

ALASKA INDUSTRIAL DEVELOPMENT AND EXPORT AUTHORITY

RESOLUTION NO. G24-13

**RESOLUTION OF THE ALASKA INDUSTRIAL DEVELOPMENT
AND EXPORT AUTHORITY APPROVING THE RETENTION OF
OUTSIDE COUNSEL AND INITIATION OF LITIGATION TO
ADDRESS UNLAWFUL FEDERAL OVERREACH SEVERELY
IMPACTING ITS PROJECTS AND MISSION**

WHEREAS, one of the purposes of the Alaska Industrial Development and Export Authority (“Authority”) is to develop and provide financing for industrial development and facilities that "are essential to the development of the natural resources and the long-term economic growth of the state, and will directly and indirectly alleviate unemployment in the state..." AS 44.88.010(a)(4), 44.88.070(1);

WHEREAS, the mission of the Authority is to work with public and private institutions to promote, develop, and advance the general prosperity and economic welfare of the people of the state;

WHEREAS, the Authority’s Ambler Mining District Industrial Access Project is aimed at the development of an industrial road that provides access for multiple mining companies to the Ambler Mining District for exploration and mine development and is the type of development that the Authority was established to pursue;

WHEREAS, the opening of new areas for natural resource development through the construction of access roads is important in supporting economic development and is in furtherance of the Authority's statutory mission;

WHEREAS, in 2020, the Bureau of Land Management (“BLM”) issued a joint record of decision (“JROD”) approving the Ambler Road Project;

WHEREAS, in many ways, the JROD specifically recognized and acknowledged the State of Alaska’s express rights to access and cross those federal lands;

WHEREAS, despite the 2020 JROD, and while that decision was being challenged by third parties, the Department of Interior (“DOI”) and BLM, under a new presidential administration, moved for the voluntary remand of the JROD, stating that it intended to revisit its decision;

WHEREAS, in June 2024, the BLM ultimately issued a ROD regarding the Ambler Access Road, selecting the “No Action” alternative;

WHEREAS, in doing so, the BLM ignored multiple non-discretionary federal laws and regulations that grant Alaska an undeniable right to road access to the Ambler Mining District, with such provisions including but not limited to the following:

- A. BLM is required to follow federal laws, rules and regulations. Key among these is the Alaska National Interest Lands Conservation Act, Pub. L. 96-487 (“ANILCA”). ANILCA provides the owner of parcels surrounded by DOI lands with a mandatory right of access over those lands as the agency determines are “adequate to secure” the “reasonable use and enjoyment” of the surrounded parcel, subject to DOI’s “rules and regulations applicable to access over public lands.”
- B. Title II, Section 201(4)(b) of ANILCA further provides that: “Congress finds that there is a need for access for surface transportation purposes across the Western (Kobuk River) unit of the Gates of the Arctic National Preserve (from the Ambler Mining District to the Alaska Pipeline Haul Road) and the Secretary shall permit such access in accordance with the provisions of this subsection.”

“Shall” means access is non-discretionary to any of the Federal Agencies, including the BLM.

- C. ANILCA section 1110(b), codified as 16 U.S.C. § 3170(b), says that “the State or private owner or occupier shall be given by the Secretary such rights as may be necessary to assure adequate and feasible access for economic and other purposes to the concerned land by such State or private owner or occupier and their successors in interest.” This Statutory language clearly requires the Secretary to grant access to inholdings for the State or other persons or entities with mineral rights.
- D. Similar to the non-discretionary access requirements contained in ANILCA, the 1976 Federal Land Policy and Management Act (“FLPMA”), Section 302(b), codified as 43 U.S.C. § 1732(b), guarantees reasonable and feasible access to federal mining patents. There are over 500 acres of federally patented mining claims in the Ambler Mining District. This provisions provides a guarantee of reasonable and economically feasible access across federal land to prospect for, mine, and remove minerals and further, limits the Secretary’s authority under the National Environmental Policy Act.

WHEREAS, the BLM’s selection of the No Action alternative affirmatively prevents use of any transportation and utility corridor to the Ambler Mining District in the manner contemplated by the 1872 Mining Law, Section 6(i) of the Alaska Statehood Compact, and ANILCA Sections 201(4)(d), 203, 206, 1109 and 1323(b) and FLPMA Section 302(b);

WHEREAS, Section 20001(b)(2)(A) of Public Law 115-97 (Dec. 22, 2017) (the "Tax Cuts and Jobs Act") requires the Secretary of the Interior, acting through the Bureau of Land

Management, to establish and administer a competitive oil and gas program for the leasing, development, production, and transportation of oil and gas in and from the Arctic National Wildlife Refuge (ANWR) Coastal Plain;

WHEREAS, the Tax Cuts and Jobs Act required that the lease sales be not fewer than 400,000 acres each and be in the areas of the highest potential for the discovery of hydrocarbons;

WHEREAS, the first of the two lease sales occurred in January 2021, however, the leases awarded as a result of that sale were subsequently unlawfully suspended and later cancelled;

WHEREAS, the Authority has been litigating the suspension and cancellation of the awarded leases ever since that occurred;

WHEREAS, despite not having yet even held a single valid lease sale in ANWR as required by the Tax Cuts and Jobs Act, the BLM is now preparing to hold the second of the two lease sales required by the Act;

WHEREAS, it is anticipated that the BLM may attempt to use a flawed Final Environmental Impact Statement analysis as the means to make the most productive portions of ANWR Area 1002 unavailable for oil production;

WHEREAS, as outlined above, it has become clear that the federal government is unwilling to honor the legal commitments it has previously made to Alaska by way of the 1872 Mining Law, the Alaska Statehood Compact, ANILCA, FLPMA, and the Tax Cuts and Jobs Act;

WHEREAS, the federal government's actions referenced above are not only contrary to explicit legal provisions and authority, but further, they severely impact the Authority's ability to fulfill its statutory mission and purpose and further, greatly harm the economic and long-term prosperity of the state and its citizens;

WHEREAS, immediate legal action by the Authority is required to compel the federal government to honor the statutory, regulatory and other legal commitments it has made to Alaska and its citizens regarding access to the state's resources;

WHEREAS, the Authority may expend funds from its Revolving Fund on outside legal counsel to advance its statutory purpose, mission and projects;

WHEREAS, the Authority intends to pursue a legal strategy that will address and counter the unlawful actions of the federal government as described above; and

WHEREAS, taking such legal action is in furtherance of the Authority's statutory powers and advances the public interest.

NOW, THEREFORE, BE IT RESOLVED BY THE ALASKA INDUSTRIAL DEVELOPMENT AND EXPORT AUTHORITY, AS FOLLOWS:

Section 1. The Authority approves the employment of outside counsel and the preparation and initiation of litigation to advance its statutory purpose, mission and projects.

Section 2. The Authority authorizes its Executive Director to pay up to \$750,000 for the costs of litigation related to the Ambler Access Project from the Authority's Revolving Fund.

Section 3. The Authority authorizes its Executive Director to pay up to \$750,000 for the costs of litigation related to leases for the Alaska National Wildlife Refuge from the Authority's Revolving Fund.

Section 4. The Authority's Executive Director is authorized to take such actions as may be necessary or appropriate to carry out the actions intended by this Resolution, including, but not limited to making decisions on the legal strategies and tactics used to properly defend its interests in the litigation. The Authority's Executive Director shall seek to recover costs and fees of litigation as allowed under relevant court rules.

DATED at Anchorage, Alaska this 7th day of November, 2024.



Secretary

J. Dana Pruhs, Chair