



TRUSTEES FOR ALASKA

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December 7, 2020

Submitted via email

David Bernhardt, Secretary of the Interior
U.S. Department of the Interior
1849 C Street N.W.
Washington, D.C. 20240
officeoftheseecretary@ios.doi.gov

Re: Notice of 2021 Coastal Plain Alaska Oil and Gas Lease Sale and Notice of Availability of the Detailed Statement of Sale, 85 Fed. Reg. 78,865 (December 7, 2020)

Secretary Bernhardt:

On behalf of the Gwich'in Steering Committee, Alaska Wilderness League, Alaska Wildlife Alliance, Canadian Parks & Wilderness Society-Yukon, Defenders of Wildlife, Environment America, Friends of Alaska National Wildlife Refuges, National Wildlife Federation, National Wildlife Refuge Association, Northern Alaska Environmental Center, Sierra Club, The Wilderness Society, and Wilderness Watch, we convey our outrage regarding the recently published public notice for the Coastal Plain Alaska Oil and Gas Lease Sale, 85 Fed. Reg. 78,865 (Dec. 7, 2020). These groups oppose any efforts to hold an oil and gas lease sale on the Coastal Plain of the Arctic National Wildlife Refuge. They stand with the Gwich'in Nation and support the Gwich'in Nation's efforts to protect their human rights and food security by protecting the Coastal Plain. These organizations have been dedicated to defending the Coastal Plain from oil and gas exploration and development for decades, and will continue to do so. These unparalleled public lands, and the wildlife that depend on them, are an international treasure that must be conserved for future generations.

The Bureau of Land Management's (BLM) actions in noticing a lease sale during an open call for nominations period is wildly inappropriate and legally inconsistent with BLM's regulations and past practices. BLM must withdraw the notice of the lease sale and not reissue it until after completion of the call for nominations period.

BLM published its call for nominations for a Coastal Plain Oil and Gas Leases Sale on November 17th. 85 Fed. Reg. 73293 (Nov. 17, 2020). BLM provided the public with thirty days to submit comments and information on the lease sale, until December 17th. In its call for nominations, BLM stated that it was soliciting comments and information on tracts "that may be offered for lease" and specifically requested comments on "tracts which should receive special concern and analysis as well as the size of the tracts." We are preparing comments in response to BLM's request on behalf of the above listed groups and plan to submit them by December 17th.

Instead of waiting for the call for nominations period to conclude, and allowing time for the agency to review all of the information received during the nominations period to inform a lease sale, BLM has now noticed a lease sale. BLM's statement that it will still consider the comments is specious because BLM has now identified tracts that are available for bid, provided the stipulations each tract will be subject to, and set out the terms for leases.¹ Rather than carefully considering the comments and concerns of the public to inform the tract selection process and necessary protections, BLM has instead chosen to offer the entire Coastal Plain to oil and gas leasing — blatantly disregarding science, human rights, and its legal obligation to protect sensitive areas and resources in the Arctic Refuge.

At no point prior to this notice did BLM indicate that it would proceed this way. BLM did not indicate in its call for nominations and public comment notice or in its press release on the call for nominations that it would, in effect, shorten the nominations period, or otherwise notify the public that comments should be received before the given comment deadline to be actually considered by the agency and inform the lease sale.² Those members of the public who submit comments between now and the end of the nominations period (which includes the groups on this letter) will not have their input meaningfully considered as part of the tract selection process, if at all. BLM's treatment and blatant disregard for public input in this way is appalling.

Noticing a lease sale during an open public comment and call for nominations period is inconsistent with BLM's regulations, which set out a process where the nominations and public comment period concludes, and BLM considers the information received prior to making decisions about tracts to lease and additional terms or stipulations to impose. 43 C.F.R. §§ 3131.1, 3131.2, 3131.3. BLM's current actions are inconsistent with how BLM administers the leasing program in the National Petroleum Reserve-Alaska and contrary to the mandate in the Tax Act.³ From a regulatory-integrity standpoint, it is entirely unclear how BLM can continue receiving and meaningfully consider information on tracts to offer, tract size, and special terms or stipulations to inform a lease sale on lease tracts noticed and stipulations and lease terms already identified. Indeed, the agency cannot legitimately do so.

BLM's action in noticing a lease sale during an open nominations period is inconsistent with representations made by the Department of Justice on your behalf in U.S. District Court for how this process would proceed: "BLM will receive nominations and comments for a 30-day period. Subsequently, should BLM determine to issue a notice of sale, it will publish such notice in the Federal Register prior to the date of any such sale."⁴ It is also inconsistent with how elected officials explained the process to the public: "A 30-day notice of a sale, which could

¹ Notice of 2021 Coastal Plain Alaska Oil and Gas Lease Sale and notice of Availability of the Detailed Statement of Sale, 85 Fed. Reg. 78,865 (Dec. 7, 2020); Department of the Interior, Bureau of Land Management, Coastal Plain Alaska, Oil and Gas Lease Sale 2021, Detailed Statement of Sale, Exh. A & B (Dec. 7, 2020).

² BLM has also set out that it will follow a bizarre process that may involve changes to the detailed statement of sale prior to the lease sale and that includes a compressed window for bid submission. Detailed Statement of Sale at 1. None of these actions are consistent with the regulations or how BLM conducts leasing in the Reserve.

³ See Attachment A: Lease Sales in the National Petroleum Reserve-Alaska; Tax Cuts and Jobs Act, Pub. L. 115-97, H.R. 1, title II, § 20001(b)(3).

⁴ Defendants' Notice of Filing, Case No. 3:20-cv-00204-SLG (Nov. 16, 2020).

occur in mid-January, could be issued once the call for nominations closes.”⁵ And it is inconsistent with prior statements of the BLM State Director, Mr. Padgett, announcing the call for nominations period and explaining its importance to inform the lease sale: “Receiving input from the industry on which tracts to make available for leasing is vital in conducting a successful lease sale.”⁶

In short, BLM’s action in noticing a lease sale during an open call for nominations period renders the process a sham, eviscerating the intent of calling for public comment. This only exacerbates the already shameful and illegal process that BLM undertook to rush through its environmental analysis for the leasing program, which is the subject of four pending lawsuits. BLM’s goal in proceeding in this inappropriate manner is transparent: BLM is striving to issue leases prior to inauguration, and is willing to bend the regulatory process to achieve this goal. BLM’s apparent realization after it opened the public comment period that it could not achieve its apparently politically driven goal of issuing leases prior to a change in administration does not excuse the agency from having to comply with the law or from its obligation to obtain *and consider* input from the public prior to making its tract selections and identifying lease provisions. By proceeding in this way, it is making a mockery of public engagement and undercutting the integrity of the Department and the agency. These actions further cast considerable doubt on the legality of the lease sale, and any leases that may issue as a result.

Instead of proceeding in this seemingly politically motivated and unlawful manner, BLM should withdraw the notice of lease sale, complete the call for nominations period, and consider all information received during that time to inform a lease sale.

Sincerely,

s/ Brook Brisson
Brook Brisson
Senior Staff Attorney

CC:

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⁵ Lisa Murkowski, Dan Sullivan, Don Young, “ANWR’s 1002 Area: Promise, potential and now a plan,” Anchorage Daily News (Nov. 20, 2020), available at: <https://www.adn.com/opinions/2020/11/20/anwrs-1002-area-promise-potential-and-now-a-plan/>

⁶ Press releases, U.S. Department of the Interior, Bureau of Land Management, Coastal Plain Oil and Gas Lease Sale Nominations Sought Across All 1.6M Acres by Dec. 17 (Nov. 16, 2020), available at: <https://www.blm.gov/press-release/coastal-plain-oil-and-gas-lease-sale-nominations-sought-across-all-16m-acres-dec-17>

Attachment A: Lease Sales in the National Petroleum Reserve-Alaska

Year	Call for Nominations Period	Notice of Lease Sale/ Detailed Statement of Sale Date	Lease Bids Received Date and Time	Lease Bid Opening Date
2019	6/20-7/22	11/5	12/9 4pm	12/11
2018	7/19-8/20	11/9	12/10 4pm	12/12
2017	8/7-9/6	10/26	12/4 4pm	12/6
2016	3/31-5/2	11/9	12/12 4pm	12/14
2015	05/28 – 6/29	9/29	11/16 4pm	11/18
2014	6/3-7/18	9/26	11/17 4pm	11/19
2013	6/3-7/18	9/30	11/4 4pm	11/6
2012	5/15-6/29	10/5	11/5 4pm	11/7
2011	6/21-7/21	11/4	12/5 4pm	12/7
2010	Occurred in 2003; see note 1.	7/9	8/9 3:45pm	8/11
2008	Occurred in 2003; see notes 1 & 2.	8/15	9/19 3:45pm	9/24
2006	Occurred in 2001; see note 2.	8/23	9/22 3:45pm	9/27
2004	Occurred in 2001 and 2003; see notes 1 & 2.	4/27	5/28 3:45pm	6/2
2002	Occurred in 1997; see note 3.	4/29	5/31 3:45pm	6/3
1999	Occurred in 1997; see note 3.	4/05	5/4 3:45 pm	5/5

Note 1- Northeast: June 23, 2003 FR notice for the NPRA IAP Amendment and Call for Nominations; comments due Sept. 30, 2003 (<https://www.govinfo.gov/content/pkg/FR-2003-06-23/pdf/03-15737.pdf>). Later extended scoping to Oct. 31, 2003

(<https://www.govinfo.gov/content/pkg/FR-2003-09-15/pdf/03-23446.pdf>)

Note 2 - Northwest: November 15, 2001 FR notice for the NPRA IAP and Call for Nominations with comments due Dec. 15, 2001 (<https://www.govinfo.gov/content/pkg/FR-2001-11-15/pdf/01-28665.pdf>)

Note 3 - Feb. 13, 1997 FR notice for the NPRA IAP and Call for Nominations @ 62 Fed. Reg. 6797 with comments through Mar. 31, 1997 (<https://www.govinfo.gov/content/pkg/FR-1997-02-13/pdf/96-3614.pdf>). Later extended through an April 9, 1997 FR notice with comments due by Apr. 18, 1997 (<https://www.govinfo.gov/content/pkg/FR-1997-04-09/pdf/97-9165.pdf>)