat. 72 (2025).

²⁷ See Elizabeth Arnold, *America's Arctic: A Remote Patch of Oil Rich Tundra that Teems with Migratory Birds*, CornellLab, All About Birds, May 31, 2025.

<https://www.bing.com/search?q=america%E2%80%99s%20Arctic%3A%20A%20Remote%20Patch%20of%20Oil+Rich%20Tundra%20That%20Teems%20with%20Migratory%20Birds%20&q&form=QBRE&sp=1&lp=0&pq=america%E2%80%99s%20arctic%3A%20a%20remote%20patch%20of%20oil-rich%20tundra%20that%20teems%20with%20migratory%20birds%20&sc=7-84&sk=&cvid=47E8BA73E7E84456A9D70277B15350C9>

²⁸ *Id.*

²⁹ Bureau of Land Mgmt., Nat'l Petroleum Rsrv. Final Integrated Activity Plan/Env'tal Impact Statement 17, 22, 251 (2012) (2012 IAP Final EIS); Bureau of Land Mgmt., Nat'l Petroleum Rsrv. Final Integrated Activity Plan/Env'tal Impact Statement vol 1 at 3-138 (2020) (2020 IAP Final EIS); Brad A. Andres, James A. Johnson, Stephen C. Brown & Richard B. Lancot, *Shoreline Breeding in Unusually High Densities in the Teshekpuk Lake Special Area, Alaska*, ARCTIC, vol 65(4) 411-420 (Dec. 2012). <http://www.jstor.org/stable/41758910>.

³⁰ *Id.*

as a migration area for as many as half of the Pacific Brant population.³¹ Similarly, the Peard Bay Special areas has been recognized as a staging and migration area for waterbird and shorebird species like dunlins and sandpipers and red-throated and pacific loons.³²

Significantly, the Reserve contains seven Audubon of Alaska Important Bird Areas because of their waterbird and raptor concentration areas, six of which were designated for global importance.³³ These globally Important Bird Areas contain critical breeding, nesting and molting habitat for birds that migrate from the Reserve to our states. Almost all regularly occurring species are protected by the Migratory Bird Treaty Act³⁴ and many are protected under the Endangered Species Act.³⁵

A significant number of birds migrate from the Reserve to and through Washington, California, Minnesota, Vermont, and Illinois. For example, the Teshekpuk Lake Special Area provides critical nesting, molting, and breeding habitat for birds that migrate to and through Washington, including shorebirds such as the Semipalmated Sandpiper, Black-bellied Plover, and dunlins, and waterfowl such as Yellow billed loons, brant, and other species.³⁶ The Kasegaluk Lagoon Special area is an important resting and high-density waterbird nesting area for shorebirds that migrate to Washington such as Pacific Brant, Pacific loons, and Red throated loons.³⁷ The Peard Bay Special area is a key stopover and migration area for shorebirds and waterbirds along the Pacific Flyway such as Yellow-billed loons, Pacific loons, and Red throated

³¹ 2012 IAP Final EIS at 251; 2020 IAP Final EIS at 3-138; *See also* Kasegaluk Lagoon Special Area – A globally significant Important Bird Area, established for having the highest diversity and abundance of birds of any lagoon system in Arctic Alaska, Conservation, Audubon Alaska, <https://ak.audubon.org/conservation/kasegaluk-lagoon-special-area> (last retrieved on Aug. 1, 2025).

³² 2012 IAP Final EIS at 22; *see also* Peard Bay Special Area, Provides vital habitat for several marine mammals and is an important staging and migration area for shorebirds and waterfowl, Audubon Alaska, <https://ak.audubon.org/conservation/peard-bay-special-area> (last retrieved on Aug. 1, 2025)

³³ 2020 IAP Final EIS at 3-138. “Important Bird Areas include three terrestrial sites—the Lower Colville River, Colville River delta, and Teshekpuk Lake Area—and four marine sites—Beaufort Sea Nearshore, Barrow Canyon and Smith Bay (combined), Kasegaluk Lagoon, and Chukchi Sea Nearshore.”

³⁴ 16 U.S.C. § 703 et seq.

³⁵ 16 U.S.C. § 1531 et seq.

³⁶ *See* Brad A. Andres, James A. Johnson, Stephen C. Brown & Richard B. Lanctot, *Shoreline Breeding in Unusually High Densities in the Teshekpuk Lake Special Area, Alaska*, ARCTIC, vol 65(4) 411-420 (Dec. 2012), <http://www.jstor.org/stable/41758910>; *See also* Bird Migration Explorer, for data on birds that migrate between Alaska and Washington. Migratory connectivity links are documented via banding and tracking. Audubon, Bird Migration Explorer, <https://explorer.audubon.org/home?layersPanel=collapse> (last retrieved on Aug. 1, 2025).

³⁷ *See* Kasegaluk Lagoon Special Area – A globally significant Important Bird Area, established for having the highest diversity and abundance of birds of any lagoon system in Arctic Alaska, Conservation, Audubon Alaska, <https://ak.audubon.org/conservation/kasegaluk-lagoon-special-area> (last retrieved on Aug. 1, 2025); *See also* Bird Migration Explorer for data on birds that migrate between Alaska and Washington, Audubon, Bird Migration Explorer, <https://explorer.audubon.org/home?layersPanel=collapse> (last retrieved on Aug. 1, 2025). Migratory connectivity links are documented via banding and tracking.

loons.³⁸ As well as being valued ecosystem components and property of Washington, migratory birds have important economic value.³⁹ For instance, in 2022, anglers, hunters, and wildlife watchers in Washington spent over \$9 billion on equipment and trip-related expenses, spending associated with an estimated \$630 million generated in taxes that contribute to the State General Fund.⁴⁰

California's wetlands and coastline provide essential habitat for globally-significant populations of birds that migrate to or through California along the Pacific Flyway from the Reserve's high-Arctic breeding grounds. Some of these species include the greater white-fronted goose, pacific brant, long-tailed duck, red phalarope, pectoral sandpiper, dunlin, tundra swan, and northern pintail. For example, the greater white-fronted goose breeds in the Teshekpuk Lake region and migrates to the Central Valley of California every winter and is commonly seen in wetlands and agricultural fields. The pectoral sandpiper also breeds in Teshekpuk wetlands and commonly migrates along California's coast. While in California, these birds provide essential ecosystem services, such as pest control and nutrient transport for agricultural fields. As a major stop on the Pacific Flyway, the Reserve's migratory birds draw ecotourists and birdwatchers to California and are therefore essential to the economy. In 2024, The National Park Service found that park tourism in California contributes an estimated \$5.1 billion to the state economy annually, whereas a 2011 study focused solely on the economic benefits of birdwatching to California found that it generated \$3.8 billion annually.

Minnesota has enacted and devotes significant resources to implementing numerous laws concerning the management, conservation, protection, restoration, and enhancement of its wildlife resources, including migratory birds and other avifauna.⁴¹ Dozens of migratory bird species fly over Minnesota during migration to and from the Coastal Plain. Greater white-fronted geese, snow geese, tundra swans, American wigeons, northern pintails, and red-breasted mergansers are among the species that use the Coastal Plain as a critical breeding ground and are also found in Minnesota. Minnesota has substantial economic interest in the protection of wildlife, including birds that migrate from the Coastal Plain through Minnesota. As of 2020, Minnesota waterfowl hunters spent roughly \$190 million on trip-related expenditures.⁴² Healthy

³⁸ See Peard Bay Special Area, which provides vital habitat for several marine mammals and is an important staging and migration area for shorebirds and waterfowl, Audubon Alaska, <https://ak.audubon.org/conservation/peard-bay-special-area> (last retrieved on Aug. 1, 2025).; see also Bird Migration Explorer for data on birds that migrate between Alaska and Washington, Audubon, Bird Migration Explorer, <https://explorer.audubon.org/home?layersPanel=collapse> (last retrieved on Aug. 1, 2025). Migratory connectivity links are documented via banding and tracking.

³⁹ Wash. Rev. Code 77.04.012 (Wildlife, fish, and shellfish are the property of the State of Washington).

⁴⁰ Braeden Van Deynze, PhD, Fishing, Hunting, and Wildlife-Associated Recreation in Washington, (Jan. 18, 2024) <https://wdfw.wa.gov/publications/02466#:~:text=These%20anglers%2C%20hunters%2C%20and%20wildlife,and%20wildlife%20management%20four%2Dfold.>

⁴¹ See, e.g., Minn. Stat. ch. 97A.

⁴² Dep't of Natural Resources, *The 2020 Waterfowl Hunting Season in Minnesota*, (Sept. 11, 2024), https://files.dnr.state.mn.us/wildlife/research/summaries/2021/hd/waterfowl-hunter.pdf?utm_source=chatgpt.com

waterfowl-breeding grounds, including those in the Coastal Plain area, are critical to support this industry. Minnesota's hunters support a statewide industry worth over \$730 million annually, supporting thousands of jobs and generating over \$1.3 billion in broader economic activity.⁴³

BLM's Proposal will harm our states' migratory birds. An increase in oil and gas development in the Reserve, and particularly development in Special Areas such as Teshekpuk Lake, Kasegaluk Lagoon and Peard Bay, could result in direct loss of nesting, molting and breeding habitat, an increase in predator populations, changes to nesting site availability, and increased risk of injury and death resulting from oil spills.⁴⁴ Oil and gas development including construction of gravel pads and roads, drilling pads, and fugitive dust could cause long-term direct habitat loss and alternation.⁴⁵ Noise and air traffic could disturb and displace migratory birds, including molting geese and brant, who are easily disturbed by aircraft and other human intrusions during brooding, molting and staging, making them particularly vulnerable to displacement and significant impacts.⁴⁶

Any new oil and gas development in the Reserve will also increase the chance of oil spills and pose a risk of injury and even death to migratory birds.⁴⁷ With oil and gas development, the question is not if a spill will occur, but when and how much will be released.⁴⁸ Migratory birds could be injured by the long-term toxicological effects of a spill or killed by oil directly through feather oiling and ingestion.⁴⁹ Large spills could pose substantial risk to migratory birds and their habitat, and may result in cleanup activities lasting for weeks which is particularly difficult in the Arctic environment.⁵⁰

Finally, expanding oil and gas development in the Reserve will exacerbate climate change which is already harming migratory birds and other wildlife. Climate change is increasing storm severity and frequently resulting in a total loss of habitat for Arctic birds. Additionally, the dramatically changing climate in the Arctic is expected to alter the timing of emergence of invertebrate prey and dramatically reduce the breeding range available to most Arctic shorebirds, with 66-83% of shorebird species losing the majority of their currently suitable breeding areas.⁵¹

⁴³ Dep't of Natural Resource, *News release: 2023 small game survey results available from Minnesota DNR*, (Sept. 5, 2024), https://www.dnr.state.mn.us/news/2024/09/05/2023-small-game-survey-results-available-minnesota-dnr?utm_source=chatgpt.com

⁴⁴ 2020 IAP Final EIS at 3-153-163.

⁴⁵ 2020 IAP Final EIS at 3-151-153.

⁴⁶ 2020 IAP Final EIS at 3-159.

⁴⁷ 2020 IAP Final EIS at 3-162.

⁴⁸ 2020 IAP Final EIS at 3-163, Appendix I ("Small spills are likely, medium-sized spills are less common, and large and very large spills are uncommon."); 2012 IAP Final EIS, vol. 6, Appendix G, p. 87-88.

⁴⁹ 2020 IAP Final EIS at 3-162.

⁵⁰ 2020 IAP Final EIS at 3-163.

⁵¹ See Hannah S. Wauchope, Justine D. Shaw, Øystein Vapre, Elena G. Lappo, David Boetmann, et. al., *Rapid climate-driven loss of breeding habitat for Arctic migratory birds*, *Global Change Biology*, vol. 23 (3) (June

An increase in oil and gas development in and near areas of the Reserve is also likely to decrease survival of both young and adult birds, and result in declines and less diversity in the numbers of birds that migrate to our states. Increased bird mortality and declines in population diversity in birds migrating to our states will harm state ecosystems and result in economic loss.

2. BLM's Proposal is likely to increase GHG emissions and drive climate change and exacerbate its adverse effects

Any new oil and gas development in the Reserve will increase greenhouse gas emissions and likely exacerbate climate change in the Reserve, in our states, and globally. Climate change is already disproportionately impacting the Reserve, which is warming four times faster than the rest of the world.⁵² Over the past 60 years, average annual temperatures in the region have increased by 3°F, and average winter temperatures have increased 6°F.⁵³ On the North Slope, the effects of climate change include increased average temperatures, decreased sea ice and snow cover extent, an expanded growing season, and thawing permafrost.⁵⁴

Preventing the worst effects of climate change in the Reserve and in our states requires limiting the total amount of GHG emissions emitted into the atmosphere by substantially decreasing emissions. The Paris Climate Agreement recognizes the need to hold long-term global average temperatures to “well below 2°C above pre-industrial levels” and to pursue efforts to limit the temperature increase to 1.5°C above pre-industrial levels.⁵⁵ Reaching the goal of net-zero global emissions by 2050 will require reducing fossil fuels' share of the total energy supply from 80 percent in 2020 to just over 20 percent in 2050.⁵⁶

Many of our states have adopted aggressive mandates and policies requiring significant reductions in emissions.⁵⁷ BLM's Proposal, which will substantially increase the area of the Reserve available for oil and gas leasing, directly conflicts with state—and international—efforts to reduce emissions and mitigate climate change. In the 2020 IAP, BLM estimates showed that any of the proposed alternatives for oil and gas development in the Reserve would produce

2016), <https://onlinelibrary.wiley.com/doi/10.1111/gcb.13404>; Eunbi Kwon, Emily L. Weiser, Richard B. Lanctot, Stephen C. Brown, et al., *Geographic variation in the intensity of warming and phenological mismatch between Arctic shorebirds and invertebrates*, ECOLOGICAL MONOGRAPHS, Ecological Society of America, vol 89(4) (June 2019); <https://esajournals.onlinelibrary.wiley.com/doi/abs/10.1002/ecm.1383>.

⁵² Mika Rantanen, Alexey Yu. Karpechko, Antti Lipponen, et al., The Arctic has warmed nearly four times faster than the globe since 1979, *Communications Earth & Environment* 3, Article number: 168 (2022), <https://www.nature.com/articles/s43247-022-00498-3#Sec6>.

⁵³ 2020 IAP Final EIS at 3.2.1, 3-2

⁵⁴ *Id.*; 1 2012 Final EIS at 144.

⁵⁵ U.N., Paris Agreement, Art. 2, U.N. Doc. FCC/CP/2015/L.9 (Dec. 12, 2015).

⁵⁶ *Id.* at 57.

⁵⁷ **Washington:** Climate Commitment Act, ch. 316, 2021 Wash. Sess. Laws 2606 (codified as amended in scattered sections of Wash. Rev. Code tits. 43, 70A); **California:** Global Warming Solutions Act of 2006, A.B. 32, 2005-06 Reg. Sess. (Cal. 2006), codified at Health & Saf. Code, §§ 38500 et seq.); **Vermont:** Global Warming Solutions Act of 2020: Vt. Stat. Ann. tit. 10, § 578 (2020); **Minnesota:** Next Generation Energy Act, Minn. Stat. Ann. § 216H.02 (2023); **Illinois:** Climate and Equitable Jobs Act, Public Act 102-0662 (2021).

thousands to hundreds of thousands of metric tons of emissions per year.⁵⁸ Additional GHG emissions will occur from construction and maintenance of and leaks from pipelines transporting oil and gas, also likely from diesel-fired generators in villages, residential heating, snow machines, all-terrain vehicles, occasional aircraft, helicopter and fixed-wing aircraft activities.⁵⁹ The projected cumulative GHG emissions from potential future development resulting from production in the Reserve are significant, especially when considered cumulatively with oil and gas development in, for example, on the Coastal Plain of the Arctic National Wildlife Refuge.⁶⁰ Using the high end of the range of potential emissions in the Coastal Plain, the estimated cumulative annual average emissions from these two BLM programs are projected to be approximately 1.1 million metric tons for direct emissions, 17.3 million metric tons for indirect emissions, and 18.4 million metric tons for total emissions.⁶¹

Any increased emissions from new oil and gas development in the Reserve will exacerbate climate change on the Reserve's delicate landscape and exacerbate adverse effects to wildlife and subsistence resources. An increase in rising average temperatures, decreased sea ice and snow cover, and thawing permafrost will adversely affect migratory birds, polar bears, caribou, and other species.⁶² Other anticipated effects include changes in wildfire patterns and species abundance and diversity.⁶³ Additionally, an increase in GHG emissions will continue to worsen arctic warming, decrease sea ice, and increase storm surges, resulting in accelerated shoreline retreat for communities already struggling with erosion.⁶⁴ These climate change effects disproportionately affect communities on the Northern Slope who utilize the area and its wildlife for subsistence purposes.⁶⁵

Increased emissions from new oil and gas development will also exacerbate climate change in our states, which are already experiencing its adverse effects, including sea-level rise; increased frequency and intensity of rainfall, flooding, droughts; hotter and more devastating wildfires and increases in associated smoke, which causes and contributes to health issues; ocean acidification; degradation water quality; and the loss of habitat and species.

In Washington, increased levels of GHG emissions and the resulting effects have increased the State's annual average air temperatures by almost 1.1°C (2.0°F) since 1900.⁶⁶ Climate change is causing sea level to rise and permanently inundate low-lying areas in the

⁵⁸ 2020 IAP Final EIS at 3.2.1, 3-4.

⁵⁹ 2020 IAP Final EIS at 3.2.1, 3-4, Table 3-1.

⁶⁰ 2020 IAP Final EIS at 3.2.1, 3-7.

⁶¹ 2020 IAP Final EIS at 3.2.1, 3-8.

⁶² 89 Fed. Reg. 28,714; 2012 IAP Final EIS at 144.

⁶³ 2012 IAP Final EIS at 144.

⁶⁴ 2012 IAP Final EIS at 143-144 (The Alaskan villages of Shishmaref, Kivalina, and Newtok already have begun relocation plans).

⁶⁵ 2012 IAP Final EIS at 144; 89 Fed. Reg. 38,714.

⁶⁶ Li Erikson, Michael Change, Kathleen Araujo, et al., Northwest, Chapter 27, Fifth National Climate Assessment (2023); A.R. Crimmins, C.W. Avery, D.R. Easterling, K.E. Kunkel, B.C. Stewart, and T.K. Maycock, (eds.), U.S. Global Change Research Program, Washington, DC, USA.

Puget Sound region,⁶⁷ which is currently home to approximately 4.3 million Washingtonians.⁶⁸ With 2 feet of sea level rise predicted for Seattle, what is currently a 1-in-100 year flood event will become an annual event.⁶⁹ Rising sea levels and higher storm surges will likely erode and weaken roads and bridges, damage stormwater drainage and tide gates, and corrode state-owned coastal facilities.⁷⁰ The adverse effects of climate change have already contributed to loss of valuable habitat for fish and wildlife resulting in a \$4.2 billion loss (in 2023 dollars) in the fishing industry.⁷¹ Heat waves and other effects of climate change are directly harming the health of Washingtonians.⁷²

California is already experiencing significant impacts from climate change, including more extreme weather events, such as wildfires and droughts, as well as rising sea levels and increased risks to public health. Most recently, the Los Angeles region experienced atypical wildfires in January—usually California's rainy season. As California faced an unusual winter drought during an extreme wind event, the Eaton and Palisades fires erupted, burning over 57,000 acres and taking at least 30 lives.⁷³ It is considered one of the most destructive wildfires in California's history. Since 1895, statewide annual mean temperatures have increased by about 2.5°F, and warming has accelerated with the past eight years being the warmest on record.⁷⁴ As temperatures continue to rise, associated climate impacts put strain on California's infrastructure, water resources, and ecosystems, while impacting our communities and economy.⁷⁵

Illinois is already experiencing impacts from the changing climate. For example, the frequency and intensity of extreme heat and heavy precipitation events are increasing throughout most of the world, including Illinois and the Midwest United States. The number of high temperature records set in the past two decades far exceeds the number of low temperature

⁶⁷ Guillaume S. Mauger, et al., *State of Knowledge: Climate Change in Puget Sound* (November 2015), Report prepared for the Puget Sound Partnership and the National Oceanic and Atmospheric Administration, Climate Impacts Group, University of Washington, (hereinafter "2015 State of Knowledge, Puget Sound") at 4-1, https://data.cig.uw.edu/picea/mauger/ps-sok/PS-SoK_2015.pdf.

⁶⁸ Orca Health Starts Here, Puget Sound Starts Here (last modified May 3, 2023); <https://www.pugetsoundstartshere.org/Facts.aspx>.

⁶⁹ 2015 State of Knowledge, Puget Sound, at 4-6.

⁷⁰ Washington State Department of Transportation, *Guidance for Considering Impacts of Climate Change in WSDOT Plans*, at 4 (2017), <https://wsdot.wa.gov/sites/default/files/2021-10/Guidance-Doc-Considering-Climate-Change-In-WSDOT-Plans.pdf>.

⁷¹ *Id.*, Inflation Calculator, US Inflation Calculator, , a CoinNews Media Group Company, <https://www.usinflationcalculator.com/> (last visited July 11, 2023).

⁷² Juanita Constible, et al., *Climate Change and Health in Washington*, NRDC at 2 (Sept. 2019); <https://www.nrdc.org/sites/default/files/climate-change-health-impacts-washington-ib.pdf>.

⁷³ Greater Los Angeles Wildfires – January 2025, USGS, Available at: Greater Los Angeles Wildfires - January 2025 | U.S. Geological Survey.

⁷⁴ State of California, Office of Environmental Health Hazard Assessment, *Air Temperatures, 2022 Report: Indicators of Climate Change in California* (July 2024), available at: Air temperatures - OEHHHA.

⁷⁵ *See id.*

records. Heavy precipitation events in most parts of the United States have increased in both intensity and frequency since 1901.⁷⁶

In Vermont, increased levels of greenhouse gas emissions and the resulting impacts from climate change have led to catastrophic flash and river flooding resulting in extensive flooding to communities, washouts of numerous roads and bridges, and significant property loss.⁷⁷

BLM's Proposal is likely to worsen these adverse climate effects in our states and globally by opening up substantial new areas of the Reserve for oil and gas development and increasing GHG emissions. Any new oil and gas development in the Reserve is incompatible with our states' efforts to address climate change. To combat climate change in our states and across the globe, we must, as a nation, reduce GHG emissions.

IV. BLM'S STATED REASONS DO NOT JUSTIFY RESCISSION

BLM failed to justify rescission of the 2024 Rule in its Proposal in violation of the Administrative Procedures Act (APA). BLM's stated rationales (that the 2024 Rule "conflicts with and exceeds [BLM's] statutory authority," "undermines the purposes" of the NPRPA, and "is inconsistent with National energy policy")⁷⁸ are unsupported and, in many cases, unexplained. In particular, BLM wholly failed to provide a reasoned explanation for ignoring or dismissing the facts and circumstances underlying the 2024 Rule and failing to explain its about-face.

A. THE 2024 RULE IS CONSISTENT WITH THE NPRPA, WHICH MANDATES RESOURCE PROTECTION AND DOES NOT PRIORITIZE OIL AND GAS ACTIVITIES

BLM mischaracterizes the NPRPA, which does not prioritize oil and gas activities over resource protection and failed to explain or provide support for its contrary assertion.

⁷⁶ D. Wuebbles, J. Angel, K. Petersen, and A.M. Lemke, (Eds.), *An Assessment of the Impacts of Climate Change in Illinois*. THE NATURE CONSERVATORY ILLINOIS, USA (2001) https://doi.org/10.13012/B2IDB-1260194_V1

⁷⁷ Peter Banacos, National Weather Service Burlington, *The Great Vermont Flood of 10-11 July 2023* (Aug. 5, 2023), <https://www.weather.gov/btv/The-Great-Vermont-Flood-of-10-11-July-2023-Preliminary-Meteorological-Summary>; John Goff, Brooke Taber, Peter Banacos, National Weather Service Burlington, *The Significant Flooding and Severe Weather Event of 10-11 July 2024* (Aug. 10, 2024), <https://www.weather.gov/btv/The-Significant-Flooding-and-Severe-Weather-Event-of-10-11-July-2024>; Seven Days Staff, 'Historic and Catastrophic': *Unrelenting Rain Swamped Vermont's Cities, Towns and Hamlets. The Recovery is Just Beginning* (updated July 13, 2023), <https://www.sevendaysvt.com/vermont/historic-and-catastrophic-unrelenting-rain-swamped-vermonts-cities-towns-and-hamlets-the-recovery-is-just-beginning/Content?oid=38643810> (last visited July 18, 2023); Jenna Russell, Flash Flooding Leads to Evacuations and Rescues in Central Vermont, *NEW YORK TIMES* (July 11, 2024), <https://www.nytimes.com/2024/07/11/us/vermont-flood.html>.

⁷⁸ 90 Fed. Reg. 23507.

In recognition of the Reserve's extraordinary ecological, cultural, and scenic values, Congress recognized the need to manage the Reserve differently from other public lands, including other BLM lands available for oil and gas activities so that "any activities which are or might be detrimental to such values will be carefully controlled."⁷⁹ In passing the NPRPA, Congress withdrew the Reserve from entry and disposition under all existing public land laws, including the Mineral Leasing Act.⁸⁰ At that time, the Reserve was "almost completely undeveloped,"⁸¹ and Congress's decision to prohibit most leasing and development until it specifically authorized otherwise reflects its cautious approach to Reserve management.⁸²

When Congress amended the NPRPA in 1980 to authorize an "expeditious program of competitive leasing,"⁸³ it continued to emphasize the importance of the Reserve's exceptional ecological and subsistence values mandating that BLM prioritize the protection of these resources and uses.⁸⁴ The NPRPA expressly requires environmental protection to ensure that "reasonably foreseeable and significantly adverse effects" on surface resources are fully "mitigate[d]."⁸⁵ In designated Special Areas, the statute requires BLM to "assure" the "maximum protection" of "subsistence, recreational, fish and wildlife, or historical value[s]."⁸⁶ Neither the text of the statute nor its legislative history support the proposition that the NPRPA was intended to prioritize, or make "dominant," oil and gas extraction activities over protection of the Reserve's unique and sensitive resources and values. Congress has never altered the foundational principle that BLM must fully account for and mitigate "reasonably foreseeable and significant adverse effects" on surface resources,⁸⁷ and provide "maximum protection" of surface values in Special Areas.⁸⁸ Although Congress had the opportunity when recently amending the NPRPA, it did not change the statute's mandate to protect the Reserve's surface values or limit the Secretary's authority to implement those mandates.⁸⁹

BLM contends that Section 2361.40(f) of the 2024 Rule specifically is "contrary to the purposes" of the NPRPA amounting to an unlawful prohibition of oil and gas activities in the Reserve because it would "effectively prohibit any new oil and gas leasing and new infrastructure not required for existing leases in areas [where] the BLM has already determined that the balancing of objectives required by the [NPRPA] leans in favor of allowing future oil

⁷⁹ H.R. Rep. No. 94-942, at 20 (1976) (Conf. Rep.), as reprinted in 1976 U.S.C.C.A.N. 516, 523; *see also* H.R. Rep. No. 94-81, pt. 1 at 8 (1975), as reprinted in 1976 U.S.C.C.A.N. 492, 498 (describing need to consider other Reserve values before Congress authorizes development).

⁸⁰ 42 U.S.C. § 6502; 89 Fed. Reg. 38715.

⁸¹ 89 Fed. Reg. 38715 (citing H.R. Rep. No. 94-156, at 3 (1975)).

⁸² Pub. L. No. 94-258, § 104(a), 90 Stat. 303 (1976); *see also* H.R. Rep. No. 94-942, at 21.

⁸³ Pub. L. No. 96-514, Title I, 94 Stat. 2957 (1980) (codified at 42 U.S.C. § 6506a(a)).

⁸⁴ *See id.*; 42 U.S.C. § 6506a(b).

⁸⁵ 42 U.S.C. § 6506a(b); *see also* H.R. Rep. No. 94-942 at 21 (stating Congress's "expect[ation] that the Secretary will take every precaution to avoid unnecessary surface damage and to minimize ecological disturbance through the [R]eserve.").

⁸⁶ *Id.* § 6504(a).

⁸⁷ 42 U.S.C. § 6506a(b).

⁸⁸ 42 U.S.C. § 6504(a).

⁸⁹ *Id.*

and gas leasing and new infrastructure.”⁹⁰ But BLM’s position hinges on its mischaracterization of the NPRPA as a dominant-use statute (i.e., one that prioritizes oil and gas activities). BLM’s position is unsupported and its reliance on *Sovereign Inupiat for a Living Arctic v. BLM*, 701 F.Supp.3d 862, 880–81 (D. Alaska 2023) is misplaced. The cited portion of the District Court’s reasoning was not upheld by the Ninth Circuit Court of Appeals, and, in any event, the issues raised in that case are distinguishable from the issues raised in the current rulemaking.⁹¹ Section 2361.40(f) of the 2024 Rule is consistent with the NPRPA.

B. THE 2024 RULE SUPPORTS EFFECTIVE MANAGEMENT OF RESERVE RESOURCES

When BLM adopted the 2024 Rule, the Agency was clear that the purpose of the rule was to aid in the effective management of surface resources on the Reserve and ensure the agency’s management decisions complied with legal mandates. The 2024 Rule sought to “develop[] a more cohesive framework” for implementing its mandates by setting out clear requirements, standards, and processes.⁹² BLM now states the 2024 Rule is “unnecessary to effectively manage surface resources” in the Reserve.⁹³ BLM’s stated justification is that management decisions are made during the IAP process, and the requirements and processes set out in the 2024 Rule “simply add additional, unnecessary processes that could complicate the BLM’s ability to make timely decisions for the protection of surface resources and for authorized uses.”⁹⁴ But BLM provides no explanation for this conclusory statement, failing to explain why or how the 2024 Rule is unnecessary or complicates BLM’s management of the Reserve.

Contrary to the reasons it now sets forth, when BLM adopted the 2024 Rule, the Agency was clear about the reason for the 2024 Rule: to aid management of the Reserve and ensure BLM management decisions complied with legal mandates. The 2024 Rule sought to “develop[] a more cohesive framework” for implementing its mandates by setting out clear requirements, standards, and processes.⁹⁵ As BLM explained, its management obligations and processes at the time were “scattered throughout several statutes and BLM regulations, plan, and guidance documents.”⁹⁶

BLM fails to provide an adequate explanation for its change in position or adequately address its prior findings that the 2024 Rule was necessary to update and clarify management of the Reserve to ensure compliance with Congressional mandates. While BLM now states that the 2024 Rule could complicate BLM’s decision making, the Agency did not provide any examples to justify its change in position. Instead, it seems BLM’s goal is simply to avoid accountability and manage the Reserve without the clear standards and processes set out in the 2024 Rule the

⁹⁰ 90 Fed. Reg. 23508.

⁹¹ *Ctr. for Biological Diversity v. BLM*, 141 F.4th 976, 2025 WL 1669344, at *9 (9th Cir. June 13, 2025).

⁹² 89 Fed. Reg. 28712-714. As BLM explained, its management obligations and processes at the time were “scattered throughout several statutes and BLM regulations, plan, and guidance documents.

⁹³ 90 Fed. Reg. 23509.

⁹⁴ *Id.*

⁹⁵ 89 Fed. Reg. 38712.

⁹⁶ *Id.* at 38713; 38714.

Agency previously found necessary to effectuate the NPRPA mandate to protect the Reserve's unique ecological and resource values.⁹⁷ That, and not the 2024 Rule is what complicates BLM's ability to manage the Reserve legally and consistently in accordance with a clear set of rules known and understood by all relevant stakeholders.⁹⁸

C. BLM FAILED TO EXPLAIN HOW ITS PROPOSAL IS PERMISSIBLE AND JUSTIFIED UNDER FLPMA

BLM proposed the 2024 Rule, in part, to “fulfill [its] mandate to take action necessary to prevent unnecessary or undue degradation under FLPMA, 43 U.S.C. § 1732(b).”⁹⁹ BLM was clear when it promulgated the 2024 Rule that it would “fulfill the [Agency’s] mandate to take action necessary to prevent unnecessary or undue degradation under FLPMA, 43 U.S.C. 1732(b).”¹⁰⁰ NPRPA removes the Reserve from operation of the land use planning provision of the Federal Land Policy and Management Act (FLPMA).¹⁰¹ Under that exemption, BLM is not bound by the specific statutory requirements and regulations related to the preparation of a resource management plan. However, as BLM has recognized, other provisions of FLPMA apply to the Reserve,¹⁰² including BLM’s obligations to manage public lands “in a manner that will protect the quality of scientific, scenic, historical, ecological, environmental, air and atmospheric, water resource, and archeological values,”¹⁰³ and “take any action necessary to prevent unnecessary or undue degradation of the lands,”¹⁰⁴ as well as the provisions governing the issuance of rights-of-way.¹⁰⁵ While BLM is correct that the Reserve is exempt from FLPMA Section 202’s planning requirements,¹⁰⁶ the Agency now appears to imply the Reserve is exempted from all FLPMA’s mandates.¹⁰⁷ This unsupported and BLM provides no support for such an assertion, nor its change in interpretation of the applicability of FLPMA to the Reserve.

⁹⁷ See BLM, Economic Analysis for the Recission of the Management and Protection of the National Petroleum Reserve in Alaska Regulations, issued May 7, 2024, at 7 (May 7, 2024).

⁹⁸ See, e.g., *id.* at 4 (describing how under the proposed rule Special Area boundaries could be changed for “other,” unexplained reasons, rather than when all significant resource values are no longer present).

⁹⁹ 88 Fed. Reg. 62031.

¹⁰⁰ 89 Fed. Reg. at 39724; see also *id.* at 39716-17, 39725, 38732.

¹⁰¹ Pub. L. No. 96-514 (Dec. 12, 1980).

¹⁰² 89 Fed. Reg. 38716-17, 38725; 43 C.F.R. § 2361.3.

¹⁰³ 43 U.S.C. § 1701(a)(8).

¹⁰⁴ *Id.* § 1732(b).

¹⁰⁵ 43 U.S.C. §§ 1764(a)-(c), 1765(a).

¹⁰⁶ 90 Fed. Reg. 23508.

¹⁰⁷ *Id.*

D. THERE IS NO ENERGY EMERGENCY JUSTIFYING RESCISSION

BLM's reliance on the false "national energy emergency" declared in Executive Order 14,156 does not justify the Agency's Proposal.¹⁰⁸ Neither the Executive Order nor BLM's Proposal provide a factual basis for concluding there is, in fact, a national energy emergency.

The Executive Order unlawfully seeks to use emergency powers to resolve a disagreement with "the policies of the previous administration" and of states in the Northeast and West Coast.¹⁰⁹ The Executive Order commands federal agencies, including the U.S. Department of the Interior and BLM, to "identify and use all relevant lawful emergency and other authorities . . . to expedite the completion of all authorized and appropriated infrastructure, energy, environmental, and natural resources projects that are within" their respective authorities.¹¹⁰

The false "national energy emergency" is not a response to an actual energy emergency. Instead, it is a transparent pretext to exempt fossil fuel development from statutory conservation requirements, such as those in the NPRPA, rather than a response to an actual emergency. The Executive Order explicitly states its objective is to advance the President's policy goals to "create jobs and economic prosperity . . . , improve the United States' trade balance, help our country compete with hostile foreign powers, strengthen relations with allies and partners, [] support international peace and security. . . [and help the United States] remain at the forefront of technological innovation." 90 Fed. Reg. 8434.

The Executive Order blatantly misrepresents our current domestic energy situation. It vaguely asserts that the country's "current inadequate development of domestic energy resources leaves us vulnerable to hostile foreign actors and poses an imminent and growing threat to the United States' prosperity and national security." *Id.* 8433. In reality, domestic energy production is at an all-time high, thriving due to a diverse mix of fossil and non-fossil fuel resources. The United States is producing record quantities of crude oil and natural gas, and experts predict additional production growth through at least 2026.¹¹¹

The United States produces so much oil and natural gas that companies have said they will not increase output in response to the President's declaration of a national energy emergency because it is not economical to do so.¹¹² The United States already produces more oil and gas than it uses: it is the world's largest exporter of liquified natural gas and exports millions of

¹⁰⁸ 90 Fed. Reg. 23509; *see* BLM, Economic Analysis for the Recission of the Management and Protection of the National Petroleum Reserve in Alaska Regulations, at 2 (May 7, 2024).

¹⁰⁹ 90 Fed. Reg. 8433.

¹¹⁰ 90 Fed. Reg. 8434.

¹¹¹ Independent Statistics and Analysis, U.S. Energy Information Admin., *Short-Term Energy Outlook* (July 8, 2025), <https://www.eia.gov/outlooks/steo/data/browser>. The next anticipated release date is August 12, 2025

¹¹² Collin Eaton et al., *U.S. Frackers and Saudi Officials Tell Trump They Won't Drill More*, WALL ST. J. (Feb. 3, 2025), https://www.wsj.com/business/energy-oil/trump-oil-drilling-saudi-arabia-71c095ff?reflink=desktopwebshare_permalink.

barrels a day of crude oil. The United States has been a net energy exporter since 2019, when President Trump declared the nation had achieved energy independence.¹¹³

Moreover, a rational response to a true energy emergency would not exclude renewable energy, but the Executive Order unreasonably omits solar and wind power from its definition of “energy,” despite their importance for reliability, energy security, affordability, and to reduce emissions to mitigate the worst effects of climate change. Wind and solar power temper the impact of international commodity price swings on crude oil and natural gas prices¹¹⁴ by reducing electric grid operators’ reliance on interruptible natural gas deliveries.¹¹⁵ And as the Department of Energy acknowledges, “[t]he rise of renewable power, which comes from unlimited energy resources, like wind, sunlight, water, and the Earth’s natural heat, has the potential to vastly improve the reliability of the American energy system.”¹¹⁶ According to the Department of Energy, the United States has enough renewable energy potential to meet 100 times the annual nationwide energy demand.¹¹⁷ The Executive Order also flies in the face of our State and international mandates and policies to increase renewable energy as part of the solution to significant reductions of emissions.¹¹⁸

The Executive Order also fails to satisfy Interior’s own definition of an “emergency,” which Interior recognizes as “a sudden, urgent, usually unexpected occurrence or occasion requiring immediate action,” or “an unforeseen combination of circumstances or the resulting

¹¹³ Independent Statistics and Analysis, U.S. Energy Information Admin., *In-Brief Analysis: The United States was the world’s largest liquified natural gas exporter in 2023* (Apr. 1, 2024), <https://www.eia.gov/todayinenergy/detail.php?id=61683>; Independent Statistics and Analysis, U.S. Energy Information Admin., *U.S. Exports of Crude Oil* (June 30, 2025), <https://www.eia.gov/dnav/pet/hist/LeafHandler.ashx?n=p&s=mcrexusl&f=a>; Independent Statistics and Analysis, U.S. Energy Information Admin., *U.S. Energy Facts Explained* (July 15, 2024), <https://www.eia.gov/energyexplained/us-energy-facts/imports-and-exports.php>; Robert Rapier, *U.S. Energy Independence Set New Record In 2023*, *Forbes*, Business, Energy (July 1, 2024), <https://www.forbes.com/sites/rrapier/2024/07/01/us-energy-independence-set-new-record-in-2023/>.

¹¹⁴ U.S. Dep’t of Energy, *Energy Reliability and Resilience* (last accessed March 11, 2025), <https://www.energy.gov/eere/energy-reliability-and-resilience>;

U.S. Fed. Energy Reg. Comm’n, et al., *The February 2021 Cold Weather Outages in Texas and the South Central United States*, 172 (Feb. 16, 2021), <https://www.ferc.gov/media/february-2021-cold-weather-outages-texas-and-south-central-united-states-ferc-nerc-and> (“Natural gas fuel supply issues alone caused 27.3 percent of the generating unit outages” during Winter Storm Uri.).

¹¹⁵ *See id.*

¹¹⁶ U.S. Dep’t of Energy, *Energy Reliability and Resilience* (last accessed March 11, 2025), <https://www.energy.gov/eere/energy-reliability-and-resilience>.

¹¹⁷ U.S. Dep’t of Energy, *Renewable Energy Resource Assessment Information for the United States* 57 (2022), <https://www.energy.gov/sites/default/files/2022-03/Renewable%20Energy%20Resource%20Assessment%20Information%20for%20the%20United%20States.pdf>.

¹¹⁸ *See supra*, n.57.

state that calls for immediate action.”¹¹⁹ None of the concerns identified in the Executive Order or in BLM’s Proposal meet this definition.

Even if the assertions in the Executive Order were true and sufficient to constitute a national energy emergency—they are not—rescinding the 2024 Rule would have no appreciable effect on the national energy supply. Thus, BLM failed to provide any evidence to support the existence of a national energy emergency, let alone one that would justify exemption of oil and gas development in the Reserve from the statutory conservation requirements of the NPRPA.

V. BLM FAILED TO EXPLAIN ITS DISREGARD FOR ITS PRIOR FACTUAL FINDINGS ITS CHANGE IN POSITION

BLM’s Proposal is contrary to the evidence before the agency and BLM’s prior findings regarding the need for the 2024 Rule. BLM failed to adequately explain its reasons for disregarding previous factual findings supporting the need for the 2024 Rule.

BLM promulgated the 2024 Rule, which had not been updated in more than 40 years, in part to codify the existing Special Areas¹²⁰ and the leasing and infrastructure restrictions for the 2013 IAP and 2022 IAP ROD.¹²¹ In doing so, BLM stated that those protections “reflect[] what the BLM views as the floor of protections” for the Reserve and made factual findings defining maximum protections and processes to avoid adverse effects.¹²² BLM failed to grapple with its prior findings about what constitutes maximum protection and what the agency needs to do in order to achieve its statutory mandates.

BLM also made several findings related to subsistence and the need for protections when promulgating the 2024 Rule and during the subsequent Special Areas process initiated under the 2024 Rule. BLM recognized, for example, that serious impacts to subsistence are occurring across the North Slope with greater frequency as development expands and included provisions for the management of subsistence resources within Special Areas and directed BLM to seek opportunities for co-management in further of the government’s trust relationships with Tribes.¹²³

¹¹⁹ 73 Fed. Reg. 61292, 61301 (Oct. 15, 2008) (applying dictionary definition of “emergency”). 73 Fed. Reg. 61,292, 61,301 (Oct. 15, 2008) (applying dictionary definition of “emergency”). BLM’s NEPA Handbook offers the following examples of typical emergencies: a “hazardous materials spill,” “ongoing wildland fires,” and “emergency stabilization actions following wildland fires or other disasters” where stabilization is “immediately needed to protect public health and safety or important resources.” Bureau of Land Mgmt., *National Environmental Policy Act: Handbook H-1790-1* (2008) at 10–11, https://www.blm.gov/sites/blm.gov/files/uploads/Media_Library_BLM_Policy_Handbook_h1790-1.pdf.

¹²⁰ 89 Fed. Reg. 38753.

¹²¹ 88 Fed. Reg. 62036.

¹²² *Id.* at 62035.

¹²³ 89 Fed. Reg. 38714; 88 Fed. Reg. 62031.

In the subsequent Special Areas process and BLM's resulting report, BLM made numerous findings related to subsistence and the need for further protections.¹²⁴ BLM recognized subsistence as a significant resource value in existing Special Areas and proposed the new Nuiqsut Subsistence Use Special Area based on a record of science and Traditional Knowledge about uses, resources and observed changes in the Reserve.¹²⁵ The Agency's findings were based on an extensive record of science and Traditional Knowledge about uses, important resources, and changes that knowledge holders have observed in the Reserve.¹²⁶ BLM acknowledged that action was necessary to ensure the Agency fulfills its mandate to ensure maximum protection of significant resource values in Special Areas and to mitigate the adverse effects of oil and gas.¹²⁷

Again, BLM ignored these prior findings, which support the current rule, in its Proposal. For example, BLM provides no explanation to address the finding that climate change—over the past nearly 50 years since the 1977 rule was promulgated—has substantially changed the Arctic region and caused significant adverse effects on Reserve surface resources and the communities that rely upon them. Nor does the Proposal address the adverse effects of oil and gas development on the Reserve's extraordinary values, or how such activities are already the source of significant adverse effects in the Reserve. BLM's change in position is arbitrary and unsupported because the agency fails to adequately explain its reason for disregarding its previous factual findings.

VI. BLM MUST COMPLY WITH OTHER STATUTORY REQUIREMENTS BEFORE IT CAN RESCIND THE 2024 RULE

A. BLM IS REQUIRED TO COMPLY WITH THE NATIONAL ENVIRONMENTAL POLICY ACT

BLM's reliance on a categorical exclusion and its failure to adequately consider alternatives do not satisfy the requirements of the National Environmental Policy Act.¹²⁸ NEPA requires federal agencies "to use all practicable means" to ensure a safe environment for future generations, assure safe, healthful, and productive surroundings for all Americans, and to attain beneficial uses of the environment "without degradation, risk to health or safety, or other undesirable and unintended consequences."¹²⁹ Fundamentally, NEPA is intended to ensure (1) informed decision making and (2) meaningful public participation.¹³⁰ To meet these two objectives, federal agencies are required to prepare a detailed Environmental Impact Statement (EIS) for major federal actions that may significantly affect the quality of the human

¹²⁴ U.S. Dep't of the Interior, Maximizing Protection in the National Petroleum Reserve-Alaska: BLM Report Based on Public Submissions in Response to the July 2024 Request for Information 4, 12-13 (Jan. 2025)

¹²⁵ *Id.* at 4-8.

¹²⁶ *Id.* at 6-8.

¹²⁷ *Id.* at 4, 12.

¹²⁸ 42 U.S.C. § 4321 et seq.

¹²⁹ 42 U.S.C. § 4331(c).

¹³⁰ *See Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 349 (1989) (citations omitted).

environment.¹³¹ An EIS must include a full assessment of the “reasonably foreseeable environmental effects of” these proposed actions, and of “any reasonably foreseeable adverse environmental effects which cannot be avoided should the proposal be implemented.”¹³² Agencies must carefully gather, assess, and make available to the public information that is “useful in restoring, maintaining, and enhancing the quality of the environment.”¹³³ If, through completing an Environmental Assessment, the agency determines an EIS is not necessary, it must prepare a finding of no significant impact that clearly “set[s] forth the basis” of such a finding.¹³⁴

1. BLM’s reliance on a categorical exclusion is unexplained and unsupported

BLM’s reliance on a categorical exclusion is unexplained and unsupported. The Agency states that CX at 43 C.F.R. § 46.210(i) applies¹³⁵ but fails to provide any explanation of why. Rescinding the 2024 Rule without formal review of the environmental violates NEPA and BLM’s own regulations,¹³⁶ because the Proposal could “[have] a reasonably foreseeable significant effect on the quality of the human environment” and on subsistence practices.¹³⁷ BLM must prepare an environmental impact statement (EIS) or, at minimum, an environmental assessment (EA) to assess these impacts and provide the opportunity for meaningful public participation.¹³⁸

BLM’s Proposal “has a reasonably foreseeable significant effect on the quality of the human environment” and on subsistence practices.¹³⁹ BLM acknowledges the Proposal would enable “additional . . . opportunities for energy development” through new “energy infrastructure projects”¹⁴⁰ the effects of which would exacerbate the environmental changes already burdening the North Slope.¹⁴¹ Unlike the 2024 Rule, which was promulgated to provide additional

¹³¹ 42 U.S.C. § 4332.

¹³² *Id.* § 4332(C)(i)-(ii).

¹³³ *Id.* § 4332(J); *id.* § 4332(D), (E) (requiring agencies to ensure the professional and scientific integrity of their environmental analysis and statements and use reliable data).

¹³⁴ 42 U.S.C. § 4336(b)(2); *W. Watershed Project v. Abbey*, 719 F.3d 1035, 1050 (9th Cir. 2013).

¹³⁵ See 90 Fed. Reg. 23510 (citing 43 C.F.R. § 46.210(i) (2025) (excluding “[p]olicies, directives, regulations, and guidelines: that are of an administrative, financial, legal, technical, or procedural nature; or whose environmental effects are too broad, speculative, or conjectural to lend themselves to meaningful analysis and will later be subject to the NEPA process, either collectively or case-by-case.”).

¹³⁶ 42 U.S.C. § 4336; 43 C.F.R. §§ 46.210(i), 46.215 (2025).

¹³⁷ 42 U.S.C. § 4336(b)(1).

¹³⁸ 42 U.S.C. § 4336(b)(1).

¹³⁹ 42 U.S.C. § 4336 (b)(1); 43 C.F.R. §§ 46.210(i), 46.215 (2025).

¹⁴⁰ 90 Fed. Reg. 23509.

¹⁴¹ See C. Grove, *Alaska’s North Slope sees record-breaking heat, among state’s other climate oddities*, Alaska Pub. Media, PBS/npr Latest News (Aug. 8, 2024), <https://alaskapublic.org/news/2024-08-08/alaskas-north-slope-sees-record-breaking-heat-among-states-other-climate-oddities> (describing the human and ecological impacts of “record-breaking heat” on North Slope, including long-term damage to permafrost); 89 Fed. Reg. 38721 (“The

protections from ongoing and potential oil and gas activities in the Reserve,¹⁴² BLM's Proposal will facilitate oil and gas activities and associated environmental effects in the Reserve, including within Special Areas.¹⁴³ The increased oil and gas activities that will foreseeably result would likely degrade caribou, migratory bird, and polar bear habitat, threaten water quality, contaminate animals and plants used for subsistence, and cause significant visual impacts.¹⁴⁴ Expanded development in the Reserve resulting from BLM's Proposal, would also lead to an increase in global greenhouse gas emissions, thereby increasing the already significant effects in the region and the global consequences of climate change.¹⁴⁵ BLM also must recognize and analyze through the required environmental analysis the significant changes in circumstances that have occurred over the last 48 years.¹⁴⁶ For example, BLM must analyze the adverse effects,

changing conditions of surface values in the Reserve are being driven in a significant way by climate change and that changes due to climate change are occurring at an accelerated rate in the Arctic compared to other parts of the planet.”).

¹⁴² See 89 Fed. Reg at 38712 (“The rule establishes new standards and procedures for managing and protecting surface resources in the Reserve from the reasonably foreseeable and significantly adverse effects of oil and gas activities. It requires the BLM, in each decision concerning oil and gas activity in the Reserve, to adopt measures to mitigate the reasonably foreseeable and significantly adverse effects on surface resources, taking particular care with surface resources that support subsistence. . . . The rule sets forth standards and procedures for managing oil and gas activities within Special Areas, confirming that the management priority within Special Areas is to assure maximum protection of significant resource values consistent with the requirements of the NPRPA for exploration of and production from the Reserve.”).

¹⁴³ BLM, Economic Analysis for the Recission of the Management and Protection of the National Petroleum Reserve in Alaska Regulations, issued May 7, 2024, at 12 (June 4, 2025) (stating that the agency “anticipates the removal of the 2024 Rule requirements will . . . allow for . . . additional economic opportunities for energy development, such as the ability to work on energy infrastructure projects . . .” and that “repeal [of the 2024 Rule] may indirectly affect future oil and gas activity and lands under protection within special areas.”

¹⁴⁴ See The Wilderness Society *et al.*, Comments on Request for Information on Special Areas in the National Petroleum Reserve in Alaska (Aug. 26, 2024); Grandmothers Growing Goodness *et al.*, Comments on Request For Information: Special Areas in the National Petroleum Reserve in Alaska (Aug. 20, 2024); Alaska Wilderness League *et al.*, Comments on Proposed Rule on Management and Protection of the National Petroleum Reserve in Alaska (Dec. 7, 2023).

¹⁴⁵ See Nat. Res. Def. Council *et al.*, Comments on Proposed Rule, Management and Protection of the National Petroleum Reserve in Alaska (RIN 1004–AE95) (Dec. 7, 2023); 89 Fed. Reg at 38714 (describing how climate change has dramatically changed the Arctic landscape and substantially affected surface resources and to North Slope communities, and how the current rule was needed to respond to these escalating effects); M. Meredith, et al., *Polar Regions*, in IPCC Special Report on the Ocean and Cryosphere in a Changing Climate 205 (H.-O. Pörtner, et al. (eds), 2019), <https://www.ipcc.ch/srocc/chapter/chapter-3-2/> (“Arctic surface air temperature has likely increased by more than double the global average over the last two decades, with feedbacks from loss of sea ice and snow cover contributing to the amplified warming. . . . [From 2014 to 2018], Arctic annual surface air temperature exceeded that of any year since 1900. During the winters (January to March) of 2016 and 2018, surface temperatures in the central Arctic were 6°C above the 1981–2010 average, contributing to unprecedented regional sea ice absence.”); cf. BLM, Economic Analysis for the Recission of the Management and Protection of the National Petroleum Reserve in Alaska Regulations, issued May 7, 2024, at 2 (June 4, 2025) (acknowledging the 2024 Rule provides the “analytic baseline” for assessing economic impacts).

¹⁴⁶ See *Montana Wildlife Fed’n v. Haaland*, 127 F.4th 1, 39 (9th Cir. 2025) (“[T]he justification offered for a change in policy or agency action cannot be inconsistent with the purpose of the requirement being implemented. Here, the agency’s decision to prioritize administrative efficiency and expedition of oil and gas production over deliberative decision-making that takes into account informed public comments is in direct tension with NEPA.”).

including, but not limited to air and water quality, public health impacts, wildlife habitat fragmentation, effects on ecological integrity, and greenhouse gas emissions and associated climate effects, of its Proposal in light of newly mandated lease sales.¹⁴⁷ BLM must prepare an EIS or, at minimum, an EA to assess these effects and provide opportunity for meaningful public participation.¹⁴⁸ BLM itself recognized in 1977 that promulgating rules to address management of resources in the Reserve requires an EA, at a minimum.¹⁴⁹ BLM's failure to explain or provide support for its use of the CX at 43 C.F.R. § 46.210(i) violates the APA¹⁵⁰ and its failure to prepare an EIS or even an EA to avoid assessing the foreseeable effects if its proposal are inadequate to satisfy NEPA.¹⁵¹

2. BLM must consider alternatives to full rescission of the 2024 Rule

BLM failed to adequately consider alternatives to full rescission of the 2024 Rule. An EA and/or EIS must include “alternatives to the proposed action.”¹⁵² An agency must “study, develop, and describe technically and economically feasible alternatives” to a proposed action.¹⁵³ The alternatives analysis under NEPA “is the linchpin of the entire” environmental analysis.¹⁵⁴ An agency must “provide information in detail on alternatives to the proposed action”¹⁵⁵ and provide the decision maker with a “reasonable range of alternatives” from which to choose.¹⁵⁶ Consistent with NEPA’s basic policy objective to protect the environment, the alternatives

¹⁴⁷ See Pub. L. No. 119-21, Sec. 50105 (2025).

¹⁴⁸ 42 U.S.C. § 4336(b)(1); see Mgmt. and Prot. of the Nat’l Petroleum Rsrv. in Alaska, 42 Fed. Reg. 28720, 28720 (June 3, 1977) (noting that BLM held three public meetings in Alaska during the comment period and prepared an EA in response to public comments on the 1977 rulemaking).

¹⁴⁹ See Management and Protection of the National Petroleum Reserve in Alaska, 42 Fed. Reg. 28720 (June 3, 1977) (noting that the BLM held three public meetings in Alaska during the comment period and prepared an EA in response to public comments on the 1977 rulemaking).

¹⁵⁰ BLM’s plan “to document the applicability of the CX concurrently with development of the final rule” 90 Fed. Reg. 23,510, is insufficient because provides no opportunity for public comment.

¹⁵¹ See *Klamath Siskiyou Wildlands Ctr. v. Boody*, 468 F.3d 549, 562 (9th Cir. 2006) (“[N]ot only did [the agency] fail to conduct an EIS ..., it did not even conduct an EA.”); see also *Solar Energy Indus. Ass’n v. FERC*, 80 F.4th 956, 995 (9th Cir. 2023) (“[W]hen an agency is uncertain about the possible environmental effects of a proposed action, the proper course is to prepare an EA to the best of the agency’s ability, not to avoid environmental analysis altogether.”).

¹⁵² 42 U.S.C. § 4332(2)(C)(iii).

¹⁵³ 42 U.S.C. § 4332(2)(F).

¹⁵⁴ *Swinomish Tribal Cmty. v. Fed. Energy Regul. Comm’n*, 627 F.2d 499, 512 (D.C. Cir. 1980).

¹⁵⁵ *Citizens for a Better Henderson v. Hodel*, 768 F.2d 1051, 1057 (9th Cir. 1985).

¹⁵⁶ 42 U.S.C. § 4332(2)(C)(iii).

analysis must include more environmentally protective alternatives.¹⁵⁷ “The existence of a viable but unexamined alternative renders an [environmental analysis] inadequate.”¹⁵⁸

BLM alleges it considered but dismissed two alternatives to full rescission.¹⁵⁹ BLM dismissed a vague and unexplained partial rescission of the 2024 Rule “that would meet BLM’s statutory objectives and provide more benefits to small entities” on the ground that “it would not be authorized under BLM’s authority.”¹⁶⁰ BLM also dismissed “delaying the repeal of requirements over time for affected small entities” on the grounds that this unclear and unexplained alternative “would unnecessarily delay the benefits for small entities, does not achieve BLM’s objectives, and would not be authorized under BLM’s authority.”¹⁶¹ Like BLM’s failure to adequately explain why the 2024 Rule is inconsistent with the Agency’s authority, BLM also failed to explain or provide support for its conclusory assertion that less than full rescission would be inconsistent with BLM’s authority. The NPRPA expressly directs BLM to promulgate rules to ensure the protection of environmental, fish and wildlife, and historical or scenic values in the Reserve.¹⁶² The NPRPA further directs BLM to “assure the maximum protection of areas containing significant subsistence, recreational, fish and wildlife, or historical or scenic value.” Maintaining the 2024 Rule, which achieves this congressional directive and is consistent with the NPRPA requirements for exploration of the Reserve, is consistent with BLM’s statutory authorities.

BLM must meaningfully consider alternatives to full rescission of the 2024 Rule. At a minimum, BLM must consider an alternative that removes from the Rule § 2361.50, the only provision of the Rule BLM identifies, although without explanation, as inconsistent with its legal duties.¹⁶³

¹⁵⁷ See *Muckleshoot Indian Tribe v. U.S. Forest Serv.*, 177 F.3d 800, 813–14 (9th Cir. 1999) (holding the Forest Service violated NEPA when it failed to consider an alternative that was more consistent with the Forest Service’s policy objectives and more protective of the environment); 23 C.F.R. § 771.105(c) (“Alternative courses of action [must] be evaluated and decisions be made in the best overall public interest based upon a balanced consideration of the need for safe and efficient transportation; of the social, economic, and environmental impacts of the proposed transportation improvement; and of national, State, and local environmental protection goals.”); *c.f.* *Kootenai Tribe of Idaho v. Veneman*, 313 F.3d 1094, 1121–22 (9th Cir. 2002) (holding the Forest Service was not required under NEPA to “conduct in-depth analyses of environmentally damaging alternatives that are inconsistent with the Forest Service’s conservation policy objectives”), *abrogated on other grounds by Wilderness Soc’y v. U.S. Forest Serv.*, 630 F.3d 1173, 1178–80 (9th Cir. 2011) (en banc).

¹⁵⁸ *Montana Wilderness Ass’n v. Connell*, 725 F.3d 988, 1004 (9th Cir. 2013) (quotations and citation omitted).

¹⁵⁹ 90 Fed. Reg. 23509.

¹⁶⁰ *Id.*

¹⁶¹ *Id.*

¹⁶² 42 U.S.C. § 6503(b); 6504(d).

¹⁶³ 90 Fed. Reg. 23508.

VII. BLM IS REQUIRED TO COMPLY WITH ANILCA SECTION 810

Alaska National Interest Lands Conservation Act (ANILCA) Title VIII recognizes that subsistence uses are an important public interest and provides procedural and substantive requirements to consider and protect subsistence uses in agency decision-making processes.¹⁶⁴ Section 810 sets forth a procedure through which effects to subsistence resources must be considered and mandates that “actions which would significantly restrict subsistence uses can only be undertaken if they are necessary and if the adverse effects are minimized.”¹⁶⁵

Procedurally, ANILCA Section 810(a), depending on circumstances, requires up to four steps: (1) An evaluation, which consists of three major parts; (2) a finding of whether or not a proposed action may have significant restriction on subsistence uses; (3) notice and hearing, if an action may have a significant restriction on subsistence uses; and (4) a three-part determination before the action may be authorized if there may be a significant restriction on subsistence uses. An ANILCA Section 810 evaluation is required for all land use actions, even if such action is properly covered by a NEPA CX.

BLM’s proposal would eliminate provisions designed to protect Special Areas vital to subsistence users and subsistence resources, as well as a provision specifically included to protect subsistence, including express protections for subsistence resources and uses in Special Areas.¹⁶⁶ When BLM promulgated the 2024 Rule, the Agency stated that the new rules would “maintain[] and enhance[] access for long-standing subsistence activities in the Reserve.”¹⁶⁷ BLM’s proposal would substantially reduce the protections for subsistence resources, use, and access, which would adversely affect subsistence uses and user. Accordingly, BLM must fully comply with the procedures required under ANILCA Section 810, including by conduct hearings, to ensure it minimizes adverse effects on the impacts to subsistence.

VIII. BLM IS REQUIRED TO COMPLY WITH THE ENDANGERED SPECIES ACT

BLM’s Proposal failed to address how the Agency will comply with its substantive and procedural obligations under the Endangered Species Act (ESA).¹⁶⁸ Several ESA-listed species inhabit the Reserve and its nearshore waters, including but not limited to whales, bearded and

¹⁶⁴ 16 U.S.C. §§ 3111-3126.

¹⁶⁵ *Amoco Prod. Co. v. Village of Gambell, Alaska*, 480 U.S. 531, 544 (1987).

¹⁶⁶ See 43 C.F.R. § 2361.50. As part of its previous Special Area process, BLM acknowledged that subsistence is a significant resource value in existing Special Areas, took steps to implement immediate, interim measures to protect subsistence, and recognized that new and expanded Special Areas were warranted to ensure maximum protection measures would be in place to protect subsistence. U.S. Dep’t of the Interior, Maximizing Protection in the National Petroleum Reserve-Alaska: BLM Report Based on Public Submissions in Response to the July 2024 Request for Information at 4 (Jan. 2025).

¹⁶⁷ 89 Fed. Reg. 38714.

¹⁶⁸ See 89 Fed. Reg. 23507; 16 U.S.C. §§ 1531-1544.

ringed seals, spectacled and Steller's eiders, and polar bears.¹⁶⁹ Section 7(a)(2) of the Endangered Species Act mandates that every federal agency, in consultation with the U.S. Fish and Wildlife Service and/or the National Marine Fisheries Service (Collectively, Services), to ensure any action over which it has discretionary involvement or control is not likely to (1) jeopardize the continued existence of any threatened or endangered species or (2) result in the destruction or adverse modification of critical habitat.¹⁷⁰ The Services have adopted joint regulations on interagency consultation.¹⁷¹ Each federal agency "shall review its actions at the earliest possible time to determine whether any action may affect listed species or critical habitat."¹⁷² The threshold for triggering consultation is low: if an action may affect any listed species or critical habitat, the action agency must engage in formal or informal consultation with the Service(s).¹⁷³ "Any possible effect, whether beneficial, benign, adverse, or of an undetermined character, triggers the formal consultation requirement."¹⁷⁴ Only where the action agency determines, in consultation with the Service(s) that its actions will have no adverse effect on listed species or critical habitat may it forgo consultation.¹⁷⁵

Consistent with President Trump's desire to maximize fossil fuel production at any cost, BLM seeks to rescind the 2024 Rule expressly to "allow the maximum possible extraction of to enable more oil and gas activities."¹⁷⁶ The Agency is obligated to consult on all consequences from its Proposal on listed species that are reasonably certain to occur.¹⁷⁷ The 2024 Rule updated and expanded the Agency's process for mitigating adverse effects of oil and gas activities and required BLM to adopt measures to mitigate reasonably foreseeable and adverse effects on surface resources.¹⁷⁸ The 2024 Rule also required BLM to protect wildlife and habitats, and presume that oil and gas activities are not allowed in Special Areas unless those activities can be completed with no or minimal adverse effects on wildlife and other surface resources.¹⁷⁹ BLM cannot lawfully take action that will enable the expansion of oil and gas development in the Reserve, such as rescinding the 2024 Rule and its environmental protections, without engaging in Section 7 consultation because increased oil and gas exploration and development "may

¹⁶⁹ See 35 Fed. Reg. 18319 (Dec. 1, 1970) (bowhead whale listing); 77 Fed. Reg. 76706 (Dec. 28, 2012) (ringed seal listing); 77 Fed. Reg. 76740 (Dec. 28, 2012) (bearded seal listing); 73 Fed. Reg. 28212 (May 15, 2008) (polar bear listing); 58 Fed. Reg. 27474 (May 10, 1993) (spectacled eider listing); 62 Fed. Reg. 31748 (June 11, 1997) (Steller's eider listing).

¹⁷⁰ 16 U.S.C. § 1536(a)(2).

¹⁷¹ See 50 C.F.R. Part 402

¹⁷² 50 C.F.R. § 402.14(a).

¹⁷³ 50 C.F.R. §§ 402.13, 402.14.

¹⁷⁴ 51 Fed. Reg. 19926, 19949 (June 3, 1986).

¹⁷⁵ 50 C.F.R. § 402.13; *Sw. Ctr. for Biological Diversity v. U.S. Forest Serv.*, 100 F.3d 1443, 1447–48 (9th Cir. 1996).

¹⁷⁶ 90 Fed. Reg. 23509.

¹⁷⁷ 50 C.F.R. §§ 402.02, 402.14.

¹⁷⁸ 90 Fed. Reg. 23508.

¹⁷⁹ 43 C.F.R. § 2361.40(f).

affect” listed species in and around the Reserve. BLM failed to explain how the Agency will comply with its substantive and procedural obligations under the ESA.¹⁸⁰

IX. BLM’S DRAFT ECONOMIC ANALYSIS FOR ITS PROPOSAL IS INADEQUATE AND OMITTS SIGNIFICANT ECONOMIC EFFECTS OF RESCINDING THE 2024 RULE

BLM is specifically soliciting comments on the economic effects associated with the proposed rescission of the 2024 Rule.¹⁸¹ BLM’s Draft Economic Analysis for the Recission of the Management and Protection of the National Petroleum Reserve in Alaska Regulation (Draft Economic Analysis)¹⁸² is fatally flawed.

As an initial matter, BLM’s baseline assumptions are inconsistent. BLM claims that “decisions in the 2022 IAP, which were made under the previous regulations, are unaffected by” [its proposal].”¹⁸³ BLM admits, however, that it “has initiated a separate process to consider any necessary changes to the 2022 IAP.”¹⁸⁴ BLM cannot sincerely assert it will maintain the 2022 IAP’s management direction for the purposes of its Draft Economic Analysis, while also reverting to management under the 2020 IAP, which would open another approximately 30% of the Reserve to fluid mineral leasing and remove Special Area protections from 2.1 million acres, which would result in significantly increased costs.¹⁸⁵ BLM must evaluate the economic costs of rescinding the 2024 Rule in light of returning to management under the 2020 IAP.

Moreover, BLM’s 13-page analysis finds few economic costs associated with rescinding the 2024 Rule and fails to quantify costs, discussing only benefits in depth.¹⁸⁶ Among other changes, BLM’s Proposal open 6.8 million more acres to oil leasing; reduce Special Areas by over 2 million acres; double peak production and surface disturbance; more than double peak water usage; roughly double greenhouse gas emissions; and affect about 6.5 million more acres of key subsistence use areas as compared to the 2024 Rule. BLM failed to account for the economic effects of these changes.

BLM also made no attempt to evaluate the economic costs and environmental damage from increased GHG emissions. Consistent with President Trump’s policies, BLM’s Draft Economic Analysis never once mentions GHG emissions or climate change. It notes only that increased “flexibility for oil and gas management . . . could lead to relative increases in revenues but possible negative impacts on climate, habitat, or other benefits that would occur from

¹⁸⁰ See 90 Fed. Reg. 23507.

¹⁸¹ BLM, Economic Analysis for the Recission of the Management and Protection of the National Petroleum Reserve in Alaska Regulations at 2 (June 2025).

¹⁸² *Id.*

¹⁸³ *Id.* at 3.

¹⁸⁴ *Id.* n.2.

¹⁸⁵ See BLM, National Petroleum Reserve in Alaska Integrated Activity Plan: Environmental Assessment DOI-BLM-AK-0000-2025-0005-EA at 6, B-4 (June 2025).

¹⁸⁶ See BLM, Economic Analysis for the Recission of the Management and Protection of the National Petroleum Reserve in Alaska Regulations, issued May 7, 2024, at 6, 7, 10, 11, Table 4, 12.

reduced oil and gas activity.”¹⁸⁷ Courts have rejected agency refusals to properly quantify the costs of GHG emissions.¹⁸⁸ It is “arbitrary and capricious to quantify the *benefits* . . . and then explain that a similar analysis of the *costs* was impossible when such an analysis was in fact possible.”¹⁸⁹ BLM must analyze and disclose to the public the actual climate effects caused by GHG emissions, such as property lost or damaged by sea-level rise; changes in energy demand; lost productivity and other impacts to agriculture; and human health impacts, such as cardiovascular and respiratory mortality from heat-related illnesses, and changes in associated pollution.¹⁹⁰ These impacts are all included, to some degree, in the different assessment models that comprise the widely accepted social cost of greenhouse gas SC-GHG estimates.¹⁹¹ BLM

¹⁸⁷ *Id.* at 10.

¹⁸⁸ See, e.g., *Montana Env't Info. Ctr. v. U.S. Office of Surface Mining*, 274 F. Supp. 3d 1074, 1094–99 (D. Mont. 2017) (rejecting agency's failure to incorporate the federal SCC estimates into its cost-benefit analysis of a proposed mine expansion); see also *Zero Zone, Inc. v. U.S. Dep't of Energy*, vcv, 679 (7th Cir. 2016) (holding estimates of the social cost of carbon (SCC) used to date by agencies were reasonable); *High Country Conservation Advocates v. U.S. Forest Serv.*, 52 F. Supp. 3d 1174, 1190–93 (D. Colo. 2014) (holding the SCC was an available tool to quantify the significance of GHG impacts, and it was “arbitrary and capricious to quantify the *benefits* of the lease modifications and then explain that a similar analysis of the costs was impossible”) (emphasis in original). An agency may not assert that the social cost of fossil fuel development is zero: “by deciding not to quantify the costs at all, the agencies effectively zeroed out the costs in its quantitative analysis.” *High Country Conservation Advocates*, 52 F. Supp. 3d at 1192; see *Ctr. for Biological Diversity v. Nat'l Highway Traffic Safety Admin.*, 538 F.3d 1172, 1200 (9th Cir. 2008) (holding that while there is a range potential social cost figures, “the value of carbon emissions reduction is certainly not zero”).

¹⁸⁹ *High Country Conservation Advocates*, 52 F. Supp. 3d at 1191 (emphases in original).

¹⁹⁰ *NRDC v. NRC*, 685 F.2d 459, 486–87 (D.C. Cir. 1982), *rev'd on other grounds*, *Baltimore Gas & Elec. Co. v. NRDC*, 462 U.S. 87, 106–07 (1983). Merely listing the quantity of emissions is insufficient if the agency “does not reveal the meaning of those impacts in terms of human health or other environmental values,” since “it is not releases of [pollution] that Congress wanted disclosed” but rather “the effects, or environmental significance, of those releases.” *Id.*

¹⁹¹ See, e.g., Env't Prot. Agency, *Report on the Social Cost of Greenhouse Gases: Estimates Incorporating Recent Scientific Advances* 47-62 (2023). Even in combination with a general, qualitative discussion of climate change, by calculating only the tons of GHGs emitted, an agency fails to meaningfully assess the actual incremental impacts to property, human health, productivity, and so forth. See *Ctr. for Biological Diversity*, 538 F.3d at 1216–17 (rejecting analysis under NEPA when agency “quantifie[d] the expected amount of [carbon dioxide] emitted” but failed to “evaluate the incremental impact that these emissions will have on climate change or on the environment more generally,” noting that this approach impermissibly failed to “discuss the *actual* environmental effects resulting from those emissions” or “provide the necessary contextual information about the cumulative and incremental environmental impacts” that NEPA requires); *California v. Bernhardt*, 472 F. Supp. 3d 573, 623 (N.D. Cal. 2020) (“[F]raming sources as less than 1% of global emissions is dishonest and a prescription for climate disaster . . . Mere quantification [of greenhouse gas emissions] is insufficient.”); *Montana Env't Info. Ctr.*, 274 F. Supp. 3d at 1096–99 (rejecting the argument that the agency “reasonably considered the impact of greenhouse gas emissions by quantifying the emissions which would be released if the [coal] mine expansion is approved, and comparing that amount to the net emissions of the United States”); *High Country Conservation Advocates*, 52 F. Supp. 3d at 1191 (“Beyond quantifying the amount of emissions relative to state and national emissions and giving general discussion to the impacts of global climate change, [the agencies] did not discuss the impacts caused by these emissions.”). An agency therefore falls short of its legal obligations and statutory objectives by disclosing only volume estimates. To take an analogous example, courts have held that just quantifying the acres of timber to be harvested or the miles of road to be constructed does not constitute a “description of actual environmental effects,”

failed to provide proper justification for omitting SC-GHG from its evaluations here, which also constitutes an unexplained change in position.¹⁹²

BLM's only apparent substantive justification for not quantifying GHG emissions is its conclusory assertion that the "costs attributed to GHGs are often so variable and uncertain that they are unhelpful for the BLM's analysis."¹⁹³ Contrary to BLM's justification, SC-GHG tool's estimates are based on extensive expert development and peer review for nearly two decades.¹⁹⁴ And BLM has for years has quantified climate effects, primarily relying on the well-supported SC-GHG estimates.¹⁹⁵ Moreover, federal courts have repeatedly recognized that agency analysis necessitates making predictive judgments, explaining that "[r]egulators by nature work under conditions of serious uncertainty"¹⁹⁶ and "are often called upon to confront difficult administrative problems armed with imperfect data."¹⁹⁷ As the Ninth Circuit has explained, "the proper response" to the problem of uncertain information is not for the agency to ignore the issue but rather "for the [agency] to do the best it can with the data it has."¹⁹⁸

Finally, BLM's Draft Economic Analysis repeatedly touts the purported economic *benefits* of rescinding the rule without giving weight to the potential significant economic *costs* of doing so.¹⁹⁹ Accounting for increased GHG emissions would likely uncover significant costs and BLM also failed to account for the loss of access to and diminished productivity of

even when paired with a qualitative "list of environmental concerns such as air quality, water quality, and endangered species," when the agency fails to assess "the degree that each factor will be impacted." *Klamath-Siskiyou Wildlands Ctr. v. Bureau of Land Mgmt.*, 387 F.3d 989, 995 (9th Cir. 2004) ("A calculation of the total number of acres to be harvested in the watershed is . . . not a sufficient description of the actual environmental effects that can be expected from logging those acres."); *see also Oregon Natural Res. Council v. Bureau of Land Mgmt.*, 470 F.3d 818 (9th Cir. 2006).

¹⁹² The Department of the Interior "adopt[ed] . . . [the EPA's] new estimates of the social cost as the best available science." 90 Fed. Reg. 4779, 4779 (Jan. 16, 2025); *see* U.S. Dep't of the Interior, *Informational Memorandum on DOI comparison of available estimates of social cost of greenhouse gases* (SC-GHG) at 1, 8 (Oct. 16, 2024), available at https://eplanning.blm.gov/public_projects/2036015/200638053/20126874/251026854/20241016.DOI%20SC_GHG%20Info%20Memo.pdf (directing BLM to "adopt the EPA's 2023 estimates of the Social Cost of Greenhouse Gases (SC-GHG) as the best available science (as of September 30, 2024)"); *see FCC v. Fox TV Stations, Inc.*, 556 U.S. 502, 515 (2009) (holding that an agency must provide "good reasons" for a change in position and must provide "a more detailed justification" when a "new policy rests upon factual findings that contradict those which underlay [an agency's] prior policy; or when its prior policy has engendered serious reliance interests that must be taken into account"). To the extent BLM may rely on its reasons for not engaging in SC-GHG analysis in its 2025 IAP EA to explain its failure to do so in its proposal to rescind the 2024 Rule, none of these grounds is valid.

¹⁹³ 2025 IAP EA at 13.

¹⁹⁴ *See, e.g.,* Peter Howard et al., *Institute for Policy Integrity, Zero Rationality: What OIRA's New Memorandum Gets Wrong on Monetizing Climate Impacts* at i (May 2025) [hereinafter *Zero Rationality*].

¹⁹⁵ *See, e.g.,* BLM, *Environmental Assessment: Wyoming 2023 Second Quarter Competitive Lease Sale* at 54–55 (2023).

¹⁹⁶ *Public Citizen v. Fed. Motor Carrier Safety Admin.*, 374 F.3d 1209, 1221 (D.C. Cir. 2004).

¹⁹⁷ *Montana Wilderness Ass'n v. McAllister*, 666 F.3d 549, 559 (9th Cir. 2011)

¹⁹⁸ *Id.*

¹⁹⁹ *See* BLM, *Economic Analysis for the Recission of the Management and Protection of the National Petroleum Reserve in Alaska Regulations*, issued May 7, 2024, at 1, 2, 6, 12.

subsistence resources and the adverse effects on ecosystem services, otherwise known as “nature's benefit,” the multitude of benefits that come from healthy natural systems. Ecosystem services include tangible benefits like food, fiber, fresh water, and climate regulation as well as less tangible services like spiritual, recreational, and aesthetic benefits. Ecosystem services also cover the basic processes that underly these benefits including oxygen production, soil formation, habitat creation, and nutrient cycling. Ecosystem services in the Reserve include among other things, habitat for Arctic species such as caribou, polar bear, marine mammals, fish, and birds; food and raw materials from wildlife and plants; connection with nature, expression of traditions and maintenance of traditional ways of life; carbon storage and sequestration through live biomass and soils; quality water supply and mitigation of flooding; and tourism and recreational experiences in Arctic nature. Ecosystem services are irreparable and difficult to quantify monetarily. Nevertheless, it is possible to approximate the economic value of ecosystem services. BLM can and must account for costs of the ecosystem services its Proposal imperils.

In short, BLM is required—and failed—to conduct a proper economic analysis for its Proposal.

X. CONCLUSION

For each of the independently sufficient reasons identified above, BLM should withdraw its proposal to rescind the 2024 Rule. The 2024 Rule is consistent with BLM's statutory obligations to ensure maximum protection for significant resource values in Special Areas and to mitigate the significant adverse effects of oil and gas activities in the Reserve. BLM's stated rationales for rescinding the 2024 Rule are unsupported, inconsistent with prior Agency findings, and contrary to BLM's statutory obligations. If BLM nevertheless decides to promulgate a final rule rescinding the 2024 Rule, it must prepare an EIS or EA, consider alternatives to fully rescinding the 2024 Rule, comply with Section 810 of ANILCA and the ESA, and it must adequately explain its decision.