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## **Response to RFI: Special Areas in the National Petroleum Reserve Alaska**

To whom it may concern,

Oil Search (Alaska), LLC, a subsidiary of Santos Limited (“Santos”), appreciates the opportunity to provide comments in response to the Notice of Request for Information: Special Areas within the National Petroleum Reserve in Alaska (NPR-A) (RFI). As a leaseholder in the NPR-A and North Slope, Santos has a unique interest in changes to the boundaries of existing special areas within the NPR-A, designation of additional special areas within the NPR-A, and BLM’s management of the NPR-A.

## **About Santos**

Santos is a global energy company committed to increasingly cleaner energy and fuels production, with operations across Australia, Papua New Guinea, Timor-Leste, and Alaska. Santos is one of Australia’s biggest domestic gas suppliers and a leading LNG supplier in the Asia Pacific region. In Alaska, Santos is one of the largest leaseholders in the State, holding leases across the North Slope on State of Alaska, Alaska Native, and federally managed lands.

On the North Slope, Santos is the operator of the Pikka Project on State of Alaska and Alaska Native Corporation lands. Development of Phase 1 of the Pikka Project is currently underway with first oil projected for 2026, which will bring an anticipated contribution of 80,000 barrels of oil per day of throughput to the Trans Alaska Pipeline System (“TAPS”). The Pikka Project will contribute significantly to the State of Alaska’s economy, with widespread benefits across the region and State. The Pikka Project is the largest project on State lands in the last 20 years, and is the first oil project sanctioned in Alaska, and one of the first in the world, to be developed on a net-zero basis for Scope 1 and 2 equity emissions from first oil.

Of particular interest to the proposed rulemaking, Santos holds an interest in over one million acres of leases within the NPR-A. Santos acreage within the NPR-A includes the Horseshoe Unit, which consists of BLM and State of Alaska leases, a portion of which are in the Colville River Special Area (“CRSA”). Santos also holds leases adjacent to and south of the Teshekpuk Lake Special Area (“TLSA”). Santos stands to be impacted by any BLM changes to its management of the NPR-A, particularly with respect to its leases in and adjacent to Special Areas.

## **History and Management of the NPR-A**

The NPR-A was established in 1923 by President Harding as an emergency oil supply for the U.S. Navy. Following the establishment of the NPR-A, over 100 exploration wells were drilled by the Navy and others, including wells discovering the Barrow gas fields. Then in 1976, Congress transferred management of the NPR-A from the Navy to the Department of Interior with the primary purpose of establishing and managing an expeditious oil and gas leasing program and development of the NPR-A. In 1981, Congress passed the 1981 Department of Interior (“DOI”) Appropriations Act directing BLM to manage an expeditious program for competitive leasing, prioritizing resource development as the primary purpose of BLM’s management of the NPR-A. The first lease sale was held the following year and BLM has historically administered oil and gas leasing and development through Integrated Activity Plans (“IAPs”). Development of IAPs is an iterative process, with extensive public engagement, consultation, and best available science backed by a comprehensive Environmental Impact Statement (“EIS”), identifying areas available for leasing and Best Management Practices and/or Required Operating Procedures.

Notably, the NPR-A is exempt from many of the provisions of Federal Land Policy and Management Act (“FLPMA”). These fundamental and distinct considerations must guide BLM’s management of the NPR-A as opposed to other federal lands. As recently as 2022, BLM affirmed the unique requirements that apply to its management of the NPR-A: “[b]ecause of the exemption from FLPMA Section 202 and that **the NPR-A is a dominant-use statute**, the IAP is not developed as a resource management plan and does not consider sustained yield and multiple use” [Emphasis Added]<sup>1</sup>. Further evidence of Congressional intent in regard to the management of the NPR-A is that the subject lands were not set aside in Alaska National Interest Lands Conservation Act (“ANILCA”), which passed in 1980, only one year prior to the 1981 Department of Interior Appropriations Act. Had Congress desired for NPR-A lands to be managed as wilderness, or solely for the “maximum protection of surface resources,” it could have included them in the 157 million acres of lands set aside by Congress in ANILCA as national parks and preserves, national wildlife refuges, designated wilderness areas, and wild and scenic rivers.

BLM should not disregard the lengthy legislative history of federal land management in Alaska and its own obligations to manage the NPR-A as directed. The primary purpose of the NPR-A is “to increase domestic oil supply as expeditiously as possible” and “advance private oil and gas development on the NPR-A.”<sup>2</sup> BLM should bear in mind the long history of leasing, exploration, and, more recently, development in the NPR-A, as well as the legislative history governing management of federal lands within Alaska. BLM does not have the authority to change the purpose, priority, and mandates of Congress with respect to any decision BLM makes as an outcome of this RFI.

BLM’s primary purpose under the Naval Petroleum Reserves Production Act (NPRPA) remains expeditious leasing, exploration, and development of the NPR-A. The objectives of protecting and developing NPR-A surface resources are not mutually exclusive, as

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<sup>1</sup> National Petroleum Reserve in Alaska, Integrated Activity Plan Record of Decision. April 2022. DOI-BLM-AK-R000-2019-0001-EIS, Page 3.

<sup>2</sup> *ConocoPhillips Alaska, Inc. v. Alaska Oil & Gas Conservation Comm’n*, No. 3:22-CV-00121-SLG, 2023 WL 2403720, at \*8 (D. Alaska Mar. 8, 2023).

demonstrated by the legacy of resource development across the North Slope done in an environmentally and culturally sensitive manner.

## Comments in Response to the RFI

Santos offers the following comments in response to the BLM's RFI.

### **1. BLM's RFI is flawed, lacks transparency, and is inconsistent with BLM's own newly issued regulation, the NPR-A Special Areas Rule, which is the basis for the RFI.**

BLM's recently issued regulation, the NPR-A Special Areas Rule, describes the process by which evaluation of existing and new Special Areas are to be considered. Despite this rule being finalized just three months prior to issuance of the RFI, BLM has not adhered to the process described in these regulations. Namely:

- 43 CFR 2361.30(a)(1). In the last 10 years, BLM has conducted three EISs on the NPR-A to inform its IAPs for the NPR-A, with the most recent EIS being conducted just two years ago. BLM seems keen to disregard the thousands of pages of best available scientific information within these EISs which inform the existing Special Areas boundaries and BLM's management of the NPR-A under the IAP.
- 43 CFR 2361.30(a)(2). BLM has not enabled a transparent or public process for the RFI, and instead has departed from their practice of public comments being submitted and accessible on BLM's e-planning website allowing all stakeholders to review and meaningfully engage in this process. Instead, BLM instructs stakeholders to submit comments to an email, with no information as to how comments will be considered by BLM, responded to by BLM, or publicly available. BLM has also offered no information as to how the public and other affected stakeholders will be given opportunities to engage in this process. This is in conflict with 43 CFR 2361.30(a)(2).
- 43 CFR 2361.30(a)(3). BLM has not offered how BLM will meaningfully consult with Tribes and Alaska Native Corporations during this process. According to an August 21, 2024 Voice of the Arctic Iñupiat Resolution in opposition to the RFI, "[B]LM has acknowledged that none of the over 25 entities that serve and represent the Alaska Native communities and people of the North support the Proposed Rule (and in turn the Final Rule)[;]". It is concerning that BLM is not conducting meaningful engagement with North Slope stakeholders as described in 43 CFR 2361.30(a)(3) and has no local support for its recent management decisions.
- 43 CFR 2361.30(b)(1). BLM committed in its regulations to conduct an evaluation, like that described in the RFI, every ten years. The most recent analysis of the NPR-A, which included an EIS, was conducted in 2022, just two years ago. BLM has provided no justification for why it has disregarded the process described in 43 CFR 2361.30(b)(1) and has pointed to no scientific information that would necessitate such an action to accelerate this exercise by eight years. This timing is indeed curious given the numerous lawsuits challenging BLM's NPR-A Special Areas Rule, including those from the North Slope Borough, Voice of the Arctic Iñupiat, State of Alaska, and other

affected stakeholders. BLM seems intent to expedite this process despite its own process described in regulations, the recent scientific information (2022) informing management of the NPR-A, and numerous lawsuits challenging the rulemaking which is the basis of the RFI. It is concerning that even the timing of the RFI is inconsistent with what BLM outlined only a few short months ago.

BLM should utilize the existing IAP/EIS process which BLM had previously relied upon for every management decision in the BLM for the last 20 years, rather than this ambiguous RFI. The IAP/EIS process is transparent, science-based, and well-understood by local stakeholders, industry, and the public. In contrast, this new, ad-hoc process of the RFI is not established, lacks transparency, does not include the required consultation and engagement with affected stakeholders, conflicts with BLM's own process described in its regulations, and has been accelerated by eight years from what BLM committed to only three months prior. In light of this flawed process, BLM should withdrawal the RFI and refer to its IAP and own regulations as described.

## **2. The RFI and forthcoming evaluation should include consideration of reduction and de-designation of Special Areas, and not be biased towards expansion and creation of new Special Areas.**

Under the RFI, the BLM is seeking "written feedback from the public on the need to: identify additional significant resource values for existing Special Areas; modify the boundaries or management of existing Special Areas; or identify public lands that may qualify for the designation as new Special Areas in the NPR-A." BLM has prematurely limited the RFI process to expansion, addition of new special resource values, and creation of new areas. Again, this is not consistent with the process BLM outlined in its regulations (See 43 CFR 2361.30(a)). BLM must consider all outcomes and make decisions based on the best available scientific information and Indigenous Knowledge and not predetermine the outcome through a limited RFI process.

Moreover, BLM should consider its own conclusions based on the best available scientific information regarding the Colville River Special Area (CRSA). The CRSA was originally designated in 1977 to protect Arctic peregrine falcons. However, the Arctic peregrine falcon was de-listed in 1994 and removed from the BLM Alaska Special Status Species List in 2019. In BLM's own 2020 NPR-A IAP/EIS, BLM eliminated the CRSA completely, citing the best available science indicating that Arctic peregrine falcon nests were now common throughout the area and a Special Area designation was no longer necessary. At that same time, BLM extended protections to raptors across the entire management of the NPR-A, thereby eliminating the need for the CRSA. Then in BLM's NPR-A Special Areas Rule finalized in 2024, BLM reversed its earlier decision and codified the CRSA, despite the Significant Resource Value for the CRSA (i.e., Arctic peregrine falcon) no longer requires maximum protection and is now widespread throughout the NPR-A and surrounding area. In 2018, Santos obtained leases in the CRSA. Since that time, Santos conducted exploration from State land and formed the Horseshoe Unit, which includes federal acreage within the CRSA. At the time Santos acquired the federal acreage, the CRSA existed with certain conditions, but in just six years of Santos holding these leases, the BLM has eliminated the CRSA, then re-established the CRSA and threatened a presumption against development in Special

Areas. BLM has not offered any scientific justification for this recent action, leaving this whiplash unexplained. At the very least, BLM should provide an explanation and scientific justification that the designation of CRSA as a Special Area is warranted or should reduce the CRSA to what is justifiable. BLM's management of the NPR-A and Specials Areas should be predictable, science-based, reasonable, and lawful.

### **3. The BLM must maintain access to and through the NPR-A to leased acreage.**

In accordance with the terms of the leases and BLM's own mandate under the NPRPA, the Department of Interior Appropriations Act of 1981, and ANILCA, BLM should not deny access to leased areas or development of leases within the Special Areas or impose any new or interim measures to halt or delay development in the NPR-A. Changes to lease terms that devalue or prohibit its development could be considered a taking under the Fifth Amendment of the U.S. Constitution. Any expansion or creation of Special Areas from this RFI which overlap with existing leases, affect access to the NPR-A, and/or would affect access to existing leases should be avoided.

Further, any impacts to access to the NPR-A through designation of Special Areas should be fully interrogated through a National Environmental Policy Act (NEPA) process, based in best available science and Indigenous Knowledge, and informed by consultation with Alaska Native Corporations and Tribal entities. Any decision by BLM to reduce or deny access to the NPR-A or leased areas and development of the NPR-A or leased areas must be lawful and the impacts fully assessed, including impacts to private landowners, the community of Nuiqsut, and the economic impacts of such an action. As BLM stated in its Economic Analysis for the NPR-A Special Area Rule, future designations of Special Areas will trigger its consideration of "what restrictions are imposed on oil and gas activity, and the effect of those restrictions on actual oil and gas exploration and production."<sup>3</sup> It is concerning that BLM did not conduct this analysis to support the NPR-A Special Areas Rule and that BLM has not indicated it intends to conduct this type of analysis as it has previously.

### **4. BLM should manage the NPR-A and Special Areas in a lawful, predictable, transparent, and science-based manner.**

The NPRPA establishes that designation of the Special Areas and management of such areas "shall be conducted in a manner which will assure the maximum protection of such surface values to the extent consistent with the requirements of this Act for the exploration of the reserve" [Emphasis Added]<sup>4</sup>. BLM should not ignore this qualifier in their management of the NPR-A; BLM's rulemaking and RFI do not supersede law.

BLM should not disregard the history of law with respect to land management in Alaska. Specifically, ANILCA Sec. 1326, requires an Act of Congress to withdraw more than 5,000 acres of land in aggregate to establish a conservation area or similar within the State. BLM cannot use this RFI process to essentially establish Special Areas as conservation areas, as

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<sup>3</sup> Economic Analysis for Proposed Regulation: Management and Protection of the National Petroleum Reserve in Alaska, Page 10.

<sup>4</sup> See 42 U.S.C. § 6504(a)

this action exceeds BLM's authority, conflicts with the NPRPA, and is in violation of the "no more" clause in ANILCA. BLM cannot simply make a management decision to manage the Special Areas wholly inconsistent with law.

BLM should not prohibit resource development in the NPR-A or Special Areas, and should not insert a presumption against resource development in Special Areas. Oil and gas exploration and development has occurred for more than 100 years in the NPR-A with robust environmental analysis to determine the nature and extent of impacts. In several scenarios, BLM has even concluded that some exploration activities do not cause significant impacts and issued a Finding of No Significant Impacts. BLM should remain consistent with decades of environmental analysis and past practice regarding administering safe, and environmentally and culturally responsible resource development in the NPR-A.

Santos appreciates BLM's consideration of our comments and looks forward to BLM's response to our comments. Given the significant legal and policy deficiencies with the BLM's NPR-A Special Area Rule and complete lack of local support for this shift in BLM's management of the NPR-A, Santos recommends that BLM withdraw the RFI and continue to utilize the long-held IAP/EIS process to determine management of the NPR-A.

Sincerely,



Joe Balash

**SVP External Affairs**