Alaska Department of Law

Federal Laws and Litigation Report

in compliance with AS 44.23.020(h)

January 15, 2024

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 law.legislation@alaska.gov.

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I. ACCESS

Federal Law or Action	Conflict or Preemption	State Concern	State Claim or Defense	Status
Chugach National Forest Management Plan On April 16, 2020, the USDA Forest Service released the Final Record of Decision for its 2020 Chugach National Forest Land Management Plan. 85 FR 21175	The 2020 Chugach National Forest Land Management Plan creates a de facto Conservation System Units (CSU)	The Management Plan: • Overlaps existing highways, railways, and utilities, • Identifies the Resurrection Pass Trail as a CSU without congressional designation, • Mandates management of river segments as if they were CSUs, although State highways are located within the restrictive management areas.	ANILCA prohibits additional CSUs except by Act of Congress. ANILCA Title V; ANILCA section 1326.	No litigation at this time. The State sought resolution of these issues with the USFS both formally and informally, and has exhausted its administrative remedies. 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 86 FR 66498	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 Complaint filed on September 8, 2023 seeking reinstatement of the 2020 Tongass Exemption. Briefing is expected to get underway in Spring 2024.

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King Cove Access Road Withdrawal (ANILCA 1110(b)) On July 15, 2021, the DOI withdrew its prior determination that the City of King Cove is entitled to a road right-of-way across the Izembek National Wildlife Refuge (NWR) to connect King Cove to the airport at Cold Bay.	The memorandum withdrawing the earlier DOI decision resulted in a complete shutdown of the State's environmental permitting process for the King Cove to Cold Bay road.	Until a road is developed, the residents of King Cove remain a landlocked community and have inadequate access to the rest of Alaska for health and safety needs.	Interior's January 15, 2021 determination that King Cove is an "inholding" under ANILCA section 1110(b) guaranteed the city's right to reasonable access across the Izembek NWR to cure the landlocking of the city via the creation of the NWR. Secretary Bernhardt's finding was a thoroughly documented factual determination made under the regulatory processes of 43 CFR 36.10.	On March 11, 2022, the USFWS Alaska Region Director denied the State's administrative appeal of DOI's withdrawal of Secretary Bernhardt's ANILCA 1110(b) decision. A judicial appeal of DOI's decision was postponed while DOI, the State and the King Cove Corporation (KCC) jointly defended the DOI-KCC land exchange for the King Cove Road. The 6-year statute of limitations for judicial appeal expires in 2026.

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<u>King Cove Corporation (KCC) - DOI Land Exchange (ANILCA 1302(h)</u> In March 2023, while waiting for a decision from a re-hearing of a 9th Circuit panel upholding the validity of a land exchange between DOI and the King Cove Corporation (KCC), DOI issued a decision memorandum withdrawing from a 2019 land exchange agreement. DOI moved to dismiss the case and commence a supplemental EIS to further study the effects of the proposed exchange.	A road directly connecting King Cove to Cold Bay must cross federally designated wilderness in the Izembek National Wildlife Refuge. DOI and KCC agreed to an equal value land exchange that would permit the road to be built. . All appraisals and land surveying was completed for KCC to deliver high value shoreline property in exchange for a narrow road corridor along the center of the Izembek peninsula. The land exchange 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 meet ANILCA's purpose of providing for the economic and social needs of Alaska and it people. Aside from the of having a year-round connection to the airport at Cold Bay, the community would finally receive the economic and social benefits of being directly connected to the State's transportation system.	The equal value land exchange complies with all federal laws and because this is an ANCSA land exchange with an ANILCA corporation, the exchange is exempted from NEPA pursuant to ANILCA 910. -.	• *Friends of Izembek NWF v. Bernhardt* 20- 35721, 35727, 35728 (9th Circuit) On June 15, 2023 the 9th Circuit dismissed the case as moot in light of DOI's decision to withdraw from the agreement. The 9th Circuit also vacated all earlier decisions, so there is no precedential value to the State's earlier win. DOI subsequently commenced a supplemental EIS to re-analyze an expired unequal value (200:1) land exchange between the State, KCC, and DOI that was approved by Congress in 2009. KCC is cooperating with DOI on the re-analysis of the 2009 land exchange.

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Eastern Interior RMP On December 30, 2016, BLM issued the Eastern Interior Resource Management Plan (EIRMP).	The Eastern Interior RMP provides management direction for 8 milllion acres of public land in interior Alaska. The planning area includes the Steese National Conservation Area, the White Mountains National Recreation Area, the Fortymile area, the upper Black River, and scattered parcels in the Fairbanks/Delta Junction area	The EIRMP recommends unjustified mineral closures and conservation designations. The EIRMP also fails to provide for lifting outdated ANCSA d-1 withdrawals.	The EIRMP is inconsistent with ANILCA and Federal Land Policy Management Act's multiple use mandate.	No litigation at this time. The State continues to monitor congressional and agency action on the issue and evaluate options, including administrative action and litigation.
Ambler Industrial Access Road BLM, USACE and NPS permitted a 211-mile 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 federal permitting industrial road through southern Brooks Range and Gates of the Arctic National Park and Preserve to access the Ambler Mining District. Plaintiffs allege that the permits violate ANILCA, CWA, NEPA, and NHPA. The State, AIDEA and Ambler Metals, LLC intervened in support of the permits.	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 is intended to 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 • *Alatna Village Council et al v. Heinlein(Padgett)*, 3:20-cv-00253-SLG This case has been remanded to federal defendants to conduct additional environmental review. On August 21, 2023, a preliminary draft supplemental EIS was released to cooperating agencies. Public release occurred on October 13, 2023, and comments were submitted December 22, 2023.

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<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 harm to the State's sovereignty — something Congress specifically preserved in ANCSA — is actual and occurred immediately upon the CLM grant of the Central Council's application. Moreover, the Central Council has four additional applications pending before the Department, and the agency has also received applications from the Ninilchik Traditional Council and the Native Village of Fort Yukon. These pending applications, coupled with the Department's current position regarding the extent of its authority under 25 U.S.C. § 5108, as articulated in the most recent Solicitor Opinion, further jeopardize the State of Alaska's sovereign authority	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*, 3:23-cv-00007-SLG. On April 4, 2023, Central Council of the Tlingit and Haida Indian Tribes of Alaska intervened. Briefing on the cross motions for summary judgement will be complete on February 2, 2024, and the court will schedule oral argument sometime after.

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<u>Chicken RS2477 ROWs</u> BLM does not recognize state-owned RS 2477 rights of way through wild and scenic river corridors near Chicken, Alaska.	The State does not have clear ownership of the RS 2477 rights of way. BLM has taken the position that valid existing rights need to first be judicially determined. BLM's management, regulation, and restrictions on its servient land are inconsistent with the State's rights of way. .	State's title to existing rights of way near Chicken arising under Revised Statute 2477. 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 pursuant to RS 2477. These rights arise automatically, by operation of law when all elements supporting their creation have been factually satisfied.	• *Alaska v. U.S.*, 4:13-cv-00008-RRB (D. Alaska) The State successfully condemned the rights-of-way across Native allotment lands. In November 2020, the 9th Circuit affirmed the district court. The case is currently stayed pending settlement discussions.

II. ENVIRONMENTAL REGULATION

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EPA WOTUS Rule The Biden Administration proposed to extend federal CWA jurisdiction over any waters having a "significant nexus" to traditionally navigable waters.	The EPA's interpretation would extend its regulatory jurisdiction over millions of acres of wetlands in Alaska	The power to control navigation, fishing, and other public uses of water is an essential attribute of state sovereignty. By too broadly interpreting the CWA's key jurisdictional phrase—"waters of the United States"—the 9th Circuit and other lower courts have blessed an EPA power grab that expands the CWA to waters that are not "navigable" under even the most generous common understanding of the term.	The CWA's phrases "waters of the United States" and "navigable waters" 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.	• *West Virginia et al. v. EPA*, 3:23-cv-032 (D. N. Dakota) Alaska joined a multi-state lawsuit filed in North Dakota to challenge the Biden administrations 2023 regulation. The states successfully obtained a preliminary injunction preventing the EPA from implementing the regulation and in the meantime the Supreme Court issued *Sackett*. Post *Sackett*, EPA has issued another regulation which the states are continuing to challenge as overbroad. • *Sackett et ux. v. EPA*, 21-454 On May 25. 2023 the US Supreme Court held that the Clean Water Act extends only to wetlands that have a continuous surface connection with Waters of the United States

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EO on Social Costs of Climate Change EO No. 13990, Protecting Public Health and the Environment and Restoring Science To Tackle the Climate Crisis 86 FR 7037	Pursuant to EO 13990, the federal Interagency Working Group published "interim" social costs of greenhouse gases without notice or comment. They require federal agencies to monetize costs of greenhouse gas emissions based on projections that purport to predict the next 300 years.	Alaska cooperatively administers many federal programs directly affected by the Working Group's actions. The Executive Order and the Working Group's Interim Values will directly impact the actions Alaska must take in its participation in these cooperative-federalism program	The IWG's interim social costs of greenhouse gases violated the APA because they were published without notice or comment. The Federal executive may not use an "interagency working group" to avoid the requirements of the APA.	• *Missouri et al. v. Biden*, 21-03013 (8th Cir.) On October 21, 2022, the Eighth Circuit upheld the district court's dismissal of the case on the basis that the plaintiff states lack standing. The US Supreme Court denied certiorari on October 10, 2023, keeping the dismissal in place.
EPA Haze Rule Amendments 2017 Regional Haze State Implementation Plan Rule; 82 FR 3078 (Jan. 10, 2017) (codified at 40 C.F.R. 51.308)	2017 Environmental Protection Agency (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, 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 their regional haze state implementation plan.	• *Texas et al. v. EPA,* 17-1074 (D.C. Cir.) Briefing is currently on hold, while EPA revisits aspects of the rule and engages in a new rulemaking process.
EPA Vehicle Emissions Rule Revised 2023 and Later Model Year Light Duty Vehicle Greenhouse Gas Emissions Standards, 86 FR 74,434, 74,493 (Dec. 30, 2021)	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 argument was held on September 14, 2023 before the DC Circuit panel.

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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. 85,364 (Dec. 7, 2023)**	New FHWA climate rule will force states to establish Greenhouse Gas (GHG) performance measures to incrementally reduce CO_2 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 CO_2 emissions exceeds the agency's statutory authority, and violates the Administrative Procedures Act and the major questions doctrine.	• *Kentucky et al. v. FHWA,* 5:23-cv-00162 (W.D. Kentucky) • Complaint was filed on December 21, 2023.
Clean Water Act §401 Litigation Final 2023 CWA Section 401 Water Quality Certification Improvement Rule 88 FR 66,558 (Sept. 27, 2023)	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.	• *State of Louisiana, et. al. v. U.S. Environmental Protection Agency*, 2:23-cv-01714 (W.D. of Louisiana) On December 4, 2023, coalition of state and industry plaintiffs filed a complaint and request for preliminary injunction.

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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 Proposed Rule will likely be finalized before the end of the year. The State will evaluate next steps when the final rule is issued.
EPA Draft Guidance Applying *County of Maui v. Hawaii Wildlife Fund* On November 20, 2023, EPA issued draft guidance interpreting US Supreme Court decision in *County of Maui v. Hawaii Wildlife Fund*	In *County of Maui v. Hawaii Wildlife Fund*, the U.S. Supreme Court held that point source discharges to a water of the United States through groundwater require a National Pollutant Discharge Elimination System (NPDES) permit if the discharge is the "functional equivalent" of a direct discharge.	The EPA's interpretation of the *Maui* decision bears directly on the type of analysis facilities must provide in the application for an APDES permit.	The State comments that the guidance does not provide useful instruction and should be replaced or modified using the prior guidance issued in 2021.	Comments were submitted on December 27, 2023.

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<u>FNSB State Improvement Plan</u> EPA Failure to Timely Disapprove Fairbanks North Star Borough PM2.5 Serious Nonattainment State Implementation Plan	Pursuant to the Clean Air Act, the State of Alaska must develop and implement an air quality control plan to reach attainment of fine particulate emission standards by dates certain but those dates have been passed and now the State requests more time to develop a defensible SIP.	The State of Alaska has sought to reach attainment as expeditiously as possible but statutory deadlines have not been met because the available science was not adapted for arctic conditions. Environmental groups sought to force EPA to act immediately.	If the EPA acts immediately, then the State will incur sanctions under the Clean Air Act. So the State sought to intervene to prevent the EPA from expediting the attainment schedule	• *Citizens for Clean air, et al. v. Regan, et al*., 2:22-cv-01382 (D. Wa). Final Consent Decree entered on October 23, 2023.

III. FISH & GAME

Federal Law or Action	Conflict or Preemption	State Concern	State Claim or Defense	Status
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 requires designation of hundreds of millions of acres of Alaska as critical habitat, directly interfering 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 and 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. Nat'l Marine Fisheries Service,* 3:22- cv-249-JMK Briefing on the merits concluded on August 18, 2023 before the district court, and the parties await a decision or the scheduling of oral argument.
Chinook Fishery Biological Opinion Biological Opinion, WCR2018-10660	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 salmon) was unlawful under the ESA, NEPA and APA.	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. 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.	The State argues that the BiOp was issued in compliance with federal law. Closing the salmon fisheries as sought by the plaintiffs will harm Alaska and its citizens.	• *Wild Fish Conservancy v. Thom,* 2:20-cv-00417-RAJMLP (W.D. Wash.) The State has appealed the district court's grant of summary judgment after the 9th Circuit stayed the district court's order closing the commercial Chinook summer and winter troll fisheries.

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Cook Inlet Salmon Rule Alaska Salmon FMP, Amendment 16 opens a federally managed fishery in the EEZ waters of Cook Inlet.	The United Cook Inlet Drift Association 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 argued and continues to argue 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 EEZ.	• *United Cook Inlet Drift Association v. NMFS,* 3:21-cv0255-JMK On June 21, 2022, the district court judge granted UCIDA's motion for summary judgment and vacated Amendment 14 and its regulations. Amendment 16 is on track to be in place May 1, 2024
Game Management Unit 13 Closure and Opening an Emergency Hunt Closure of Units 13A and 13B to moose and caribou subsistence hunting by nonfederally qualified hunters; opening an emergency hunt for the Organized Village of Kake	Federal subsistence activities prevent the State from managing and conserving wildlife in accordance with federal law, the Alaska Constitution, and Alaska statutes and regulations.	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 ANILCA and infringes on the State's authority to manage wildlife	• *Alaska v. Federal Subsistence Board,* 22-0195 (9th Cir.) The district court issued an unfavorable decision regarding the GMU 13 closure and declined to address the emergency hunt,. On appeal, the Ninth vacated the district court's order and remanded for further proceedings On remand, the district court again issued an unfavorable decision. It found that ANILCA allows the Board to open as well as close seasons and that it may delegate its authority to local land managers. The State will appeal.

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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*, 3:20-cv-209-SLG (D. Alaska) On September 30, 2022, Judge Gleason issued a decision and judgment, finding the 2020 rules violated the APA and remanding pending new rulemaking by NPS. The parties have agreed to stay their appeals while the NPS considers the new rule.
Incidental Take Regulation On August 5, 2021, the USFWS issued a five-year ITR allowing oil and gas activities to continue in the South Beaufort Sea region.	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. USFWS, et al.*, 3:21- cv-209-SLG On March 29, 2023, the District Court granted summary judgment in favor of SOA, AOGA, and FWS, upholding the ITR. Plaintiffs appealed. Briefing before the 9th Circuit is complete and oral argument is scheduled for February 8, 2024.

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Metlakatla Fishing Rights Metlakatla Annette Island Reserve, 25 U.S.C. § 495	Metlakatla Indian Community sued the Governor and the State of Alaska, asserting that Congress intended to grant MIC members off-reservation rights when it created the Annette Island Reserve in 1897. MIC claims its members do not need a commercial fishing permit to commercially fish in fishing 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 In 2020, the State moved to dismiss MIC's complaint. The district court granted that motion. The 9th Circuit reversed and remanded to the district court. The State and MIC have cross-motions for Summary Judgment are currently pending. The United States is evaluating filing an amicus brief, and any briefing is due by January 12, 2024.
Kuskokwim River Order Federal Subsistence Board closure of 180-mile-long section of the Kuskokwim River to non-subsistence users pursuant to ANILCA	In 2021 and 2022, the Federal Subsistence Board (FSB) and agency field officials exercised their authority under 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.	Alaska issued emergency orders in 2021 and 2022 permitting fishing on the same stretch of the Kuskokwim River that had been closed to non-subsistence harvest by federal emergency special action.	The FSB and its delegation of authority to the Refuge Manager violates the Appointments Clause of the 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 APA for failing to manage fisheries in accordance with sound scientific principles	• *US v. Alaska,* 1:22-cv-0054-SLG Briefing on cross motions for summary judgment was completed on December 22, 2013. It is unclear whether the court will hear oral argument on the motions.

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<u>Ice Seal Critical Habitat</u> Challenge under ESA, following Ice Seal Critical Habitat Designation 16 U.S.C. § 1531	State of Alaska brough suit against the National Marine Fisheries Service ("NMFS"), for violations of the Endangered Species Act ("ESA"), 16 U.S.C. § 1531 et seq., in designating critical habitat for the Arctic subspecies of the ringed seal, Pusa hispida hispida ("ringed seal") and the Beringia distinct population segment ("DPS") of the Pacific bearded seal, Erignathus barbatus nauticus ("bearded seal")	The critical habitat that NMFS designated for each seal consists of an enormous area covering all or virtually all of the seal's range within the United States' jurisdiction, including coastal waters along the Alaskan North Slope and the adjacent Outer Continental Shelf. The area contains 324,105 square miles. The designation is over-encompassing, which conflicts with the plain language of the ESA, limiting critical habitat to specific areas that are essential to the conservation of the species	The critical habitat designation is overbroad and fails to take into account the economic consequences of its adoption. The critical habitat designations for the ringed seal and bearded seal therefore violated the ESA and are arbitrary, capricious, an abuse of discretion, and not in accordance with the law, in excess of statutory authority, and without observance of the procedure required by law. 5 U.S.C. § 706(2).	• *State of Alaska v. National Marine Fisheries Service,* No. 3:23-cv-00032 -SLG Complaint filed on Feb. 15, 2023, NMFS answer filed on April 24, 2023. Center for Biological Diversity intervened on May 9, 2023. SOA opening brief filed on Sept. 29, 2023, Response Briefs filed on Dec. 24, 2023, SOA reply due Jan. 26, 2024.

IV. GENERAL GOVERNMENT

Federal Law or Action	Conflict or Preemption	State Concern	State Claim or Defense	Status
SNAP Benefits Bostock Rule Supplemental Nutrition Assistance Program: Civil Rights Update to the Federal-State Agreement 87 FR 35855	New USDA memorandum and rule apply SCOTUS Bostock ruling regarding sexual and gender identity discrimination to SNAP benefits program. The new memorandum and rule 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 in conflict with state law.	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."	Alaska s does not deny benefits based on a household member's sexual orientation or gender identity. The memorandum and rule violate the Administrative Procedure Act, and the non-delegation doctrine, the major questions doctrine, the separation of powers doctrine, and the anti-commandeering doctrine.	• *Tennessee v. USDA*, 3:22-cv-00257-TRM-DCP On December 6, 2022 the Defendants filed a motion to dismiss the complaint for failure to state a claim. The Coalition filed its opposition on December 30, 2022. The district court granted the motion to dismiss on March 29, 2023.
Well Data Public Disclosures Naval Petroleum Reserves Production Act (NPRPA), 42 U.S.C. 6501 et seq.	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.	AS 31.05.035(c) 20 AAC 25.537(d) 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) ConocoPhillips filed suit for declaratory judgment on May 13, 2022. The district court entered judgment in favor of Conoco on June 23, 2023. The State appealed to the 9th Circuit on July 26, 2023. Briefing is ongoing.

Federal Law or Action	Conflict or Preemption	State Concern	State Claim or Defense	Status
APRA Tax Mandate The "Tax Mandate" of the American Rescue Plan Act of 2021 (ARPA)	The "Tax Mandate" of the American Rescue Plan Act of 2021 (ARPA) restricts states from using funds to "directly or indirectly offset" a reduction in the net tax revenue of a state and requires detailed accounting of modification to tax.	The Tax Mandate, due to its ambiguity, could expose a state to claims by the federal government to return COVID relief funds if the state enacted any form of tax relief or even spending cuts. State legislatures would lack information to determine the impact of revenue measures on the ability to receive or retain federal funds. The Tax Mandate and the detailed accounting requirement set a dangerous precedent of federal intrusion on state taxing authority.	The Tax Mandate exceeds Congress's power under the Spending Clause of the U.S. Constitution because it is ambiguous, coercive, and unrelated to ARPA's purpose. It also violates the tenth amendment, and the anti-commandeering doctrine by preventing the State from decreasing future taxes.	• *West Virginia et al. v. U.S. Dep't of Treasury*, 22-10168 (11th Cir.) The district court on November 11, 2021 granted a permanent injunction against the Tax Mandate. The 11th Circuit upheld the injunction on January 20, 2023 and refused rehearing on September 14, 2023. The Federal Government has received an extension until Feb. 9, 2024 to file for certiorari.
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*, 3:21-cv-0308 (E.D. Tenn) On July 15, 2022, the district court denied the federal defendants' motion to dismiss and granted the plaintiff states' request for a preliminary injunction. Briefing is ongoing on Dept, of Education's appeal to the 6th Circuit.

V. HEALTH & SOCIAL SERVICES

Federal Law or Action	Conflict or Preemption	State Concern	State Claim or Defense	Status
Behavioral Health Services for Minors Department of Justice issued a report on December 15, 2022, finding that Alaska was violating Title II of the ADA.	DOJ alleges that the Depts. of Health and Family & Community Services are in violation of the ADA based on failing to provide community- based behavioral health services to youth in Alaska, resulting in children being placed unnecessarily in hospitals or residential facilities.	DOJ appears to want Alaska to make sure that the services are actually available and provided in certain quantities, while under Medicaid the State's obligation is as an insurance provider to make sure that we are willing to pay for services, not that actual providers exist.	Dept of Law is working with DOH and DFCS to respond to DOJ. The Alaska team has met with DOJ representatives on multiple occasions in connection with the parties' efforts to reach a settlement to create a realistic plan to increase services. If that cannot be achieved, then litigation is possible.	No litigation at this time. DOJ is looking to enter into a settlement agreement to require Alaska to make sure that the full spectrum community-based behavioral health services are available in significant quantities statewide.

Federal Law or Action	Conflict or Preemption	State Concern	State Claim or Defense	Status
Proposed Rule Regarding Section 504 of the Rehabilitation Act The Department of Health and Human Services published a proposed rule on September 24. 2023 which seeks to amend regulations under section 504 of the Rehabilitation Act of 1973.	The proposed rule would require all recipients of funding (including state and private providers) to comply with an extensive array of new anti-discrimination requirements and creates an expansive new interpretation of recipients' obligations to "provide services in the most integrated setting."	Complying with this rule would not be practical or feasible and would have a significant negative effect on provider capacity for behavioral health services. It would require the state to subordinate its budget processes and policy decisions to the requirements of a federal regulation.	This proposed rule is an attempt by an executive agency to circumvent the democratic process and intrude on state political judgments by enacting regulations that would vastly expand the scope of the Rehabilitation Act. The proposed rule is an unfunded mandate that bypassed rulemaking requirements, violates federalism and separation of powers principles, and is inconsistent with federal funding mechanisms. It is inconsistent with the recent 5th Circuit opinion of *United States v. Mississippi*, 82 F.4th 387, 398 (5th Cir. 2023).	Public comment closed on November 13, 2023. Alaska submitted comment in a multistate letter signed by Alabama, Arkansas, Indiana, Iowa, Louisiana, Mississippi, Nebraska, Texas, and Utah.

VI. LABORS & STATE AFFAIRS

Federal Law or Action	Conflict or Preemption	State Concern	State Claim or Defense	Status
CMS COVID-19 Vaccination Rule Medicare and Medicaid Programs; Omnibus COVID-19 Health Care Staff Vaccination 86 FR 61555	The CMS vaccine mandate requires nearly every full-time employee, part-time employee, volunteer, and contractor working at a wide range of healthcare facilities receiving Medicaid or Medicaid funding to be vaccinated against COVID-19.	The mandate conflicts with the state's sovereign police powers and violates Alaskans' fundamental privacy right to make decisions about medical treatment under the Alaska Constitution. The mandate also conflicts with Alaska law granting citizens the right to object to COVID-19 vaccines and forbidding any person from requiring an individual to provide justification or documentation to support the individual's decision to decline a COVID-19 vaccine.	The mandate exceeds CMS's statutory authority and violates the APA because it was issued without notice and comment and is arbitrary, capricious, and unlawful. The mandate is further unconstitutional under the Spending Clause, the anti-commandeering doctrine, and the Tenth Amendment.	• *Missouri v. Biden, et al.*, 4:21-vc-01329 (trial court); 21-3725 (appeal); 21A241 (SCOTUS) On June 6, 2023, the Defendants notified the court that DHHS published a final rule withdrawing language on COVID-19 health care staff vaccination requirements. On July 19, 2023, the Plaintiffs voluntarily dismissed the case as moot it was closed on July 21, 2023.
Head Start COVID Mandate Vaccine and Mask Requirements To Mitigate the Spread of COVID-19 in Head Start Programs 86 FR 68052	Federal mandate would require the vaccination of Head Start staff, volunteers, and anyone else who comes in contact with Head Start children, as well as the masking of all Head Start children two years or older and all adults.	The mandate conflicts with the state's sovereign police powers and violates Alaskans' fundamental privacy right to make decisions about medical treatment under the Alaska Constitution. The mandate also conflicts with Alaska law granting citizens the right to object to COVID-19 vaccines and forbidding any person from requiring an individual to provide justification or documentation to support the individual's decision to decline a COVID-19 vaccine.	The executive branch of the federal government lacks the authority to impose the head start vaccine mandate without clear congressional authorization. The rule unlawfully usurps the State's police power to legislate on health care policy within its borders.	• *Louisiana, et al. v. Becerra*, et al., 3:21-cv-04370 (W.D. La.) The Court entered summary judgment in favor of the Coalition on September 21, 2022. On appeal to the 5th Circuit, the district courts' permanent injunction was vacated as moot after the federal government rescinded the challenged rule, although the district court's opinion was left in place.

Federal Law or Action	Conflict or Preemption	State Concern	State Claim or Defense	Status
CDC Mask Mandate Requirement for Persons To Wear Masks While on Conveyances and at Transportation Hubs. 86 FR 8025	CDC mandate requires persons to wear masks while traveling on "conveyances within the United States," defined broadly to include "aircraft, train[s], road vehicle[s], vessel[s]" in conflict with state sovereignty.	The rule would interfere with Alaskans' ability to travel throughout the state. Approximately 82% of Alaska communities depend on air travel.	The mandate exceeds CDC's statutory authority, and violates the APA because it was issued without notice and comment and is arbitrary, capricious, and unlawful. CDC failed to consider state and local measures before regulating. The mandate is further unconstitutional under the anti-commandeering doctrine, and the Tenth Amendment.	• *Florida, et al. v. Walensky, et al.*, 8:22-cv-00718 (M.D. Fl.) Litigation was voluntarily dismissed as moot on June 27, 2023 after the federal government ended the national emergency declaration.
Federal Contractor Vaccine Executive Order Executive Order No. 14042, Ensuring Adequate COVID Safety Protocols for Federal Contractors 86 FR 50985	EO requires all federal contractors or subcontractors to vaccinate their employees as a condition of any future contract or a renewal of an existing federal contract.	The mandate conflicts with the state's sovereign police powers and violates Alaskans' fundamental privacy right to make decisions about medical treatment under the Alaska Constitution. The mandate also conflicts with Alaska law granting citizens the right to object to COVID-19 vaccines and forbidding any person from requiring an individual to provide justification or documentation to support the individual's decision to decline a COVID-19 vaccine.	The Contractor Mandate is not a lawful exercise of the President's authority under the Procurement Act.	• *Missouri, et al. v. Biden, et al*. 4:21-cv-01300 (trial court); 22-1104 (appeal to 8th Circuit) Litigation voluntarily dismissed as moot on June 7, 2023 after President Biden revoked EO 14042 on May 9, 2023.

Federal Law or Action	Conflict or Preemption	State Concern	State Claim or Defense	Status
<u>Military Vaccine Mandate</u> Coronavirus Disease 2019 Vaccination for Members of the National Guard and the Ready Reserve	Federal vaccine requirement for military applies to state national guard personnel, infringing the Governor's authority as Commander-in-Chief of non-federalized national guard troops in Alaska.	In addition to violating Alaskans' fundamental right to privacy, the federal government usurped the governor's authority as Commander-in-Chief of non-federalized Guardsmen.	A federal official's ordering, directing, or punishing of non-federalized Guardsmen violates the Militia Clauses and the Commander-in-Chief Clause of the U.S. Constitution and the Tenth Amendment. Issuance of the mandate was further arbitrary and capricious in violation of the APA.	• *Abbott, et al. v. Biden, et al*., 6:22-cv-00003 On January 3rd 2024, the court dismissed the case without prejudice pursuant to the stipulation of the parties. This occurred after the Fifth Circuit ruled in favor of Texas' governor in an interlocutory appeal.

VII. NATURAL RESOURCES

Federal Law or Action	Conflict or Preemption	State Concern	State Claim or Defense	Status
ANWR Lease Program Termination 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.	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.	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.	• *AIDEA v. Biden*, 3:21-cv-0245 • *AIDEA v. Haaland*, 1-23-cv-03126 On August 8, 2023, the district court granted summary judgment for the federal government. The State has a motion for relief from the judgment pending. Meanwhile, AIDEA filed a new lawsuit in district court in Washington DC challenging DOI's September 6, 2023 termination of AIDEA's leases. The State has also requested BLM cease and return improper "offsets" to the State's revenues from ANWR and NPRA due to BLM's refund of rentals and bonuses from "cancelled" leases issued to Regenerate Alaska, Inc. and Knik Arm Services, LLC.

Federal Law or Action	Conflict or Preemption	State Concern	State Claim or Defense	Status
ANCSA 17(d) Withdrawals Delay in implementing Public Land Orders 7899, 7900, 7901, 7902, and 7903	Pursuant to Section 17(d)(1) of ANCSA, DOI 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 BLM 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 al*., 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. Additionally, BLM has completed a draft supplemental environmental impact statement regarding the revocations and has opened it for public comment, due February 14, 2024.
Willow Project Approval On March 13, 2023, BLM issued its Record of Decision approving the Willow Project Plan	Environmental NGOs and tribal groups challenged BLM, U.S. Army Corps of Engineers, and Fish & Wildlife Service 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.	The federal government pays the State fifty percent of revenues received from the sales, rentals, bonuses, and royalties on leases 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.	BLM and the Corps fully satisfied the requirements of federal law in approving the Willow Master Development Plan.	• *Center for Biological Diversity v. Bureau of Land Management*, 3:23-cv-0061 On November 9, 2023, the district court dismissed the plaintiff's lawsuit. Plaintiffs have filed an appeal to the 9th Circuit. The district court denied plaintiffs' request for an injunction pending appeal, as has the 9th Circuit. Briefing is pending before the 9th Circuit with argument Feb. 5, 2024.

Federal Law or Action	Conflict or Preemption	State Concern	State Claim or Defense	Status
Cook Inlet Lease Sale As part of the Inflation Reduction Act of 2022, 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 sued the federal Department of Interior alleging that the lease sale violated NEPA, the Outer Continental Shelf Lands Act, and the APA	The State favors leasing generally but did comment on the lease sale environmental analysis. The State expressed concerns about the limited acreage and leasing conditions.	The State intervened in support of the sale as it was mandated by the Inflation Reduction Act.	• *Cook Inletkeeper et.al v. US, DOI, et al.*, 3:22-cv-00279 (D. Alaska) Environmental group challenge to December 2022 federal Cook Inlet Lease Sale filed in district court on December 21, 2022. Briefing is ongoing.
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 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	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 various mining industry representatives.	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 business on federal lands open to mining in Alaska.	The State agrees with the district court and DOI that the mining rules were promulgated in conformity with federal law.	• *Earthworks, et al v. DOI, et al,* 20-5382 (D.C. Cir.) Appeal from the district court's grant of summary judgment upholding the rules was held in abeyance by the D.C. Circuit until January 2023. Upon expiration of the stay all briefing was completed on September 25, 2023. Appellants abandoned their appeal as it pertained to the 2008 FLPMA fair market value rent issue. Oral arguments are scheduled for January 16, 2024.

Federal Law or Action	Conflict or Preemption	State Concern	State Claim or Defense	Status
EPA 404(c) Veto EPA's exercise of its CWA Section 404(c) veto of the Pebble mine project	Exercise of CWA Section 404(c) veto by EPA over dredge and fill permit, effectively stops development of the Pebble mine	Veto of the proposed Pebble mine project, and future development of the Pebble deposit over a 309 square mile area has broad implication for resource development across Alaska, and could prevent the State from fulfilling its constitutional and statutory mandates to develop its natural resources	EPA's 404(c) veto was issued without adherence to the established 404(q) process and without adherence to objective standards	• *Alaska v. United States,* No. 22O157 On July 26, 2023, the State filed a request directly with the US Supreme Court to review the EPA's exercise of its 404(c) veto. The parties are waiting for the court issue a decision whether it will hear the case.
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.	BLM's decision to revert to the pre-2020 IAP pursuant to EO 13990 is arbitrary and capricious and harms Alaska's economy	• *Nat'l Audubon Soc'y v. de la Vega,* 3:20-cv0206; • *N. Alaska Envtl. Center v. de la Vega,* 3:20-cv-0207 As of April 26, 2023, briefing on the State's and federal defendants' motion to dismiss was completed, and, on September 14, 203, the court denied the motion. This case is currently stayed to Dec. 29, 2023 allow DOJ and the remaining plaintiffs to discuss settlement. Additional extensions for time are anticipated.

Federal Law or Action	Conflict or Preemption	State Concern	State Claim or Defense	Status
ANCSA Land Remediation Failure of the DOI to remediate contaminated ANCSA lands	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 ("ANCSA Lands") and other compensation.	Significant portions of over one thousand parcels (that make up over 17.6 million acres of the ANCSA Lands), given by the United States as consideration for the Alaska Natives' rights taken, were 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. DOI's failure to follow Congress's instructions violates the APA.	• *Alaska v. U.S.,* 3:22-cv-00163-HRH On July 18, 2023, the district court dismissed the State's claim with prejudice.

Federal Law or Action	Conflict or Preemption	State Concern	State Claim or Defense	Status
Donlin Mine Federal Litigation Challenge to Donlin Project under the National Environmental Policy Act (NEPA), the Alaska National Interest Lands Conservation Act (ANILCA), and the Clean Water Act. The Tribes challenge the FEIS and the joint record of decision (JROD) issued by Defendants, the permit issued by the U.S. Army Corps of Engineers (Corps) allowing filling of wetlands, and a right-of-way authorization for a pipeline issued by the U.S Bureau of Land Management (BLM) and the U.S. Department of the Interior 5 U.S.C. §§ 701-706; 42 U.S.C. § 4332; 16 U.S.C. § 3120; 33 U.S.C. § 1344	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 State argues that federal permitting was done consist with relevant federal law and that the extent of State of Alaska involvement in that process was also consistent with federal law.	• *Orutsararmiut Native Council et al v. United States Army Corps of Engineers et al*, 3:23-cv-00071-SLG. Complaint and Answers have been filed by all parties. Currently, the administrative record has been filed by federal defendants and is under review. Summary Judgment briefing will begin Feb. 16, 2024 and is scheduled to conclude on May 7, 2024.

VIII. STATE LAND OWNERSHIP

Federal Law or Action	Conflict or Preemption	State Concern	State Claim or Defense	Status
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 Act	• *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 has filed a summary judgment motion regarding the final 16 miles, which is pending.
Mulchatna River Navigability BLM has failed 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.	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 On September 19, 2023, the State filed its second amended complaint. The United States' again filed a motion to dismiss on October 31, 2023.

Federal Law or Action	Conflict or Preemption	State Concern	State Claim or Defense	Status
Koyukuk River Navigability BLM has failed 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.	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) 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.
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-JMK The State filed a quiet title action on these waters in November 2022. The United States filed a motion to dismiss on March 2, 2023; As of May 4, 2023, the motion is fully briefed and we await a decision.

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 This matter has been remanded to IBLA; briefing concluded December 22, 2023 and we await a decision.
RS 2477 Section Line Easements Alaska's acceptance of the RS 2477 highway right of way offer along section lines per 19 SLA 1923 sec.1.	Homeowners claim that the Territorial Legislature's acceptance of the RS 2477 offer of public lands for the construction of highways, 43 U.S.C. 932, was invalid under federal law unless highways were actually constructed. Homeowners allege Section Line Easement (SLE) running through their properties is unenforceable.	A ruling in favor of the homeowners would potentially divest Alaska of RS 2477 SLEs where construction did not occur.	Alaska law does not require construction to establish the existence of an SLE created under 19 SLA 1923. Both federal and state law require only an affirmative act showing acceptance of the RS 2477 offer, and 19 SLA 1923 satisfied that criterion.	• *Franke and Frost v. Boyle, DNR, 3:23-cv-00085-SLG* The State has moved to dismiss per Fed. R. Civ. P. 12(b)(2) on the grounds of 11th Amendment immunity.

Federal Law or Action	Conflict or Preemption	State Concern	State Claim or Defense	Status
Ladue Statehood Entitlement Survey General Selection application F-028269 (GS913)	BLM rejected State's objections to a proposed statehood entitlement patent on General Selection application.	The plat of survey includes an insufficiently surveyed and described boundary between SOA land and land owned by Tetlin Native Corporation. Mining claims straddle the insufficiently described boundary.	BLM's proposal is inconsistent with section 6 of the Alaska Statehood Act.	• *SOA v. IBLA,* 2020-0361 Alaska filed the notice of appeal with the IBLA on June 5, 2020. Merits briefing is stayed pending ongoing settlement discussions with BLM and Tetlin Native Corporation, the adjacent landowner. Based on these discussions, the State moved to withdraw its appeal and the IBLA entered an Order approving the request on February 24, 2023.