December 7, 2023

James Tichenor
Advisor, Office of the Director
U.S. Department of the Interior
Bureau of Land Management
1849 C St. NW, Room 5646
Washington, DC 20240
Attn: 1004-AE95

Submitted via Federal eRulemaking Portal: https://www.regulations.gov

Re: American Petroleum Institute's Comments on the Proposed Rule for Management and Protection of the National Petroleum Reserve in Alaska

Dear Mr. Tichenor,

The American Petroleum Institute ("API") appreciates the opportunity to provide these comments in response to the Bureau of Land Management's ("BLM") proposed rule to govern the management of surface resources and Special Areas in the National Petroleum Reserve in Alaska ("Petroleum Reserve" or "NPR-A").[1] The oil and natural gas industry has a 50-year track record of safe and responsible energy development on the North Slope of Alaska while protecting the Alaskan environment and wildlife. These comments and recommendations on BLM's Proposed Rule reflect that experience and perspective.

API is a nationwide, non-profit trade association that represents all facets of the oil and natural gas industry, which supports 10.3 million U.S. jobs and nearly eight percent of the U.S. economy. API's nearly 600-member companies include large integrated companies, as well as exploration and production, refining, marketing, pipeline and marine businesses, and service and supply firms, including some that operate within the Petroleum Reserve. API was formed in 1919 as a standards-setting organization, and API has developed more than 700 standards to enhance operational and environmental safety, efficiency, and sustainability.

[1] BLM, *Management and Protection of the National Petroleum Reserve in Alaska*, 88 Fed. Reg. 62,025 (Sept. 8, 2023) ("Proposed Rule"). BLM subsequently extended the comment period by ten days, to November 17, 2023. BLM, *Extension of Comment Period*, 88 Fed. Reg. 72,985 (Oct. 24, 2023). On November 13, BLM announced an additional 20-day extension of the comment deadline to December 7, 2023. BLM, *Extension of Comment Period*, 88 Fed. Reg. 80,237 (Nov. 17, 2023).

API's members are dedicated to meeting environmental requirements while economically developing and supplying energy resources for consumers. Our members have a substantial interest in the effective environmental stewardship of natural resources. All segments of the oil and natural gas industry are subject to extensive permitting and regulatory requirements at local, state, and federal levels for activities such as exploration, drilling, and production from oil and gas wells, refining crude oil, transporting crude oil or refined product, and operating filling stations. Protecting environmental resources is important, and API and our members remain committed to working with federal, state, and local regulators to ensure that environmental programs relating to oil and natural gas development are protective, clear, administrable, and legally sound.

I. Executive Summary

API is concerned that BLM's approach in the Proposed Rule creates substantial uncertainty, undermines investor confidence and expectations, and reduces the value and reliability of partnerships with federal agencies on shared efforts to responsibly operate on and around federal lands and resources. Companies have invested billions of dollars to acquire leases on federal public lands relying on a stable regulatory regime with reasonable permitting timeframes for development and production. BLM's Proposed Rule, while limited to the Petroleum Reserve, reflects a significant departure from long-standing regulations and practices under the Naval Petroleum Reserve Production Act ("NPRPA"). The Proposed Rule is contrary to the NPRPA, inconsistent with congressional intent for the Petroleum Reserve, imposes restrictions that could not have been anticipated by bidders at the time existing leases were sold, and would foster litigation rather than energy production from the Petroleum Reserve.

If this reflects BLM's approach to regulation of other lands within its jurisdiction, it will cause significant uncertainty and undermine the investment-backed expectations of lessees on all public lands. To avoid that precedent and to re-align the Proposed Rule with the underlying statute and existing leases, API recommends that BLM withdraw the Proposed Rule; reissue a revised proposal with appropriate notice, consultation with Tribes and Alaska Native corporations, and more robust public engagement with stakeholders, including compliance with the National Environmental Policy Act ("NEPA"); and aim for a more balanced and durable approach to managing the Petroleum Reserve.

As explained herein, there are many elements of the Proposed Rule that are contrary to the plain language of the NPRPA and congressional intent. It is well established that the primary objective of the NPRPA is the establishment of an "expeditious program of competitive leasing of oil and gas" in the Petroleum Reserve.[2] Thus, while BLM is to consider impacts on the environment, those must be balanced with the countervailing mandate to develop a program of competitive leasing. At every turn, the Proposed Rule frustrates and undermines this statutory purpose. For example, the Proposed Rule would impose a presumption that largely prohibits leasing and new infrastructure in Special Areas, which is clearly contrary to the plain statutory language and governing case law. The Proposed Rule would also elevate the protection of surface values within Special Areas and surface resources within the Petroleum Reserve well beyond the clear bounds established by Congress.

[2] 42 U.S.C. § 6506a(a).

Additionally, the Proposed Rule would adopt numerous provisions that unduly burden the exploration, development, and production of oil and natural gas within the Petroleum Reserve, contravening Congress's directive that these activities occur expeditiously. For example, the Proposed Rule disproportionately promotes the expansion and protection of Special Areas without providing commensurate procedures for the reduction of those areas or the removal of protective measures. The Proposed Rule would also enable BLM to broadly condition, restrict, delay, or deny proposed actions within the Petroleum Reserve and require procedural determinations that appear intended to promote litigation in opposition to any oil and gas related activities. Instead of any semblance of "balance," these measures are clearly designed to burden domestic energy production.

Finally, the Proposed Rule would require BLM to consider uncertainty, and make management decisions for the Petroleum Reserve that "account for and reflect" any uncertainty, regarding effects on surface resources or significant resource values. The Proposed Rule compounds this unauthorized approach by also requiring that BLM evaluate "effects that are later in time or farther removed in distance" with no obligation to demonstrate a causal connection between any effects and the proposed activity under consideration. BLM is precluded from adopted this precautionary approach absent specific statutory authorization, which it does not have, and BLM cannot impose restrictions or mitigation measures beyond those authorized by the NPRPA or attempt to address effects that are not specifically caused by a proposed activity.

II. Table of Contents

III. The Oil and Natural Gas Industry Has a Long History of Respecting and Supporting Reasonable Environmental Regulation of Operations in Alaska.

Global forecasts indicate that oil will continue to be an important part of our nation's energy future. The U.S. Energy Information Administration ("EIA") predicts that, by 2050, petroleum and other liquids (followed closely by natural gas) will remain, by multiple magnitudes, the energy source most relied on in the United States to continue to power our economy and to meet the challenges that our dynamic nation will face in the future.[3] Our nation's long-term energy security will depend upon diversity of sources, and the United States needs a constant supply of new discoveries to replace declining production from existing and end-of-life wells to meet our

[3] EIA, *Annual Energy Outlook 2021*. Available at: http://www.eia.gov/aeo.

nation's growing demand for energy. The U.S. Geological Survey ("USGS") estimates the Petroleum Reserve holds a mean of 8.7 billion barrels of oil and 25 trillion cubic feet of natural gas.[4]

Alaska's oil and natural gas industry has a history of safe, effective, and environmentally responsible development of Arctic Alaska spanning five decades. Oil and natural gas operations on federal lands in Alaska are subject to extensive environmental reviews and have been conducted with an impressive track record of environmental protection. This experience with development on Alaska's North Slope and associated offshore areas provides strong support for the continued competitive leasing of oil and natural gas in the Petroleum Reserve.

Development of the North Slope began in the early 1960s, just after Alaska's Statehood. In 1964, the State held its first North Slope lease sale, and the massive Prudhoe Bay field was discovered in 1968. Production from Alaska's North Slope hit a peak of slightly more than 2.0 million barrels per day (mbd) in 1988.[5] As production declined to an estimated 1.2 mbd in 1998, many Alaskans expressed support for exploration of the Petroleum Reserve in the hopes that production from that area would offset declines in royalty payments from lower Prudhoe Bay production.[6] Development within the Petroleum Reserve became feasible with the construction of the Alpine facility in 2000, on lands just to the east of the Petroleum Reserve. In 2014, BLM approved Unit 1 of the Greater Mooses Tooth development, the first oil production pad within the Petroleum Reserve on federal leases, and additional exploration, development, and production has continued within the Reserve.

In its long history of production, the North Slope has produced, and the Trans-Alaska Pipeline System ("TAPS") has delivered, over 18.5 billion barrels of oil.[7] It is without dispute that this production has provided unparalleled economic and social benefits to the State of Alaska, Alaska Native organizations, municipalities, and Alaska's citizens. Oil and natural gas production in Alaska brought tens of thousands of people out of poverty and into our modern world. Despite the 2014-2016 economic downturn and the subsequent coronavirus pandemic, the oil and natural gas industry remains the backbone of Alaska's economy. In 2022, the oil and gas industry supported 69,250 jobs, which represents 16% of all employment in Alaska.[8] Between 1959 and 2022, the oil and gas industry has contributed over $274 billion (not adjusted for inflation) to the State of Alaska through royalties and taxes, and provides the largest cash contribution to the Alaska Permanent Fund. In addition, the taxation of oil and gas infrastructure has provided significant revenue to the North Slope Borough, which uses those funds to provide educational services,

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[4] USGS, *Assessment of undiscovered oil and gas resources in the Cretaceous Nanushuk and Torok Formations, Alaska North Slope, and summary of resource potential of the National Petroleum Reserve in Alaska* at 1 (2017).

[5] CRS, *The National Petroleum Reserve – Alaska (NPRA)* at 1 (Sept. 17, 2002).

[6] *Id*. at 1-2.

[7] *See* TAPS Historic Throughput. Available at: https://www.alyeska-pipe.com/historic-throughput/.

[8] McKinley Research Group, *The Role of Oil and Gas in Alaska's Economy* (2023). Available at: https://www.aoga.org.

health care, water and sewer infrastructure, public safety, wildlife management, and search and rescue services to the eight villages within its jurisdiction.

These benefits have been produced through an established record of safe and environmentally responsible development that is respectful of Alaska's natural resources. This outstanding record stems in significant part from an industry commitment to employing best management practices and providing extensive training programs for North Slope workers (e.g., ASRC Energy Services, LLC's "Nutaaq" training program). In addition, advances in technology have greatly reduced the footprint of development, allowing for greater consolidation of facilities and the preservation of more acreage within development zones for wildlife habitat. The industry has also dedicated significant resources to minimize impacts on species and their habitats. For example, oil and natural gas operators have detailed plans and procedures that reduce and manage oilfield attractants to polar bears, outline a chain-of-command for responding to any polar bear, and provide polar bear awareness and response training for employees.[9] Similarly, our members regularly employ caribou mitigation measures, such as avoidance of offroad travel during and after peak caribou calving to minimize potential impacts during the calving season, specifications for pipelines and roads to allow for unaltered caribou movement, and seasonal speed restrictions on vehicles.[10]

In sum, the development of Arctic Alaska's oil and natural gas resources has produced enormous economic, social, and scientific benefits while simultaneously reducing environmental impacts and protecting Alaska's natural resources. This record of experience and knowledge proven by a half-century of responsible development on the North Slope, along with continuing industry innovations, provides a sound basis for the future safe and responsible exploration and development of the Petroleum Reserve.

IV. Administration of the Petroleum Reserve Has Focused on the Congressionally-Established Purpose of Balancing Production with Environmental Considerations.

Located on the North Slope of Alaska, the Petroleum Reserve includes approximately 23 million acres of federal mineral estate. Originally established in 1923 as the Naval Petroleum Reserve No. 4, it was one of four petroleum reserves created to ensure that, "in time of war, the Navy's ships would have adequate petroleum supplies."[11] The Secretary of the Navy was authorized to develop and operate the reserves "in his discretion, directly or by contract, lease, or

[9] FWS, *Determination of Threatened Status for the Polar Bear (Ursus maritimus) Throughout Its Range*, 73 Fed. Reg. 28,212, 28,266 (May 15, 2008) ("Oil and gas exploration, development, and production activities do not threaten the [polar bear] species throughout all or a significant portion of its range….").

[10] *See, e.g.*, Alaska Dept. of Fish & Game, *Central Arctic Caribou Herd News* at 2, Winter 2016-17. ("The impact of oil infrastructure on [the Central Arctic caribou herd] has also been considered, but is not thought to be contributing to the decline since the herd grew substantially during peak oil development.").

[11] H.R. Rep. No. 94-81(I), at 5 (1975).

otherwise, and to use, store, exchange, or sell the oil and gas products thereof . . . for the benefit of the United States."[12]

For most of its early history, the Petroleum Reserve experienced limited exploration and development. In the 1970s, the Organization of the Petroleum Exporting Countries ("OPEC") oil embargo demonstrated "that the Nation had a need for oil that exceeded the needs of the Navy."[13] Congress promptly responded in 1976 by passing the NPRPA.[14] In part, the NPRPA re-designated the reserve as the "National Petroleum Reserve in Alaska," withdrew it from operation of the mining and mineral leasing laws, and placed it under the jurisdiction of the Secretary of the Interior.[15] More importantly, the purpose of the Petroleum Reserve was redirected to increase domestic supplies of oil, and the NPRPA authorized the Secretary to begin consideration of "development" that would be "regulated in a manner consistent with the total energy needs of the Nation."[16]

In 1980, Congress amended the NPRPA through an appropriations bill that authorized development and production in the Petroleum Reserve.[17] The 1980 amendment authorized "an expeditious program of competitive leasing of oil and gas" in the Petroleum Reserve.[18] That legislation "was passed as part of an effort to combat the difficulties caused by the energy crisis."[19] While the NPRPA includes provisions designed to protect and mitigate adverse effects to the surface resources of the Petroleum Reserve, these provisions are to be applied consistent with its stated requirements for leasing, development, and production of oil and natural gas resources.[20] Because Congress exempted the Petroleum Reserve from certain requirements of the Federal Land Policy and Management Act ("FLPMA"),[21] the NPRPA is a dominant-use statute and does not require consideration of sustained yield and multiple use or the preparation of a resource management plan.

In 2013, following its development of an Integrated Activity Plan ("IAP") and environmental impact statement ("EIS"), BLM issued a record of decision ("ROD") that made 11.8 million acres of the Petroleum Reserve available for oil and natural gas leasing, subject to numerous lease stipulations and best management practices imposing requirements on lessees

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[12] Pub. L. No. 243, 41 Stat. 812, 813 (1920) (codified as amended at 10 U.S.C. § 8722 (2018)).

[13] *N. Alaska Envtl. Ctr. v. Norton*, 361 F. Supp. 2d 1069, 1072 (D. Alaska 2005).

[14] Pub. L. No. 94-258, 90 Stat. 303 (1976).

[15] 42 U.S.C. §§ 6502 & 6503(a).

[16] H.R. Rep. No. 94-81(I), at 1 (1975).

[17] Department of the Interior Appropriations Act for Fiscal Year 1981, Pub. L. No. 96-514, 94 Stat. 2957, 2964–65 (1980).

[18] 42 U.S.C. § 6506a(a).

[19] *Wilderness Soc'y v. Salazar*, 603 F. Supp. 2d 52, 57 (D.D.C. 2009).

[20] 42 U.S.C. §§ 6504(a), 6506a(b).

[21] *Id*. § 6506a(c).

when constructing facilities and conducting oil and natural gas operations.[22] In 2020, BLM updated and revised the IAP and EIS for the Petroleum Reserve in order to "strike[] an appropriate balance of promoting development while protecting surface resources."[23] The subsequent ROD adopted the preferred alternative, which opened an additional 6.8 million acres in the Petroleum Reserve to oil and natural gas leasing subject to revised lease stipulations and required operating procedures.[24] Following a change in policy direction under a new Administration, the Secretary of the Interior directed a review of certain policies related to the Petroleum Reserve and BLM reevaluated the 2020 IAP and associated EIS.[25] On April 25, 2022, BLM determined that the NEPA analysis completed in 2020 was adequate and remained valid.[26] However, BLM then published a new ROD that adopted the alternative that reverts management of the Petroleum Reserve to what was approved in 2013.[27] Notwithstanding that the Petroleum Reserve has been successfully managed for decades through the IAP process, BLM published this Proposed Rule which substantially revises and upends the established regulatory regime.

V. API's Comments on the Proposed Rule

A. BLM Has Failed to Provide an Adequate Process for Public Participation Regarding the Proposed Rule.

From conception through the public comment period, BLM has failed to provide adequate public participation regarding the Proposed Rule. At the outset, pursuant to section 1(c) of Executive Order ("E.O.") 13563, "[b]efore issuing a notice of proposed rulemaking, each agency, where feasible and appropriate, shall seek the views of those who are likely to be affected, including those who are likely to benefit from and those who are potentially subject to such rulemaking."[28] There are eight active lessees in the Petroleum Reserve,[29] there are several state and national trade associations that regularly engage with BLM on Alaska oil and natural gas issues (e.g., API and the Alaska Oil and Gas Association ("AOGA")), and there are numerous tribal and

[22] BLM, *National Petroleum Reserve-Alaska Integrated Activity Plan Record of Decision* (Feb. 21, 2013).

[23] BLM, *National Petroleum Reserve in Alaska Integrated Activity Plan and Environmental Impact Statement* at 1-1 (June 2020).

[24] BLM, *National Petroleum Reserve in Alaska Integrated Activity Plan Record of Decision* (Dec. 2020).

[25] E.O. 13,990, *Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis*, 86 Fed. Reg. 7,037 (Jan. 25, 2021); Secretary of the Interior, Order No. 3398, *Revocation of Secretary's Orders Inconsistent with Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis* (Apr. 16, 2021).

[26] BLM, *Determination of NEPA Adequacy, National Petroleum Reserve in Alaska Integrated Activity Plan 2020 Final Environmental Impact Statement Evaluation* (Apr. 25, 2022).

[27] BLM, *National Petroleum Reserve in Alaska Integrated Activity Plan Record of Decision* (Apr. 2022).

[28] E.O. 13,563, *Improving Regulation and Regulatory Review*, 76 Fed. Reg. 3,821, 3,822 (Jan. 21, 2011).

[29] 88 Fed. Reg. at 62,037.

local governmental entities that will be affected by this Proposed Rule.[30] Despite its development of proposed regulations that significantly revise long-established regulatory procedures governing lessees in the Petroleum Reserve, BLM conducted no outreach or engagement with these entities and industry representatives to seek their views on the scope or merits of the contemplated proposed rulemaking. In addition, API is not aware of any meaningful efforts to engage directly with the North Slope Borough, the municipal government with zoning authority over activities in the Petroleum Reserve, or to consult with affected Alaska Native regional and village corporations or Tribes.[31]

The present public comment process itself has been flawed and insufficient. The Proposed Rule was published on September 8, 2023, with a 60-day public comment period. Based on its long history of working and collaborating with the people and communities of the North Slope, API recognizes that this time period coincides with the traditional fall whaling season, which is an essential subsistence harvest that supports the health, culture, and traditions of the local Iñupiat people, whose traditional lands encompass and include the Petroleum Reserve. Despite its awareness of the timing of this critical subsistence harvest period, and the significance it holds for the people of the North Slope of Alaska, BLM endeavored to host eight public meetings during this same time period with minimal notice. Apart from two planned "virtual" meetings, BLM has had obvious and readily foreseeable difficulties in scheduling "in-person" meetings in the affected village communities on the North Slope. These North Slope communities and related organizations submitted multiple requests to the Administration citing these challenges and requesting extensions to accommodate local circumstances. From API's perspective,[32] and those of its member companies that operate in Alaska, BLM's failure to respond to, and accommodate, the views of the North Slope Iñupiat people is extremely troubling and contrary to the policy directives issued by this Administration.[33] Given these difficulties, BLM's collective 30-day extension to the comment deadline was woefully inadequate to allow for informed public participation and comments on the Proposed Rule.[34]

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[30] *See* 43 C.F.R. § 46.200(b) ("Bureaus must solicit the participation of all those persons or organizations that may be interested or affected as early as possible, such as at the time an application is received or when the bureau initiates the NEPA process for a proposed action").

[31] E.O. 14,094, *Modernizing Regulatory Review*, § 2, 88 Fed. Reg. 21,879 (April 11, 2023); E.O. 13,175, *Consultation and Coordination with Indian Tribal Governments*, 65 Fed. Reg. 67,249 (Nov. 9, 2000); Pub. L. No. 108-447, 118 Stat. 2809, 3267 (2005) (amending Pub. L. No. 108-199, 118 Stat. 3, 452 (2005); Secretaries of the Interior and Agriculture, Order No. 3403, *Joint Secretarial Order on Fulfilling the Trust Responsibility to Indian Tribes in the Stewardship of Federal Lands and Waters* at 1 (Nov. 15, 2021).

[32] API has developed guidelines for community engagement which are designed to promote the safe and responsible development of the nation's oil and natural gas resources by engaging and respecting the communities where these operations occur. API, *Community Engagement Guidelines*, ANSI/API Bulletin 100-3 (2014). Available at https://www.api.org/-/media/Files/Policy/Exploration/100-3_e1.pdf.

[33] *Department of the Interior Policy on Consultation with Indian Tribes*, 512 DM 4 (Nov. 30, 2022); *Department of the Interior Policy on Consultation with Alaska Native Claims Settlement Act Corporations*, 512 DM 6 (Nov. 30, 2022).

[34] *See* Letter from Alaska Congressional Delegation to Secretary Haaland (Oct. 20, 2023).

Furthermore, this process for a Proposed Rule subject to the Administrative Procedures Act ("APA") was substantially less significant than other actions that dictate management of the Petroleum Reserve. As compared to BLM's IAP process, there was no scoping or solicitation of suggestions and comments regarding management objectives or regulatory provisions, no consideration of alternatives or analysis of the affected environment, no involvement of cooperating agencies or consultation with North Slope Iñupiaq tribal governments and Alaska Native Claims Settlement Act ("ANCSA") Native corporations, and a substantially flawed public notice and comment process. BLM's Proposed Rule would make wholesale revisions to the management framework of the Petroleum Reserve—it supersedes the IAP, establishes new standards (e.g., proposed §§ 2361.10 and 2361.40), and imposes new policies (e.g., maximum protection and primary use of Special Areas). Given the more durable nature of these regulations and the significance of the measures being proposed, reliable and informed public participation and feedback on the Proposed Rule is even more essential to ensure a balanced approach to management of the Petroleum Reserve.

B. BLM's Issuance of the Proposed Rule Violates NEPA.

BLM's development of the Proposed Rule failed to comply with its obligations under NEPA. BLM incorrectly determined that the Proposed Rule met the criteria for a categorical exclusion because it is purportedly "of an administrative, financial, legal, technical, or procedural nature."[35] This conclusion is belied by BLM's prior practice and the substantive purpose of the Proposed Rule, which is clearly intended to have "a significant effect on the human environment."[36] Accordingly, pursuant to NEPA, BLM is required to prepare an environmental assessment or EIS to inform and support any promulgation of a final rule.

NEPA is a procedural statute that seeks to ensure that federal agencies consider the environmental impacts of proposed major federal actions.[37] It requires agencies to take a "hard look" at the environmental consequences of a proposed federal action.[38] NEPA requires that an EIS is prepared for all "major Federal actions significantly affecting the quality of the human environment."[39] As the courts have recognized, the threshold for triggering an environmental analysis under NEPA is "relatively low"—"it is enough for the plaintiff to raise substantial questions whether a project may have a significant effect on the environment."[40] Importantly, this obligation applies even if the effects to the environment from the proposed action will be largely

[35] 88 Fed. Reg. at 62,038 (citing 43 C.F.R. § 46.210(i)).

[36] *See* 40 C.F.R. § 1508.1(d) (Categorical exclusions apply to actions that "normally do not have a significant effect on the human environment.").

[37] *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 16 (2008).

[38] *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 350 (1989).

[39] 42 U.S.C. § 4332(C).

[40] *Blue Mountain Biodiversity Proj. v. Blackwood*, 161 F.3d 1208, 1212 (9th Cir. 1998).

beneficial.[41] In appropriate circumstances, when an agency determines that a proposal falls within a category of actions that normally do not have a significant effect on the human environment (i.e., a categorical exclusion), it is not required to prepare an environmental assessment or EIS.[42] Even if an agency determines that a categorical exclusion applies, it is required to "evaluate the action for extraordinary circumstances in which a normally excluded action may have a significant effect."[43]

In the Proposed Rule, BLM relied on a Departmental categorical exclusion that applies to "[p]olicies, directives, regulations, and guidelines: that are of an administrative, financial, legal, technical, or procedural nature."[44] BLM's invocation of this categorical exclusion is wholly improper, as the Proposed Rule will clearly have a significant effect on the human environment (which includes ecological, aesthetic, historic, cultural, economic, social, or health impacts).[45] Indeed, as BLM explains, the Proposed Rule "would revise the management framework for surface resources throughout the NPR–A and Special Areas in the NPR–A."[46] BLM states that it "would improve upon the existing regulations' standards and procedures to balance oil and gas activities with the protection of surface resources in the NPR-A; designate and assure maximum protection of Special Areas' significant resource values; and maintain and enhance access for long-standing subsistence activities."[47] Indeed, the rule's overarching purpose is "to govern management of surface resources and Special Areas" in the Petroleum Reserve.[48] While some components of the Proposed Rule are procedural in nature, other provisions would impose substantive new measures addressing resources and areas within the Petroleum Reserve,[49] and even some of the procedural

[41] 40 C.F.R. § 1508.1(g)(4) ("Effects may also include those resulting from actions which may have both beneficial and detrimental effects, even if on balance the agency believes that the effects will be beneficial.").

[42] *Id*. § 1501.4(a); *id*. § 1508.1(d) ("Categorical exclusion means a category of actions that the agency has determined, in its agency NEPA procedures [], normally do not have a significant effect on the human environment.); 43 C.F.R. § 46.205 ("Categorical Exclusion means a category or kind of action that has no significant individual or cumulative effect on the quality of the human environment.").

[43] 40 C.F.R. § 1501.4(b).

[44] 88 Fed. Reg. at 62,038; 43 C.F.R. § 46.210(i) ("[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.").

[45] 40 C.F.R. § 1508.1(g)(4).

[46] 88 Fed. Reg. at 62,026.

[47] *Id*.

[48] *Id*. at 62,025.

[49] *E.g.*, *id*. at 62,040 (proposed § 2361.10(a)) ("In administering the Reserve, the Bureau must protect surface resources by adopting whatever conditions, restrictions, and prohibitions it deems necessary or appropriate to mitigate reasonably foreseeable and significantly adverse effects of proposed activities."); *id*. at 62,042 (proposed § 2361.40) ("Assuring maximum protection of significant resource values is the management priority for Special Areas."); *id*. (proposed § 2361.40(b)) ("The Bureau must, to the extent consistent with the Act, take such steps as are necessary to avoid the adverse effects of proposed oil and

provisions will clearly have substantive impacts that require analysis in an environmental assessment or EIS. As noted below, the Proposed Rule has significant economic and social implications for the State of Alaska, the North Slope Borough, and the villages on the North Slope.

The Ninth Circuit has rejected agency characterizations of a rule as "administrative" or "procedural" when the rulemaking would revise substantive environmental protections and land management regimes.[50] Accordingly, given the substantive focus of the Proposed Rule to enhance environmental protections of surface resources and Special Areas within the Petroleum Reserve, it is clearly not "procedural only," and BLM erroneously relied on a categorical exclusion to avoid preparing an EIS.

Even if the Proposed Rule were to fit within the scope of the invoked categorical exclusion, BLM erred in summarily determining that none of the extraordinary circumstances listed in 43 C.F.R. § 46.215 apply.[51] The Ninth Circuit has held that "[w]here there is substantial evidence in the record that exceptions to the categorical exclusion may apply, the agency must at the very least explain why the action does not fall within one of the exceptions."[52] Here, based on BLM's characterizations in the preamble alone, it is readily apparent that at least three of the extraordinary circumstances are directly applicable.

- The Proposed Rule may "[h]ave significant impacts on such natural resources and unique geographic characteristics as historic or cultural resources; park, recreation or refuge lands; wilderness areas; wild or scenic rivers; national natural landmarks; sole or principal drinking water aquifers; prime farmlands; wetlands (EO 11990); floodplains (EO 11988); national monuments; migratory birds; and other ecologically significant or critical areas."[53] Indeed, one of the purposes of the Proposed Rule is to adopt new and revised standards and procedures to improve BLM's protection of the "significant surface resources" in the Petroleum Reserve, which include caribou, migratory birds, fish, marine mammals, cultural resources, unique recreational areas, and subsistence resources.[54]

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gas activities on the significant resource values of Special Areas."); *id*. (proposed § 2361.40(c)) ("On lands allocated as available for future oil and gas leasing or new infrastructure, the Bureau will presume that those activities should not be permitted unless specific information available to the Bureau clearly demonstrates that those activities can be conducted with no or minimal adverse effects on significant resource values.").

[50] *California ex rel. Lockyer v. U.S. Dep't of Agric.*, 575 F.3d 999, 1018 (9th Cir. 2009) (rejecting application of a categorical exclusion for "procedural" rules to a Forest Service rulemaking that removed the Roadless Rule regulations, noting that counsel for the agency "could cite no occasion when this categorical exclusion was used to repeal a rule with substantive effects on land management").

[51] 88 Fed. Reg. at 62,038.

[52] *California v. Norton*, 311 F.3d 1162, 1177 (9th Cir. 2002).

[53] 43 C.F.R. § 46.215(b).

[54] 88 Fed. Reg. at 62,029-31.

- The Proposed Rule may "[e]stablish a precedent for future action or represent a decision in principle about future actions with potentially significant environmental effects."[55] BLM forthrightly acknowledges that the Proposed Rule is intended to "revise the management framework" and is "a new rule to govern the management of surface resources and Special Areas."[56] In part, the Proposed Rule would incorporate into regulation two maps from the 2022 IAP ROD in order to codify and precedentially establish the areas that are open and closed to future oil and gas leasing, the areas that are available and unavailable for new infrastructure, and certain restrictions that would apply to new leases and infrastructure.[57] The Proposed Rule also reinterprets the existing IAP and sets a precedent for applying the IAP as a "floor"[58] for environmental protections rather than an appropriate balance—both floor and ceiling—that provides a reasonable level of regulatory assurance for leaseholders in the Petroleum Reserve. The Proposed Rule imposes a presumption against approving production from leases that have been leased expressly for the purposes of exploration and production. The Proposed Rule thereby reduces or eliminates the incentive to explore the leases and develop a project for oil production. And by casting the IAP as the "floor" for environmental protections, the Proposed Rule appears to signal additional future restrictions, increasing regulatory risk and making investment decisions more difficult.

- The Proposed Rule may "[h]ave a disproportionately high and adverse effect on low income or minority populations (EO 12898)."[59] While BLM notes the benefits associated with subsistence harvest of resources from the Petroleum Reserve,[60] BLM makes no mention of the significant economic and social benefits of oil and natural gas production to the communities of the North Slope, whose residents are predominantly Iñupiat people. As BLM is aware, the taxation of oil and gas property provides the vast majority of revenue for the North Slope Borough (about 95 percent), which is then used to provide a wide range of essential public services to its eight Iñupiat village communities, such as healthcare, education, sanitation services, and public safety services.[61] In addition, pursuant to the NPRPA, 50 percent of the money received by the federal government from the "sales, rentals, bonuses, and royalties on leases issued…" is paid to the State of Alaska,[62] a portion of which is used to fund NPR-A Impact Mitigation grants that go to those communities most directly or severely impacted by oil and natural gas development. Accordingly, any reduction in oil and natural gas leasing and production within the Petroleum Reserve, as this Proposed Rule would effectuate, will have an adverse effect on the economic benefits

[55] 43 C.F.R. § 46.215(e).

[56] 88 Fed. Reg. at 62,025-26

[57] *Id*. at 62,035-36.

[58] *Id*. at 62,036.

[59] 43 C.F.R. § 46.215(j).

[60] 88 Fed. Reg. at 62,030-31.

[61] BLM, *National Petroleum Reserve in Alaska Integrated Activity Plan and Environmental Impact Statement* at 3-351 (2020).

[62] 42 U.S.C. § 6506a(l).

provided to the Borough and its communities, whose populations are predominately Alaska Native.

BLM must explain why these (and other) extraordinary circumstances do not apply. Absent that, as recognized by the Ninth Circuit and BLM's regulations, if one or more of the circumstances "may" apply, BLM is precluded from invoking the categorical exclusion.[63]

In publishing the Proposed Rule, BLM violated its obligations under NEPA by improperly invoking a categorical exclusion instead of preparing the requisite environmental analysis. As it did when promulgating the first Petroleum Reserve regulations in 1977, at a minimum, BLM must prepare an environmental assessment of the proposed action.[64] However, given the likelihood of significant effects associated with the Proposed Rule, as it does with the IAPs for the Petroleum Reserve, BLM should prepare an EIS to fully inform any final action.

C. The Proposed Rule is Inconsistent with the Requirements of the NPRPA and Congressional Intent.

In issuing the Proposed Rule, BLM states that, "consistent with its duties under the [NPRPA], the [FLPMA], and other authorities," it "would revise the framework for designating and assuring maximum protection of Special Areas' significant resource values, and would protect and enhance access for subsistence activities throughout the [Petroleum Reserve]."[65] API supports the statutory objectives of the NPRPA, FLPMA, and the Alaska National Interest Lands Conservation Act ("ANILCA") (the "other authority" identified by BLM), and wholeheartedly agrees that access for subsistence activities within the Petroleum Reserve should be protected and enhanced. Many non-subsistence aspects of the Proposed Rule, however, are inconsistent with or contrary to the requirements dictated by BLM's statutory authority and the congressional intent relevant to those authorities.

1. Summary of Relevant NPRPA Statutory Provisions and Legislative History

As a result of the oil embargo imposed by OPEC in 1973-74, the United States sought to boost domestic energy production to reduce vulnerabilities to oil imports and to ease nationwide fuel shortages. The NPRPA was introduced in 1975 with the purpose of authorizing the Secretary of the Interior to establish national petroleum reserves, "the development of which needs to be regulated in a manner consistent with the total energy needs of the Nation."[66] With respect to the Petroleum Reserve, the House Committee on Interior and Insular Affairs found that "early

[63] *California v. Norton*, 311 F.3d 1162, 1177 (9th Cir. 2002); *see also* 46 C.F.R. 46.215 ("Extraordinary circumstances (see paragraph 46.205(c)) exist for individual actions within categorical exclusions that may meet any of the criteria listed in paragraphs (a) through (l) of this section.") (emphasis added).

[64] BLM, *Management and Protection of the National Petroleum Reserve in Alaska*, 42 Fed. Red. 28,720 (June 3, 1977) (in response to a comment about preparation of an EIS, BLM stated that "[a]n environmental assessment of the proposed action has been prepared.").

[65] 88 Fed. Reg. at 62,025.

[66] H.R. Rep. No. 94-81(I), at 1 (1975).

exploration for oil and gas in Naval Petroleum Reserve No. 4 is essential" and expressed frustration that exploration by the Navy "is presently proceeding at a snail's pace."[67] According to the Committee, it was "vital to the national interest to assess the amount and location of potential oil and gas available" in the Petroleum Reserve, and there was also the possibility of finding other minerals along with wildlife and other values that would need to be considered.[68] The Department of the Interior would assess oil and gas potential and other values and report annually to Congress, but further congressional authorization would be needed before there could be any development or production.

The primary purpose of the legislation was to promote exploration of the Petroleum Reserve,[69] and Congress also recognized, that in certain areas, "special precautions may be necessary" to control activities which would disrupt surface values or disturb fish and wildlife habitat and the subsistence requirements of the Alaska Natives.[70] Accordingly, Section 104(b) states that:

> [a]ny exploration within the Utukok River, the Teshekpuk Lakes areas, and other areas designed by the Secretary of the Interior containing any significant subsistence, recreational, fish and wildlife, or historical or scenic value, shall 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.[71]

In the Proposed Rule, BLM incorrectly posits that "[t]he 'maximum protection' standard is an unusually high protective bar" when compared to other statutes.[72] As Congress explained, "maximum protection of such surface values' is not a prohibition on exploration-related activities within such areas, it is intended that such exploration operations will be conducted in a manner

[67] *Id*. at 8.

[68] *Id*.

[69] H.R. Conf. Rep. No. 94-942, at 21 (1976) ("SEC. 104 makes it absolutely clear that only exploration is authorized at the [Petroleum Reserve]. After the studies are completed and transmitted to Congress, as required by the legislation, then the Congress will determine how future development and production will take place."); *see also Sovereign Iñupiat for a Living Arctic v. Bureau of Land Mgmt.*, 2023 WL 7410730, *7 (D. Alaska, Nov. 9, 2023) (recognizing that "[t]he NPR-A was set aside by Congress to be a petroleum reserve to help meet the Nation's need for oil and gas.")..

[70] *Id*.

[71] Codified at 42 U.S.C. § 6504(a).

[72] 88 Fed. Reg. at 62,027.

that will minimize the adverse impact on the environment."[73] Thus, it is similar to other statutory provisions that require BLM to "minimize" adverse impacts to public lands.[74]

In 1980, after receiving a comprehensive study regarding the utilization and development of the Petroleum Reserve, Congress passed an appropriations bill that authorized development and production of the area.[75] Recognizing that "we can no longer delay efforts which would increase the domestic supply of oil and gas,"[76] Congress amended the NPRPA to mandate that the Secretary of the Interior conduct "an expeditious program of competitive leasing of oil and gas in the [Petroleum Reserve]."[77] While focused on promoting the shift from federal to private exploration and development of the Petroleum Reserve's oil and gas potential,[78] Congress authorized BLM to mitigate certain adverse impacts associated with expanded activities in the Petroleum Reserve. Specifically, Congress amended the NPRPA to state that:

> [a]ctivities undertaken pursuant to this Act shall include or provide for such conditions, restrictions, and prohibitions as the Secretary deems necessary or appropriate to mitigate reasonably foreseeable and significantly adverse effects on the surface resources of the National Petroleum Reserve in Alaska.[79]

As Congress explained when enacting the NPRPA, the Secretary was expected to "take every precaution to avoid unnecessary surface damage and to minimize ecological disturbances throughout the reserve."[80] However, these objectives must be viewed in relation to Congress' overarching directive to expeditiously explore and develop the Petroleum Reserve's oil and natural gas resources.

Since taking over management of the Petroleum Reserve, BLM has recognized that the NPRPA and its implementing regulations are to "balance energy development with environmental protection and subsistence values."[81] For example, when promulgating its initial final rule for the management and protection of the Petroleum Reserve, BLM recognized its obligations to protect the environment throughout the Reserve, but limited the discretion of the authorized officer to such

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[73] H.R. Conf. Rep. No. 94-942, at 21 (emphasis added). For example, Congress noted that this could be achieved by scheduling exploration activities in certain manners or seasons to cause the least adverse influence on fish and wildlife and to minimize adverse effects on Alaska Native subsistence requirements. *Id*.

[74] *See*, *e.g.*, 43 U.S.C, §§ 1732(d)(2)(A) (authorization to use certain Alaska public lands for military purposes); 1765(a) (terms and conditions for rights-of-way).

[75] Pub. L. No. 96-514 (Dec. 12, 1980).

[76] 126 Cong. Rec. 29,489 (1980) (statement of Sen. Stevens).

[77] Pub. L. No. 96-514, 94 Stat. 2964 (codified at 42 U.S.C. § 6506a(a)).

[78] S. Rep. No. 96-985, at 34 (1980).

[79] 42 U.S.C. § 6506a(b).

[80] H.R. Conf. Rep. No. 94-942, at 21 (emphasis added).

[81] BLM, *Proposed Rulemaking Authorizing Oil and Gas Leasing in the National Petroleum Reserve-Alaska*, 46 Fed. Reg. 37,725 (July 22, 1981).

actions that are "consistent with the requirements of the Act for the exploration of the reserve."[82] Indeed, the Ninth Circuit has held that "[t]he [NPRPA] did not give the Secretary the discretion not to lease; instead, the Secretary was given the discretion to provide rules and regulations under which leasing would be conducted and was to develop restrictions necessary to mitigate adverse impact on the [Petroleum Reserve]."[83] BLM must adhere to these statutory directives as informed by congressional intent and judicial interpretation, and promulgate regulations that properly reflect and respect the purposes of the NPRPA.

2. Numerous Provisions of the Proposed Rule Conflict with Congressional Directives in the NPRPA and Are Not Supported by Other Authorities.

In the Proposed Rule, BLM explicitly recognizes that Congress sought to "strike a balance" between exploration and the protection of environmental and other values in the Petroleum Reserve.[84] However, when viewed collectively, the provisions in the Proposed Rule significantly distort the balance that Congress intended and directed through the NPRPA. Instead of promoting "an expeditious program of competitive leasing of oil and gas,"[85] the Proposed Rule would undermine and frustrate this explicit congressional mandate. Indeed, at every opportunity, BLM has improperly proposed to elevate the standards and requirements applicable to Special Areas and surface resources, to add additional and redundant procedural processes, and to hinder the exploration, development, and production of the Petroleum Reserve's oil and natural gas resources. As explained below, many of these proposed provisions are directly contrary to the plain language of the statute and congressional intent.

a. BLM's Proposed Management of Special Areas

BLM states that it is adding proposed section 2361.40 to establish new standards and procedures for achieving maximum protection of Special Areas' significant resource values, with a specific focus on addressing the impacts of oil and gas activities.[86] In part, BLM would implement the following: (1) "establish a presumption against leasing and new infrastructure on lands in Special Areas that are allocated as available for those activities"; (2) "affirmatively establish that assuring maximum protection of significant resource values is the management priority for Special Areas"; (3) "require the BLM take such steps to avoid the adverse effects of proposed oil and gas activities on the significant resource values of Special Areas, including by conditioning, delaying action on, or denying proposals for activities"; (4) "require mitigation of adverse effects on significant resource values of Special Areas that cannot be avoided or minimized[,] . . . includ[ing] compensatory mitigation"; and (5) an impermissibly overbroad

[82] BLM, *Management and Protection of the National Petroleum Reserve in Alaska*, 42 Fed. Reg. 28,720, 28,722 (June 3, 1977) (see 43 C.F.R. § 2361.1(a)); 46 Fed. Reg. at 37,725 ("The proposed rulemaking is designed to expedite the exploration, development and production of oil and gas resources in the [Petroleum Reserve].").

[83] *Kunaknana v. Clark*, 742 F.2d 1145, 1149 (9th Cir. 1984).

[84] 88 Fed. Reg. at 62,026.

[85] 42 U.S.C. § 6506a(a).

[86] 88 Fed. Reg. at 62,035.

definition of "significant resource value."[87] These proposed provisions are all contrary to the plain language of the NPRPA and congressional intent.

i. A Presumption Against Leasing and New Infrastructure Is Contrary to Law.

BLM proposes to adopt a regulatory presumption against leasing and new infrastructure on lands in Special Areas that are allocated as available for those activities. Specifically, the proposed regulatory provision states, "[o]n lands allocated as available for future oil and gas leasing or new infrastructure, the Bureau will presume that those activities should not be permitted unless specific information available to the Bureau clearly demonstrates that those activities can be conducted with no or minimal adverse effects on significant resource values."[88] This provision is directly contrary to the requirements of the NPRPA and reflects a significant and unexplained departure from BLM's prior interpretation and corresponding regulations.

In part, the NPRPA requires that any exploration within Special Areas "shall 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."[89] As Congress explained:

> [i]t is the intention of this provision to immediately authorize the Secretary to require that the exploration activities within these designated areas be conducted in a manner designed to minimize adverse impacts on the values which these areas contain. While "maximum protection of such surface values" is not a prohibition of exploration-related activities within such areas, it is intended that such exploration operations will be conducted in a manner which will minimize the adverse impact on the environment.[90]

Previously, when designating the Utukok River Uplands, Teshekpuk Lake, and Colville River Special Areas, BLM explicitly endorsed and adopted this statement of congressional intent—"[m]aximum protection of designated special areas does not imply a prohibition of exploration or other activities."[91] Instead, BLM stated that "steps to minimize adverse impacts on existing resource values will be required and implemented."[92]

BLM's newly proposed presumption against permitting activities in Special Areas is plainly contrary to law. While BLM is authorized to assure the "maximum protection of . . . surface values," BLM impermissibly focuses solely on that phrase and excludes the remainder of

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[87] *Id*. at 62,036-37, 62,040.

[88] *Id*. at 62,042 (proposed § 2361.40(c)) (emphasis added).

[89] 42 U.S.C. § 6504(a) (emphasis added).

[90] Joint Statement of the Committee of Conference, S. Rep. No. 94-708, at 21 (1976) (emphasis added).

[91] 42 Fed. Reg. at 28,723 (emphasis added).

[92] *Id*. (emphasis added).

the statutory provision.[93] In doing so, BLM fails to recognize that, by its plain language, the "maximum protection" clause is only triggered by the occurrence of exploration in Special Areas. BLM also fails to appreciate that its ability to impose measures to maximally protect surfaces values is constrained by the obligation that such measures must be "consistent with the requirements" of the NPRPA. Indeed, in its contemporaneous Conference Report, Congress explicitly stated that "maximum protection" is not a prohibition of activities within Special Areas, and BLM subsequently concluded that it does not even "imply a prohibition" of exploration or other activities. Furthermore, the courts have already found that imposing "no activity" as "maximum protection" in Special Areas is an "impossibility," because "that action in itself would violate § 6504(a), which expressly contemplates some level of activity within [Special Areas], and Congressional intent as contained in the legislative history."[94] More recently, a court concluded that "[a]lthough Congress directed 'maximum protection' be accorded to significant surface values in the [Teshekpuk Lake] and other Special Areas while undertaking oil and gas activities in the NPR-A, it still clearly envisioned that [Special Areas] would be developed for oil and gas production."[95] BLM's interpretation in the Proposed Rule is flatly precluded by the plain language of the statute, governing legal authority, and congressional intent.

Furthermore, BLM has failed to acknowledge or explain its significant change in position regarding its long-standing interpretation of the requirements of NPRPA § 6504(a).[96] Consistent with congressional intent, BLM's long-standing view has been that "maximum protection" only requires "steps to minimize adverse impacts on existing resource values." Indeed, in its existing regulations, BLM defines "[m]aximum protection" as requirements for: (1) [r]escheduling activities and use of alternative routes, (2) types of vehicles and loadings, (3) limiting types of aircraft in combination with minimum flight altitudes and distances from identified places, and (4) special fuel handling procedures."[97] In prior IAPs, BLM has explained that "[d]esignation of lands as a Special Area carries with it no specific restrictions on activities."[98] And, each year from 2011 through 2019, BLM has made lands in Special Areas available for oil and natural gas leasing—"these lands, at least through the remainder of this decade, offer the greatest promise for oil and

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[93] *See*, *e.g.*, *Dolan v. U.S. Postal Serv.*, 546 U.S. 481, 486 (2006) ("Interpretation of a word or phrase depends upon reading the whole statutory text, considering the purpose and context of the statute, and consulting any precedents or authorities that inform the analysis."); *Food & Drug Admin. v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 132–33 (2000) ("It is a 'fundamental canon of statutory construction that the words of a statute must be read in their context and with a view to their place in the overall statutory scheme.'") (citation omitted).

[94] *Nat'l Audubon Soc'y v. Kempthorne*, 2006 WL 8438583, *15 (D. AK, Sept. 25, 2006) ("maximization of protection of the environment does not mean that a leasing program provide maximum protection, but that to the extent that the leasing program permits development, that development be conducted in a manner that provides maximum protection.").

[95] *Sovereign Iñupiat for a Living Arctic v. Bureau of Land Mgmt.*, 2023 WL 7410730, *7 (D. Alaska, Nov. 9, 2023).

[96] *E.g.*, *Fed. Commc'ns Comm'n v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009).

[97] 43 C.F.R. § 2361.1(c).

[98] BLM, *National Petroleum Reserve-Alaska Integrated Activity Plan Record of Decision* at 19 (Feb. 21, 2013) (emphasis added).

gas development and making them available for leasing constitutes a proper balancing of BLM's management responsibilities for NPR-A."[99] Accordingly, there is no basis in statute or BLM's prior interpretations and practice that supports the proposed prohibition on leasing and new infrastructure on lands within Special Areas.

ii. BLM's Other Standards for the Management of Oil and Gas Activities in Special Areas Are Similarly Flawed.

BLM would also revise other standards and requirements for oil and natural gas activities in Special Areas that are contrary to statute and congressional intent. For example, BLM would revise its regulations to state that "[a]ssuring maximum protection of significant resource values is the management priority for Special Areas."[100] To fulfill this purported duty, as contemplated in the Proposed Rule, BLM "must, to the extent consistent with the Act, take such steps as are necessary to avoid adverse effects of proposed oil and gas activities on the significant resource values of Special Areas."[101]

Similar to its proposed presumption against leasing or new infrastructure, BLM fails to appreciate and adhere to Congress's directives. While Congress recognized the need to protect the resources within Special Areas, there is nothing in the NPRPA or legislative history that suggests maximum protection of surface values is the "management priority" for Special Areas. Congress was very clear that "early exploration . . . is essential" and that it was "vital to the national interest to assess the amount and location of potential oil and gas available" in the Petroleum Reserve. Accordingly, Congress directed the Secretary to "conduct an expeditious program of competitive leasing of oil and gas in the Reserve,"[102] and BLM's ability to assure maximum protection is restricted to measures that are "consistent" with that, and the other requirements of the NPRPA for exploration, development, and production activities.[103] Furthermore, BLM points to no authority that requires the avoidance of adverse effects on the significant resource values of Special Areas. As explained above, both Congress and BLM have interpretated the NPRPA as only allowing BLM to "minimize adverse impacts on existing resource values." Absent statutory authority, BLM cannot extrapolate from a minimization standard to an avoidance standard under the guise of assuring maximum protection for significant surface values within Special Areas.

iii. BLM Lacks Authority to Assure Maximum Protection When Considering Designation of Special Areas.

The Proposed Rule would empower the authorized officer to impose interim measures to assure maximum protection of significant resource values "in lands under consideration for

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[99] *Id*. at 21 (emphasis added).

[100] 88 Fed. Reg. at 62,042 (proposed § 2361.40) (emphasis added).

[101] *Id*. (proposed § 2361.40(b)) (emphasis added). These steps could include "conditioning, delaying action on, or denying proposals for activities, either in whole or in part." *Id*.

[102] 42 U.S.C. § 6506a(a).

[103] *Id*. § 6504(a).

designation as a Special Area."[104] The authorized officer could make this determination at any point during the evaluation period for a new Special Area, and the measures may be implemented during the period for which the lands are under consideration.[105] This provision is contrary to BLM's statutory authority.

The NPRPA clearly limits BLM's authority to assure the maximum protection of certain surface values to "areas designated by the Secretary of the Interior."[106] Congress was explicit that this authority is limited to "exploration with the Utukok River, the Teshekpuk Lake areas, and other areas designated by the Secretary of the Interior containing any significant subsistence, recreational, fish and wildlife, or historical or scenic value."[107] Pursuant to the plain language of the statute, Special Areas first must be "designated" before the significant resource values on lands therein can qualify for this protection. It is axiomatic that areas being "evaluated" or "under consideration" for designation are not Special Areas, and BLM cannot prematurely impose maximum protection in such areas.

iv. BLM Lacks Authority to Require Compensatory Mitigation.

The Proposed Rule would require mitigation of adverse effects on significant resource values of Special Areas that cannot be avoided or minimized, including compensatory mitigation.[108] Other than this fleeting statement, BLM fails to identify any statutory authority allowing it to require compensatory mitigation for any residual adverse effects to significant resource values. A bedrock principle of administrative law is that agency regbulations must be based on statutory authority, and congressional statutes define the permissible bounds of a federal agency action.[109] While BLM points to the NPRPA, FLPMA, and ANILCA as providing authority for the Proposed Rule, those statutes do not authorize or contemplate compensatory mitigation. "An agency's regulation cannot 'operate independently of' the statute that authorized it," and absent an express statutory basis for its proposed imposition of compensatory mitigation, BLM "literally has no power to act."[110]

v. BLM's Proposed Definition of "Significant Resource Value" Is Impermissibly Overbroad.

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[104] 88 Fed. Reg. at 62,042 (proposed § 2361.30(a)(5)).

[105] *Id*.

[106] 42 U.S.C. § 6504(a).

[107] *Id*. (emphasis added).

[108] 88 Fed. Reg. at 62,036; *id*. at 62,042 (proposed § 2361.40(f)(6)).

[109] *See, e.g.*, 5 U.S.C. § 706(2)(C) (finding unlawful agency actions "in excess of statutory jurisdiction, authority, or limitations, or short of statutory right"); *West Virginia v. EPA*, 142 S. Ct. 2587, 2609 (2022) ("Agencies have only those powers given to them by Congress, and 'enabling legislation' is generally not an 'open book to which the agency [may] add pages and change the plot line.'" (brackets in original)).

[110] *See FEC v. Cruz*, 596 U.S. 289, 301 (2022) (citation omitted); *see also Entergy Corp. v. Riverkeeper, Inc.*, 556 U.S. 208, 223 (2009) (discussing how "statutory silence, when viewed in context, is best interpreted as limiting agency discretion") (emphasis added).

Through the Proposed Rule, BLM would add a new definition of "significant resource value."[111] BLM proposes to define the phrase to mean "any subsistence, recreational, fish and wildlife, historical, or scenic value identified by the Bureau as supporting the designation of a Special Area."[112] The definition is contrary to the requirements that Congress established for the designation of Special Areas.

In NPRPA § 6504(a), in addition to the Utukok River and Teshekpuk Lake areas, Congress authorized BLM to designate other Special Areas if they contain "any significant subsistence, recreational, fish and wildlife, or historical or scenic value."[113] Congress used the word "significant" to describe the enumerated values, thereby dictating that those values must be of heightened or greater importance in that particular area to warrant designation as a Special Area. In contrast, BLM's proposed definition merely reiterates the base values that Congress specified, but omits the statutory requirement that the values be "significant." This flaw is even more apparent when the definition of "significant resource value" (*italicized* below) is incorporated into the definition of "Special Areas" as follows:

> Special Areas means areas within the Reserve identified by the Secretary or by statute as having [*any subsistence, recreational, fish and wildlife, historical, or scenic value identified by the Bureau as supporting the designation of a Special Area*] and that are managed to assure maximum protection of such values, to the extent consistent with the requirements of the Act for the exploration of the Reserve.[114]

When the definitions are read collectively, the Proposed Rule would remove the statutory requirement that restricts the designation of Special Areas to those areas containing certain "significant" values. As a result, if applied as proposed, it appears that the existence of any subsistence, recreational, fish and wildlife, historical, or scenic value could support the designation of a Special Area. This is contrary to explicit statutory authority.

b. BLM's Proposed Management of Surface Resources

BLM proposes to redesignate and revise existing section 2361.10 to address the "protection of surface resources." In part, BLM would establish "new standards and procedures for managing and protecting surface resources in the [Petroleum Reserve] from the reasonably foreseeable and significantly adverse effects of oil and gas activities."[115] As explained below, several of BLM's proposed provisions overstate its authority or are inconsistent with the authority bestowed by Congress in the NPRPA and the congressional intent informing those obligations.

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[111] 88 Fed. Reg. 62,032.

[112] *Id*. at 62,040 (proposed § 2361.5).

[113] 42 U.S.C. § 6504(a) (emphasis added).

[114] 88 Fed. Reg. at 62,040 (incorporating the definition of "significant resource value" into the definition of "Special Areas").

[115] *Id*. at 62,032.

The Proposed Rule would revise the title of this section to state "Protection of Surface Resources." BLM states that this is necessary to "more closely track with the BLM's statutory authority under 42 U.S.C. § 6506a(b)."[116] As an overarching issue with respect to the proposed revisions to this section, BLM misstates and misinterprets its statutory authority regarding the management of the surface resources of the Petroleum Reserve. In the applicable statutory provision, Congress only allows for the "mitigation of adverse effects" to surface resources,[117] which is markedly different than an obligation to "protect" surface resources.[118]

BLM then perpetuates this error in statutory interpretation by proposing that it "must" protect surface resources by adopting "whatever" conditions, restrictions, and prohibitions it deems necessary or appropriate to "mitigate reasonably foreseeable and significantly adverse effects of proposed activities."[119] By statute, the application of any mitigation measures is discretionary and limited to those instances that the Secretary deems "necessary or appropriate," which is confined to certain discrete contexts when specified thresholds are met—the NPRPA does not include a broad "must protect" mandate for all surface resources within the Petroleum Reserve.[120]

Congress clearly limited the scope of BLM's authority to impose mitigation measures in several respects. First, BLM's authority is explicitly confined to those "[a]ctivities undertaken pursuant to this Act" that have a causal connection to "effects on the surface resources" of the Petroleum Reserve.[121] This precludes BLM's ability to impose mitigation measures on NPRPA activities to address effects beyond the Petroleum Reserve. Second, Congress did not mandate the imposition of mitigation measures in <u>all</u> circumstances when there are "reasonably foreseeable and significant adverse effects" on certain resources.[122] Instead, as Congress explained, this provision is intended to avoid "<u>unnecessary</u> surface damage" and "<u>minimize</u> ecological disturbances."[123] Third, only "[a]ctivities undertaken" can include "conditions, restrictions, and prohibitions."[124] This precludes BLM from "delaying action on" or "denying . . . all aspects of proposed activities,"[125] because the activity must be "undertaken" (not delayed or denied) in order for BLM to have any authority to act. Fourth, consistent with the requirements of the NPRPA, BLM must identify and explain the criteria it will use to determine whether the two statutory prerequisites for initiating the consideration of any mitigation measures have been satisfied—BLM's authority to

[116] *Id*.

[117] 42 U.S.C. § 6506a(b).

[118] 88 Fed. Reg. at 62,032.

[119] *Id*. at 62040 (proposed § 2361.10(a)).

[120] 42 U.S.C. § 6506a(b).

[121] *Id*.

[122] 88 Fed. Reg. at 62040 (proposed § 2361.10(b)(2)).

[123] H.R. Conf. Rep. No. 94-942, at *21 (emphasis added).

[124] 42 U.S.C. § 6506a(b).

[125] 88 Fed. Reg. at 62,040 (proposed § 2361.10(a)).

impose any mitigation measures is contingent on finding that effects to surface resources are both: (1) "reasonably foreseeable"; and (2) "significantly adverse."[126] Neither the proposed regulations nor the preamble offer any explanation for how these mandatory criteria will be interpretated, applied, evaluated, or enforced, and BLM is statutorily precluded from requiring any mitigation measures absent this determination. Finally, BLM would require that any decision to issue a use authorization "must conform to the IAP and these rules" and, if there is an inconsistency, "the rules govern."[127] BLM must revise this provision to reflect that the NPRPA, and its requirements and standards as informed by congressional intent, provide the management framework that governs the Petroleum Reserve.

D. The Proposed Rule Unduly Burdens Exploration, Development, and Production within the Petroleum Reserve.

1. BLM Must Include a Regulatory Provision Exempting Existing Leases.

In the preamble, BLM states that the Proposed Rule would not affect "existing leases" in the Petroleum Reserve.[128] BLM also states that the Proposed Rule would have "no effect on currently authorized oil and gas operations" and would have "no effect on existing activities."[129] BLM must do more to provide the regulatory certainty that these statements are attempting to convey.

Instead of relying on statements in the preamble, BLM must include these provisions as part of the regulations dictating management of the Petroleum Reserve. As the D.C. Circuit has explained:

> Publication in the Federal Register does not suggest that the matter published was meant to be a regulation, since the [Administrative Procedure Act] requires general statements of policy to be published as well. Instead, the real dividing point between the portions of a final rule with and without legal force is <u>designation for publication in the Code of Federal Regulations</u>. To be sure, we have reserved a possibility that statements in a preamble may in some unique cases constitute binding, final agency action susceptible to judicial review. But this is not the norm because [a]gency statements having general applicability and legal effect are to be published in the Code of Federal Regulations. And where . . . there is a discrepancy between the preamble and the Code, <u>it is the codified provisions that control</u>.[130]

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[126] *Sovereign Iñupiat for a Living Arctic v. Bureau of Land Mgmt.*, 2023 WL 7410730, *14 (D. Alaska, Nov. 9, 2023) (recognizing that the Secretary's mitigation authority is "<u>only</u> for 'reasonably foreseeable and significantly adverse effects'") (emphasis added).

[127] 88 Fed. Reg. at 62040 (proposed § 2361.10(b)(1)).

[128] *Id*. at 62,026 & 62,037.

[129] *Id*. at 62,025 & 62,029.

[130] *AT&T Corp. v. Fed. Commc'ns Comm'n*, 970 F.3d 344, 350–51 (D.C. Cir. 2020) (internal quotations and citations omitted) (emphasis added).

It is readily apparent that many substantive provisions of the Proposed Rule can be interpreted as applying to existing leases, operations, and activities. The only statements that demonstrate the opposite intent are what BLM has included in the preamble. Should there be a discrepancy or conflict between the regulations and the preamble, the D.C. Circuit makes clear that the regulatory provisions will apply. Accordingly, BLM must codify the stated exemptions in the preamble regarding existing leases and activities in its actual regulations.

Furthermore, given the various references to "existing leases," "currently authorized operations," and "existing activities," BLM must clarify the scope of the exemption. It appears that BLM's intent is that the Proposed Rule will not apply to the leases themselves and also will not apply to any current, proposed, or future activities, operations, or uses on lands covered by those leases, which would remain subject to the regulations currently in effect. This interpretation is supported by BLM's Economic Analysis which, for management of oil and natural gas activities in Special Areas, states that "[w]here leases currently exist within existing Special Areas, there will be no effects."[131] Notwithstanding, there is some uncertainty when comparing the language of the preamble phrases with some of the requirements in the proposed regulations. Exempting "currently authorized oil and gas operations" and "existing activities" would not shield new operations or activities of existing lessees from potential application of the new regulatory requirements for issuance of a use authorization or "proposed activity" in the Petroleum Reserve. BLM should address and resolve any potential ambiguities so that lessees have regulatory certainty.

Unless appropriately resolved, BLM's approach in the Proposed Rule creates substantial uncertainty, undermines stakeholder confidence and expectations, and reduces the value and reliability of partnerships with federal agencies on shared efforts to responsibly operate on and around federal lands and resources. Companies have invested billions of dollars to acquire leases on federal public lands in reliance on a stable regulatory regime that allows lessees to reasonably anticipate and manage the risks and timeframes associated with development and production. For example, in the Petroleum Reserve, 15 lease sales have generated almost $295 million.[132] Nationwide, in FY 2022, revenue collected from energy and minerals on federal onshore property exceeded $9 billion.[133] BLM's Proposed rule, while limited to the Petroleum Reserve, reflects a significant departure from long-standing regulations and practices under the NPRPA. If this reflects BLM's approach to regulation of other lands within its jurisdiction, it will cause significant uncertainty and undermine the investment-backed expectations of lessees on all public lands.

2. BLM Should Avoid Establishing Additional, Unnecessary Procedural Requirements for Management of the Petroleum Reserve.

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[131] BLM, *Economic Analysis For Proposed Regulation: Management and Protection of the National Petroleum Reserve in Alaska* at 5 (2023) (emphasis added).

[132] BLM, NPR-A Sale Statistics 1999 to Present. Available at https://www.blm.gov/sites/blm.gov/files/documents/files/Oil_Gas_Alaska_NPR-A_LeaseSale_Statistics_1999toPresent.pdf.

[133] Department of the Interior, Natural Resources Revenue Data. Available at https://revenuedata.doi.gov/.

The Proposed Rule would establish additional, unnecessary procedural requirements that undermine the NPRPA's objectives for expeditious leasing, exploration, and production. For example, for the protection of surface resources, in each decision concerning a proposed activity in the Petroleum Reserve, BLM "will document consideration of, and adopt measures to mitigate, reasonably foreseeable and significantly adverse effects on [surface resources]."[134] For the designation and amendment of Special Areas, BLM is required, "at least once every 5 years," to evaluate and determine whether to add new or expand existing Special Areas, recognize additional significant resource values, or require additional measures to assure maximum protection of significant resource values.[135] This evaluation process would include public notice and meaningful opportunities for public participation, and BLM must evaluate and respond to any submitted recommendations.[136] For the management of Special Areas, if BLM determines that it cannot avoid adverse effects on a Special Area's significant resource values, it "must prepare a Statement of Adverse Effects."[137] BLM must provide a meaningful opportunity for the public to review and comment on the Statement of Adverse Effects, and then must consider and respond to any relevant matter.[138]

Instead of adding additional processes, BLM should follow current practice and use the IAP as the guiding management and planning document for the Petroleum Reserve. The environmental effects associated with a reasonable range of alternatives should be evaluated in an EIS pursuant to NEPA. The addition or modification of Special Areas has historically been conducted through the IAP/EIS and implementing ROD. Requiring a separate five-year cycle for Special Area review and evaluation establishes a different management framework applicable only to Special Areas, which will be separate from the holistic review and management of the entire Petroleum Reserve through the IAP/EIS. For project-specific proposals, alternatives and any environmental effects should be evaluated through the NEPA process applicable to that proposal. That NEPA document should include any consideration and adoption of appropriate mitigation measures for surface resources and any Statement of Adverse Effects with respect to Special Areas. In addition to establishing unnecessary procedural steps, the Proposed Rule's new requirements also add uncertainty and risk regarding BLM's ability to comply with these new obligations in a timely manner and avoid corresponding legal challenges.

3. The Proposed Rule Disproportionately Favors the Expansion and Protection of Special Areas Over Domestic Energy Production.

As BLM acknowledges, in the NPRPA, Congress intended to strike a balance between exploration and the protection of environmental and other values in the Petroleum Reserve.[139] As exploration and other activities are allowed in Special Areas, Congress balanced the authorization

[134] 88 Fed. Reg. at 62,040 (proposed § 2361.10(b)(2)).

[135] *Id*. at 62,041 (proposed § 2361.30(a)(1)).

[136] *Id*. (proposed § 2361.30(a)(4)).

[137] *Id*. at 62,042 (proposed § 2361.40(f)).

[138] *Id*. (proposed § 2361.40(g)).

[139] *Id*. at 62,026.

given to the Secretary of the Interior to assure the maximum protection of significant surface values in these areas with the limitation that any such measures be consistent with the requirements of the NPRPA for the exploration of the Petroleum Reserve.[140] In part, the NPRPA requires that the Secretary conduct an expeditious program of competitive oil and natural gas leasing.[141] To ensure that these objectives are properly accommodated and "balanced," BLM must provide commensurate and consistent procedures for both the addition and removal of lands from Special Areas. Instead, the Proposed Rule arbitrarily promotes the expansion of Special Areas and restricts the removal of lands from Special Areas.[142]

In proposed § 2361.30(a), BLM proposes to establish procedures that are clearly intended to expand and enhance protections for Special Areas and the significant resources values that are identified within them. At least every five years, BLM would be required conduct an evaluation of lands within the Petroleum Reserve to assess the presence of significant resource values.[143] As part of this evaluation, BLM could only: "(i) [d]esignate new Special Areas; (ii) [e]xpand existing Special Areas; (iii) [r]ecognize the presence of additional significant resource values in existing Special Areas; or (iv) [r]equire additional measures to assure maximum protection of significant resource values within existing Special Areas."[144] There would be no ability to also consider any reduction or modification of Special Areas or the removal of significant resource values or protective measures, effectively making the evaluation in proposed § 2361.30(a) a one-way ratchet that could only be used to expand Special Areas and their protections. Similarly, BLM would be required to provide a public notice and comment process, but it would only allow the submittal of recommendations to take the same actions specified above and would preclude recommendations to the contrary.[145] Based on these recommendations, which do not appear to be subject to specified data quality or scientific criteria, the Proposed Rule would allow the authorized officer to implement interim measures to assure the maximum protection of possible significant resource values in lands under consideration for designation as Special Areas.[146]

Comparatively, in proposed § 2361.30(b), the Proposed Rule includes procedures for the removal of lands from Special Areas, but they are clearly and inexplicably more onerous and less accommodating than the corresponding proposed regulations for the addition or expansion of Special Areas. First, BLM would preclude itself from removing any "lands from the Teshekpuk Lake and Utukok River Uplands Special Areas unless directed to do so by statute."[147] This provision would impermissibly ossify the boundaries of those Special Areas. While Congress

[140] 42 U.S.C. § 6504(a).

[141] *Id*. § 6506a(a).

[142] As explained in section V.C.2.a.iii, BLM does not have the authority to create "de facto" Special Areas subject to the "maximum protection" provisions absent actual designation by the Secretary.

[143] 88 Fed. Reg. at 62,041 (proposed § 2361.30(a)).

[144] *Id*. (proposed § 2361.30(a)(1)) (emphasis added).

[145] *Id*. (proposed § 2361.30(a)(4)).

[146] *Id*. (proposed § 2361.30(a)(5)). API has already explained that this proposed authority is contrary to the plain language of the NPRPA. *Supra* at section V.C.2.a.iii.

[147] 88 Fed. Reg. at 62,041 (proposed § 2361.30(b)).

identified these two Special Areas by name only, BLM acknowledges that the boundaries of those Special Areas were established by regulation.[148] And, based on its prior practice, BLM has already demonstrated that the boundaries of these Special Areas can be modified via regulatory action or the IAP/EIS process without the need for congressional action.[149] Second, the removal of lands from Special Areas would only be allowed when "all of the significant resource values that support the designation are no longer present."[150] BLM should clarify that this determination must be based on a granular review that considers whether the relevant significant resources values are present on particular parcels of land. Any land that does not contain a "significant subsistence, recreational, fish and wildlife, or historical or scenic value" should not be included within a Special Area. Third, the Proposed Rule would obligate BLM to consult with any federally recognized Tribes and Alaska Native Claims Settlement Act corporations that have certain uses or ties to the Special Areas before any removal.[151] API supports including this regulatory consultation obligation; however, the Proposed Rule noticeably fails to include a corresponding consultation obligation in its proposed procedures for the expansion of Special Areas or the inclusion of additional significant resource values or measures to protect those values. Finally, in order to remove lands from Special Areas, the Proposed Rule would require BLM to "[i]ssue a determination that documents how the views and information provided by the public, federally recognized Tribes, Alaska Native Claims Settlement Act corporations, federally qualified subsistence users, and other interested stakeholders have been considered."[152] As with BLM's recognition of its consultation obligation, this documentation requirement is only imposed when the removal of lands from Special Areas is contemplated, and it must also apply to the expansion of Special Areas or the inclusion of additional significant resource values or measures to protect those values.

The Proposed Rule does not explain why BLM would promulgate significantly different procedural obligations for the expansion versus contraction of Special Areas, the significant resource values contained therein, and the applicable protective measures. Given that the NPRPA requires the balancing of resource development and environmental protection within the Petroleum Reserve, BLM should adopt the same procedures and processes for both the addition and removal of lands from Special Areas, the addition and removal of significant resource values that support Special Area designation, and the addition and removal of measures to assure the maximum protection of those identified significant resource values. The failure to do so, given the disparate procedures noted above, epitomizes arbitrary and capricious rulemaking.

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[148] *Id*. at 62,027 (citing 42 Fed. Reg. 28,723 (June 3, 1977)).

[149] *See*, *e.g.*, BLM, *Designation of Additions to Special Areas in National Petroleum Reserve-Alaska*, 64 Fed. Reg. 16,747 (Apr. 6, 1999) (expanding Teshekpuk Lake Special Area); BLM, *National Petroleum Reserve-Alaska Integrated Activity Plan Record of Decision* at 4 (2013) (adding lands to Teshekpuk Lake Special Area and Utukok River Uplands Special Area); BLM, *National Petroleum Reserve-Alaska Integrated Activity Plan Record of Decision* at 1 (2020) (adjusting the boundaries of the Teshekpuk Lake Special Area and the Utukok River Uplands Special Area based on the most current information about the distribution of important species in the Petroleum Reserve).

[150] 88 Fed. Reg. at 62,041 (proposed § 2361.30(b)).

[151] *Id*. (proposed § 2361.30(b)(3)).

[152] *Id*. (proposed § 2361.30(b)(4)).

E. BLM's Proposed Treatment of Uncertainty is Contrary to Law.

For both surface resources and Special Areas within the Petroleum Reserve, the Proposed Rule would require that BLM consider "any uncertainty" in potential effects and implement restrictions on proposed activities that "account for and reflect such uncertainty."[153] Specifically, the Proposed Rule would require that BLM "document its consideration of any uncertainty concerning the nature, scope, and duration of potential effects on surface resources of the [Petroleum Reserve] and shall ensure that any conditions, restrictions, or prohibitions on proposed activities account for and reflect any such uncertainty."[154] And, similarly, for Special Areas, the Proposed Rule would require that BLM "document and consider any uncertainty concerning the nature, scope, and duration of potential adverse effects on significant resource values of Special Areas and shall ensure that any actions it takes to avoid, minimize, or mitigate such effects account for and reflect any such uncertainty."[155] While certain statutes dictate how BLM should acknowledge uncertainty in its decision-making processes, BLM has identified no statutory authority that requires it to make certain management decisions on account of (and presumably to avoid or mitigate) uncertain effects.

Notably, in E.O. 13563, the President directed improvements in the Nation's regulatory system to promote predictability and reduce uncertainty.[156] The E.O. directs federal agencies to protect public health and the environment while promoting economic growth, innovation, competitiveness, and job creation.[157] Notably, it emphasizes that regulations "must be based on the best available science."[158] As the Supreme Court has explained, "[t]he obvious purpose of the requirement that each agency 'use the best scientific and commercial data available' is to ensure that [statutes] not be implemented haphazardly, on the basis of speculation or surmise" and thus "avoid needless economic dislocation produced by agency officials zealously but unintelligently pursuing their environmental objectives."[159] Indeed, courts have held that, absent a statutory directive on how to handle uncertainties, federal agencies cannot apply a precautionary principle. As the D.C. Circuit has explained:

> when the Congress wants an agency to apply a precautionary principle, it says so. Consider the Clean Air Act, for example, requiring "an adequate margin of safety" when the EPA sets air quality standards. The precautionary principle, taken seriously, can multiply an agency's power over the economy. It allows an agency to regulate or veto activities "even if it cannot be shown that those activities are likely to produce significant harms." That is particularly significant because

[153] *Id*. at 62,040 (proposed § 2361.10(b)(4)) & 62042 (proposed § 2361.40(e)).

[154] *Id*. (proposed § 2361.10(b)(4)).

[155] *Id*. at 62,042 (proposed § 2361.40(e)).

[156] E.O. 13,563, *Improving Regulation and Regulatory Review* at § 1(a), 76 Fed. Reg. 3,821 (Jan. 21, 2011).

[157] *Id*.

[158] *Id*.

[159] *Bennett v. Spear*, 520 U.S. 154, 176-77 (1997).

> uncertainty is "not unusual in day-to-day agency decisionmaking within the Executive Branch." Indeed, it is endemic in the field of health and safety regulation.
>
> The presumption in favor of the species is, like an adequate margin of safety, a blunt tool. The presumption significantly expands the Service's veto power, prevents the agency from "paying attention to the advantages *and* the disadvantages" of the action, and invites the unnecessary economic dislocation wrought by worst-case thinking. A presumption also ignores that worst-case scenarios lie on all sides. . . . The result may be great physical and human capital destroyed, and thousands of jobs lost, with all the degradation that attends such dislocations. Nor are humans the only casualties of worst-case thinking: A presumption in favor of one protected species may jeopardize another. We may reasonably expect the Congress at least to speak, not to be silent, when it delegates this power to destroy.[160]

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The Proposed Rule points to no source of authority that would allow BLM to make management decisions or impose restrictions or protective measures "to account for and reflect" any uncertainty. Absent such authority, BLM is precluded from taking such actions.

Furthermore, pursuant to NEPA, BLM is only required to consider "changes to the human environment from the proposed action or alternatives that are reasonably foreseeable."[161] NEPA contains no obligation that an agency consider worst case scenarios or analyze uncertain effects. Courts have explained that the focus on "reasonably foreseeable impacts" prevents agencies from "distorting the decision-making process by overemphasizing highly speculative harms."[162] Indeed, there is always a degree of uncertainty regarding environmental impacts in every analysis of proposed actions. The NEPA regulations dictate how agencies are to ensure scientific accuracy:

> [a]gencies shall ensure the professional integrity, including scientific integrity, of the discussions and analyses in environmental documents. Agencies shall make use of reliable existing data and resources. . . . They shall identify any methodologies used and shall make explicit reference to the scientific and other sources relied upon for conclusions in the statement. . . . Agencies are not required to undertake new scientific and technical research to inform their analyses.[163]

And, the NEPA regulations dictate how agencies are to proceed when there is incomplete or unavailable information. When information relevant to reasonably foreseeable significant adverse impacts cannot be obtained or the means to obtain it are unknown, the agency must include:

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[160] *Maine Lobstermen's Ass'n v. Nat'l Marine Fisheries Serv.*, 70 F.4th 582, 599-600 (D.C. Cir. 2023) (citations omitted).

[161] 40 C.F.R. § 1508.1(g) (emphasis added).

[162] *E.g.*, *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 356 (1989).

[163] 40 C.F.R. § 1502.23.

(1) A statement that such information is incomplete or unavailable;
(2) A statement of the relevance of the incomplete or unavailable information to evaluating reasonably foreseeable significant adverse impacts on the human environment;
(3) A summary of existing credible scientific evidence that is relevant to evaluating the reasonably foreseeable significant adverse impacts on the human environment; and
(4) The agency's evaluation of such impacts based upon theoretical approaches or research methods generally accepted in the scientific community.[164]

BLM must adhere to these requirements when preparing environmental documents pursuant to NEPA, and they should be included or referenced in its regulations for the Petroleum Reserve so that any uncertainty is addressed in the appropriate manner.

F. The Scope of BLM's Analysis of Effects Must Be Consistent with NEPA.

In proposed § 2361.10(b)(3), BLM would include the criteria to be considered in BLM's analysis of effects to surface resources within the Petroleum Reserve. BLM states that this analysis would include any reasonably foreseeable effects, including indirect effects and cumulative effects.[165] This regulatory provision mirrors the requirements in NEPA to evaluate the environmental effects of a proposed action.[166] Given that NEPA already applies to proposed federal actions in the Petroleum Reserve, the inclusion of this proposed provision is unexplained, duplicative, and unnecessary. BLM should remove the provision from any final rule.

Should BLM retain this requirement, it must ensure that application and implementation is consistent with NEPA and relevant case law. For example, while it appears that BLM intends to include the same scope of effects, the Proposed Rule differs in several respects from the definition of "effects" as codified by the Council on Environmental Quality.[167] Most importantly, it appears that BLM would expansively consider "any" reasonably foreseeable effects of its decision.[168] Unless revised, this formulation erroneously omits the requirement that, to be included in the analysis, a direct or indirect effect also must be "caused" by the proposed action. As the courts have explained, this requires both "but for" and proximate causation before an effect can be attributed to an action.[169] For example, in recently rejecting a claim that BLM violated the NPRPA

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[164] *Id*. § 1502.21(c).

[165] 88 Fed. Reg. at 62,032.

[166] *See* 40 C.F.R. §§ 1502.16(a)(1) & 1508.1(g).

[167] *Id*. § 1508.1(g) ("(1) Direct effects, which <u>are caused by the action</u> and occur at the same time and place[;] (2) Indirect effects, which <u>are caused by the action</u> and are later in time or farther removed in distance, but are still reasonably foreseeable. . . .") (emphasis added).

[168] 88 Fed. Reg. at 62,040 (proposed § 2361.10(b)(3)).

[169] *See*, *e.g.*, *Sierra Club v. United States Dep't of Energy*, 867 F.3d 189, 198 (D.C. Cir. 2017) ("NEPA also requires a reasonably close causal relationship between the environmental effect and the alleged cause, analogous to proximate causation from tort law.") (quotation and citation omitted); *City of Dallas, Tex. v.*

for failing to address how a project's greenhouse gas ("GHG") emissions may impact the surface resources of the Petroleum Reserve, a court concluded that "[w]hile one might generally conclude that climate change can damage the NPR-A's surface resources, [Plaintiffs] do not causally link how GHG emissions from the Willow Project would specifically harm NPR-A surface resources."[170] Accordingly, BLM must revise its proposed regulations and, while retaining the requirement that all effects must be "reasonably foreseeable," clearly specify that the scope of any direct or indirect effects to resources within the Petroleum Reserve are actually "caused" by the proposal under consideration. Pursuant to case law, this requires BLM to establish, based on the best available science, a causal connection between the proposed action and impacts to specific resources in specific areas.

G. BLM Has Not Complied with the Regulatory Flexibility Act due to Significant Problems with its Economic Analysis.

Pursuant to the Regulatory Flexibility Act ("RFA"), as amended by the Small Business Regulatory Enforcement Fairness Act, BLM must assess the impacts of rules on "small businesses,"[171] "small organizations,"[172] and "small governmental jurisdictions"[173] (collectively, "small entities"). If BLM determines that a proposed rule will have a "significant economic impact on a substantial number of small entities," it must prepare an initial regulatory flexibility analysis ("IRFA").[174] In part, an IRFA must contain a description of any significant alternatives which would "minimize any significant economic impact of the proposed rule on small entities."[175] Alternatively, if BLM can certify that the proposed rule will not have a significant economic impact on a substantial number of small entities, it need not prepare an IRFA.[176] The certification

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Hall, 562 F.3d 712, 719 (5th Cir. 2009) ("[A] 'but for' causal relationship is insufficient to make an agency responsible for a particular effect under NEPA and the relevant regulations. Rather, a plaintiff mounting a NEPA challenge must establish that an alleged effect will ensue as a 'proximate cause,' in the sense meant by tort law, of the proposed agency action.").

[170] *Sovereign Iñupiat for a Living Arctic v. Bureau of Land Mgmt.*, 2023 WL 7410730, *14 (D. Alaska, Nov. 9, 2023) (emphasis added); *see also id*. at *40 ("Plaintiffs have not shown any available scientific evidence that links Willow's projected GHG emissions to a reasonably certain decrease in sea ice impacting polar bears in the Action Area.").

[171] A "small business" is one "which is independently owned and operated," which is not dominant in its field of operation, and which meets the size criteria promulgated by the Small Business Administration ("SBA") based on industry, "number of employees, dollar volume of business, net worth, net income, a combination thereof, or other appropriate factors." *See* 5 U.S.C. § 601(3) (defining "small business" based on the SBA's definition).

[172] A "small organization" is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field. *Id*. at § 601(4).

[173] "Small governmental jurisdictions" are "governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand . . . ." *Id*. at § 601(5).

[174] *Id*. at § 603.

[175] *Id*. at § 603(c).

[176] *Id*. at § 605(b).

statement must include a "factual basis for the certification."[177]

For the Proposed Rule, BLM prepared a cursory economic assessment to determine if "the proposed rule [met] statutory and regulatory thresholds that would trigger more detailed analyses under Executive Order 12866…or the Regulatory Flexibility Act (RFA)."[178] After a preliminary analysis that purported to assess "costs" without including a single dollar figure, BLM "tentatively conclude[d]" that the Proposed Rule will not have a significant economic impact on a substantial number of small entities and, therefore, that an IRFA is not required.

BLM's economic analysis has multiple deficiencies that render the analysis invalid. First, a break-even analysis demonstrates that the Proposed Rule is economically significant. Second, there are deficiencies in critical elements underpinning BLM's analysis—impacts to small entities, selection of a baseline, and mischaracterization of the Proposed Rule. Finally, there are under-representations regarding the economic impacts associated with Special Areas. Both individually and together, these flaws render BLM's certification of economic significance invalid. Accordingly, BLM is required to conduct an IRFA as required by the RFA, including the exploration of regulatory alternatives for reducing significant economic impact on small entities.

1. BLM's Economic Analysis Would Not Pass a Threshold Analysis.

BLM's economic analysis is inadequate and does not support its determination that the Proposed Rule will not have a significant impact on the economy.

Assuming a per barrel price of $73,[179] the Proposed Rule only needs to preclude the production of about 7,600 barrels per day for one year for it to generate $200 million in lost revenue. The 7,600 barrels per day is a modest amount given that the most recently permitted and producing well site in the NPR-A (Greater Mooses Tooth Two) produces nearly twice this amount on an annual average daily basis after having only been in production for two years.[180]

If the presumption of no surface infrastructure on a lease in a Special Area either prevents a site from coming online or substantially limits the number of wells producing on a site, then the Proposed Rule could quickly impose significant economic costs. For example, if the rule stops the development of a project similar to the one previously mentioned, then it would take just over 6 months to generate $200 million in economic damages from lost production alone. Given that the

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[177] *Id*.

[178] BLM, *Economic Analysis for Proposed Regulation: Management and Protection of the National Petroleum Reserve in Alaska* (2023) ("Economic Analysis").

[179] Energy Information Administration. 2023. Alaska North Slope First Purchase Price. The $73 per barrel estimate is based on the monthly-average Alaska North Slope first purchase price between January and April 2023. During the same period the monthly-average spot price of WTI was $78 per barrel.

[180] Greater Mooses Tooth Two produced an annual daily average of 14,637 barrels in 2022 and so far in 2023 is averaging 15,149 barrels per day. Source: Alaska Conservation Commission: Production – Data Miner (state.ak.us).

lifespan of the average well site is about 30 years, some of these production impacts would be ongoing.

Even if imported oil were to be partially or fully substituted for the foregone domestic production from the Petroleum Reserve, the lost production in Alaska would directly impact Alaskans and Alaska small entities.

2. The Analysis Failed to Appropriately Screen for Impacts to Small Entities in Multiple Ways – by Declining to Quantify "Some," by Failing to Assess Impacts to Small Government Entities, and by Failing to Examine the Significance of the Development Opportunities.

When considering "small entities," BLM examined the number of oil and gas lessees currently operating in the Petroleum Reserve and found eight active lessees. Based on SBA size standards for crude petroleum extraction and natural gas extraction, BLM found that only "some of the eight active lessees" are below the 1,250-employment threshold and conclude that this does not constitute "a substantial number of small entities potentially affected."[181] BLM did not quantify "some." Some is likely to be more than one. At its smallest, "some" could potentially be only two – which is 25% out of the eight they analyzed. But "some" could certainly be many more. Based on their analysis, it is impossible to tell whether "some" is as few as two or as many as seven. Surely BLM should provide more clarity on the number upon which they rest their claim that they do not need to perform a robust regulatory impact analysis or an RFA.

Furthermore, BLM impermissibly constrained the scope of "small entities" by failing to include any small government jurisdictions. Notably, the North Slope Borough qualifies as a "small government jurisdiction" as do the municipal governments of four villages located within the Petroleum Reserve—Utqiaġvik, Wainwright, Atqasuk, and Nuiqsut. Tribal entities for each of those villages also quality as small entities, as does the regional tribal organization, the Inupiat Community of the Arctic Slope. Ignoring these entities ignores the reality of communities on the North Slope. They will be affected by this Proposed Rule, and it was an error by BLM not to include them in the analysis.

Any increase or reduction in production is likely to be significant to the North Slope Borough and its residents. The North Slope Borough and other local governments are supportive of responsible, well-regulated development opportunities in the Petroleum Reserve. The North Slope Borough, Arctic Slope Regional Corporation, Kuukpik Corporation, and the State of Alaska have affirmatively intervened in litigation to help defend BLM's decision to approve the Willow development in the Petroleum Reserve. The eight companies that have invested in existing leases by submitting high bids at BLM lease sales have a reasonable expectation of being allowed to install infrastructure and produce economic quantities of oil if their exploration programs are successful. Doing so serves the national public interest in making secure, domestic production available on the market, providing base support for economic health. Doing so also serves the regional public interest in a strong tax base, employment opportunities, and development of valuable infrastructure such as roads.

[181] Economic Analysis at 11.

Oil and gas related revenues account for more than 90% of the revenues taken in annually by the North Slope Borough and that revenue is used for sewer, water, heat, sanitation, schools, clinics, hospitals, emergency services, local government infrastructure, wildlife and fisheries management, environmental health, and much more.[182] This has resulted in vastly improved living conditions and even increased life spans in the Borough.[183] If throughput through TAPS continues to decline, this revenue stream to the North Slope Borough will likewise decline and these life-improving services can be expected to decrease. Petroleum Reserve production is very important to stemming this throughput decline and maintaining the North Slope Borough revenue stream and these life-improving services. This must be taken into account in an economic analysis of a rule that weighs against NPR-A oil production, as this Proposed Rule does.

3. BLM Conducted its Economic Analysis According to the Wrong Baseline – It Should be Calculated According to the Rule It Is Replacing.

BLM, by using the 2022 IAP ROD as the baseline instead of the existing regulations, used the wrong baseline in its analysis. Any economic analysis requires a baseline to which to compare the Proposed Pule. The "baseline should be the best assessment of the way the world would look absent the proposed action."[184]

Absent this Proposed Rule, the Petroleum Reserve would continue to be governed by 43 C.F.R. § 2360, the existing rule governing NPR-A administration. Under that rule, BLM is free to adopt and follow IAPs, but is not required to do so. With the Proposed Rule, 43 C.F.R. 2360 will be supplanted and the current IAP will be codified except to the extant it conflicts with the Proposed Rule (e.g., with respect to infrastructure in Special Areas) or future actions under the Proposed Rule.

The appropriate baseline for this new Proposed Rule is the rule it replaces. The rule being replaced does not presume that leases or surface infrastructure in Special Areas cannot be permitted. The appropriate baseline for economic analysis is clear when the difference between adopting the Proposed Rule and not adopting the Proposed Rule is considered. On this point, BLM has described the differences as follows:

> This proposed rule would revise the management framework for surface resources throughout the NPR–A and Special Areas in the NPR–A. The BLM has not updated this framework in the more than 45 years since the original and still current rule for management of NPR–A surface resources and Special Areas was promulgated in 1977.[185]

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[182] Letter from Mayor Harry K. Brower, North Slope Borough to Secretary Deb Haaland, U.S. Department of the Interior (Apr. 15, 2021).

[183] Dwyer-Lindgren, L., et al., *Inequalities in Life Expectancy Among US Counties, 1980 -2014*, JAMA Intern Med., 177(7):1003-1011 (2017).

[184] OMB Circular A-4, pg. 15.

[185] 88 Fed. Reg. at 62,026 (emphasis added).

Moreover, BLM also emphasized the substantive nature of these changes: "The proposed rule would establish new standards and procedures for managing and protecting surface resources in the NPR–A from the reasonably foreseeable and significantly adverse effects of oil and gas activities."[186]

Most importantly, BLM itself noted that the IAP process is voluntary and outside of the designated statutory process.

> Currently, the applicable legal standards and procedures are scattered throughout several statutes, regulations, plans, and guidance documents. For example, the existing regulations do not integrate with the use of IAPs, which BLM has used either on a regional or area wide basis for the NPR–A for over two decades. Although the BLM is not required to plan for the use of the NPR– A, see 42 U.S.C. 6506a(c), it has chosen to produce the IAP through a public process and has analyzed it in an Environmental Impact Statement.[187]

BLM should therefore perform a new economic analysis to determine this proposal's actual impact according to the rule it will be replacing, rather than what BLM itself indicates is a voluntary planning process. This is particularly necessary when the maximum protection considerations raised in the next section are also considered.

4. BLM Incorrectly Characterized Its Actions as Having No Economic Cost or Benefit - Without Consideration of the Consequences of Those Actions and Without Any Provision Exempting Existing Leases.

BLM found that "most of the provisions of the proposed rule are editorial, administrative, or otherwise have no economic cost or benefit." [188] This assessment mischaracterizes the Proposed Rule, which clearly involves a new policy and new substantive standards for administration of the Petroleum Reserve.

The existing rule, 43 CFR 2361.1(c), elucidates the "maximum protection" standard by providing examples of measures that could be taken to provide "maximum protection":

> (1) [r]escheduling activities and use of alternative routes, (2) types of vehicles and loadings, (3) limiting types of aircraft in combination with minimum flight altitudes and distances from identified places, and (4) special fuel handling procedures.[189]

[186] *Id*. at 62,032.

[187] *Id*. at 62,031 (emphasis added).

[188] Economic Analysis at 1.

[189] 43 C.F.R. § 2361.1(c).

Under the Proposed Rule, those examples would be abandoned and the presumption against leasing, infrastructure, and production would take its place. That change reflects a major policy shift (from promoting production to restricting production), and there will be major substantive impacts that occur under the Proposed Rule. BLM's economic analysis fails to acknowledge or analyze the economic implications associated with this substantial change in the regulatory management regime.

Other parts of the Proposed Rule add to the substantive effect it would have. Examples include requiring BLM to delay, deny, or add limiting conditions to their decisions; and codifying multiple elements of the 2022 IAP ROD. In fact, it is clear that: (1) these changes mark a significant departure from the list of four operational protections in 43 C.F.R. § 2361.1(c); and (2) these changes could take offline the single well site referenced earlier in the sample break-even case.

Furthermore, the Proposed Rule states that it would not affect existing oil and gas leases. This statement has no basis in the Proposed Rule. The proposal contains no provision exempting existing leases. In fact, the Proposed Rule states: "Paragraph (c) of this section would require oil and gas leasing and new infrastructure to conform[.]" Without some saving language elsewhere, which is not apparent, that provision means the restrictions in the Proposed Rule apply to existing leases.

Equally important, nowhere in the Proposed Rule or the economic analysis does BLM address what happens if new surface infrastructure is necessary to serve existing leases. To ensure that existing lease rights are honored, BLM provide clear assurance that the government will not withhold approval for reasonable proposals for infrastructure such as roads and pipelines necessary to bring valid existing leases into production.

5. BLM's Assessment of the Impacts Stemming from a Special Areas Designation Is Unreasonably Superficial.

In its analysis, BLM wrongfully dismissed issues relating to Special Area designation and the amendment process as *de minimis.* Under the Proposed Rule, BLM could treat areas that are not designated as Special Areas as if they are in fact Special Areas while they are potentially being considered for designation as Special Areas.[190] During this pendency, BLM could presume that leasing, infrastructure, and production should be denied. This expands the substantive economic impact of the presumption beyond Special Areas to all areas of the Petroleum Reserve that might be considered in the future for designation as Special Areas. It is unreasonable to merely assume that this expansive policy shift away from encouraging production would not have an economic impact.

6. Given the Severity of These Deficiencies, BLM Should Ensure that the Final Rule Undergoes Review **by OIRA Prior to Release and Publication, and that the Classifications for the Rule are Correctly Noticed.**

[190] 88 Fed. Reg. at 62,041 (proposed § 2361.30(a)(5)).

According to the Fall 2023 Unified Regulatory Agenda issued on December 6, 2023, BLM plans to issue the final rule in March 2024. This is an aggressive schedule for incorporating stakeholder feedback, and may not leave sufficient time for a review of the final rule by the Office of Management and Budget's Office of Information and Regulatory Affairs ("OIRA"). Based on the concerns API has raised about the sufficiency of the economic analysis accompanying the proposal, we believe a review by OIRA is critical.

Additionally, the Fall 2023 Unified Regulatory Agenda lists this rulemaking as being subject to review pursuant to Section 610 of the RFA. While this may be only a mere transposition error, it was certainly one with consequences. Many stakeholders chose not to schedule pre-proposal meetings with OIRA, believing that the RFA-mandated focus on small businesses would give them sufficient opportunity to have their voices heard before a final regulatory action was taken. BLM therefore should not make any inferences concerning the small number of requests for a pre-proposal OIRA meeting because the notice (like many other elements of stakeholder engagement concerning this rulemaking) lacked appropriate attention to detail.

H. BLM Has Not Complied with E.O. 13132 (Federalism).

E.O. 13132 establishes requirements for policies that have "federalism implications," meaning "substantial direct effects on the States."[191] The purpose of E.O. 13132 is to ensure that, in formulating and implementing policies with federalism implications, agencies are guided by certain fundamental principles. For example, E.O. 13132 provides, "the national government should be deferential to the States when taking action that affects the policymaking discretion of the States" and should act "only with the greatest caution" when State or local governments have identified uncertainties regarding the agencies' statutory authority.[192] When there are significant uncertainties about whether an action is authorized or appropriate, "agencies shall consult with appropriate State and local officials to determine whether Federal objectives can be attained by other means."[193] Where national standards are required by federal statutes, agencies are required to "consult with appropriate State and local officials in developing those standards."[194] This consultation must occur "early in the process of developing the proposed regulation."[195]

In the preamble, BLM states that the Proposed Rule "would not have a substantial direct effect on the States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government."[196] This is incorrect. The federal government is required to pay 50 percent of all receipts from "sales, rentals, bonuses, and royalties on leases" in the Petroleum Reserve to the State of Alaska.[197] In

[191] E.O. 13,132, *Federalism*, 64 Fed. Reg. 43,255 (Aug. 10, 1999).

[192] *Id.* § 2(i).

[193] *Id.* § 3(b).

[194] *Id.* § 3(d)(4).

[195] *Id.* § 6(b)(2).

[196] 88 Fed. Reg. at 62,038.

[197] 42 U.S.C. § 6506a(l).

addition, the North Slope Borough derives the vast majority of its revenue from the taxation of oil and gas infrastructure, including infrastructure located within the Petroleum Reserve. By revising and imposing additional procedures and requirements for exploration, development, and production in the Petroleum Reserve, the Proposed Rule has a direct impact on these revenues and, thus, the interests of the State and North Slope Borough. Neither the State nor the North Slope Borough were consulted on the Proposed Rule as E.O. 13132 requires. BLM should conduct the necessary consultation with States and local governments before proceeding with a revised version of the Proposed Rule.

VI. Conclusion

API appreciates the opportunity to provide our comments and recommendations on the Proposed Rule. We remain supportive of a management regime in the Petroleum Reserve that promotes responsible oil and natural gas exploration, development, and production while balancing protections for important environmental resources and local subsistence uses consistent with the purposes of the NPRPA. The Proposed Rule, however, deviates from this balanced approach and is compromised by pervasive instances in which provisions exceed, or conflict with, BLM's statutory authority and unduly burden the leasing of oil and natural gas in the Petroleum Reserve. We remain very concerned about the flawed process for public participation and the lack of adequate environmental and economic analyses of the proposed regulatory provisions. The Proposed Rule should be withdrawn and, if BLM decides to proceed after, developed anew in a manner that follows an appropriate public process and contains provisions that comply with the applicable Executive Orders, statutes, and congressional intent. API and our members would welcome an opportunity to work collaboratively with BLM to ensure that any regulations for management of the Petroleum Reserve properly reflect the purposes established by Congress.

Sincerely,

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