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March 13, 2019

The Honorable David Bernhardt
Acting Secretary
U.S. Department of Interior
1849 C Street NW
Washington, DC 20240

Dear Acting Secretary Bernhardt:

I write in response to the December 28, 2018 Notice of Availability of the Draft Environmental Impact Statement (DEIS) for the Coastal Plain Oil and Gas Leasing Program (83 Fed. Reg. 673378). I ask that this letter be made part of the DEIS public record, as it outlines legal, policy, and resource issues that the Bureau of Land Management (BLM) did not adequately address in its DEIS.

Throughout the legislative process, Senators on both sides of the aisle clearly stated that no environmental laws would be waived or bypassed and no process cut short if oil and gas leasing activities were conducted on the Coastal Plain of the Arctic Refuge¹. The Senate expected BLM to ensure wildlife, fish, habitat, and other values of the Coastal Plain are protected. These essential commitments, on which Congress relied, govern BLM's implementation of Title II of the Tax Cuts and Jobs Act (P.L. 115-97). To date, however, the agency has not lived up to that mandate and, instead, is following a course that falls short of its legal obligations.

As the lead agency responsible for managing the oil and gas program on the Coastal Plain of the Arctic Refuge, BLM must also ensure the entire planning process complies with the National Environmental Policy Act (NEPA), the National Wildlife Refuge System Administration Act, the Endangered Species Act (ESA), and the Marine Mammal Protection Act (MMPA), among other binding legal authorities.

BLM's proposed program is insufficient with regards to legal mandates governing National Wildlife Refuges and the National Wildlife Refuge System. While the Tax Cuts and Jobs Act established an oil and gas program as a purpose of the Arctic National Wildlife Refuge Coastal Plain, it did not elevate that purpose over any of the four conservation purposes Congress established in the Alaska National Interest Lands Conservation Act or the original three purposes

¹ See, e.g., Senator Lisa Murkowski, Floor Speech on Reconciliation Legislation (November 30, 2017), www.murkowski.senate.gov/press/speech/floor-speech-reconciliation-legislation-tax-reform.

of the Arctic National Wildlife Range from 1960. BLM cannot arbitrarily elevate this single purpose over any of the other specific purposes of the Arctic Refuge or the statutory purposes for the National Wildlife Refuge System recognized by Congress in the National Wildlife Refuge System Administration Act. Similarly, while the Tax Cuts and Jobs Act established BLM as the managing agency for the oil and gas program, it did not otherwise alter the U.S. Fish and Wildlife Service's (FWS) jurisdiction as the Refuge's administrator and manager, as that role has been recognized and affirmed by Congress. The oil and gas program that BLM is proposing may not allow FWS to play this superior role. BLM should respect its new, but limited, role for the oil and gas program.

BLM's DEIS fails to meet or consider the legal obligations required by NEPA in multiple ways. BLM does not consider a reasonable range of alternatives, looking instead only at alternatives that allow for exploration and development on the majority or all of the Coastal Plain. Key elements of the DEIS analysis are missing, inadequate, inaccurate, or inconsistent with the best available science. For example, the agency neglects to acknowledge and address considerable missing information, relying instead on older and previous impacts analysis done for areas in the western Arctic. Many other issues, such as impacts to polar bears, caribou, and other wildlife, impacts to wilderness, water resources, and vegetation, are only partly addressed. The Coastal Plain of the Arctic Refuge is a unique ecosystem with complex connections between the permafrost, soils, tundra, water, plants, wildlife, and people. Much more information specific to the area is needed before BLM can evaluate the impacts of an oil and gas program or propose a program that may meet Congressional mandates. The analysis should also fully consider the adverse impacts of an oil and gas program on the Coastal Plain, including seismic exploration, which is currently proposed.

BLM also fails to ensure that its leasing program complies with the protective mandates of the ESA and MMPA. Congress enacted the ESA to conserve endangered and threatened species and the habitats and ecosystems upon which they depend. Several species protected under the ESA inhabit the Arctic Refuge and its nearshore waters, including bowhead whales, ringed and bearded seals, spectacled eider, and polar bears. The DEIS fails to explain how BLM will comply with the ESA's substantive and procedural requirements to protect these species when conducting leasing operations. The DEIS contemplates extensive oil and gas leasing on no less than one million acres of the Coastal Plain and fails to consider effective mitigation measures to address any damage this activity may cause. This failure is concerning given BLM's Congressional mandate to avoid jeopardizing endangered and threatened species and destroying or adversely modifying their critical habitats. Additionally, the DEIS does not adequately explain how an oil and gas program on the Coastal Plain will comply with the MMPA. To carry out Congress' protective and conservation purposes, the MMPA prohibits the taking of all marine mammals, with limited exceptions. BLM's DEIS, however, fails to consider any MMPA implications for any marine mammal species other than polar bears – ignoring the protected status of whales and seals entirely. Further, the DEIS ignores likely lethal and population-level impacts from exploration and development to the already depleted Southern Beaufort Stock of polar bears and fails to consider effective and enforceable mitigation measures. In sum, BLM's proposed actions ignore and are in direct conflict with existing federal requirements to ensure its leasing program will protect species under the ESA and MMPA.

The DEIS's rushed process also fails to ensure adequate public participation. A hasty planning process is not consistent with the Department of Interior's (DOI) legal obligations to involve the public and consult with Tribes. The BLM is adhering to Secretarial Order 3355 and its guidance memoranda, which arbitrarily compresses the process into a one-year timeframe. This limitation is insufficient when applied to this proposal. The Coastal Plain of the Arctic Refuge is exceptional in its wildlife and wilderness values. Numerous tribes in Alaska and Canada use the Coastal Plain's resources for subsistence and cultural practices and have for millennia. Millions of Americans have also taken part in processes over the years regarding the protection of this cherished area and are seeking a voice in this process, as well. BLM's inadequate timeline and unwillingness to more broadly engage the public is counter to Congressional intent. BLM has not yet taken, but must take, the time necessary to fully engage the public and affected communities and conduct the thorough and detailed analysis required to meet its Congressional mandates under NEPA.

BLM's DEIS is legally deficient in several fundamental respects. Instead of rushing forward an insufficiently vetted leasing program in the Coastal Plain, BLM must remedy the serious issues with its DEIS. As proposed, the DEIS simply fails to meet the minimum standards that Congress established—and the federal requirements Congress purposefully retained—when Congress enacted Title II of the Tax Cuts and Jobs Act. Thank you for your consideration.

With best personal regards, I am,

Sincerely yours,

A handwritten signature in dark ink, appearing to read "Tom Carper", written over a horizontal line.

Tom Carper
Ranking Member

CC: Joe Balash, Assistant Secretary for Land and Minerals, Department of Interior; Nicole Hayes, Coastal Plain Project Manager, Bureau of Land Management