

# STATE OF ALASKA

## CITIZENS' ADVISORY COMMISSION ON FEDERAL AREAS

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August 31, 2011

Mr. Bob Abbey, Director  
Bureau of Land Management  
Attn: Brenda Hudgens-Williams  
20 M Street SE, Room 2134LM  
Washington, D.C. 20003

Dear Mr. Abbey:

Pursuant to the regulations at 43 CFR 1610.5-2, the Citizens' Advisory Commission on Federal Areas is protesting decisions made in the Proposed Delta River Special Recreation Management Area (SRMA) Plan and East Alaska Resource Management Plan (RMP) Amendment. In May 2010 the Commission submitted substantive comments on the draft environmental assessment and plan. Because most of those comments were either dismissed or inadequately addressed by the Bureau of Land Management, the Commission is filing this protest. A copy of our original comments is attached for your reference.

### **Public Participation**

Despite agency claims to the contrary, the opportunities for public participation during the review period for the draft environmental assessment were inadequate. The original public comment period was limited to 30 days. It was extended to 45 days only after this Commission and others made requests for additional time. Even then we were advised of the decision to extend only 2 days prior to the end of the original 30 day comment period.

No public meetings were held during the comment and review period, further reducing the public's opportunity to comment. The Commission's request to the Glennallen Field Office manager and the Anchorage District Office manager that public meetings be held was denied. This is unfortunate, as our experience has shown that members of the public are more likely to present comments or testimony at a public meeting than to submit written comments. This is particularly true in rural Alaska. In addition, public meetings would have provided an opportunity for the public to ask questions and better understand

the recently adopted and confusing Benefits Based Management (BBM) Planning process.

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

According to the final East Alaska RMP and EIS (Appendix F) public scoping meetings for the East Alaska RMP were held in winter and spring 2003. In 2004 public meetings to discuss plan alternatives were held. Public meetings and subsistence hearings on the draft RMP were held in 2005. Seven focus group meetings were held in February 2007 during the BBM planning process for the DWSR plan. No public meetings were held during the 2008 scoping period for the Delta plan. The 20 comments received in response to the more than 1,300 scoping bulletins mailed out represents a response rate of approximately 1.5%. And, as noted above, no public meetings were held during the 2010 comment period for the draft EA and plan.

With the exception of the 2007 focus group meetings, the last public meetings on the East Alaska RMP were held some 5 years prior to the release of the draft EA and plan for the Delta WSR and more than 6 years prior to the release of this proposed river plan and RMP amendment. The agency has held no meeting, workshop, or open house at which the general public could discuss the draft plan and its alternatives with agency staff, ask questions or present comments.

Although NEPA guidelines do not require an agency to hold public meetings during the review period for an environmental assessment, an agency is not precluded from doing so. The benefits of holding public meetings as an effective way of gathering input on a draft plan should be obvious. While this is not a lengthy plan, it is complicated by the inclusion of the BBM process. As such, the BLM has an obligation to the public to do more than simply comply with the most basic NEPA or CEQ guidelines for public involvement.

Public meetings for this plan should be held and comments taken in local communities, as well as in Anchorage and Fairbanks. Public comments received at those meetings must be given full consideration and appropriate changes made before a Record of Decision is signed for this plan.

### **Wilderness Characteristics**

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

Only after the review period for the draft EA past was a Wilderness Characteristic Inventory completed for the five Recreational Management Zones (RMZ) within the Delta WSR Corridor. This inventory, completed in March 2011, is incorporated in the current EA only by reference and is available only by request or at the BLM Glennallen Field Office. Curiously, it is also the only appendix to the plan that is not available on the BLM website.

The December 2008 **Scoping Report for the Delta River Management Plan Environmental Assessment, Section D - Issues Raised During Scoping That Are Outside the Scope of the EA** (pg. 19) addresses the issue of wilderness inventories and wilderness designation as follows:

*“.....(w)ilderness qualities and characteristics will not be documented for the purpose of future wilderness designation, but will be analyzed in the EA only to the extent these characteristics are affected by site-specific, recreation-related decisions that are developed in the plan.”*

The draft EA, however, did not document wilderness qualities or characteristics for the 5 RMZs. This made it impossible to analyze potential effects of “site-specific, recreation-related decisions” proposed in the plan on wilderness characteristics that may or may not exist in a given RMZ. More importantly for the public users, the EA provided no information on how the presence or absence of wilderness characteristics in a zone would drive management decisions affecting recreational activities and opportunities.

**Section 3.2.13** of the draft EA *Wilderness Characteristics* (pg. 77) did acknowledge that the Delta Wild & Scenic River Corridor included 2 areas that had outstanding opportunities for solitude or a primitive and unconfined recreation experience and high levels of naturalness and that *“These attributes are comparable to characteristics that are commonly found in areas designated as ‘wilderness.’”* However, this section stopped short of stating whether or not that these areas had wilderness characteristics and provided no basis for a meaningful analysis of any management proposals.

Indeed, the only discussion in the draft EA of the potential effects of management actions on wilderness characteristics or on which areas might possess those characteristics was found in **Section 4.2.13 Wilderness Characteristics** (pg. 98). It states *“RMZs 1 and 4 currently provide the best opportunity for wilderness characteristics...”* This generalized discussion does not constitute an analysis and fails to provide the type of site specific information necessary for a reviewer to make a substantive comment or for the agency to make reasonable and informed management decisions.

Because the wilderness inventory was not provided to the public along with the draft EA, and because the determination of whether or not an area has wilderness characteristics will guide management decisions for recreational and other activities in the Delta WSR corridor, approval of the recreation management plan should be withheld until a public review period is provided for the wilderness inventory.

As you know, since the wilderness inventory was completed, your office has issued new instructions outlining the requirements for conducting and maintaining inventory information for wilderness characteristics and for considering lands with those characteristics in land use plans. Approval of the Delta WSR management plan should be withheld until it is determined that it and the referenced wilderness inventory comply fully with Instruction Memorandum No. 2011-154 and its associated instructions. A statement of compliance should be included in the Record of Decision.

Through its actions on the wilderness inventory, it appears the BLM considers the process to be an internal one. This Commission, even though we had participated in the review of the draft EA and had asked to be kept informed of any developments in the plan, was not advised that an inventory was being conducted. To our knowledge none of the other State of Alaska agencies were notified. No notice to the public was made of the agency's intent to conduct the inventory using any of the methods listed by the BLM for its public outreach program on the development of the draft EA and plan.

Given the considerable controversy over the issue of Wilderness Characteristics, Wilderness Inventories and the ill-conceived BLM Wild Lands Program, the BLM must reconsider its approach on conducting future wilderness inventories and provide for public participation in the inventory process.

The BLM maintains the provisions of Sections 201 and 202 of the Federal Land Policy and Management Act require it to conduct and maintain wilderness characteristics inventories. The agency should not have to be reminded that those same sections require it to provide State and local governments with data from the inventory and to involve the public in the development, maintenance and revision of land use plans for the public lands under its management. The agency should have provided notice to the State of Alaska, local communities, tribal governments and the general public when it initiated the wilderness characteristics inventory. It also should have provided the opportunity for all interested parties to participate in the process and to review the inventory.

### **Travel Management and Closures**

The Commission is pleased to note that the proposal in the draft EA to prohibit motorized boats and airplane landings in Zones 1 and 4 has been dropped and that the BLM acknowledges the protections for access found in ANILCA Title XI and the procedural requirements in the regulations in 43 CFR Part 36.

We are concerned, however, about the statements (pgs. 19, 28 & 33) that motorized boating and airplane landings will be discouraged in Zones 1 and 4 and "highly" discouraged in Zone 3. The plan contains no explanation on how these statutorily protected uses would be discouraged. There is a fine line between actions designed to discourage a use or activity and actually preventing the use or activity through overzealous methods or even intimidation on the part of agency personnel. This is

important as the plan acknowledges (pg. 175) that the current level of motorized boating and airplane landings do not warrant a closure.

As stated in our previous comments, all conservation system units in Alaska, including the Delta WSR, are open to motorized boating or aircraft landings unless otherwise restricted under the criteria and procedures found in ANILCA Title XI and associated regulations. The proposed monitoring program will help identify any detrimental impacts to resources or safety concerns that may need to be addressed through appropriate regulatory action. However, since the agency has stated that the monitoring strategy will look at specific resources values to determine if motorized boat and aircraft uses are detrimentally affecting the specified values in RMZs 1 and 4, those specified values should be clearly noted in the record of decision.

Prior to implementing any monitoring program, the BLM should collect the necessary data to establish a baseline which recognizes current levels of use. Until such time as the agency determines that restrictions on motorized boat use or airplane landings are necessary, based on an objective monitoring program and collection of data, the management direction to “discourage” these uses should be removed from the plan.

While recognizing the closure procedures found in 36 CFR §36.11(h) for implementing closures or restrictions for motorized boating and aircraft use within conservation system units, the agency has clearly misconstrued parts of our comments. Those comments clarified that use of motorized boats and/or aircraft is not restricted to “traditional activities.” Their use, as is non-motorized surface transportation, is allowed unless otherwise restricted or prohibited. We quote our previous comments here:

“One point that must be clarified in the final EA and plan amendment is that the “traditional activity” standard does not apply to access via motorboats, airplane and nonmotorized surface transportation. The regulations in Sections 36.11(d, e & f) do not restrict use of motorboats, airplanes and nonmotorized surface transportation only for traditional activities or travel to and from villages and homesites. The Department of the Interior addressed this in the supplementary information accompanying the Title XI regulations when they were published in the *Federal Register* in 1986:

“Some commenters criticized the proposed regulations on motorboats and aircraft used within areas, in that those uses are not restricted to traditional activities and travel to and from homesites as in the statutory authorization. These commenters preferred the more restrictive language of the statute. Interior is of the view that it has the discretion to broaden the authorization beyond that required in the statute in light of other authorizations. Executive Order 11644 (EO 11644), on off-road vehicles (ORV) does not apply to motorboats or aircraft, so Interior is not limited by its requirements in authorizing these uses. After review of the impacts of these uses on the areas, including a review of the experience of the NPS and the FWS with their current

regulations which are identical in addressing motorboat and aircraft uses, it was decided that deleting the limiting language of the statutory authorization would not significantly increase the use of areas by motorboats and airplanes. Such use would not be in the derogation of the values and purposes for which these areas were established, and would provide for greater enjoyment of these areas by visitors. Accordingly, to allow for access to the areas, the restrictions on motorboat and fixed wing aircraft use have not been increased in the final regulations.” (51 FR 31626) (*emphasis added*)

The final EA and plan amendment should be revised to reflect that use of motorboats, aircraft and nonmotorized surface transportation are not restricted to “traditional activities” or for access to villages or homesites.”

The BLM responded, in part, to our comments as follows:

“After additional consideration, the BLM agrees that a traditional use determination would be needed to implement a seasonal closure, and at this point, the current level of motorized boat use and airplane landings do not warrant an ANILCA closure.”

In fact, no traditional use determination would be needed because, again, motorized boat and aircraft use (and non-motorized surface transportation) are not restricted to traditional activities. We repeat our request that the final plan and the record of decision be revised to reflect this fact.

The plan states in each of the alternatives that special rules for the river corridor will be developed in accordance with 43 CFR 8351.2-1 to codify an administrative restriction that the use of snowmachines and OHVs will only be allowed during periods of adequate snow cover, which would be 6 inches of ground frost or 12 inches of snow cover. Development of any special rules is unnecessary and duplicative. There is an existing codified definition of *adequate snow cover* found in 43 CFR §36.11- *Special Access* regulations. This definition is applicable to the Delta WSR corridor and should be used.

The term *adequate snow cover* is defined as “*snow of sufficient depth, generally 6-12 inches or more, or a combination of snow and frost depth sufficient to protect underlying vegetation and soil.*” This definition is consistent with that used for other conservation system unit by other managing agencies. The standard proposed in the plan of at least 6 inches of ground frost or 12 inches of snow cover is more restrictive than the existing standard, which allows a combination of both snow cover or frost depth to be used, provided the combination of the two is of sufficient depth to protect the underlying vegetation. Additionally, the procedures in 43 CFR §36.11(h) must be followed since the adoption and application of the proposed special rule would constitute a restriction from the existing regulatory standard.

The plan also proposes to close developed trails in Zones 2 to the use of pack animals,

mechanized travel, and dog musing by adopting special rules under 43 CFR 8351.2-1. Again, because Title XI provides for these types of uses within conservation system units, the BLM must comply with the closure procedures in the regulations at 43 CFR §36.11(h). The regulations in 43 CFR 8351.2-1 are not appropriate for use in restricting these uses within a conservation system unit.

With the exception of Alternative 1, in all zones under the proposed plan, the caching of supplies would only be allowed through written authorization with special stipulations from the BLM. No explanation or justification for the need to implement this restriction is provided in the EA. Existing regulations at 43 CFR §8365.1-2 *Occupancy and Use* state:

“On all public lands, no person shall:

(b) Leave personal property unattended longer than 10 days (12 months in Alaska), except as provided under §8365.2-3(b) of this title, unless otherwise authorized. Personal property left unattended longer than 10 days (12 months in Alaska), without permission of the authorized officer is subject to disposition under the Federal Property and Administrative Services Act of 1949, as amended (40 USC 484(m)).” (emphasis added)

Caching of supplies is presently allowed for up to 12 months without any written authorization or special stipulations. The exception would appear to be the developed campground in Tangle Lakes Developed Zone 3 under the provisions of §8365.2-3(b). Any limitation or restriction on the caching of supplies or personal property would require revision of the regulations in §8365.1-2. The proposed plan does not indicate that a rule change would be required. This proposed restriction should be dropped.

#### Navigability Determination

The Commission repeats its objection to the BLM’s failure to consult with the State of Alaska prior to completing the February 2010 navigability determination for the Delta River. While, as the agency claims, the determination process may have been completed independently from this planning process, the timing for the completion of the determination is hardly coincidental. Certainly, its effects on the plan and the plan alternatives are undeniable. This is another unfortunate example of the lack of adequate consultation and coordination associated with this planning effort.

In addition, the statement (pg. 211) regarding the federal test for navigability is incorrect. A river is considered navigable if it was used or was susceptible of being used in its ordinary condition for travel, trade or commerce at the time of statehood. There is no requirement that actual use had to have occurred.

#### Delta River Recreation User Survey

Our review of the data from the Recreation User Survey presented in the draft EA and plan indicated that there is no justification for the proposed limitations on camping, group

size limits and other similar use restrictions. We question the need to implement restrictions for an area where use levels have remained relatively low and stable.

Conclusion

We have strong concerns about the inadequate opportunities for public participation during the review period for this Delta WSR Plan and RMP amendment. There is no dispute that there was considerable public outreach and ample opportunities for participation during the preparation of the East Alaska RMP. However, the bulk of that effort took place years ago at the front end of the planning process. With the exception of the focus group meetings, the effort did not carry over into the development of the Delta WSR plan. That is unacceptable, particularly if it sets a precedent for future plan development.

The East Alaska RMP designated 5 Special Recreation Management Areas, including the Delta and Gulkana Wild and Scenic Rivers. A plan revision for the Gulkana was completed in 2006. To our knowledge the plans for the other 3 SRMAs have not been prepared. Those plans must be developed with more than minimal opportunities for public participation.

A major planning effort is under way for the Eastern Interior Planning Area. That area contains 3 wild and scenic rivers, a national conservation area and a national recreation area. It is reasonable to expect that these areas will be designated as special recreation management areas and at some point plans will be developed for them. In its planning process to date the Eastern Interior Field Office has done an excellent job of involving the public through public meetings and outreach to affected communities, organizations and interests. We have discussed with the field manager the plans for holding public meeting once the plan is released. It is apparent the public will have ample opportunity to participate by attending public meetings. That same effort should extend through the development and adoption of future plans associated with the RMP.

We ask that you carefully consider our protest of the Proposed Delta River Special Recreation Management Area (SRMA) Plan and East Alaska Resource Management Plan (RMP) Amendment and look forward to your decision.

Sincerely,



Stan Leaphart  
Executive Director

Cc: Governor Sean Parnell  
Bud Cribley – BLM Alaska State Director