

DIN E'H LLC
22808 Green Garden Drive
Eagle River, AK 99567
907-360-2672
Fax 907-338-1747

April 11, 2012

Secretary Ken Salazar
Department of the Interior
1849 C Street, N.W.
Washington DC 20240

Re: Proposed Pipeline Corridor/Land Exchange
Tetlin National Wildlife Refuge

Dear Secretary Salazar:

My name is Robert L. Brean and I am a tribal member of the Tanacross Tribe in the Upper Tanana Region of the State of Alaska. I am also the general manager of Din e'h LLC, which represents the Native people of the Upper Tanana Region (Dot Lake Native Corporation; Tanacross, Inc.; Tetlin Natives Corporation; and, Northway Natives Inc.) These four village corporations collectively own approximately 120 miles of proposed natural gas pipeline right-of-way. My purpose in writing today is to request your assistance in enforcing the protections of Title XI of the Alaska National Interest Lands Conservation Act ("ANILCA"), as they apply to a land exchange proposed by the U.S. Fish and Wildlife Service ("FWS") and the Alaska Pipeline Project, an unincorporated partnership between TransCanada Corporation and ExxonMobil, acting through The Conservation Fund.

FWS is proposing to transfer title to about 400 acres of land within the Tetlin Wildlife Refuge Land into private ownership by The Conservation Fund. Ultimately, The Conservation Fund intends to grant an easement over a portion of the land to be used for a pipeline corridor related to the preferred alternative route of the Alaska Pipeline Project. In exchange, the FWS will receive 515 acres in Texas and a donation of \$500,000 from the Alaska Pipeline Project. While recent events make it more unlikely than ever that the Prudhoe Bay-to-Alberta route of the natural gas pipeline will be economically feasible or built, it is FWS's intent to transfer the 400 acres of federal refuge land into private ownership by October of 2012.

This exchange has the potential to seriously impact the Native people of the Upper Tanana who have traditionally used the land included in the proposal. The area is known as Scottie Creek to western culture, but as Din e'h to our people. It has a long history of use by the Northway Tribe and other Native people. That use will be negatively affected by the exchange. Tribal members will lose their federal subsistence hunting rights on the land because the transfer to private ownership will result in State of Alaska management of wildlife resources. Further, the Northway Tribe will lose its first position for eligibility to provide revenue-producing visitor services under section 1307 of ANILCA.

The terms of the pipeline easement to be given to the Alaska Pipeline Project are not clear. Nor is it clear who will be negotiating those terms. At the Government to Government Meeting in Northway held on February 21, 2012, The Conservation Fund seemed to throw that responsibility back to FWS. FWS has refused to allow Northway to participate in setting those terms and has, in the past, described the easement as possibly not being tied to the FERC License, or to a use-it-or-lose-it clause, or to allowing other, compatible uses of the land. As the other proposed route for the pipeline, Prudhoe Bay-to-Valdez, will not pass this way, and the Prudhoe Bay-to-Alberta route may never be built, the proposed exchange and resulting transfer of land out of the refuge may be completely unnecessary.

The proposed land exchange was presented to FWS in July of 2011. After the terms were developed, FWS sent out notice of the proposed exchange in January of 2012. That notice gives no particular reason for agreeing to transfer of land out of the wildlife refuge or for doing it by October 2012. We understand that TransCanada and ExxonMobil have told FWS the exchange needs to be done so that those companies can meet their requirements under the Alaska Gasline Inducement Act ("AGIA"). AGIA is an Alaska state law which in part, specifically AS 43.90.130(3), requires the pipeline companies to submit to the Federal Energy Regulatory Commission, ("FERC"), a complete application for a Certificate of Public Convenience and Necessity within 36 months after receiving the AGIA license.

Nothing in AGIA requires the pipeline companies to own or resolve all right-of-way issues by October 2012. FERC represents that it does not require the pipeline companies to own or resolve all right-of-way issues prior to submitting an application for a Certificate of Public Convenience and Necessity. The real reason FWS is pushing this land exchange through appears to be 1) that the FWS believes that the gas pipeline must be approved, 2) that TransCanada and ExxonMobil do not have experience dealing with Title XI of ANILCA, and 3) that it would be inconvenient for both the FWS and the companies to comply with Title XI. I

suggest to you that even if there was discretion in choosing to apply Title XI to land in the wildlife refuge, discretionary authority does not exist at the local level and that inconvenience would not be a sufficient reason to exercise it.

However, there does not appear to be discretion in the choice whether or not to apply the law. The Tetlin National Wildlife Refuge Land portion of the proposed exchange is clearly under the jurisdiction of the Department of the Interior and ANILCA. It was established by section 302(8) of ANILCA. Title XI of ANILCA, section 1101, *et seq.*, provides specific procedural requirements that, “[n]otwithstanding any provision of applicable law,” must be complied with before “any Federal agency” approves, in whole or in part, a transportation or utility system within this refuge. Thus, FWS, TransCanada and ExxonMobil must inconvenience themselves to comply with the law.

The procedural requirements of Title XI, which are contained in section 1104, include the following:

- no pipeline is allowed unless it complies with Title XI
- the process is started with an application
- the application is first reviewed for completeness
- a draft NEPA EIS is required within nine (9) months
- a final NEPA EIS is required within one year
- after the final EIS, an agency decision is issued that must address
 - o need and economic feasibility
 - o alternate routes
 - o impact on different systems in the same corridor
 - o short and long term effects on social, economic, environment and traditional lifestyles
 - o impacts on national security (this is an international border)
 - o impacts on initial purpose for establishing the refuge
 - o measures to avoid adverse impacts
 - o analysis of impacts, benefits and public values.

In addition, section 1107 of Title XI provides specific rights-of-way terms and conditions that are required. Title VIII of ANILCA imposes its own obligations on your Department to safe guard Native Alaskan uses of wildlife for subsistence purposes. None of these requirements are being applied to the proposed land exchange which simply removes protected land from the refuge so it can be used as a privately owned pipeline corridor.

Page 4
Secretary Ken Salazar
April 11, 2012

The rules of procedure that are being applied by FWS for the proposed land exchange have not been clearly identified. What we see taking place bears little resemblance to Title XI. Neither TransCanada nor ExxonMobil have applied for anything, but have instead apparently convinced FWS that it should be championing a land exchange to save the pipeline companies from allegedly breaching AGIA. Although a draft Environmental Assessment is racing through the FWS process and is expected momentarily as this is being written, there is no EIS underway and there are no studies of the kind sufficient or necessary to inform the agency so it may consider and draft the scope of decision required by Title XI.

At this point, all that appears to be happening is that public and Government to Government meetings are being held, during which FWS representatives have repeated that they do not have time to comply with Title XI, and that they are caught between the competing time lines of Title XI, AGIA and ANGPA (the Alaska Natural Gas Pipeline Act). I believe these explanations are completely mistaken and respectfully request you to look into this situation before it is too late to be addressed by your agency.

First, it is my understanding that a state law like AGIA, which may or may not penalize a private company like TransCanada or ExxonMobil for missing a deadline requirement, does not control the application of federal law. Second, to my knowledge, the current Alaska pipeline project has not been approved by the President and a joint resolution of Congress and therefore it does not fall within ANGPA or ANGTA. Even if those acts do apply, they provide for expediting certain parts of the application process, not circumventing Title XI of ANILCA completely. Thus, the justification being offered for the land exchange appears to us to be false and contrived to avoid Title XI.

In the end, I believe that FWS is proposing to transfer 400 acres of protected wildlife refuge and federal subsistence land into private ownership, for the construction of a pipeline, in violation of the law and on the basis of misinformation. There are no competing timelines, there are no competing statutes, and there may never be a Prudhoe Bay-to-Alberta pipeline route. As a practical matter, it makes no sense to give away 400 acres of important subsistence land within a federally protected wildlife refuge when there is no certainty at this time that the pipeline will be built, and when there are applicable procedures within ANILCA to grant a right-of-way and protect the original intent and purposes of the refuge.

One recent and revealing twist to the land exchange brought to my attention is FWS's announcement that the land will be returned to federal ownership within two weeks! What happens during the two week period of private ownership is

Page 5
Secretary Ken Salazar
April 11, 2012

unknown. I assume it involves recording of a pipeline right-of-way that would accompany the land upon its return to federal ownership. This scheme was offered as a means of reassuring us of the resumption of federal ownership and subsistence protections. While that result, if attainable, sounds good, the primary effect of this quick "re-exchange" is to illustrate to all the transparent intent to make an end run around Title XI.

On March 21, 2012, I received a letter from Polly Wheeler explaining that the Solicitor's Office has provided her with an opinion on the complexities surrounding Title XI of ANILCA, the Alaska Natural Gas Pipeline Act ("ANGPA") and the Natural Gas Act ("NGA"). In her words, the Solicitor's Office "concluded that these differing legal mandates could be meshed" but that it would be "unlikely that the project could be completed within the necessary timeframe." I can only assume that the "necessary timeframe" is not identified because it does not exist or because it is a scheduling term submitted in Trans Canada's AGIA application. She did not provide a copy of the Solicitor's opinion. I am not aware of, and Ms. Wheeler does not identify, any legal deadlines or any meaningful conflicts between ANILCA, ANGPA or NGA that warrant the proposed violation of ANILCA.

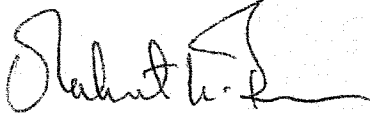
As this letter was being prepared, the State of Alaska and the major North Slope oil producers announced settlement of the Point Thompson Superior Court Case (3AN-06-13751). The Point Thompson case involved the State's effort to terminate 38 oil leases covering 93,000 acres of State land adjacent to the Arctic National Wildlife Refuge ("ANWR"). The settlement extends beyond the issues being litigated, however, and includes the commitment of the producers to assess large-scale liquefied natural gas ("LNG") exports from south-central Alaska, and LNG tidewater site locations, as an alternative to gas line exports through Alberta.

As result of the new focus, the need for an expedited Tetlin land exchange and the related violations of ANILCA has evaporated. We expect the AGIA schedule requirements to be extended for at least two years which should provide ample time for completion of the Title XI process with full government to government consultation with the local Tribes and Village Corporations.

Thank you for your consideration. This letter is not submitted as a protest against the Alaska Pipeline Project. In fact, one purpose of Din e'h is to cooperate in that project. It is, however, a protest against a land exchange that violates ANILCA and the federal laws that we have been asked to accept and follow in Alaska and in the Upper Tanana Valley. Our concerns are in many ways similar to those identified in the Title XI process. In this regard we respectfully request your assistance in enforcing Title XI of ANILCA.

Page 6
Secretary Ken Salazar
April 11, 2012

Sincerely yours,

A handwritten signature in black ink, appearing to read "Robert L. Brean". The signature is fluid and cursive, with a prominent initial "R" and a long, sweeping underline.

Robert L. Brean

Cc: Myron Fedak, EXDC
Mel Johnson, TC
Larry Persily, OFC
Kurt Gibson, DNR
Kim Elton, DOI
Jerry Isaac, TCC
Michael Boyle, FERC

326554.2