Alaska Wilderness League ● Northern Alaska Environmental Center
Conservation Lands Foundation ● The Wilderness Society[1]

Bud C. Cribley, State Director
Bureau of Land Management
Alaska State Office
222 West Seventh Avenue, #13
Anchorage, Alaska 99513

27 April 2016

Re: Creating compensatory mitigation pools within the NPR-A's Regional Mitigation Strategy

Dear Mr. Cribley:

Thank you for your continued efforts to complete an effective Regional Mitigation Strategy (RMS) for the National Petroleum Reserve-Alaska (NPR-A or Reserve). We appreciate the hard work and good thinking that you and your team are devoting to this important effort. As we have communicated about before, the RMS is an important step in successfully balancing development and conservation, and ensuring continued access to subsistence resources within the region.

As part of the RMS process, we are asking that the Bureau of Land Management designate candidate lands of high conservation and subsistence importance as compensatory mitigation "pools." These "pools" would encompass areas that, based on their natural values and importance to subsistence, may warrant additional protections and improved stewardship to offset the impacts of oil and gas development. These "pools" would function in a manner similar to a wetland mitigation bank. If and when there are unavoidable impacts from development in the region, BLM will be able to compensate for the adverse effects through more durable protections, such as through the use of conservation easements. By creating these "pools," BLM will ensure that the values of these areas are preserved and maintained for future compensatory mitigation actions.

Attached to this letter you will find a brief document and map with recommendations on how and where BLM should create compensatory mitigation "pools" using the Colville River and Teshekpuk Lake Special Areas. The Colville River and Teshekpuk Lake Special Areas, already recognized for their very high conservation and subsistence values, are well suited to be compensatory mitigation pools. These features give BLM the ability to better weigh management needs and compensatory actions based on assessed impacts to the landscape.

[1] Prepared with assistance from Trustees for Alaska.

Creating compensatory mitigation "pools" is an essential element for a functional RMS and a necessary first step to effectively offset the impacts of the Greater Mooses Tooth One (GMT-1) project and future oil and gas developments within the northeast region of the NPR-A. The cumulative effects of oil and gas development in the Arctic are already causing significant adverse impacts to subsistence users, wildlife, and habitat adjacent to and in the Reserve, and these effects will only increase if additional development moves forward. It is vital that BLM put in place mechanisms, such as compensatory mitigation "pools," prior to development proceeding to ensure that BLM preserves opportunities for meaningful mitigation in the future.

Science staff at The Wilderness Society are currently working to complete a quantitative geospatial analysis to help prioritize where increased protective action should take place within established "pools." These efforts consider, among other factors, subsistence use, climate change, and wildlife biodiversity. Preliminary results are expected during the summer of 2016 and we plan to share this information with BLM to inform future compensatory actions.

As we move forward with the NPR-A's Regional Mitigation Strategy, we look forward to working with you to create compensatory mitigation "pools." Please let us know if you have any questions. Thank you again for your time and efforts.

Sincerely,

Nicole Whittington-Evans
Alaska Regional Director
The Wilderness Society

On behalf of:

Kristen Miller
Conservation Director
Alaska Wilderness League

Lindsey Hajduk
Alaska Program Director
Conservation Lands Foundation

Jessica Girard
Program Director
Northern Alaska Environmental Center

Cc: Molly Cobbs
Steve Cohn

Mike Dwyer
Stacy Fritz
Joshua Hanson
Neil Kornze
Stacie McIntosh
Matthew Preston
Bob Sullivan
Serena Sweet
Jason Taylor

DRAFT

Creating Compensatory Mitigation Pools in the NPR-A: Background, Rationale, and Locations

✓ Introduction

The recent Presidential Memorandum and Department of the Interior Departmental Manual on mitigation emphasize the importance of conserving high value areas before they are impacted by development. These directives instruct agencies to take proactive compensatory mitigation measures before impacts occur so that natural values and processes are at a reduced risk of being compromised by future development impacts. The Presidential Memorandum specifically speaks to the need for "upfront," additive protections. The Memorandum reads: "Advance compensation means a form of compensatory mitigation for which measurable environmental benefits (defined by performance standards) are achieved before a given project's harmful impacts to natural resources occur."[2] President Obama also called on Interior and other agencies to set a goal of achieving a net benefit or, at a minimum, no net loss for the natural resources managed by the agencies.[3] The Department of the Interior's manual also emphasizes the importance of adopting mitigation measures that achieve environmental benefits prior to impacts occurring: "When compensatory mitigation is necessary, the Department notes a preference for compensatory mitigation measures that: (a) maximize the benefit to impacted resources and their values, services, and functions; and (b) are implemented and earn credits in advance of project impacts."[4]

To achieve protection before impacts, we encourage the Bureau of Land Management to establish a set of compensatory mitigation "pools" within the final Regional Mitigation Strategy using the established Colville River and Teshekpuk Lake Special Areas.[5] The 2013 Integrated Activity Plan identified these areas for their high conservation and subsistence values, and they are well suited to be compensatory mitigation offsets.[6] Moreover, compensatory mitigation actions should demonstrate that the benefits they provide are "additional" or new and go beyond existing commitments by BLM. These "pools," with their existing recognition of importance and differing levels of protections, provide this opportunity.

As mentioned above, compensatory mitigation "pools" should be protected at some level in advance of developments' impacts. This will ensure that conservation and subsistence values are maintained if future development is allowed to proceed in other locations, such as within BLM's reasonably foreseeable future development area. BLM should both formally recognize the

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[2] Presidential Memorandum: Mitigating Impacts on Natural Resources from Development and Encouraging Related Private Investment, 2015; available at: http://1.usa.gov/1H3EbIx.
[3] *Id.*
[4] Department of the Interior's Landscape-Scale Mitigation Manual, 2015; available at: http://on.doi.gov/1TgSxd2.
[5] Special Area boundaries should not be compromised to create pools. Instead, Special Areas should remain whole.
[6] Lands outside of Special Areas are also necessary to maintain habitat connectivity and ecosystem function, and should not be ruled out for protective compensatory actions.

Colville River and Teshekpuk Lake Special Areas as "pools" within the NPR-A's Regional Mitigation Strategy, and put in place mechanisms that will ensure these areas are set aside and maintained as places for compensatory actions.

✓ Creating Compensatory Mitigation "Pools"

Effectively offsetting the impacts of development by ensuring investment in key conservation priorities is a stated goal of the Department of the Interior's mitigation policies.[7] BLM has a number of tools it can draw on to set up compensatory mitigation "pools" and to ultimately put in place even more durable protective measures, such as conservation easements. For example, BLM has the authority under the Federal Land Policy and Management Act (FLPMA) to issue easements or rights-of-way and to "regulate, through easements, permits, leases, licenses, published rules, *or other instruments as the Secretary deems appropriate*, the use, occupancy, and development of the public lands."[8] BLM also has the authority under FLPMA to enter into contracts and cooperative agreements involving the management and protection of public lands.[9] This is in addition to BLM's broad authority and mandate under the Naval Petroleum Reserves Production Act to protect the subsistence, habitat, wildlife, and other values of the Reserve, while allowing oil and gas leasing, exploration and, where appropriate, development to move forward.[10]

There are two potential ways the "pools" could be set up to compensate for the impacts of Greater Mooses Tooth One (GMT-1) and lay the stage for future developments and compensatory mitigation actions. One way compensatory mitigation "pools" could be set up is through management agreements adopted pursuant to FLPMA.[11] This could potentially be accomplished through a memorandum of understanding between BLM, U.S. Fish and Wildlife Service, the U.S. Army Corps of Engineers, and a non-governmental organization. This

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[7] See: S.O. 3330- Improving Mitigation Policies and Practices of the Department of the Interior; available at: http://on.doi.gov/1SgmxXf.

[8] FLPMA § 302, 43 U.S.C. § 1732(b) (emphasis added); FLPMA § 501, 43 U.S.C. § 1761(a) (providing BLM's general authority to grant rights-of-way).

[9] FLPMA § 307, 43 U.S.C. § 1737(b).

[10] *See, e.g.*, 42 U.S.C. § 6502 ("[The] Secretary is authorized to . . . make such dispositions of mineral materials and grant such rights-of-way, licenses, and permits as may be necessary to carry out his responsibilities under this Act."); *id.* § 6506(a) ("Activities undertaken pursuant to this Act shall include or provide for such conditions, restrictions, and prohibitions as the Secretary deems necessary or appropriate to mitigate reasonably foreseeable and significantly adverse effects on the surface resources of the National Petroleum Reserve in Alaska."); *see also* 43 C.F.R. § 2361.1(c) ("Maximum protection measures shall be taken on all actions within the Utukok River Uplands, Colville River, and Teshekpuk Lake special areas, and any other special areas identified by the Secretary as having significant subsistence, recreational, fish and wildlife, or historical or scenic value."); 43 C.F.R. § 2361.1(e)(1) ("To the extent consistent with the requirements of the Act and after consultation with appropriate Federal, State, and local agencies and Native organizations, the authorized officer may limit, restrict, or prohibit use of and access to lands within the Reserve, including special areas. On proper notice as determined by the authorized officer, such actions may be taken to protect fish and wildlife breeding, nesting, spawning, lambing or calving activity, major migrations of fish and wildlife, and other environmental, scenic, or historic values.").

[11] *See* FLPMA § 307, 43 U.S.C. § 1737(b).

framework would be similar to the agreement between BLM and the California Department of Fish and Wildlife related to the management of federal lands in California.[12]

Under a management agreement, all of the involved parties would work together to ensure that the high conservation and subsistence values of the compensatory mitigation "pools" are maintained. This will ensure that these areas remain suitable for future compensatory mitigation actions and have at least an interim level of protection. Then, when future developments are found to require compensatory mitigation, BLM could issue more durable protective measures, such as a conservation easement, over an area within the designated "pool." Over time and as new developments occur, BLM could grant additional conservation easements within the pools, ensuring ecological function and continued subsistence access and practices within the region.

A second way to set up these compensatory mitigation "pools" is for BLM to grant an easement to an appropriate third party up front. This conservation easement could encompass the entire compensatory mitigation "pool" and could be put in place before any further development occurs. This would be more in line with the Department of the Interior's mitigation manual, which, as discussed above, notes the agency's preference for compensatory mitigation measures that are implemented and earn credits in advance of impacts.[13] Like a traditional wetlands mitigation bank, compensatory mitigation credits could then be purchased and applied within that easement. This approach would also ensure that fish, wildlife, and habitat values are protected prior to impacts occurring and through more durable protective measures.

✓ Pool Locations, Rationales, and Additionality

Below we offer the location and rationale for compensatory mitigation "pools" that are located within BLM's geographic region for the northeastern NPR-A and within recognized Special Areas. These "pools," with a description of their purpose, should be included with the final Regional Mitigation Strategy. (*See the attached map for a depiction of these areas.*)

○ Teshekpuk Lake Special Area Pools

The Teshekpuk Lake Special Area has three distinct levels of management pertaining to conservation and development: A) lands unavailable for leasing and no new non-subsistence permanent infrastructure or exploratory drilling, B) lands unavailable for leasing but open to new oil and gas permanent infrastructure like roads and pipelines, and C) lands recognized as a Special Area for their high conservation and subsistence values but without protections from leasing or infrastructure restrictions outside of some best management practices requiring no surface occupancy buffers along certain streams and rivers. These differences define the following three pools, respectively, and offer varying levels of additionality for compensatory mitigation actions.

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[12] Agreement by and Between the United States Bureau of Land Management and the California Department of Fish and Wildlife (Oct. 2, 2015).

[13] Department of the Interior's Landscape-Scale Mitigation Manual, 2015; available at: http://on.doi.gov/1TgSxd2.

Pool 1A

Location:

- Lands, as defined by the 2013 Integrated Activity Plan, within the Teshekpuk Lake Special Area, that are unavailable for leasing and do not allow any new non-subsistence permanent infrastructure. [See Map: Location 1A]

Rationale:

- Recognized Special Area for almost 40 years by both Democratic and Republican Administrations
- Includes Teshekpuk Lake, an important fish and wildlife habitat, that is the largest lake in Arctic Alaska, and globally unique throughout the circumpolar Arctic
- Globally significant Arctic wetlands complex
- Vital area for the Teshekpuk Caribou Herd:
    - Calving grounds
    - Insect relief area
    - Overwintering site for a large portion of the herd
    - Late summer foraging habitat
    - Two migratory corridors
- Vital area for waterfowl and shorebird nesting and molting
- Important subsistence use area, including many subsistence cabins

Additionality:

- While neither leasing nor non-subsistence permanent infrastructure are currently allowed within this pool, activities deleterious to conservation and subsistence are still permitted, particularly if they are considered temporary. For example, this winter season (2015-2016) snow roads were constructed through the wintering grounds of the Teshekpuk Caribou Herd to support offshore exploration activities in the state waters of Smith Bay. Such allowances are particularly troubling because this is a time of scarce resources and gestation for the herd. These allowances also may help establish travel route precedents for potential future oil and gas development activities. Durable protections that restrict temporary oil and gas exploration infrastructure would increase certainty for conservation and subsistence interests within this area.
- Current protections from oil and gas leasing and permanent infrastructure in the Teshekpuk Lake Special Area are secured for as long as the 2013 Integrated Activity Plan is in place, or likely about 15 – 20 years. This is a much shorter timeframe than the impacts from permitted oil and gas development that will likely last more than 50 years. Conservation easements or rights-of-way in effect for the life of the impacts of development (50+ years) would be durable and add significant, long-term certainty for conservation and subsistence values and interests.

Pool 1B

Location:

- Lands, as defined by the 2013 Integrated Activity Plan, within the Teshekpuk Lake Special Area that are unavailable for leasing but open to new oil and gas permanent infrastructure like roads and pipelines. [See Map: Location 1B]

Rationale:

- Globally significant Arctic wetlands complex, particularly for waterfowl and shorebirds
- High value habitat for the Teshekpuk Caribou Herd
- Important subsistence use area
- Will be increasingly important for ecosystem resilience in the face of coastline erosion and climate change

Additionality:

- Pipelines, roads, and other permanent infrastructure are allowed through this portion of the Special Area. The potential for this type of development can pose serious risks to ecosystem function and habitat connectivity.[14] Durable protections from temporary or permanent oil or gas infrastructure would increase BLM's commitment to conservation and subsistence in this area.[15]
- Similar to Pool 1A, current protections from oil and gas leasing in the Teshekpuk Lake Special Area are secured for as long as the 2013 Integrated Activity Plan is in place, or likely about 15 – 20 years. This is a much shorter timeframe than the impacts from permitted oil and gas development that will likely last more than 50 years. Conservation easements or rights-of-ways in effect for the life of the impacts of development (50+ years) would be durable and add significant, long-term certainty for conservation and subsistence values and interests.

Pool 1C:

Location:

- Lands, as defined by the 2013 Integrated Activity Plan, within the southeast corner of the Teshekpuk Lake Special Area that are available for leasing and exploratory drilling. [See Map: Location 1C]

Rationale:

- These lands are formally recognized as a Special Area for their high conservation and subsistence values
- Helps maintain necessary habitat connectivity between the Teshekpuk Lake and Colville River Special Areas
- High quality calving habitat for the Teshekpuk Caribou Herd
- Important subsistence use area
- Captures the headwaters of the Fish Creek and Inigok Creek watersheds

Additionality:

[14] Best Management Practices in this area are limited to setbacks on select waterways.
[15] As another compensatory action, efforts should be made to buy-back the three leases within this pool.

- This pool has no durable conservation protections. While setbacks on waterways of importance exist as a Best Management Practice, as was seen with GMT-1, these buffers can be compromised.[16]
- Protections from oil and gas leasing, exploration, and development through conservation easements and rights-of-way would provide significant additionality in a place where these activities are not currently restricted.
- Conservation easements and rights-of-way should be in effect for the life of the impacts of development (50+ years). They would provide additionality through significant, long-term protections for conservation and subsistence values and interests.

○ Colville River Special Area Pools

All of the Colville River Special Area is open to oil and gas leasing and development. As mentioned above, while there are Best Management Practices that aim to guide development away from important setbacks, these buffers can be compromised and offer no true protections.

Pool 2A:

Location:

- All unleased lands of the Colville River Special Area, as defined by the 2013 Integrated Activity Plan, between Nuiqsut and Umiat, including the Kikiakrorak and Kogosukruk Rivers and their 2-mile setbacks. [See Map: Location 2A]

Rationale:

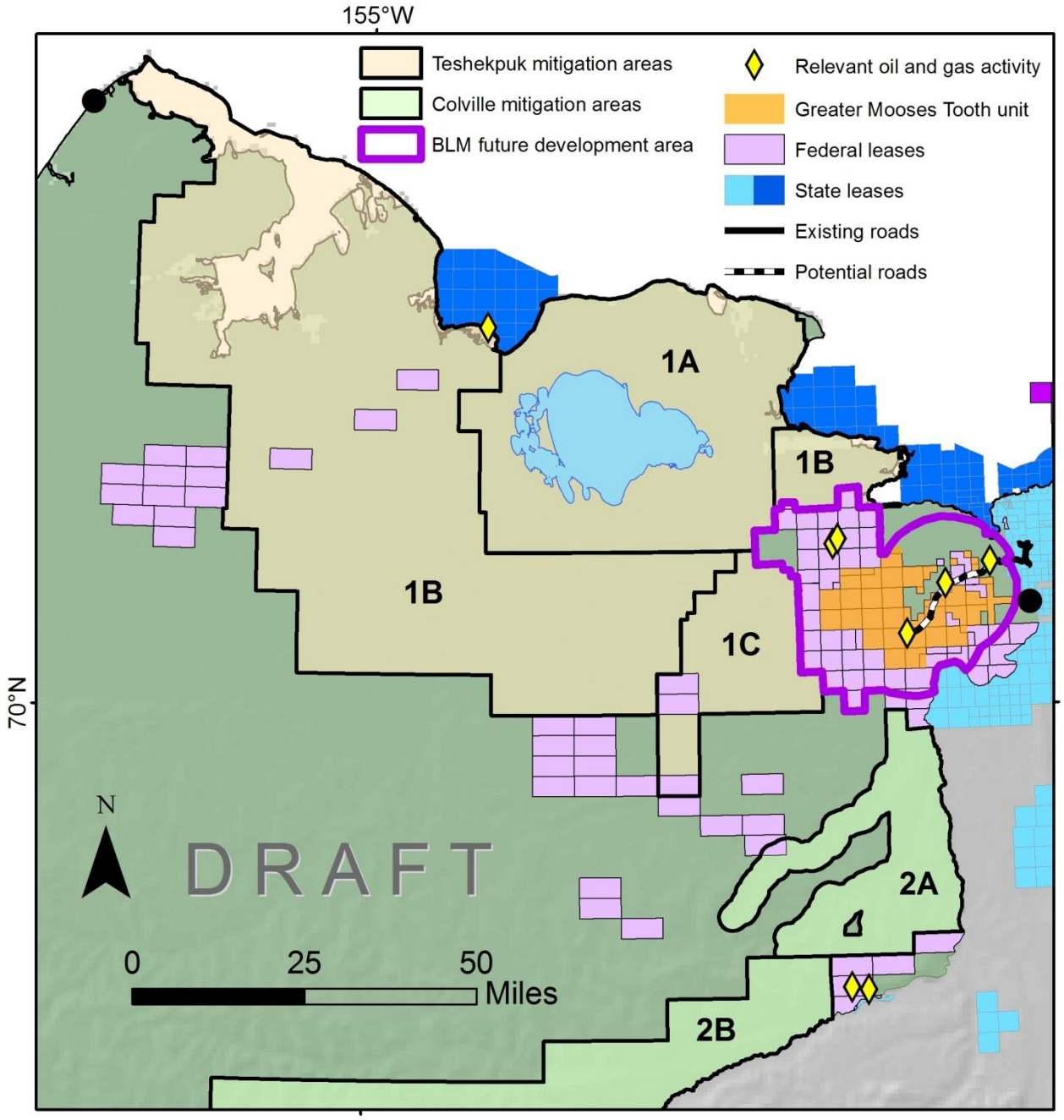
- Recognized Special Area for almost 40 years
- Important subsistence use area for fish, waterfowl, and caribou, particularly as development has compromised subsistence use areas to the north, east, and now west of Nuiqsut
- Important raptor habitat
- Contains unleased tracts
- Low oil potential area
- Important migratory corridor for the portion of the Teshekpuk Caribou Herd that overwinters in the Brooks Range

Additionality:

- This pool currently has no durable conservation protections. While setbacks on the Colville, Kikiakrorak, and Kogosukruk Rivers exist as a Best Management Practice, these buffers are easily compromised.

[16] The Greater Mooses Tooth One (GMT-1) decision is an example of how Best Management Practices and setback areas, such as the Fish Creek setback area, can be easily compromised. Similarly, Caelus, the company currently pursuing exploration offshore in Smith Bay, requested at least one variance to Best Management Practices identified in the IAP and BLM approved the permit.

- Protections from oil and gas leasing, exploration, and development through conservation easements and rights-of-way would provide significant additionality in a place where these activities are not currently restricted.
- Conservation easements and rights-of-ways should be in effect for the life of the impacts of development (50+ years). Durable protections would provide additionality through significant, long-term management for conservation and subsistence values and interests.



Proposed Mitigation Areas (

(Based on Management Restrictions)

Teshekpuk Lake Special Area Pools

1A – Unavailable for leasing and no new non-subsistence infrastructure or exploratory drilling

1B – Unavailable for leasing or exploratory drilling

1C – Open to leasing

Colville River Special Area Pools

2A – Open to leasing

2B – Open to leasing (though currently outside of BLM's RMS geographic region)

Notes:

- All proposed "pools" are currently within established Special Areas.
- The Special Area's varying levels of restriction allow for differing levels of additionality, a necessary component of mitigation policy.