Alaska Department of Law

Federal Laws and Litigation Report

in compliance with AS 44.23.020(h)

January 15, 2025

FORWARD

Under AS 44.23.020(h), the Department of Law must submit a report to the legislature that identifies federal laws, regulations, or actions that impact the State of Alaska and that the department believes may have been improperly adopted or unconstitutional. This report provides a brief summary of each federal law, regulation, or action identified along with a description of any related ongoing litigation in which the State intervened or joined. For more information on any item discussed in this report, contact Senior Assistant Attorney General Parker W. Patterson, at (907) 465-6544 or parker.patterson@alaska.gov.

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I. ACCESS

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Chugach National Forest Plan On April 16, 2020, the US Forest Service released the Final Record of Decision for its 2020 Chugach National Forest Land Management Plan.	The Forest Land Management Plan effectively creates additional Conservation System Units ("CSU") that restrict the state's rights to manage its land.	The Management Plan • Overlaps existing highways, railways, and utilities, making it difficult to impossible to expand or improve these facilities • Identifies the Resurrection Pass Trail as a CSU, without congressional designation • Mandates management of river segments as if they were CSUs, although State are located within the restrictive management areas	The Alaska National Interest Lands Conservation Act ("ANILCA") prohibits additional CSUs except by act of Congress.	No litigation at this time. The State sought resolution of these issues with the USFS both formally and informally and has exhausted administrative remedies. The State is considering its options. The 6 year statute of limitations for judicial appeal expires in 2026.
Reinstatement of Tongass Roadless Rule USDA reinstated the 2001 Roadless Area Conservation Rule on 9.3 million acres of the Tongass National Forest 88 Federal Register 5252	The 2001 Roadless Rule limits logging, road construction, mineral leasing, and other activities in designated roadless areas in national forests across the country.	Because the Tongass comprises the vast bulk of land in Southeast Alaska, application of the Roadless Rule stifles the State's interest in facilitating economic and social development in the region.	Reapplying the 2001 Roadless Rule to the Tongass violates unique Alaska and Tongass specific statutory provisions of the ANILCA and the Tongass Timber Reform Act, based on a flawed and biased decision-making process.	• *State of Alaska v. USDA*, 3:23-cv-00203 Pending motions for summary judgment denied without prejudice to refiling pending January 20, 2025 change in federal administration.

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<u>Ambler Industrial Access Road</u> Federal agencies permitted a 50-year right-of-way for an industrial road through southern Brooks Range and Gates of the Arctic National Park and Preserve to access the Ambler Mining District	Environmental groups and tribal entities filed lawsuits challenging the federal permits for the industrial road, alleging violations of National Environmental Policy Protection Act (NEPA), 2 U.S.C. 4321 et seq. Alaska National Interest Lands Conservation Act (ANILCA), 16 U.S.C. §3101 et seq. National Historic Preservation Act (NHPA), 54 U.S.C. § 300101 et seq. Federal Land Policy and Management Act (FLPMA), 43 U.S.C. § 1701 et seq. Clean Water Act (CWA), 33 U.S.C., § 1251 et seq.	AIDEA has proposed to construct a 211-mile private industrial access road from mile post 161 on the Dalton Highway to the Ambler Mining District. The road will facilitate mine development and transportation of ore as part of the Ambler Access Project.	The federal agencies complied with ANILCA and the NHPA when assessing the Ambler Road Project's impact. Remand prejudices AIDEA because it undermines AIDEA's rights under its permits, and results in an open-ended delay in the Ambler Road Project.	• *Northern Alaska Environmental Center et al v. Haaland*, 3:20- cv-00187-SLG (D. Alaska) • *Alatna Village Council et al v. Heinlein(Padgett)*, 3:20-cv-00253-SLG (D. Alaska) The State, AIDEA and Ambler Metals, LLC intervened in support of the permits. The court remanded to federal defendants to conduct additional environmental review. On June 26, 2024, the Department of Interior issued a Record of Decision adopting the "no action" alternative and terminated the BLM-issued right-of-way.
<u>King Cove Access Road</u> DOI entered into a land swap agreement in 2019 with King Cove Corporation.	DOI agreed to a land exchange that would permit the road to be built. The land swap was challenged by environmental groups alleging violations of NEPA, ESA, and ANILCA.	For many years, residents of King Cove have been trying to get a road from the village to the airport at Cold Bay. The road would be primarily for health and safety purposes, as the airport at Cold Bay is the nearest location where large planes can land in the area's often poor weather conditions. A road directly connecting these two	The land swap complies with federal law and is urgently needed to provide access to land-locked King Cove.	Friends of Izembek NWF v. Zinke, (9th Cir: 20-35721, 35727, 35728) In June 2020, the land swap agreement was vacated by the district court after finding the agreement violated the Administrative Procedures Act and Title XI of the Alaska National Interest Lands

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		towns would have to cross federally designated wilderness in the Izembek National Wildlife Refuge.		Conservation Act. The State, King Cove Corporation, and DOI appealed the decision vacating the agreement to the 9th Circuit. On March 16, 2022, the 9th Circuit reversed the district court on all grounds and remanded the decision for further proceedings. That decision was vacated for a rehearing before an 11-judge panel of 9th Circuit judges, which was held on December 13, 2022. The 9th Circuit panel dismissed the case as moot after DOI withdrew from the land exchange with King Cove. DOI has since suggested a different agreement and the State is reviewing for compliance with ANILCA.
Chicken RS2477 ROWs The Bureau of Land Management did not recognize state owned RS 2477 rights of way through wild and scenic river corridors near Chicken, Alaska.	BLM's management, regulation, and restrictions on its servient land were inconsistent with the State's rights of way. BLM took the position that valid existing rights need to first be judicially determined before it is obligated to recognize them.	The State lacked clear ownership of the RS 2477 rights of way. The routes provide access to state and federal mining claims, as well as overland access for hunting and to recreational sites.	The roads and trails at issue in this litigation are public rights-of-way granted by the United States to Alaska under federal legislation known as Revised Statute 2477. These rights arise automatically, by operation of law when all elements supporting their creation have been factually satisfied.	• *Alaska v. U.S.*, 4:12-cv-00008-RRB (D. Alaska) The state reached settlement with the federal government pursuant to a consent decree entered by the Ninth Circuit on November 20, 2024. The case was dismissed on December 2, 2024.

II. ENVIRONMENTAL REGULATION

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EPA Effluent Limitation Guidelines EPA issued new effluent limitation guidelines affecting coal-fired power plans 89 Federal Register 40198	Effluent Limitation Guidelines (ELGs) are set by EPA under the federal Clean Water Act. EPA's May 2024 ELG for coal-fire power plants sets a zero-discharge standard based on membrane and evaporator technology.	The Rule endangers the State's substantial interest in reliable, affordable electricity. The massive costs imposed by the Rule inevitably will lead to increased utility rates for Alaskans. The Rule will increase energy costs, decrease grid reliability, and prematurely shutter vital plants.	EPA acted arbitrarily and capriciously under the Administrative Procedures Act in concluding that membranes, thermal evaporators, and spray dryers, "alone or in combination," are available to treat wastewater at power plants.	• *Southwestern Electric Power Co. v. EPA*, 24-2123 (8th Cir.) Alaska joined 21 other states in *West Virginia et al v. EPA* (24-2225), consolidated in multidistrict litigation in the Eighth Circuit. Briefing is ongoing.
NHTSA CAFE Standards National Highway Traffic Safety Administration issued new Final Rule for Corporate Average Fuel Economy ("CAFE") vehicle emissions standards 89 Fed. Reg. 52540	NHTSA must set CAFE standards for passenger vehicles and light trucks under the federal Energy Policy and Conservation Act of 1975 and must also set fuel efficiency standards for heavy duty trucks under the Energy Independence and Security Act of 2007	The Biden Administration aims to eliminate non-electric vehicles through administrative rulemaking in contravention of congressional mandates. NHTSA's standards will increase costs of the State of Alaska while decreasing tax revenues and undermining the State's interest in protecting its electric grid.	NHTSA's rulemaking incorporated considerations and factors in setting fuel efficiency standards for motor vehicles that were impermissible under federal law.	• *In Re: NHTSA CAFE Standard*, 24-7001 (6th Cir.) Alaska joined 25 other states in *West Virginia v. Buttigieg et al* (24-3560), consolidated in multidistrict litigation in the Sixth Circuit. Briefing is ongoing.
State Plans for Designated Facilities Rule EPA final rule: Adoption and Submittal of State Plans for Designated Facilities: Implementing Regulations Under Clean Air Act Section 111(d) 88 Fed. Reg. 80480	EPA establishes "standards of performance" for new sources of air pollution and issues guidelines for States to set existing source standards under the Clean Air Act. Section 111(d) of the Act "prescribes a process of cooperative federalism for the regulation" of emissions from "existing sources." But "the States set the actual rules"	Although section 111(d) mandates that EPA "shall permit" States to consider source-specific factors, EPA has reinterpreted the statute to allow it to forbid States from reasonably exercising their discretion unless they meet EPA's heightened justification requirements for considering these factors.	• EPA lacks authority to restrict the reasonable exercise of state discretion to consider remaining useful life and other source-specific factors. • EPA's decision to set an 18-month deadline for States to submit plans	• *West Virginia, et al. v. EPA*, 24-1009 (D.C. Cir.) Briefing before the DC Circuit Court of Appeals is complete and oral argument is scheduled for January 17, 2025.

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	governing what standards existing sources must meet and how		violates the statute and is arbitrary and capricious. • EPA lacks authority to import the state plan calls and error correction processes from Section 110 into Section 111(d).	
<u>EPA WOTUS "Conforming" Rule</u> In light of the U.S. Supreme Court's decision in *Sackett et ux v. EPA* (21-454), EPA and the Army Corps of Engineers on August 29, 2023 published amendments to the Waters of the United States Rule ("WOTUS"). 88 Fed. Reg. 61964	The Biden Administration proposes to extend federal Clean Water Act jurisdiction by defining any waters having a "significant nexus" to traditionally navigable waters as "Waters of the United States."	The power to plan the development and use of water resources is an essential attribute of state sovereignty. The State of Alaska supports a narrow, plain language interpretation of the CWA's phrases "waters of the United States" and "navigable waters" to include only wetlands that are indistinguishable from waters that are clearly subject to the Act, such as bodies of water that are relatively permanent, standing, or continuously flowing.	In the *Sackett* case, the U.S. Supreme Court unanimously rejected EPA's "significant nexus" test for WOTUS. EPA's subsequent "Conforming Rule" rehashes the rejected significant nexus rule without remedying the procedural problems and constitutional flaws that identified by the Supreme Court.	• *West Virginia, et al. v. EPA*, 3:23-cv-00032-DLH-ARS (D. N. Dakota) Alaska and its sister plaintiff states moved for summary judgment in February 2024 against EPA's revised WOTUS Conforming Rule. After extensive briefing, the parties await a ruling from the district court.
<u>2017 EPA Haze Rule Amendments</u> 2017 Regional Haze State Implementation Plan Rule; 82 FR 3078	2017 EPA haze rule changes require states to amend their state plans relating to air quality.	The State is concerned about having international contributions to haze that are beyond the State's control count against Alaska and other states. The State also objects to the EPA shifting its modeling responsibilities and modeling costs to Alaska.	EPA's 2017 haze rule is arbitrary and capricious and an abuse of discretion, because it converts states' statutory discretion in considering conclusions of a federal land manager into a mandatory requirement that states must respond through costly formal revision of	*Texas et. al v. EPA*, 17-1021 (D.C. Cir.) Briefing is currently on hold in the DC Circuit Court of Appeals, while EPA revisits aspects of the rule and engages in a new rulemaking process.

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			their regional haze state implementation plan.	
ANCSA Land Remediation The federal government refuses to environmentally remediate land provided under the Alaska Native Claims Settlement Act ("ANCSA").	Through ANCSA, the United States sought to extinguish all Alaska Natives' claims to aboriginal title to over 360 million acres of land in Alaska, in exchange for title to a designated 44 million acres of land and other compensation.	Significant portions of over 1000 parcels of ANCSA land provided by federal government are environmentally contaminated with hazardous substances.	Congress required the US Executive to identify, investigate, and remedy contamination on lands conveyed under ANCSA three times over the last thirty years. The DOI has repeatedly failed to take the actions that Congress directed it to take.	Alaska sued the federal government alleging violations of the Administrative Procedures Act (*ADEC v. U.S.*, 3:22-cv-00163-HRH). Judge Holland dismissed Alaska's APA claim on July 17, 2023 and the State declined to appeal to the Ninth Circuit. The State is developing a new lawsuit based on a different theory of liability under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA).
EPA Vehicle Emissions Rule Revised 2023 and Later Model Year Light Duty Vehicle Greenhouse Gas Emissions Standards, 86 FR 74434, 74493	New EPA climate rule will force car manufacturers to transition to electric vehicles.	EPA's standards infringe on state regulatory authority, threaten electrical grid reliability, Alaskan interests in oil & gas, mining, national security, and freedom of choice.	EPA's new vehicle standards violate the Clean Air Act, the Energy Independence and Security Act, 42 U.S.C. § 17001 et seq., and the major questions doctrine, and are arbitrary and capricious under the APA.	• *Texas et al. v. EPA*, 22-1031 (D.C. Cir) Oral arguments were held in September 2023. We are awaiting a ruling. Supplemental briefing was requested by the Court July 29, 2024 to explore the impact of the DC Circuit's standing decision in *Ohio v. EPA* and SCOTUS's statutory interpretation decision *in Loper Bright*.

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FHWA Greenhouse Gas Emission Rule National Performance Management Measures; Assessing Performance of the National Highway System, Greenhouse Gas Emissions Measure 88 Fed Reg. 85364	New FHWA climate rule will force states to establish Greenhouse Gas (GHG) performance measures to incrementally reduce CO2 emissions generated from on-road use of vehicles.	Congress has not directed or supported FHWA's mandate to have the states regulate GHG emissions, thus there is no federal authority to require the State to impose this federal mandate. DOT&PF does not have a vehicle emissions program, and does not regulate personal vehicles or individuals' lawful use of public roads.	FHWA's new mandate for states to obtain reductions in CO2 emissions exceeds the agency's statutory authority, and violates the Administrative Procedures Act and the major questions doctrine.	• *Kentucky et al v. FHWA*, 24-5532 (6th Circuit) Western District of Kentucky held the rule exceeded FHWA's statutory authority and was arbitrary and capricious on August 20, 2024. The Biden Administration appealed to the Sixth Circuit. Briefing is completed and oral arguments are scheduled for February 5, 2025.
Clean Water Act §401 Litigation Final 2023 CWA Section 401 Water Quality Certification Improvement Rule 88 FR 66,558	2023 §401 Cert. Rule imposes additional requirements on States as certifying authorities under the Clean Water Act.	The 2023 Rule requires States to regulate entire activity proposed for permitting, not just associated discharge into navigable waters, complicating the review process and impeding development of infrastructure and resource development projects.	EPA's rule exceeds the agency's statutory authority and is arbitrary and capricious under the APA.	*Louisiana, et. al. v. EPA*, 2:23-cv-1714 (W.D. of Louisiana) Cross-motions for summary judgment pending. Briefing is complete on the motions.
Glacier Hwy 404 Enforcement Action EPA enforcement action of alleged violation of Section 404 of the Clean Water Act along the Glacier Highway in Juneau due to DOT&PF maintenance activities in 2021	Federal jurisdiction over State wetlands and State maintenance of transportation facilities.	Extent of WOTUS jurisdiction following EPA v. Sackett (2023) and extent of Section 404(f) maintenance exemption.	• EPA does not have WOTUS jurisdiction over wetlands that are separated by State right of way north of Mendenhall Wildlife Refuge • DOT&PF's maintenance activities are exempt from 404 permitting under Section 404(f) of the Clean Water Act.	• *EPA v. DOT&PF*, CWA-10-2024-0154 EPA filed an administrative complaint against DOT&PF on Aug. 27, 2024. DOT&PF's answer filed Oct. 4, 2024. The parties are currently conducting discovery.

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Clean Power Plan 2.0 On July 8, 2024, EPA issued Final Rule entitled "New Source Performance Standards for Greenhouse Gas Emissions From New, Modified, and Reconstructed Fossil Fuel-Fired Electric Generating Units; Emission Guidelines for Greenhouse Gas Emissions From Existing Fossil Fuel-Fired Electric Generating Units; and Repeal of the Affordable Clean Energy Rule" 89 Fed. Reg. 39798	The Final Rule addresses greenhouse gas emissions from fossil fuel-fired electricity generating power plants under section 111 of the Clean Energy Act.	Whether the rule properly respects the States' significant latitude in setting existing sources' "standards of Performance" and accounting for source-specific factors like a plant's "remaining useful life."	The Rule is arbitrary and capricious, implicates a major question, and in violation of 42 U.S.C. § 7411(d)(l).	• *West Virginia, et al. v. EPA*, No. 24-1120 (D.C. Cir) Multistate coalition challenged Clean Power Plan 2.0, and 15 other cases have been consolidated into the states' case. Numerous intervenors have also joined the cases. DC Circuit and SCOTUS denied a stay. Oral argument was on December 6, 2024.
Clean Air Act State Plan Rule One December 18, 2023 EPA promulgated a new Final Rule entitled "Adoption and Submittal of State Plans for Designated Facilities: Implementing Regulations Under Clean Air Act Section 111(d)" 88 Fed. Reg. 80480	Section 111(d) of the Clean Air Act "prescribes a process of cooperative federalism for the regulation" of emissions from "existing sources." EPA establishes "standards of performance" for new sources and issues guidelines for States to set existing source standards.	The "States set the actual rules" governing what standards existing sources must meet and how. Nonetheless, even though section 111(d) mandates that EPA "shall permit" States to consider source-specific factors, EPA has reinterpreted that mandatory statutory language to mean that EPA may forbid States from reasonably exercising their discretion unless they meet EPA's heightened justification requirements for considering these factors.	• EPA lacks authority to restrict the reasonable exercise of state discretion to consider remaining useful life and other source-specific factors. • EPA's decision to set an 18-month deadline for States to submit plans violates the statute and is arbitrary and capricious. • EPA lacks authority to import the state plan calls and error correction	• *West Virginia, et al. v. EPA*, 24-1009 (D.C. Cir.) Alaska joined a coalition of states led by West Virginia to challenge EPA's rule.

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			processes from Section 110 into Section 111(d).	
Water Quality Standards Regulatory Revisions To Protect Tribal Reserved Rights EPA's Proposed Rule would require states to engage in a mandatory process of consultation with Native tribes to determine the nature and scope of any tribal reserved rights to water use. 87 FR 74361 (To amend 40 CFR 131)	If such tribal reserved rights are determined to exist, then the Proposed Rule will require states to develop Water Quality Standards (WQS) based on the rights-holders' reserved rights.	State's right to manage relations with Native tribes and to determine the process by which ADEC ensures compliance with the Clean Water Act.	All tribal claims of reserved rights were extinguished by the Alaska Native Claims Settlement Act (ANCSA). The Proposed Rule is unconstitutional, and EPA's promulgation of the proposed regulations exceeds the authority granted to it by the Clean Water Act.	• The Rule was finalized on May 2, 2024. Idaho filed the Complaint on May 28, 2024, in the District of North Dakota, and a Motion for Preliminary Injunction on June 14, 2024, which included Alaska's Declaration in Support of the Motion. A number of federally-recognized Indian Tribes have informed the parties that they plan to move to intervene, and the court granted the request. • The parties have completed motion work for the Preliminary Injunction. DOJ submitted its Answer to the Complaint on September 5, 2024. Petitioners submitted their motion for summary judgment on November 4, 2024, EPA submitted their combined response and cross motion for summary judgment on January 3, 2025.

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<u>Clean Air Act Methane Rule</u> Standards of Performance for New, Reconstructed, and Modified Sources and Emissions Guidelines for Existing Sources: Oil and Natural Gas Sector Climate Review 89 Fed. Reg. 16820	EPA's Clean Air Act Methane Final Rule requires reduced emissions of methane and other harmful air pollution from oil and natural gas operations — including, for the first time, from existing sources	Rule strips states of their discretion and primary role in regulating emissions under section 111(d) of the Clean Air Act by establishing presumptive standards and forcing the states to adopt them.	Rule is arbitrary and capricious because it sets presumptive standards that limit the state's statutorily granted discretion and because it provides states only two years to submit plans despite EPA knowing that is not possible in most cases.	• *Oklahoma, et al. v. EPA*, No. 24-1059 (DC Cir.) Twenty-five states filed suit over EPA's new greenhouse gas rules governing crude oil and natural gas facilities. This case and others have been consolidated into *Texas v. EPA*, 24-1054. Various intervenors have joined the case and motions to stay have been denied by DC Circuit and SCOTUS. Merits briefing is ongoing at DC Circuit.

III. FISH & GAME

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Metlakatla Fishing Rights Metlakatla Annette Island Reserve, 25 U.S.C. § 495.	Metlakatla Indian Community sued the State of Alaska, asserting that Congress intended to grant MIC members off-reservation fishing rights when it created the Annette Island Reserve in 1897. MIC claims its members do not need a commercial fishing permit to fish in districts 1 and 2 in Southeast Alaska.	State jurisdiction over off reservation fishing by members of the MIC. Courts have typically held that the tribe's aboriginal rights before the creation of the reservation provides the scope of any implied off reservation fishing right. Because the Metlakatlans did not hold aboriginal rights in any of Southeast Alaska's waters, MIC members' implied-off reservation fishing rights would not include fishing districts 1 and 2.	Because the U.S. provided the Annette Islands to the Metlakatla as a gift rather than pursuant to an exchange, the U.S. did not intend the 1897 Act to provide any implicit off-reservation rights.	• *Metlakatla Indian Community v. Dunleavy et al.*, 5:20-cv-00008-JWS (D. Alaska) The Court of Appeals decided MIC held a reserved off-reservation fishing right regardless of whether MIC had a similar aboriginal right, and that ANCSA's extinguishment clause did not apply to reserved rights. The Court held that a trial is needed to determine whether MIC's reserved fishing right (i.e., its traditional fishing grounds) extends to districts 1 and 2. Trial is scheduled for the week of February 10, 2025.
NPS Hunting Rule The 2020 National Park Service (NPS) rule permits hunting practices authorized under Alaska's hunting regulations to take place on National Preserves in Alaska 85 FR 35181	Environmental groups allege the 2020 Rule violates the National Park Service Organic Act, Congressional Review Act, ANILCA, and the APA. The 2020 Rule withdrew a prior rule, promulgated by NPS in 2015, that preempted State law and prohibited the hunting practices on National Preserves.	The 2020 Rule defers to State management, thereby making the State's non-subsistence hunting practices applicable to National Preserves. The State supports liberalizing hunting practices in accordance with Alaska's sustainable yield principal.	The 2020 Rule is not arbitrary or capricious, because harvest data and other published studies conclude that the State's hunting regulations have resulted in low levels of additional take of predator species.	• *Alaska Wildlife Alliance v. Haaland, 36001* (9th Circuit) While on appeal in the Ninth Circuit, the NPS issued a new rule which became effective August 2, 2024 (89 FR 55059). On September 24, 2024, the U.S. and the State of Alaska jointly moved to dismiss the case as moot. On October 4, 2023, the environmental groups indicated they did not oppose dismissal. The appeal was dismissed as moot on November 11, 2024.

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Incidental Take Regulation (ITR) On August 5, 2021, the USFWS issued a five-year ITR allowing oil and gas activities to continue in the South Beaufort Sea region. 86 FR 42982	The ITR allows nonlethal "take" of polar bears (i.e., potential to disturb) in the Southern Beaufort Sea region for specified oil and gas activities. Environmental groups brought suits against FWS alleging that the ITR violates the Endangered Species Act (ESA) and the Marine Mammal Protection Act (MMPA), which protect polar bears.	Such regulations have been in place since 1993 allowing oil and gas exploration, development and production in the region.	Although Alaska continues to have concerns with the modeling used by the federal government to estimate nonlethal incidental take, Alaska is aligned with the federal government for purposes of this lawsuit in order to allow at least some incidental nonlethal take, in small numbers and with negligible impact.	• *Alaska Wildlife Alliance v. US Fish and Wildlife Service, et al.*, 23-35299 (9th Circuit) On March 29, 2023, the District Court granted summary judgment in favor of SOA, AOGA, and FWS, upholding the ITR, plaintiffs' appeal followed. The appeal was argued on February 8, 2024. On March 19, 2024, the Ninth Circuit reversed and remanded in part, but left the ITR in place pending further analysis by FWS.
Ice Seal Critical Habitat Designation The National Marine Fisheries Services ("NMFS") designated critical habitat areas for the arctic ringed seal and the Pacific bearded seal 87 Fed. Reg. 19,232 87 Fed. Reg. 19,180	When the NMFS designates a species as endangered or threatened, it must also designate any habitat of the species which is considered a "critical habitat." There may be no "take" of the listed species from the designated area.	The ESA requires that critical habitat designations be beneficial to the recovery of a species and that they only incorporate the smallest area necessary. Designations that are overly broad do not benefit the species and their costs far outweigh negligible benefits.	The State is challenging NMFS's designation of virtually all ringed seal and bearded seal habitat within the State as critical habitat for these two species. NMFS failed to fully incorporate ESA critical habitat requirements and issued an overly broad designation. The State is seeking an order holding unlawful and setting aside the overly expansive critical habitat designations.	• *State of Alaska v. Nat'l Marine Fisheries Serv.* 24-7147 (9th Cir.) The federal District Court for Alaska vacated the final rule designating the critical habitat on September 6, 2024. The case is on appeal in the Ninth Circuit and briefing is ongoing.
Kuskokwim River Order Federal Subsistence Board closure of 180-mile-long	In 2021 and 2022, the Federal Subsistence Board (FSB) and agency field officials exercised their authority under ANILCA	Alaska issued emergency orders in 2021 and 2022 permitting	The FSB and its delegation of authority to the Refuge Manager violates the Appointments Clause of the	• *U.S. v. Alaska*, 24-02251 (9th Cir.)

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section of the Kuskokwim River to non-subsistence users pursuant to Alaska National Interest Land Conservation Act ("ANILCA")	to issue emergency special actions to close the 180-mile-long section of the Kuskokwim River within the Yukon Delta National Wildlife Refuge to nonsubsistence uses, while allowing limited subsistence uses by local rural residents under narrowly prescribed terms and means of harvest.	fishing on the same stretch of the Kuskokwim River that had been closed to nonsubsistence harvest by federal emergency special action.	U.S. Constitution. The FSB lacks jurisdiction over the Kuskokwim River because it is not "public land" under ANILCA. FSB's orders relating to the Kuskokwim River violate ANILCA and are without statutory authority. They further violate the Administrative Procedures Act for failing to manage fisheries in accordance with sound scientific principles.	On March 29, 2024 Judge Gleason ruled in favor of the US and entered a permanent injunction. The State appealed to the Ninth Circuit and briefing in ongoing.
Administration of GMU 13 Closure by the Federal Subsistence Board ("FSB") of Units 13A and 13B to moose and caribou subsistence hunting by non-federally qualified hunters; opening an emergency hunt for the Organized Village of Kake	Regulations promulgated by the federal Secretaries of Interior and Agriculture created the FSB under the Alaska National Interest Land Conservation Act ("ANILCA") and granted it authority to administer subsistence taking and uses of fish and wildlife on public land	The closures prohibit non-federally qualified users from moose and caribou hunting in GMUs 13A and 13B and could deprive Alaskans, including local subsistence dependent Alaskans, of important food resources. ANILCA does not authorize opening emergency hunts but provides for a subsistence priority when it is necessary to restrict taking of game.	The expansion of federal authority exceeds what Congress delegated in the ANILCA and infringes on the State's authority to manage wildlife.	• *Alaska v. FSB*, 24-00179 (9th Cir.) On November 3, 2023, the federal district court ruled against the State. The Court found that ANILCA provides a general subsistence scheme, the FSB may open as well as close seasons and may delegate that authority to local land managers. The State filed a notice of appeal January 4, 2024 and oral argument is scheduled for February 7, 2025.
Chinook Fishery Biological Opinion Biological Opinion ("BiOp"), WCR- 2018-10660	Wild Fish Conservancy (WFC) brought suit alleging that the ESA Biological Opinion related to Southern Resident Killer Whales was flawed and that take of their food (chinook	The SEAK salmon fishery has averaged $806 million in output, $484 million in gross domestic product, $299 million in labor income or wages, and 6,600 full time equivalent jobs.	The State argues that the BiOp was issued in compliance with federal law. Closing the salmon fisheries as sought by the plaintiffs	• *Wild Fish Conservancy v. Quan*, 23-34322 The State and federal government appealed the district court's grant of summary

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	salmon) was unlawful under the Endangered Species Act, National Environmental Policy Act and the Administrative Procedures Act	WFC seeks an injunction that will close salmon fisheries in the EEZ adjacent to Southeast Alaska. Any such closure will have significant adverse impacts on the State's economy and its citizens' welfare.	would harm Alaska and its citizens.	judgment after the 9th Circuit stayed it's order closing the commercial Chinook summer and winter troll fisheries. On August 16, 2024, the Court of Appeals reversed the district court and remanded the case for the National Marine Fisheries Service to issue a new BiOp.
Arctic Ringed Seal Delisting National Marine Fisheries Service (NMFS) Negative 90-Day Finding.	The State petitioned NMFS to delist the Arctic ringed seal in light of updated information developed since listing. NMFS denied that the Petition's information and analysis was new and concluded that the Petition did not present substantial scientific information indicating that a review of the Arctic ringed seal's biological status was warranted.	The Arctic ringed seal listing and designation of hundreds of millions of acres of Alaska as critical habitat directly interferes with oil and gas exploration and production, mining and mineral production, navigation dredging, in-water construction activities, commercial fishing, and subsistence hunting and fishing.	NMFS's Negative 90-Day Finding conflicted with the Endangered Species Act (ESA) and its implementing regulations, which require only that a petitioner "submit credible scientific or commercial information in support of the petition's claims such that a reasonable person conducting an impartial scientific review would conclude that the action proposed in the petition may be warranted."	*North Slope Borough v. MNFS*, 3:22-cv-249-JMK (D. Alaska); 24-3148 (9th Cir.) Briefing on the merits concluded on August 18, 2023, and the case was argued on February 20, 2024. On March 20, 2024, the Court upheld NMFS' negative 90-day finding. The State appealed to the Ninth Circuit.
Cook Inlet Salmon Rule Alaska Salmon Fisheries Management Plan, Amendment 14 final rule closes the federal waters of Cook Inlet to commercial salmon fishing.	The United Cook Inlet Drift Association (UCIDA) alleged that Amendment 14 violates the Magnuson-Stevens Act (MSA), the APA and NEPA, and fails to comply with the 9th Circuit's order in the previous litigation.	Critically for Alaska, UCIDA argues that NMFS must manage salmon in Alaska's state waters.	Alaska supported Amendment 14, but the district court found it unlawful and ordered vacatur. As a result, NMFS has promulgated Amendment 16, which opens a federal salmon fishery in the Exclusive Economic Zone..	UCIDA v. NMFS, 3:21-cv-0255-JMK The State intervened in support of NMFS. On June 21, 2022, the district court judge granted UCIDA's motion for summary judgment and vacated Amendment 14 and its regulations, but on November

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				28, wholly denied UCIDA's sought relief. NMFS published the Final Rule on April 30, 2024, thus complying with the court order and bringing this iteration of the litigation to an end. However, UCIDA maintains that the Final Rule must regulate fisheries in state waters. The court denied UCIDA's motion on October 8, 2024.

IV. GENERAL GOVERNMENT

Federal Law or Action	Conflict or Preemption	State Concern	State Claim or Defense	Status
Education Bostock Guidance Enforcement of Title IX of the Education Amendments of 1972 With Respect to Discrimination Based on Sexual Orientation and Gender Identity in Light of Bostock v. Clayton County 86 FR 32637.	Pursuant to EO 13988, the federal DoE and EEOC issued guidance applying the SCOTUS Bostock ruling to Title IX of the Education Amendments of 1972 with respect to discrimination based on sexual orientation and gender identity. DoE and EEOC's Offices of Civil Rights will enforce Title IX to prohibit discrimination based on sexual orientation and gender identity in education programs and activities that receive federal financial assistance.	Adherence to the guidance will require implementation of expensive and onerous new procedures and obligations, including potentially ending sex-separated facilities and athletics and mandating the use of preferred pronouns. AS 14.18.040(a) requires that a school that provides "showers, toilets, or training-room facilities for athletic or recreational purposes shall provide comparable facilities for both sexes, either through the use of separate facilities or by scheduling separate use by each sex."	The guidance is arbitrary and capricious and was adopted without compliance with the Administrative Procedures Act. It violates the Spending Clause, the Tenth Amendment and the First Amendment to the US Constitution, and the separation of powers.	• *Tennessee, et al. v. U.S. Dep't of Education*, 22-5807 (6th Cir.) On July 15, 2022, the district court denied the federal defendants' motion to dismiss and granted the plaintiff states' request for a preliminary injunction. The Sixth Circuit affirmed the district court's decision on June 14, 2024.
Maintenance of Equity U.S. Department of Education's determination that Alaska failed to follow the novel Maintenance of Equity provision included in the American Rescue Plan Act	Section 2004 of the American Rescue Plan Act of 2021 (ARP Act) included new maintenance of equity (MOEquity) provisions that are a condition for state and local entities to receive funds under the Elementary and Secondary School Emergency Relief (ARP ESSER) Fund. DoE requires that state not reduce funding to certain schools even where state education funding has not	U.S. Department of Education designated the State of Alaska a "high risk" grantee and sought to withhold approximately $17.5M in state education funding due to the State allegedly failing to properly allocate state funding during FYs 22 and 23.	Alaska met the requirement that per pupil funding not be decreased for specific school districts. Following the statutory funding formula, the State ensured every school district received the necessary payments for each student enrolled in their districts, plus hold harmless funding if the school district experienced a significant decline in enrollment. US DoE's determination was not consistent with federal law	• *DEED Application*, 24-29-OJ The State has challenged the U.S. Department of Education's determination that Alaska failed to follow the novel Maintenance of Equity provision included in the American Rescue Plan Act. before Judge Angela Miranda in the U.S. DOE Office of Hearings and Appeals. The parties voluntarily dismissed the

Federal Law or Action	Conflict or Preemption	State Concern	State Claim or Defense	Status
	decreased overall. DoE alleges the State violated this rule by decreasing funding in certain school districts due to lower enrollment.		or USDOE's own guidance, and if the State had been able to discern and implement US DoE's interpretation, less money would have gone to rural school districts and more to urban, which does not meet the intended goal of the funding.	appeal after U.S. DOE sent a letter withdrawing its prior determination and determining, instead, that Alaska was in compliance.

V. HEALTH & SOCIAL SERVICES

Federal Law or Action	Conflict or Preemption	State Concern	State Claim or Defense	Status
Medicaid Staffing Rule Center for Medicare & Medicaid Services issued Final Rule "Minimum Staffing Standards for Long-Term Facilities and Medicaid Institutional Transparency Reporting" 89 Fed. Reg. 40876	The Final Rule establishes minimum staffing standards for long-term care facilities	The requirements of this rule are anticipated to have negative impacts to the availability of long-term care for Medicaid recipients. The rule does not account for national workforce shortages, requires the state to change its licensing oversight activities, and it will be difficult to implement the data reporting requirements since the state does not currently collect or require providers to submit data in that way.	The final rule violates the Administrative Procedures Act , Major Questions Doctrine, and nondelegation doctrine.	• *Kansas et al v. Becerra*, 1:24-cv-00110 An amended complaint was file October 23, 2024, and we are waiting on defendants' Answer..
Rule on Rehabilitation Act Sec. 504 Department of Health and Human Services Rule implementing Section 504 of the Federal Rehabilitation Act 89 FR 40066	The Final Rule: • obligates all recipients of federal financial assistance to provide services in "the most integrated setting," • prohibits actions that result in "serious risk of institutionalization"; and • allows discrimination claims to be brought when no institutionalization or segregation has actually occurred.	The final rule requires states to ensure that all services are available in the "most integrated" (community) setting, regardless of cost, feasibility, or need to redesign state systems.	The Final Rule conflicts with new 5th Circuit caselaw, is in tension with other federal requirements (in Medicaid), and violates separation of powers and state sovereignty principles. The final rule violates the APA, commandeers state government for federal policy, and violates the Spending Clause.	• *Texas et al v. Becerra et al*, 5:24-cv-00225 Alaska joined Texas and 15 other states in a lawsuit challenging the rule on September 26, 2024.

VI. NATURAL RESOURCES

Federal Law or Action	Conflict or Preemption	State Concern	State Claim or Defense	Status
ANCSA 17(d) Withdrawals Delay in implementing Public Land Orders ("PLOs") 7899, 7900, 7901, 7902, and 7903	Pursuant to Section 17(d)(1) of the Alaska Native Claim Settlement Act ("ANCSA"), the Department of Interior withdrew more than 158 million acres of land in Alaska from appropriation under the public land laws, removing them from availability for selection by the State.	The five PLOs partially revoked Section 17(d)(1) withdrawals covering 28 million acres of Bureau of Land Management lands, and returned those lands to multiple use management, including possible conveyance to the State under Statehood Act entitlements.	BLM's action delaying implementation of the PLOs was arbitrary and capricious, an abuse of discretion, and not in accordance with law under the Administrative Procedures Act.	• *Alaska v. Haaland, et a*l., 21-cv-0158 (D. Alaska); 22-35376 (9th Cir.) The parties reached a settlement where BLM will complete the analysis and issue decision on whether to revoke the land withdrawals on BLM administered land subject to the PLOs by August 31, 2024. A draft supplemental environmental impact statement was released for comment on December 14, 2023. In July 2024, BLM released the final supplemental Environmental Impact Statement. We currently await the record of decision.
EPA 404(c) Pebble Mine Veto Recommended decision of EPA Region 10 to prohibit and restrict the use of certain waters in the Bristol Bay watershed as a disposal site for the discharge of dredged or fill material associated with mining at the Pebble deposit.	Pebble Limited Partnership requires a permit from EPA under Section 404(c) of the Clean Water Act (CWA) to develop the Pebble mine project	Denial of the dredge and fill permit for PLP will effectively prevent development of the large-scale mine at the Pebble deposit, harming economic development for the State.		• *Alaska v. U.S.*, 22O157 (S. Ct.); • *Alaska v. U.S.* 1:24-cv-396-RAH (Fed. Cl); • *Alaska v. U.S.* 3:24-cv-0084-SLG (D. Alaska) On July 26, 2023, the State sought an original action before the United States Supreme Court. On January 8, 2024, the Court denied the State's motion.

Federal Law or Action	Conflict or Preemption	State Concern	State Claim or Defense	Status
				On March 14, 2024, the State filed a complaint in the Court of Federal Claims asserting breach of contract and takings claims to over $700 billion in damages. This action has been stayed pending the outcome of the U.S. District Court litigation. On April 11, 2024, the State filed a separate complaint in the U.S. District Court of Alaska asserting its remaining claims under the APA. On November 12, 2024, the Court consolidated this matter with two other private lawsuit both challenging the 404(c) determination. Currently, the parties are discussing the contents of the administrative record and briefing of the merits has not been scheduled pending the finalization of the record.
Mining on Federal Land Rules 2003 Mining Claim Rule, 68 FR 61,046-01, 43 C.F.R. 3832 under which mining claimants are not limited to a single five-acre mill site, but instead	Earthworks and other environmental organizations sued the Department of Interior (DOI), challenging two rules promulgated by DOI in 2003 and 2008 that pertain to mining activities on federal land. The State joined as an Intervenor Defendant, as did	The State and other Intervenor Defendants agree with Defendant DOI that elimination of these rules (adopted under the 2nd Bush administration), which reduced regulatory hurdles for miners regarding annual use fees and mill site limits, would increase miner's costs of doing	The State agrees with the district court and DOI that the mining rules were promulgated in conformity with federal law.	Earthworks, et al. v. U.S. Department of the Interior, et al., 20-5382 (D.C. Cir.) The D.C. Circuit affirmed the judgment of the district court's holding that the rules were validly promulgated. Earthworks moved of rehearing

Federal Law or Action	Conflict or Preemption	State Concern	State Claim or Defense	Status
may operate more than 1 mill site per mining claim if no individual mill site is larger than five acres. 2008 Mining Claim Rule, 73 FR 73789, under which BLM will not apply FLPMA fair market value annual rent policy to approved mining operations that occur on mining claims of unknown validity	various mining industry representatives.	business on federal lands open to mining in Alaska.		*en banc*. DOI and the intervenors, including the State, filed their oppositions on November 21, 2024.
<u>Alaska Native Lands into Trust</u> On November 17, 2022, the Bureau of Indian Affairs (BIA) placed a 787 square foot parcel of land in downtown Juneau into trust for the Central Council of Tlingit and Haida and proclaimed the parcel an Indian reservation	Lands held in trust by the United States constitute Indian country; thus tribes have territorial jurisdiction over these lands. The tribe — not the state or the municipality — regulates and controls these lands. There is only one reservation in Alaska: the Annette Islands Reserve. DOI's approach would increase the amount of Indian country in Alaska and increase the number of reservations in Alaska	The confusion caused by changing interpretations from the federal government means that the Alaska landscape and who has what jurisdiction remains uncertain, despite the attempt by ANILCA and ANCSA to provide clarity. Moreover, the creation of Indian country in Alaska impacts State sovereignty and calls into question the boundaries over which the State has sovereignty.	For 46 years following the passage of ANCSA, under the guidance of multiple Secretaries of the Interior, the Department declined to take lands into trust on behalf of Alaska Natives. The Assistant Secretary's decision to accept land into trust on behalf of the Central Council and create Indian country in Alaska was arbitrary, capricious, an abuse of discretion, in excess of statutory authority, and/or otherwise contrary to the law and in violation of the APA.	• *Alaska v. Newland et al.*, 3:23-cv-00007-SLG The state received a partially favorable decision from the district court on June 26, 2024. The court vacated the decision to take the lands into trust and remanded for further proceedings. The State appealed the portions of the decision that were adverse, and the Tribe cross-appealed on the other portions.
NIGC Opinion on Eklutna Gaming Ordinance	Relying on the Secretary of the Interior's opinion M-37079 (Feb. 1, 2024), NIGC	M-37079 states a "presumption" exists that Alaska Tribes have territorial jurisdiction over	With the passage of the Alaska Native Claims Settlement Act, Congress,	No litigation at this time. The State is considering its options.

Federal Law or Action	Conflict or Preemption	State Concern	State Claim or Defense	Status
On July 18, 2024, the National Indian Gaming Commission issued a letter approving the Eklutna 2024 Gaming Ordinance.	approved the Native Village of Eklutna's ordinance to construct a gaming facility on a native allotment.	Native allotments and thus those allotments are "Indian country." Using this reasoning, NIGC in July 2024 approved Native Village of Eklutna's request for gaming on a native allotment. However, there is one problem: the DC Circuit Court in Native Village of Eklutna vs. U.S. in 2021 found the Native Village of Eklutna lacked jurisdiction over this same native allotment and that NIGC properly denied their request for a gaming ordinance on this same allotment	the State of Alaska, and Alaska Tribes carefully crafted a settlement that ensured there would be no Indian country created in Alaska; thus, preventing the complicated jurisdictional issues that face States and Tribes in the Lower 48. .	
10-Day Notice Rule Department of Interior Final Rule entitled "Ten-Day Notices and Corrective Action for State Regulatory Program Issues," 89 Fed. Reg. 24,714	Under the new rule the federal Office of Surface Mining will have increased authority to take action in the event of permit violations at coal development sites. However, if OSM has "reason to believe" that a permittee is in violation of a permit, OSM sends a notice giving the permittee 10-days to take action. If no action is taken OSM orders a federal inspection. In the past OSM consulted with and collected information from state regulators before issuing a 10-day notice. This was part of the "reason to believe" investigation.	Under the Surface Coal Reclamation and Mining Act (SMCRA) Congress gave the states primacy over almost all aspects of coal mining regulation. Under the new rule the states are left out of the process, which deprives the states of their primacy and their ability to work with operators to avoid violations.	The Final Rule violates the SMCRA and is arbitrary and capricious under the Administrative Procedures Act,	• *Indiana v. Haaland*, 1:24-cv-01665 The state petitioners filed suit in U.S. District Court, D. D.C. in June 2024. Petitioners filed a motion to stay enforcement of the new rule in August 2024. The stay motion was fully briefed as of September 27, 2024. Th parties await a ruling.

Federal Law or Action	Conflict or Preemption	State Concern	State Claim or Defense	Status
BLM Conservation Rule BLM's adopted the Landscape Health rule, which elevates conservation, a non-use, to be on par with other enumerated purposes of public lands. 89 Fed. Reg. 40308	Federal law requires that BLM manage its land for multiple uses, not non-use.	BLM lands were supposed to be available for multiple uses, including resource development, roads, recreation, etc. By elevating conservation as a separate and distinct use, BLM can create de facto conservation system units, hindering development in Alaska and access to resources.	The challenged rule attempts to add, by regulation, the statutory uses of public lands provide under FLPMA. This attempt is contrary to the expressed purpose of FLPMA as outlined by Congress. The challenged rule is unlawful, arbitrary, or capricious under the Administrative Procedure Act.	• *State v. Haaland*, 3:24-cv-00161 On July 24, 2024, the State filed its complaint. Numerous NGOs have moved to intervene to defend BLM's rule, those motions remain pending. On November 4, 2024, BLM lodged its administrative record. Currently, the State's opening brief is due on April 4, 2025, BLM's response is due May 16, 2025, and the State's reply is due June 27, 2025

VII. RESPONSIBLE RESOURCE DEVELOPMENT

Federal Law or Action	Conflict or Preemption	State Concern	State Claim or Defense	Status
NPR-A Rule On May 7, 2024, the Bureau of Land Management published the Management and Protection of the National Petroleum Reserve in Alaska Rule 89 Fed reg. 38712	The Rule governs the management of surface resources and Special Areas in the National Petroleum Reserve in Alaska (Reserve or NPR-A).	The Rule elevates the protection of surface values to the exclusion of oil and gas production and, in effect, enshrines a new management standard for the Petroleum Reserve for which there is no statutory support.	Issuance of the rule violated the Naval Petroleum Reserves Production Act's (NPRPA), 42 U.S.C. 6501 et seq. requirements to encourage development of the NPR-A, violated APA procedural requirements for rule-makings, violated Alaska National Interest Land Conservation Act's "no more" clause by unlawfully creating a de facto Conservation System Unit, and violated the procedural requirements of National Environmental Policy Act by relying on a categorical exception instead of conducting a proper environmental analysis.	• *State of Alaska v. BLM*, 3:24-cv-00144 On July 3, 2024, the State filed its complaint.
ANWR Lease Cancellation DOI Secretary Order 3401 imposing a moratorium on all activities of the federal government relating to the implementation of the Coastal Plain Oil and Gas Leasing Program, as ordered by EO 13990.	President Biden's EO 13990 specifically directed the Bureau of Land Management (BLM) to halt the lease program to conduct a new, comprehensive analysis of the potential environmental impacts of the program.	Under contract law, the State as holder of a royalty interest is a third-party beneficiary, and the United States, as lessor, is required to protect the State's interest. Cancellation of these oil and gas leases deprives the State of lease royalty, rental, and bonus revenues.	The 2017 Tax Cuts and Jobs Act requires the U.S. establish an oil and gas leasing program in ANWR. Under that guidance, the BLM issued oil and gas leases, thereby establishing contractual relationships. The United States was required to protect the rights established, failing to do so by cancelling the leases breached that duty.	• *Alaska v United States*, 1:24-cv-01017-EGB The State filed its complaint on July 2, 2024.

Federal Law or Action	Conflict or Preemption	State Concern	State Claim or Defense	Status
		Cancellation of the federal leases breached this duty, and the United States is required to compensate the State for that breach.		
NPR-A Integrated Activity Plan (IAP) On April 25, 2022, BLM released a new Record of Decision adopting the "no action" alternative, thereby reverting management of the National Petroleum Reserve Alaska to the prior 2013 IAP	The 2013 IAP includes certain more protective lease stipulations and operating procedures for threatened and endangered species from the 2020 IAP and would close lands to leasing opened by the 2020 ROD. BLM's decision was based on Presidential EO 13990—Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis—issued on January 20, 2021.	On December 31, 2020, BLM adopted a revised Integrated Activity Plan Record of Decision (ROD), which opened additional areas for leasing in the National Petroleum Reserve - Alaska.	The State is defending the 2020 EIS/IAP against challenges by environmental groups.	• *Nat'l Audubon Soc'y v. de la Vega*, 3:20-cv-00206-SLG; • *N. Alaska Envtl. Center v. de la Vega*, 3:20-cv-0207 On September 14, 2023, the court denied the State's and federal defendants' motion to dismiss. On May 20, 2024, federal defendants and SOA filed their respective Answers. Briefing is scheduled to be complete on Jan. 31, 2025.
Donlin Federal Permit Case Final Environmental Impact Statement (FEIS), joint record of decision (JROD), and permit issued by the EPA and U.S. Army Corps of Engineers (Corps) allowing filling of wetlands, and a right of-way authorization for	Plaintiffs assert that development of the Donlin project will harm the Kuskokwim River and its surrounding lands and waters. As such Plaintiffs challenge various elements of the federal approval process of the Project	The State of Alaska intervened in the litigation in light of economic and social considerations pertinent to the SOA in regard to the development of the Donlin Mine. The State is joined as an intervenor-defendant along with Donlin Gold, LLC, and Calista Corp.	The EIS considered adequate mine tailings dam failures and potential subsistence impacts, in satisfaction of NEPA and ANILCA. The environmental analyses leading to approval of the Donlin right of way permits adequately considered mine tailings failure scenarios and subsistence impacts.	• *Orutsararmiut Native Council, et al. v. Corps of Engineers, et al.*, 3:23-cv-00071-SLG Briefing on the merits has been completed and oral argument was conducted on June 24, 2024. The parties await a decision.

Federal Law or Action	Conflict or Preemption	State Concern	State Claim or Defense	Status
a pipeline for the Donlin Mine.				
<u>Well Data Public Disclosures</u> Naval Petroleum Reserves Production Act (NPRPA), 42 U.S.C. 6501 et seq.	AS 31.05.035(c) as implemented by 20 AAC 25.537(d) Conoco filed a declaratory judgment action in federal court alleging that AOGCC's statute, AS 31.05.035(c) is preempted under federal law and that federal law protects well data confidentiality on federal land against disclosure by AOGCC.	Under Conoco's interpretation of the NPRPA, a state must keep all exploration information received from a lessee confidential, whether or not such information is actually protected under the federal confidentiality provisions or risk accidentally violating the information program and being subjected to a lawsuit for civil penalties.	The State's laws do not conflict with federal law. Conoco disregards the statutory text and instead attempts to derive Congress's intent to create expansive confidentiality protections solely from statements made in a committee report and by industry members.	• *ConocoPhillips v. AOGCC*, 3:22-cv-00121-SLG (D. Alaska) The federal district court held that AOGCC's confidentiality statute was preempted by the NPRPA. The State appealed to the 9th Circuit. Following argument, the US Dept of Interior filed an amicus brief that did not view the AOGCC statute as preemptive. The parties have responded to the amicus brief and the matter is pending decision.
<u>Cook Inlet Lease Sale</u> As part of the Inflation Reduction Act of 2022 ("IRA"), Congress directed that the Cook Inlet Sale be held before December 31, 2022. The Bureau of Ocean Energy Management (BOEM) held the Cook Inlet lease sale on December 30, 2022.	Environmental groups challenged the December 2022 federal Cook Inlet Lease Sale alleging violations of National Environmental Policy Act ("NEPA"), Outer Continental Shelf Lands Act ("OCSLA"), and the Administrative Procedures Act.	The State favors leasing generally and commented on the lease sale environmental analysis. The State expressed concerns about the limited acreage and leasing conditions.	The State argued in support of the lease sale in the case and argued from the IRA that NEPA was not required or if required that it was met under the circumstances due to the IRA mandate.	• *Cook Inletkeeper et.al v. US, DOI, et al.*, 3:22-cv-00279 (D. Alaska) The district court on July 16, 2024 found that the sale violated NEPA. The decision remanded without vacatur for Department of Interior to issue a Supplemental Environmental Impact Statement and modified Record of Decision. The one lease from the sale to Hilcorp was suspended during the remand process. The federal government will provide updates to the district

Federal Law or Action	Conflict or Preemption	State Concern	State Claim or Defense	Status
				court every 6 months until supplemental review is complete. The status update will be due in January 2025.
ANWR Lease Program Implementation of Federal ANWR Coastal Plain Oil and Gas Leasing Program	DOI Secretary Order 3401 imposing a moratorium on all activities of the federal government relating to the implementation of the Coastal Plain Oil and Gas Leasing Program, as ordered by EO 13990.	P.L. 115-97 established a program for oil and gas leasing in ANWR's Coastal Plain. BLM held the first oil and gas lease sale for the ANWR Coastal Plain, on January 6, 2021, offering 22 tracts on 1.1 million acres. Most leases went to AIDEA. President Biden's EO 13990 specifically directed the Bureau of Land Management (BLM) to halt the lease program to conduct a new, comprehensive analysis of the potential environmental impacts of the program.	Neither the Secretary nor President Biden are authorized to place a moratorium on the ANWR lease program created by congressional action. Order 3401 was arbitrary and capricious and issued in violation of the APA.	• *Native Village of Venetie v. Haaland*, 3:20-cv-0223 (D. Alaska) • *Gwich'in Steering Committee v. De La Vega*, 3:20-cv-0204 (D. Alaska) • *National Audubon Society et al v. Haaland*, 3:20-cv-0205 (D. Alaska); • *State of Washington et al v. Haaland*, 3:20-cv-0224 (D. Alaska) A draft Supplemental Environmental Impact Statement was released for comment on September 6, 2023, and the record of decision was issued in late November 2024. The State filed a challenge to the SEIS and the issuance of leases from the second lease sale, which occurred in early January. Unfortunately, there were no bids received from the second lease sale.
Willow Master Development Plan	Environmental NGOs and tribal groups challenged BLM, U.S. Army Corps of Engineers, and Fish & Wildlife Service	The federal government pays the State fifty percent of revenues received from the sales, rentals, bonuses, and royalties on leases	BLM and the Corps fully satisfied the requirements of federal law in approving the	• *Center for Biological Diversity v. Bureau of Land Management*, 23-3624 (9th Cir.),

Federal Law or Action	Conflict or Preemption	State Concern	State Claim or Defense	Status
On March 13, 2023, BLM issued its Record of Decision approving the Willow Project Plan	approvals of the Willow Master Development Plan, which authorized additional development by ConocoPhillips Alaska on federal oil and gas leases for lands in the National Petroleum Reserve–Alaska.	issued in the NPR-A. 42 U.S.C. § 6506a. The State allocates the funds to subdivisions of the State directly or severely impacted by oil and gas development through annual appropriations from the NPR-A special revenue fund established in AS 37.05.530.	Willow Master Development Plan.	The district court dismissed the plaintiffs' suits in November 2023. The plaintiffs appealed to the 9th Circuit. Argument was held in February 2024. The matter is pending decision.

VIII. STATE LAND OWNERSHIP

Federal Law or Action	Conflict or Preemption	State Concern	State Claim or Defense	Status
Mulchatna River Navigability BLM has refused to acknowledge the State's ownership of the Turquoise Lake, Twin Lakes, the Mulchatna River, and the Chilikadrotna River, Lake Clark National Park and Preserve	The United States has claimed that the waters are non-navigable, and hence did not convey to the State at statehood. Without a judicial order, the State's ownership of the submerged lands would not be recognized by BLM; these lands would continue to be managed by BLM, not the State.	The federal government has failed to recognize State ownership of submerged lands underlying Turquoise Lake, Twin Lakes, the Mulchatna River, and the Chilikadrotna River, Lake Clark National Park and Preserve.	Alaska's title to submerged lands underlying Turquoise Lake, Twin Lakes, the Mulchatna River, and the Chilikadrotna River, Lake Clark National Park and Preserve vested at statehood on January 3, 1959, by operation of the Equal Footing Doctrine, the Submerged Lands Act, and the Alaska Statehood Act.	• *Alaska v. US*, 3:22-cv-0103- SLG (D. Alaska). Oral argument on the U.S.'s the motion to dismiss was held on October 11, 2024. On November 1, 2024, the Court granted the motion and dismissed the easement-burdened lands from the case. On November 15, 2024, the United States filed its answer to the remaining claims. The parties are currently discussing case scheduling.
Koyukuk River Navigability BLM has refused to acknowledge the State's ownership of the South Fork and Middle Fork of the Koyukuk River, the Bettles River, and the Dietrich River.	The United States has claimed that the subject waters are non-navigable, and hence did not convey to the State at statehood. Without a judicial order, the State's ownership of the submerged lands would not be recognized by BLM; these lands would continue to be managed by BLM, not the State.	The federal government has failed to recognize State ownership of South Fork and Middle Fork of the Koyukuk River, the Bettles River, and the Dietrich River.	Alaska's title to the South Fork and Middle Fork of the Koyukuk River, the Bettles River, and the Dietrich River vested at statehood on January 3, 1959, by operation of the Equal Footing Doctrine, the Submerged Lands Act, and the Alaska Statehood Act.	• *Alaska v. US*, 3:21-cv-0221- SLG (D. Alaska) The State filed an amended complaint removing the claim regarding the South Fork of the Koyukuk River. On August 15, 2022, the district court denied the majority of Defendant's motion to dismiss. The motion was granted as to two small parcels conveyed to ANCs, with leave to reinstate the claims if the subject waters are found to be navigable above and below these parcels. The parties are engaged in discovery.

Federal Law or Action	Conflict or Preemption	State Concern	State Claim or Defense	Status
ANWR Boundary Public Land Order No. 2214 25 FR 12598	BLM denied the State's statehood entitlement request for conveyance of 20,000 acres, based on dispute over whether the western boundary of ANWR is the western bank of the Canning River or the western bank of the Staines River. The State also objected to a survey plat of the area directly south of the area requested for conveyance.	State ownership of land between Canning and Staines River. If the State's title is recognized, the State would be entitled to 100% of the mineral revenue instead of 50%.	Interior Board of Land Appeals determination that "the extreme west bank of the Canning River" should be reinterpreted as "the Staines River" was arbitrary and capricious under the Administrative Procedure Act.	• *Alaska v. U.S. Dep't of the Interior*, 3:22-cv- 0078-SLG (D. Alaska) On September 30, 2024, the State moved for summary judgment. Briefing is ongoing.
Mendenhall Lake Navigability United States assertion of ownership of Mendenhall Lake and River.	The United States claims Mendenhall Lake and River were the subject of a pre-statehood withdrawal, and hence were not conveyed to the State at statehood..	State ownership of submerged land underlying Mendenhall Lake and the Mendenhall River.	Alaska's title to the Mendenhall Lake and River vested at statehood on January 3, 1959, by operation of the Equal Footing Doctrine, the Submerged Lands Act, and the Alaska Statehood Act.	• *Alaska v. U.S.*, 3:22-cv-0240-SLG (D. Alaska) District court judge Gleason granted the federal government's motion to dismiss on December 12, 2024.
Fortymile River Navigability United States claims ownership over the submerged land underlying the Middle and North Forks of the Fortymile River	On June 29, 1983, BLM issued an administrative decision which purported, to find non-navigable both the Middle Fork of the Fortymile River from the Village of Joseph, Alaska to its confluence with the North Fork of the Fortymile River and the North Fork of the Fortymile River from its headwaters to the Kink.	Alaska ownership of submerged land underlying Middle and North Forks of Fortymile River	The Middle and North Forks of the Fortymile River are navigable-in-fact waters within the boundaries of the State of Alaska, and the State obtained ownership to its submerged lands on the date of statehood pursuant to the Equal Footing Doctrine, the Submerged Lands Act of 1953, and the Alaska Statehood Ac	• *Alaska v. US*, 3:18-cv-00265- SLG (D. Alaska) BLM has filed a quiet title disclaimer for the entirety of the Middle Fork and for the North Fork from below its confluence with Champion Creek. Approximately 16 miles of North Fork remain in litigation. The State moved for summary judgment regarding the final 16 miles, and the United States filed a cross-motion. On February 27, 2024,

Federal Law or Action	Conflict or Preemption	State Concern	State Claim or Defense	Status
				the court issued an order rejecting the United States' cross motion and moving the case forward to trial. Trial is set for March 2025.