



September 16, 2024

Submitted via Federal eComment Portal: BLM_NPRA_SpecialAreas@blm.gov

Ms. Tracy Stone-Manning
U.S. Department of the Interior, Director (630)
Attention: RFI Special Areas in the NPR-A
Bureau of Land Management
1849 C Street, NW, Room 5646
Washington, DC 20240

Mr. Steve Cohn
State Director
Bureau of Land Management, Alaska
222 W. 7th Avenue, #13
Anchorage, AK 99513

Re: Comments on BLM's request for information regarding Special Areas within the National Petroleum Reserve in Alaska
89 Federal Register 58181 (July 17, 2024)
[BLM_AK_FRN_MO4500180291]

Dear Director Stone-Manning and Mr. Cohn:

Armstrong Oil & Gas, Inc. ("Armstrong") appreciates this opportunity to provide comments and recommendations regarding the Bureau of Land Management's ("BLM") request for public comment on "Special Areas Within the National Petroleum Reserve in Alaska" ("Request"). This Request intends to seek public feedback regarding whether BLM should: (1) identify additional resource values for protection within existing Special Areas; (2) modify the boundaries or management of existing Special Areas; (3) identify additional protective measures within existing Special Areas, or (4) identify public lands that may qualify for designation as new Special Areas in the National Petroleum Reserve in Alaska ("Petroleum Reserve").

Armstrong, as Manager of North Slope Energy, LLC and North Slope Exploration, LLC, along with its partners, is one of the largest leaseholders on the North Slope, holding approximately 1.1 million gross acres of federal leasehold within the Petroleum Reserve; approximately 500,000 net acres. These acres are directly south of and adjacent to the Teshekpuk Lake Special Area, as identified on the attached map at Exhibit A. Over the last two decades, Armstrong has been responsible for generating projects that have brought partners such as Kerr McGee, Pioneer, Repsol, Eni, Oil Search, Santos, and Apache to the North Slope, many within close proximity to the Teshekpuk Lake Special Area. Discoveries from these partnerships resulted in new developments including the Pikka Unit, Horseshoe Unit, Oooguruk Unit, and Nikaitchuq Unit, along with numerous exploration projects yet to be tested.

Armstrong and its partners are concerned that the Request initiates an unnecessary and potentially unlawful process of expanding existing Special Areas, including the Teshekpuk Lake Special Area, and potentially creating additional Special Areas such that the majority of the Petroleum

Reserve is unavailable for oil and gas development, contrary to Congressional direction and the reason for the establishment of the Petroleum Reserve.

As explained in greater detail below, Armstrong does not believe that BLM should initiate any process to expand Special Areas, nor does Armstrong believe that BLM has the support or legal authority to do so. Indeed, even the BLM itself recognized that the decisions in the 2022 Petroleum Reserve IAP Record of Decision (“ROD”) (“2022 IAP”) “makes available for leasing the *minimum* amount of public lands necessary to allow for oil and gas development while providing necessary protection for subsistence users and resources.¹ Based on BLM’s own statements within the 2022 IAP, it has already reduced the amount of lands available to oil and gas development to the minimum potentially allowed under the Petroleum Reserve’s authorizing act.

Any expansion of the Teshekpuk Lake Special Area, or development of a new special area within Armstrong’s federal leasehold interests, could result in Armstrong’s inability to permit and construct vital infrastructure necessary to access its exploratory and developmental units, as well as to provide for the takeaway of crude oil and natural gas to downstream users and markets. Such burdens on Armstrong’s ability to develop its leases could constitute a regulatory taking in violation of both federal law and Armstrong’s valid existing lease rights. BLM must recognize existing leases as it considers any modification to special areas within the Petroleum Reserve.

In its more than two decades in the North Slope, Armstrong and its partners have a positive history of working collaboratively with the Alaska BLM, local stakeholders, the North Slope Borough, and the State of Alaska through the Alaska Department of Natural Resources, Alaska Oil and Gas Conservation Commission, Alaska Department of Environmental Conservation, and other state agencies, to safely and responsibly explore for oil and gas resources in the North Slope and within the Petroleum Reserve in a manner that protects the environment, species and their habitats, and subsistence activities while providing economic benefits to state and local economies. Armstrong is committed to continued development of new technologies and best practices to reduce surface disturbance and impacts on the environment, consistent with this Administration’s goals.

Based on its experience operating in the North Slope and its past and current collaborative efforts, Armstrong again would like to offer its knowledge and expertise to serve as a resource to BLM as it considers these and other stakeholder comments on special areas to ensure that BLM balances the direction of Congress in designating the Petroleum Reserve with the Administration’s goals of protecting special resource values within the area.

I. Designating the Petroleum Reserve Under the Naval Petroleum Reserves Production Act

The Petroleum Reserve was initially established in 1923 as a petroleum reserve for the U.S. Navy, then transferred to DOI in 1976 through the Naval Petroleum Reserves Production Act of 1976 (Petroleum Reserves Production Act), which designated the Petroleum Reserve and directed the

¹ 2022 IAP at 17 (emphasis added).

Secretary to “commence further petroleum exploration of the reserve”² Further, through the Petroleum Reserves Production Act, Congress directed the Secretary to report to Congress “any new plans or substantial amendments to ongoing plans for the exploration of the [Petroleum Reserve].”³ Throughout the history of the Petroleum Reserve, the underlying and consistent message from Congress is that the lands are to be developed for oil and gas resources.

Indeed, in the Department of the Interior Appropriations Act, Fiscal Year 1981, Congress again directed the Secretary to develop the lands’ oil and gas resources, stating the Secretary “shall conduct an expeditious program of competitive leasing of oil and gas in the Reserve in accordance with this Act.” 42 U.S.C. § 6506a(a). While this Petroleum Reserves Production Act amendment directed the Secretary to mitigate adverse effects from oil and gas development, Congress did not direct the Secretary to preclude adverse effects.⁴

Relevant to the Final Rule, the Petroleum Reserves Production Act provides:

Any exploration within 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, 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.**

42 U.S.C. § 6504(a) (emphasis added).

Contrary to the Final Rule’s preamble, nowhere in the Petroleum Reserve does Congress give BLM the direction or authority to prioritize “maximum protection of surface values” over development of the Petroleum Reserve’s petroleum resources. It is, in fact, a *petroleum reserve*.

If Congress wanted BLM to protect surface values of the Petroleum Reserve over the development of petroleum resources, it would have clearly designated such lands. Instead, in 1980 Congress passed the Alaska National Interest Lands Conservation Act (“ANILCA”), which set aside over 157 million acres of lands in Alaska as national parks and preserves, national wildlife refuges, designated wilderness areas, wild and scenic rivers, and the Iditarod National Historic Trail, as well as the Steese National Conservation Area and the White Mountains National Recreation Area.⁵ Through the ANILCA, Congress directed the “maximum protection of surface values” of millions of acres of land in Alaska. Importantly, ANILCA does not include provisions protecting

² 42 U.S.C. § 6504(c).

³ 42 U.S.C. § 6504(c)(2).

⁴ *Id.*

⁵ 16 U.S.C. §§ 3101-3233 (ANILCA),

lands within the Petroleum Reserve, which are designated for development of petroleum resources.⁶

II. Estimated Reserves of the Petroleum Reserve

BLM manages the Petroleum Reserve based in part on estimated recoverable oil, balancing protection of surface resources with the potential development of subsurface petroleum resources. A 2017 U.S. Geological Survey report estimates 8.7 billion barrels of recoverable oil in the Petroleum Reserve.⁷ Following this report, in the 2020 Petroleum Reserve IAP/EIS BLM classified over 4 million acres of the Petroleum Reserve as having high petroleum development potential.⁸ Under a high development scenario, but based on certain lands withheld from leasing, BLM then estimated total lifetime production of 2.6 billion barrels of oil from lands available for development within the Petroleum Reserve.⁹ Based in part on these estimates, the 2020 Petroleum Reserve IAP/EIS preferred alternative, Alternative E, designated the most land open to leasing, opening approximately 18.7 million acres to leasing.¹⁰

The 2012 Petroleum Reserve IAP/EIS relied on a 2011 U.S. Geological Survey report estimating only 604 million barrels of recoverable oil. Based on this reduced estimate of recoverable oil, the 2013 Petroleum Reserve IAP ROD offered substantially less lands available for lease.

Based on its own experience and knowledge of the Petroleum Reserve through its operations, Armstrong estimates that the Petroleum Reserve could hold over 20 billion barrels of recoverable oil. Neither the 2022 IAP ROD nor the Proposed Rule's economic analysis appropriately account for the likely recoverable oil within the Petroleum Reserve. Indeed, the additional barriers to development from provisions within the Proposed Rule will significantly impact the economic outlook from the Petroleum Reserve.

III. Request for Updated Petroleum Reserve Integrated Activity Plan Accurately Recognizing Petroleum Reserves

It must be noted that the 2013 IAP was finalized prior to the play opening the Pikka discovery, which then led to a complete re-evaluation of the hydrocarbon potential in the Petroleum Reserve. Prior to that Pikka discovery, the USGS assessed the total mean recoverable oil resource within the Brookian topset play to be only 117 MMBO. After the discoveries at Pikka and Willow, the

⁶ See map of the State of Alaska attached as Exhibit B, which depicts the multiple lands across the state preserved for conservation of their surface resources, available at https://upload.wikimedia.org/wikipedia/commons/a/a9/Alaska_Public_Lands_Map4000x2255.png.

⁷ <https://pubs.usgs.gov/fs/2017/3088/fs20173088.pdf>.

⁸ 2020 IAP/EIS at B-2; Map B-1.

⁹ 2020 IAP/EIS at B-12, Section B.8.3.

¹⁰ 2020 IAP/EIS at ES-6. While Alternative E would open the most land to leasing, it still provided protective measures such as no surface occupancy stipulations and timing limitations to protect species and their habitats within the Teshekpuk Lake Special Area and other similarly-designated Special Areas.

USGS revised its assessment of the play to be over 6 BBO, representing a 52-fold increase in estimated oil resources. Subsequent discoveries at Horseshoe, Stirrup, Mitquq and further delineation of Pikka and Willow fields will likely result in additional upward revisions to the USGS assessment for the Petroleum Reserve. Given that the primary purpose of the Petroleum Reserve is to preserve and allow access to petroleum resources, Armstrong requests that a comprehensive IAP contemplate the oil discoveries and revised resource assessments made since publication of the 2013 IAP.

IV. History of Special Areas in the Petroleum Reserve

Under the Final Rule, “Special Areas” is defined as “areas within the [Petroleum] Reserve identified by the Secretary or by statute as having significant resource values and that are managed to assure maximum protection of such surface values, to the extent consistent with the requirements of the Act for the exploration and production of the [Petroleum] Reserve.”¹¹

Timeline of the Petroleum Reserve

- **1976:** Naval Petroleum Reserves Production Act of 1976 enacted
- **1977:** Teshekpuk Lake, Colville River, and Utukok River Uplands designated as the first three Special Areas¹²
- **1998:** Northeast Area IAP finalized, authorizing drilling in 87% of the Petroleum Reserve¹³
- **1999:** First oil and gas lease sale held for the Petroleum Reserve¹⁴
- **2005:** BLM designates a fourth Special Area, Kasegaluk Lagoon¹⁵
- **2010:** USGS¹⁶ assessment update – Mean of 896 MMBO (117 MMBO in Brookian Topsets)

¹¹ 43 C.F.R. § 2361.5.

¹² See 42 U.S.C. 6504(a).

¹³ See Northeast NPR-A IAP/EIS Record of Decision 1998 at 1.

¹⁴ See <https://www.conocophillips.com/sustainability/sustainability-news/story/responsibly-developing-alaska-s-willow-project/#:~:text=Congress%20authorized%20competitive%20oil%20and,%2C%20began%20production%20in%202015.%E2%80%9D>.

¹⁵ See 70 Fed. Reg. 9096 (Feb. 24, 2005).

¹⁶ U.S. Geological Survey.

- **2013:** New IAP released, expanding Special Area protections to approximately 11 million acres including adding fifth Special Area, Peard Bay¹⁷
- **2013:** NPRA IAP takes 11 million acres off-limits to leasing
- **2013:** Giant Nanushuk play-opening discovery at Pikka¹⁸
- **2015:** Greater Moose's Tooth #1 drilling project approved¹⁹
- **2016:** Giant Nanushuk discovery at Willow.²⁰
- **2017:** Giant Nanushuk discovery at Horseshoe²¹
- **2017:** USGS assessment update – Mean of 8.8 BBO (6,079 MMBO in Brookian Topsets)
 - Assessment based on 1,000 MMBO at Pikka, 300 MMBO at Willow
- **2017:** Giant Nanushuk discovery at Horseshoe
- **2018:** BLM initiates an environmental review to expand oil leasing in the Petroleum Reserve²²
- **2018:** BLM initiates an NPRA-wide EIS
- **2020:** Giant Nanushuk discoveries at Stirrup and Mitquq²³

¹⁷ See 2013 Petroleum Reserve Integrated Activity Plan at 2.

¹⁸ See Pikka Unit Nanushuk Development, North Slope of Alaska available at <https://www.nenergybusiness.com/projects/pikka-nanushuk-development-north-slope-alaska/>.

¹⁹ See ConocoPhillips Alaska's Greater Mooses Tooth #1 Produces First Oil available at <https://alaska.conocophillips.com/newsroom/news-releases/story/conocophillips-alaska-s-greater-moses-tooth-1-produces-first-oil/>. The project was permitted under the 2013 IAP and located in a Special Area.

²⁰ See Booming Interest in Nanushuk available at <https://digital.akbizmag.com/issue/august-2019/booming-interest-in-nanushuk/>.

²¹ See Alaska Dept. of Nat. Resources available at chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://dog.dnr.alaska.gov/Documents/ResourceEvaluation/20180521_DiscovThinking_Decker.pdf.

²² See 83 Fed. Reg. 58785 (Nov. 21, 2018).

²³ See Oil Search completes successful well tests at Nanushuk in Alaska available at <https://pesa.com.au/oil-search-completes-successful-well-tests-at-nanushuk-in-alaska/>.

- **2020:** BLM issues 2020 IAP ROD, making 18,581,000 acres of the Petroleum Reserve available for oil and gas leasing²⁴
- **2020:** ROD issued – NPRA IAP re-opens Nanushuk fairway to leasing with stipulations
- **2021:** Pikka field size increased to 3.3 BBO, Willow increased to over 800 MMBO
- **2022:** BLM issues 2022 IAP ROD, reversing land use designations to 2013 levels and includes additional stipulations to protect threatened and endangered species²⁵
- **2023:** ConocoPhillips Willow Project is approved²⁶
- **2023:** BLM proposes new rule to govern management of the Petroleum Reserve, including Special Areas²⁷
- **2024:** BLM finalizes proposed rule for Petroleum Reserve management, including Special Areas²⁸

Through the Petroleum Reserves Production Act Congress explicitly designated the Utukok River area and the Teshekpuk Lake area as areas necessary for special protection.²⁹ Other areas containing significant subsistence, recreational, fish and wildlife, or historical or scenic values were also designated, with the Kasegaluk Lagoon, Peard Bay, and Colville River areas also being added to Special Area status at later dates. The Utukok River Uplands Special Area covers 4 million acres, Teshekpuk Lake Special Area covers 3.65 million acres, Colville River Special Area covers 2.4 million acres, Peard Bay Special Area covers 107,000 acres, and the Kasegaluk Lagoon Special Area covers 97,000 acres. These five designated Special Areas cover more than 13 million acres within the 23-million-acre Petroleum Reserve, comprising one of the nation's largest public land tracts.³⁰ These five designated Special Areas, when analyzed under Petroleum Reserves Production Act language, are intended to provide maximum protection consistent with the purposes of the Act. The Petroleum Reserves Production Act presumes oil and gas exploration with subsequent continued development, whereas the Special Areas merely identify areas that possess surface resource values worthy of added protections during oil and gas development. Together, oil and gas development and surface values are intended to continue simultaneously,

²⁴ See 2020 IAP ROD at 3.

²⁵ See Petroleum Reserve Integrated Activity Plan ROD 2022 at 1.

²⁶ See Willow Master Development Plan ROD 2023 at 1.

²⁷ See 88 Fed. Reg. 62025 (Sep. 8, 2023).

²⁸ See 89 Fed. Reg. 58182 (July 17, 2024).

²⁹ 42 U.S.C. § 6504(a).

³⁰ See BLM *National Petroleum Reserve in Alaska* available at <https://www.blm.gov/programs/energy-and-minerals/oil-and-gas/about/alaska/NPR-A>.

with balanced protections that consider the unique makeup of the landscape and its oil and natural gas resources.

A. 2013 Petroleum Reserve Integrated Activity Plan

In 2013, BLM released the first comprehensive IAP and ROD for the Petroleum Reserve, which opened 11.8 million acres, or approximately 52% of the total area, of subsurface minerals in the Petroleum Reserve to oil and gas leasing.³¹ Conversely, the decision closed off 11 million acres to leasing through Special Area designation increases, representing approximately 48% of the total area.³² The impact of the 2013 ROD resulted in an increase in size of the Teshekpuk Lake Special Area by 1.9 million acres, bringing its total size to 3.65 million acres. While prior iterations of BLM IAPs for the Special Areas were meant to protect bird breeding and migration habitats, the 2013 IAP added protections for the Teshekpuk Caribou Herd calving and insect relief-areas.³³

B. 2020 Petroleum Reserve Integrated Activity Plan

An updated IAP was issued in 2020 following full availability for public notice and comment, as well as an extensive environmental review.³⁴ Under the 2020 IAP ROD, BLM opened up 18.6 million acres of the Petroleum Reserve for subsurface oil and natural gas development and leasing, constituting of approximately 82% of the total area available.³⁵ Conversely, 4.1 million acres, or 18%, were closed off to leasing and development, most of which were lands located within the Utukok River Special Area and a small area located around Teshekpuk Lake in the Teshekpuk Special Area.³⁶ The 2020 IAP ROD resulted in 4 million additional acres being available for lease, with an additional 2 million acres available for lease with no surface occupancy (“NSO”) restrictions.³⁷ Previous stipulations centered on protecting caribou calving habitat and important bird habitats from the 2013 IAP ROD were deemed to have been properly mitigated in the 2020 IAP ROD by the use of NSO stipulations.³⁸ However, BLM did place a ten-year leasing deferral in areas comprising two caribou herd migration corridors near Teshekpuk Lake that are considered important for the Teshekpuk Caribou Herd.³⁹ Lastly, the 2020 IAP ROD eliminated the Colville River Special Area due to the protections of the Colville River Special Area for raptors being

³¹ 2013 Petroleum Reserve Integrated Activity Plan at 21.

³² *Id.*

³³ *Id.* at 22.

³⁴ 2020 Petroleum Reserve Integrated Activity Plan at 9.

³⁵ 2020 Petroleum Reserve Integrated Activity Plan at 7.

³⁶ *Id.* at 3.

³⁷ *Id.* at 11.

³⁸ *Id.* at 7.

³⁹ *Id.* at 10.

applied to the entire Petroleum Reserve, making the associated protections specific to the Colville River Special Area no longer unique.⁴⁰

C. 2022 Petroleum Reserve Integrated Activity Plan

Two years after the 2020 IAP ROD, BLM issued a new ROD based on the 2020 environmental analysis, largely reverting to the management decisions established in the 2013 Petroleum Reserve IAP ROD. BLM determined that NEPA, subsistence and biological assessments, and Endangered Species Act (“ESA”) reviews performed as part of the 2020 IAP were adequate for the 2022 IAP ROD.⁴¹ In fact, BLM determined that “no additional analysis was necessary for the Department to select a different alternative from the range analyzed in the 2020 IAP/EIS,” resulting in the undoing of years of agency analysis and public comment, without providing new analysis or record support for the change.⁴² The 2022 IAP ROD was catalyzed by Executive Order 13990 which set forth new policy direction for various agency actions in support of a national “commitment to empower our workers and communities; promote and protect our public health and the environment; and conserve our national treasures and monuments, places that secure our national memory.”⁴³ Under the 2022 IAP ROD, the acreage open to oil and gas leasing decreased back to 11.8 million acres, with 11 million acres being closed to leasing. This reduction in lands available, when compared to the 2020 IAP ROD, resulted in a 30% decrease of lands available for leasing in the Petroleum Reserve. The majority of the 11 million acres closed off to leasing comprised of land once again within the Special Areas and much of the coastal areas of the Petroleum Reserve along the Beaufort Sea.⁴⁴

The Teshekpuk Lake Special Area protections were modified to 2013 levels, with 1.1 million acres in the Special Area being closed off to oil and gas leasing. Similar to the 2013 IAP ROD, the stated purpose behind the protections were centered on the protection of waterbirds, shorebirds, and the calving and insect relief areas of the Teshekpuk Caribou Herd.⁴⁵ BLM noted that the lands around Teshekpuk Lake are of “particular importance” for the Teshekpuk Caribou Herd.⁴⁶ The 2022 IAP ROD also reinstated the Colville River Special Area, as established under the 2013 IAP ROD, to be managed in accordance with the July 2008 Colville River Special Area and the 2013 IAP ROD management plans.

Given the fact that it takes decades to explore for and move to continuous production within the Petroleum Reserve, the expansion and contraction cycle of Special Areas creates an additional factor of uncertainty for leaseholders and prospective developers of the Petroleum Reserve’s

⁴⁰ *Id.* at 2.

⁴¹ 2022 Petroleum Reserve Integrated Activity Plan at 1.

⁴² 2022 Petroleum Reserve Integrated Activity Plan/EIS at 1.

⁴³ *Id.*

⁴⁴ *Id.* at 4.

⁴⁵ *Id.* at 5.

⁴⁶ *Id.* at 11.

resources. Oil and natural gas development, particularly in the remote areas of Alaska's North Slope, require considerable lead time and resource planning. The recent state of fluctuation in development stipulations, leasing availability, and required operating procedures administered by BLM and imposed onto industry only exacerbates developmental headwinds for the region.⁴⁷ BLM should ensure lessees of lands within the Special Areas consistency in its administration of the Petroleum Reserve.

V. Regulatory Background of the Petroleum Reserve

A. Petroleum Reserve Management Rulemaking

In September 2023, BLM initiated a rulemaking for the "Management and Protection of the National Petroleum Reserve in Alaska,"⁴⁸ which proposed multiple changes to the way BLM manages the Petroleum Reserve and regulates oil and gas development. Relevant to the current Request, the proposed rule modified how BLM could designate new or expand or modify existing Special Areas within the Petroleum Reserve. As a small business concerned by the proposed changes, Armstrong provided comments on the Special Area proposal as well as many of the other mechanisms proposed in the draft rule. Based on Armstrong's knowledge and experience from its partnerships on the North Slope, and its sizeable leasehold, Armstrong offered to be a resource to BLM in providing a workable update to the Petroleum Reserve's regulations.

Instead, on May 7, 2024, BLM issued its final rule for the Petroleum Reserve ("Final Rule")⁴⁹ without recognizing comments from Armstrong's and others in industry. The Final Rule codified standards and procedures for managing oil and gas activities within Special Areas, including requiring BLM to analyze proposed oil and gas leasing, exploration, development, and new infrastructure in Special Areas, including requirements for public participation and consultation with federally recognized Tribes and Alaska Native Claims Settlement Act corporations that use the affected Special Area for subsistence purposes or have historic, cultural, or economic ties to the Special Area.⁵⁰ The Final Rule further requires BLM evaluate potential adverse effects on deemed significant resource values and consider measures to avoid, minimize, or otherwise mitigate adverse effects to achieve maximum protection of those significant resource values.⁵¹ Additionally, the Final Rule encourages the BLM to explore co-stewardship opportunities for

⁴⁷ Alaska Public Media, *Shell abandons North Slope oil leases . . .* (May 23, 2024), <https://alaskapublic.org/2024/05/23/shell-abandons-north-slope-oil-leases-raising-questions-about-the-industrys-future-in-alaska/>

⁴⁸ 88 Fed. Reg. 38712 (May 7, 2024).

⁴⁹ *Id.*

⁵⁰ 89 Fed. Reg. 38759 (May 7, 2024) (43 C.F.R. § 2361.40. Management of oil and gas activities in Special Areas.).

⁵¹ *See* 89 Fed. Reg. 38713.

Special Areas.⁵² Five existing Special Areas are codified by the Final Rule, as well as their management under the 2022 IAP.⁵³

B. BLM's Request Stems from the Management Rulemaking

Under the terms of the Final Rule, effective June 6, 2024, which multiple entities including Armstrong are challenging the legality of in Alaska's federal court,⁵⁴ BLM gave itself permission to modify the procedures for the designation, amendment, and change in management of Special Areas within the Petroleum Reserve. The Request, published a month after the Final Rule's effective date, now seeks direction from the public on whether to initiate a process under the newly created but not yet established Final Rule authority to consider changes to the currently-designated Special Areas outside of a full public and comment process. BLM is now considering whether to modify existing Special Areas through an Integrated Activity Plan ("IAP") revision or by utilizing the new process as provided under the Final Rule.⁵⁵ Specifically, through the Request, BLM wants information on whether: (1) the significant resource values protected by the existing Special Areas are comprehensive or whether additional such values exist; (2) the boundaries of existing Special Areas should be modified; (3) additional measures in existing Special Areas may be necessary to assure maximum protection of significant surface resource values; and (4) new Special Areas should be designated.⁵⁶

Due to the fact of ongoing litigation over the Final Rule, Armstrong believes that any changes to the Special Areas reliant on the Final Rule process and outside of a public notice and comment IAP process would be arbitrary, capricious, premature and violate the Petroleum Reserves Production Act and the Administrative Procedure Act (APA).

VI. BLMs Request for Information – Discussion of Considerations

As a foundational matter, through the Petroleum Reserves Production Act, Congress instructed that the Petroleum Reserves be developed for its oil and gas resources first and foremost. BLM must recognize and acknowledge this Congressional direction as it contemplates any changes to Special Areas within the Petroleum Reserves. BLM cannot review Special Areas in a vacuum.

Under the Federal Land Policy and Management Act, known as FLPMA, the Secretary has authority to regulate the use, occupancy, and development of public lands and "take any action

⁵² 89 Fed. Reg. 38760 (May 7, 2024) (43 C.F.R. § 2361.60. Co-stewardship opportunities in management of Special Areas and subsistence.).

⁵³ 89 Fed. Reg. 38758 (May 7, 2024) (43 C.F.R. § 2361.20. Existing Special Areas).

⁵⁴ *North Slope Exploration, LLC and North Slope Energy, LLC v. U.S. Dept. of the Int. et al.*, 3:24-cv-00143-SLG; *North Slope Borough v. BLM, et al.*, 3:24-cv-00135-SLG; *Voice of the Arctic Iñupiat, v. BLM, et al.*, 3:24-cv-00136-SLG; *State of Alaska v. BLM, et al.*, 3:24-cv-00144-SLG; *Alaska v. BLM, et al.*, 3:24-cv-144-SLG; *ConocoPhillips Alaska, Inc. v. Dept. of Int. et al.*, 3:24-cv-00142-SLG.

⁵⁵ See 43 C.F.R. § 2361.30 (Special Areas designation and amendment process).

⁵⁶ See 89 Fed. Reg. 58181 (July 17, 2024) at "Supplementary Information".

necessary to prevent *unnecessary* or *undue* degradation” of those lands.⁵⁷ The Petroleum Reserves Production Act provides that the Secretary “shall assume all responsibilities” for “any activities related to the protection of environmental, fish and wildlife, and historical or scenic values” and authorizes the Secretary to “promulgate such rules and regulations as [s]he deems necessary and appropriate for the protection of such values within the [Petroleum Reserve].”⁵⁸ More importantly, the Petroleum Reserves Production Act also requires that the activities set to occur on Special Area land “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 [Petroleum] Reserve*.”⁵⁹

Significantly, when managing oil and gas activities in Special Areas, BLM is tasked with administering an “expeditious program of competitive leasing of oil and gas” and also balancing “maximum protection of significant resource values” consistent with the requirements of the Petroleum Reserves *Production Act*, with emphasis on the term “Production” within the Act’s name.⁶⁰ In doing so, BLM must fulfill these duties “at each stage of the decision-making process for oil and gas activities in the Reserve. . . .”⁶¹

As the U.S. Court of Appeals for the D.C. Circuit recently held, BLM cannot perform a one-sided analysis. BLM must look at all of the resources within the Petroleum Reserve, including the petroleum resources that Congress set the lands aside for, when looking at whether to modify Special Areas. *See Interstate Nat. Gas Ass’n of Am. v. PHMSA*, No. 23-1173, 2024 U.S. App. LEXIS 20710 (D.C. Cir. Aug. 19, 2024).

With this background in mind, the following sections provide specific feedback on the four questions presented by BLM in the July 17, 2024 Request for Information.

A. Whether the Significant Resource Values Protected by Existing Special Areas are Comprehensive or Whether Additional Such Values Exist

Based on BLM’s years of planning and managing the Petroleum Reserve, Armstrong does not believe that additional Significant Resource Values (“SRV”) need be identified or protected within the Reserve.

The SRVs identified in the 2020 IAP ROD and subsequently adopted in the 2022 IAP ROD are adequately protected under the current ROD and management plan. The impact analysis supporting the 2020 IAP ROD determined that the issuance of oil and gas leases would have no

⁵⁷ 43 U.S.C. § 1732 (emphasis added).

⁵⁸ 42 U.S.C. § 6503.

⁵⁹ 42 U.S.C. § 6504 (emphasis added).

⁶⁰ 42 U.S.C. § 6506a(a); 43 C.F.R. § 2361.40.

⁶¹ *Id.*

direct impacts on the environment.⁶² This is largely because a lease, in itself, does not authorize on-the-ground oil and gas activities, only that a lease grants the lessee certain rights to drill for and extract oil and gas subject to further environmental review, *reasonable* regulation, and applicable laws, terms, conditions, and stipulations of the lease. Thus, the 2022 IAP ROD, by adopting the 2020 IAP analysis wholesale, also acknowledges the established adequacy of the 2020 IAP ROD. When further analysis is warranted, it will occur at the stage where an operator, like Armstrong, submits an application to perform on-the-ground activities (*e.g.*, Application to Drill (“APD”), or Right-of-Way (“ROW”)). It is here that BLM may perform site specific analysis pursuant to the National Environmental Policy Act (“NEPA”) and the ESA to forecast actual site-specific impact to SRVs; not at the Petroleum Reserve-wide management level.

BLM has settled on a decision, based on inadequate records from the 2022 IAP, which disadvantages the leasing of lands with high potential for oil and gas resources for the benefit of maximized surface resource protection. BLM’s decision fails to consider the location and amount of land necessary for an economically feasible leasing program, the proven success of surface resource protections and measures that have been shown to reduce the possibility of significant restrictions on subsistence uses by oil and gas activity. The 2022 IAP ROD already makes unavailable for leasing large tracts of land important to the Teshekpuk Caribou Herd and Western Arctic Herd that were previously accepted as adequately protected in the 2020 IAP biological assessment. The 2022 IAP ROD also provides setbacks on rivers for infrastructure to protect important river habitats, use, and access. By deploying an approach that offers only a minimal number of public lands for oil and gas leasing, BLM has not fulfilled the statutory mandate outlined originally by Congress.

With the Final Rule and 2022 IAP ROD, BLM has now determined no less than three times (*i.e.*, 2013 IAP, 2020 IAP, and 2022 IAP) in less than a decade that SRVs will remain sufficiently protected during oil and gas exploration and development activities. More importantly, for SRVs such as fish and wildlife, the ultimate takeaways from cooperating agency (*e.g.*, U.S. Fish and Wildlife Service (“USFWS”)) findings, as adopted by BLM, determine that the anticipated scope and scale of industry development will continue to expand but the effects of a proposed action similar to that of oil and gas leasing and development will remain minimized through development guidelines. In the Biological Report prepared for the 2020 IAP, USFWS determined that the proposed action is not likely to adversely affect certain endangered species, such as the short-tailed albatross, northern sea otters or their habitat, spectacled eiders or their habitat, or Steller’s eiders.⁶³ Additionally, in the same report, USFWS concluded that the future effects of the proposed action on polar bears, given its lengthy time horizon, would not appreciably affect the survival and recovery of the polar bear species as a whole.⁶⁴ Where critical species are put at risk by surface activities, such as within polar bear sea ice habitat that occurs in the boundaries of the Petroleum Reserve, the USFWS has stated that existing restrictions and Recommended Operating Procedures

⁶² 2020 Petroleum Reserve Integrated Activity Plan/EIS Executive Summary at ES-7.

⁶³ *Id.*

⁶⁴ USFWS Biological Opinion for NPR-A IAP at 200.

(“ROPs”) imposed on oil and gas lease developers will affect only a fraction of the available habitat while serving to limit potential disturbance and spill related impacts to polar bears⁶⁵. Similar results were reached for the minimization of caribou herd movement and subsistence use.⁶⁶

Armstrong believes that the 2020 IAP guidelines were properly promulgated and supported by scientific data and records, along with lease stipulations, and required operating procedures, and have operated and will continue to operate as a mechanism for minimizing the disruption to SRVs as indicated by their longstanding usage by BLM. Additionally, added review under NEPA and ESA on a project-level and facility-level basis that occurs during permitting will further ensure that SRV protections will continue to be bolstered by added protections moving forward. Armstrong believes the existing mechanisms are more than sufficient to protect SRVs within the Petroleum Reserve. Additional SRVs need not be identified.

The key SRVs reviewed by the BLM include: fish and wildlife, water resources, Special Areas, oil and gas, subsistence and sociocultural systems, and economics. Armstrong believes that these SRVs, when analyzed both individually and in aggregate, encompass a comprehensive understanding of the core SRVs contained in the Petroleum Reserve and the Special Areas. BLM must continue to prioritize oil and gas resources as an SRV and review oil and gas resources on equal footing as other SRVs in its decision making. Resultingly, the SRVs compiled and analyzed in the 2020 IAP and affirmed in the 2022 IAP ROD should not be modified or expanded in scope.

B. Whether the Boundaries of Existing Special Areas Should be Modified

If anything, Armstrong believes that the existing Special Area designations are overly-broad and should be reduced in line with Congressional intent that the Petroleum Reserve be managed for oil and natural gas production.

The protection and management of existing Special Areas, having been the subject of expansion and contraction since 2008, would benefit from a decision by BLM that stabilizes their boundaries for the foreseeable future based on sound data from the 2020 IAP. Originally in 2008, lands available for oil and gas leasing within the Petroleum Reserve was 4 million acres, compared to 11.8 million acres in 2013. The lands available to leasing were again expanded to 18.6 million acres in 2020 before more recently contracting to 11.8 million acres in 2022.

The Teshekpuk Lake Special Area began at 1.75 million acres in 2008 before growing to 1.9 million acres in 2013, then again to 3.65 million acres in 2022. Not only have the Petroleum Reserve and Special Areas grown in size, they have also grown in the scope of their purpose. In 2013, the purpose of Petroleum Reserve and Special Areas aimed to provide protection for surface resources. Today, the purpose of the 2022 IAP and ROD, in addition to protecting surface resources, is to: (1) protect the free flow, water quality, and outstandingly remarkable values of the rivers and river segments determined to be suitable for designation as Wild and Scenic Rivers,

⁶⁵ *Id.* at 205.

⁶⁶2020 Petroleum Reserve Integrated Activity Plan/EIS Executive Summary at 2-7.

and (2) provide protections for significant surface values through no surface occupancy stipulations, timing limitations, and controlled surface use stipulations to ensure that development is conducted in a way that minimizes impacts to significant surface values.

As the sizes of the protected Special Areas and scope of BLM protections have increased, so have the cooperation requirements among North Slope stakeholders, and thus, the complexity of a sustained oil and gas development operation. Armstrong believes Special Area boundaries must meet the twin Congressional aims of allowing for oil and natural gas exploration and development and resource protection. If anything, BLM should be considering reducing the size of Special Area designations, as fully justified in the 2020 IAP, where potential oil and gas resources are high.

The 2022 IAP ROD to offer only minimal public lands for lease while re-establishing Special Area sizes to 2013 levels underscores the need to provide certainty around the administration of Special Areas. For example, the Colville River Special Area was eliminated in the 2020 IAP ROD and reinstated by the 2022 IAP ROD. This reinstatement takes surface lands off the table for oil and natural gas development and further encircles the lands open for leasing on three complete sides, limiting the direction and opportunity for viable expansion of surface development opportunities.

Armstrong strongly expresses the need to stabilize Special Area boundaries at appropriate sizes to ensure that conflict between existing leasehold development and protected areas may be avoided and impacts to SRVs can be planned for and mitigated against. BLM must continue to prioritize oil and gas resources as an SRV and review oil and gas resources on equal footing as other SRVs in its decision making.

Having previously analyzed the modification of Special Area boundaries and their impacts in prior years, BLM should allow time for management practices, when properly supported on the record with facts and data, to function as intended. The impact analysis undertaken for the Petroleum Reserve in 2020 was reviewed again in 2022 and (again) deemed adequate. The same is true for consultation performed with tribes on the North Slope, Alaska Native Corporations, local governments, industry, and environmental organizations. Since the biological, subsistence, outreach, and impact analysis reviews have all been twice vetted and twice proven to be adequate, BLM need not expand existing Special Areas, and if anything, the record shows that BLM should revert to the 2020 IAP ROD land management decisions.

Armstrong understands the most recent Petroleum Reserve management plan, as solidified in the 2022 IAP ROD, to be a functionally less-workable plan compared to the 2020 IAP ROD from a federal oil and gas leaseholder perspective. As it stands now, the 2022 IAP ROD adds uncertainty to Armstrong's ability for long range planning of its leases, which is integral to the continued success of developing the north slope field. Any continued encroachment on lands available for leasing or current leases via enlargement of Special Areas will restrict future understanding of the field's oil and gas potential as a whole and could constitute a taking.

C. Whether Additional Measures in Existing Special Areas May be Necessary to Assure Maximum Protection of Significant Surface Resource Values

Based on current restrictions on development within the Petroleum Reserve, including stipulations, limitations and operator-endorsed ROPs, oil and gas exploration and development is uniquely managed to protect surface resources. Armstrong does not believe that the record would support a need for additional restrictive measures on exploration and development within Special Areas.

Designation of a Special Area does not, in itself, automatically require specific management prescriptions on exploration and development. The fact that a potential lease resides in a Special Area designation does not trigger the need for additional, unique management prescriptions beyond the standard base-level stipulations and required operating procedures applied throughout the entire Petroleum Reserve, unless a fact specific inquiry determines a need for additional stipulations. Areas within the Special Area boundaries where SRVs are not present, but oil and gas resources are, should be subject to the current base level stipulations applied throughout the entire Petroleum Reserve. This SRV analysis should be fact specific and default land management prescriptions applied should assume a permissible activity rather the heightened standard presumed by BLMs 2022 IAP ROD, which defaults to a “do not permit” decision.⁶⁷ Resultingly, BLM must continue to categorize oil and gas resources as an SRV and review oil and gas resources on equal footing as other SRVs in its decision making.

Approved existing oil and gas exploration and development projects in Petroleum Reserve Special Areas demonstrate the effectiveness of current protective measures that maximize the protection of SRVs. In 2023, for example, BLM approved the “Willow Master Development Plan” that contains drill sites, processing facilities, and pipeline infrastructure in both the Teshekpuk Lake and Colville River Special Areas (“Willow Project”).⁶⁸ In its decision, BLM prescribed project design features that avoid and minimize impacts in the Special Areas and included measures pertaining to road construction, optimized drill locations, among others, and allowed for additional mitigation proposed by the project proponent itself.⁶⁹ As a benefit to the State of Alaska and local communities, in addition to mitigation efforts, the Willow Project also resulted in the build-out of infrastructure for the supply of natural gas to the nearby community of Nuiqsut, additional funds to support the Kuukpik Subsistence Oversight Panel (“KSOP”), the funding of scholarships via the Kuukpikmiut Foundation, and the assistance of the design and construction of a boat launch for the City of Nuiqsut.⁷⁰

Also inherent in the Willow Project were the use of exceptions from lease stipulations and required operating procedures. No less than nine exceptions were requested and approved to allow for some

⁶⁷ 2022 Petroleum Reserve Integrated Activity Plan at 12.

⁶⁸ U.S. D.O.I., Willow Master Development Plan – Supplemental EIS, January 2023, <https://eplanning.blm.gov/eplanning-ui/project/109410/570>.

⁶⁹ *Id.* at 438.

⁷⁰ *Id.* at 440.

deviation from a protective measure (e.g., river setbacks, minimum pipeline distances from lakes/roads), further showing that the protective measures in the 2022 IAP ROD, when coupled with site-specific measures, are adequate and adaptable.

As recently as August 2024, BLM has approved APDs and ROWs in Special Areas and the District Court of Alaska has upheld the BLM's decision.⁷¹ The Emerald House's Peregrine oil and gas exploration program in the Petroleum Reserve was approved by the BLM in 2021 as a five year development program, the objective of which is to explore, delineate, and appraise oil and gas for potential future development.⁷² Program activities occur in the southeast regions of the Petroleum Reserve, within the Colville River Special Area and watershed. BLM authorized two APDs and the five-year right-of-way implementing the plan.⁷³ Though existing in parts of the Special Area, the BLM's review of the project and its safeguards were deemed adequate for protection of SRVs,⁷⁴ showing that development can occur while minimizing impacts to surface resources. BLM's decision was documented in its FONSI for the program.⁷⁵

Armstrong firmly believes that with careful planning, robust stakeholder engagement, and collaboration with BLM, the existing protective measures in place at the Petroleum Reserve field-level and project-specific-level can meet the intended statutory and congressional requirements, even in areas within Special Areas. No further restrictive measures should be required within Special Areas without site-specific information and analysis.

D. Whether New Special Areas Should be Designated

Armstrong is concerned that BLM is considering additional Special Area designations when 48% of the Petroleum Reserve is already protected and off-limits from oil and gas exploration and development.

The continued expansion and designation of Special Areas will result in the divergence from the original Congressional intent for the Petroleum Reserves Production Act towards an outright prohibition of all development for the sake of "maximum protection" of resource values. The Final Rule attempts to turn the Petroleum Reserve into a nature preserve by designating lands not available for leasing into a *de facto* wilderness area.⁷⁶ This direction is contrary to direction regarding wilderness in Alaska where the BLM is required to manage proposed wilderness lands "in accordance with the applicable land use plans and applicable provisions of law." BLM cannot hold proposed Special Area lands to a higher standard than it could hold proposed wilderness

⁷¹ *Sierra Club; Friends of the Earth; and Greenpeace, Inc., v. BLM*, Case No. 3:22-cv-00189-JMK (D. Alaska 2024).

⁷² *Id.* at 18.

⁷³ *Id.*

⁷⁴ *Id.* at 19.

⁷⁵ *Id.* at 21.

⁷⁶ Petroleum Reserve IAP ROD at 10, quoting Section 1320 of the ANILCA.

lands. BLM's abuse of this discretion could result in a breach of contract and a regulatory taking. While the Petroleum Reserves Production Act sought to increase oil and gas production from the Petroleum Reserve, the Final Rule appears to have sought to increase barriers to all oil and gas development, and by proxy, barriers to new infrastructure and roads to surrounding communities. These obstructions are most apparent in Special Areas. As such, the designation of new Special Areas under the guise of protecting resource values appears to be at odds with the conferred benefits of oil and gas development that include employment, infrastructure build-out, and improved connectivity for isolated communities.

Armstrong reiterates the need for Special Areas to remain constant with previous BLM decisions. Keeping both the boundaries and number of Special Areas persistent with prior agency determinations provides much needed certainty around the administration of the Petroleum Reserve, which in turn provides certainty and confidence around Armstrong and others' ability to develop and operate in the Petroleum Reserve. Moreso, BLM must continue to categorize oil and gas resources as an SRV and review oil and gas resources on equal footing as other SRVs in its decision making regarding Special Areas. The existing Special Areas serve to straddle the fine line between an "expeditious oil and gas leasing program" as originally intended by Congress and the need to protect important surface resources. Adding more Special Areas would tip the scale in favor of an outright prohibition on oil and gas development and would thus violate the Petroleum Reserves Production Act. BLM should not designate any new Special Areas for the foreseeable future.

VII. BLM Must Make Any Decisions on Special Areas via Public Process

Armstrong reiterates its December 6, 2023 comments on the proposed management rule with regard to requesting BLM revert to managing Special Areas based on pre-Final Rule regulations, including continuing to incorporate a rigorous public review and comment process. BLM should not be allowed to manage lands as Special Area designated lands without a full public process. Nor can BLM manage Petroleum Reserve lands as de facto wilderness or any similar land use designation without the public process.

In assessing and maintaining Special Area designations, BLM must ensure a public process where all interested stakeholders are provided adequate notice and opportunity to comment. Any decision must be based on the best available scientific and commercial data, and protective measures within the Special Areas must recognize the Petroleum Reserve's statutory authorities. If BLM intends that lands within designated Special Areas be removed from the possibility for oil and gas development, BLM must comply with the statutory process to withdraw such lands.⁷⁷ Failure to do so would be arbitrary, capricious and violate the APA and the Petroleum Reserves Production Act.

Further, BLM must ensure that this Request process provides a fully-transparent process by making public comments available for review, similar to many other NEPA-related reviews and

⁷⁷ See 43 U.S.C. § 1714.

rulemakings that BLM performs on a daily basis. Further, potential modification to existing Special Areas can and will affect leaseholders with leases in or adjacent to newly-designated lands. BLM must ensure that any movement it may make regarding Special Area boundaries does not result in a taking in violation of the Fifth Amendment to the U.S. Constitution.

VIII. Conclusion

Armstrong believes that BLM should allow adequate time for the implications of the Final Rule to be realized prior to modifying any protections within or boundaries of Petroleum Reserve Special Areas. Armstrong appreciates the opportunity to provide comments on the Request for Information and looks forward to a collaborative dialogue with BLM to create a reasonable management plan moving forward that recognizes technical and operational limits and respects valid existing lease rights and resource value protections.

Please do not hesitate to contact me should you have any questions regarding Armstrong's comments and concerns.

Sincerely,

A handwritten signature in blue ink, appearing to read "Nathan C. Lowe".

Nathan C. Lowe, CPL
Vice President
Land & Business Development

Exhibit A – Map of Armstrong leases within the Petroleum Reserve

Exhibit B – Alaska Public Lands Map, depicting state and federally designated public lands

Exhibit C – Petroleum Reserve Teshekpuk Lake Special Area Boundary Changes (2008-2020)