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First name: Susan
Last name: Magee
Organization: State Of Alaska
Title: ANILCA Program Coordinator
Comments:
October 29, 2019

USDA Forest Service

Attn: Objection Reviewing Officer, Alaska Region 709 W. 9th Street
Juneau, AK 99801

Department of Natural Resources

OFFICE OF PROJECT MANAGEMENT AND PERMITTING

550 West 7th Avenue, Suite 1430

Anchorage, AK 99501

Main: 907.269-8690

Fax: 907-269-5673

RE: Objection to the 2019 Chugach National Forest Land Management Plan. Submitted electronically at:
<https://cara.ecosystem-management.org/Public//CommentInput?Project+40816>.

Responsible Official:

Jeff Schramm, Forest Supervisor

Objector:

State of Alaska

Submitted by Susan Magee

State of Alaska ANILCA Program Coordinator 550 West 7th Avenue, Suite 1430

Anchorage, AK 99501 susan.magee@alaska.gov 907-269-7529

INTRODUCTION

The State of Alaska participated in the planning process for the Chugach National Forest Land Management Plan (CNFP) by engaging with the USDA Forest Service (USFS) in planning meetings and providing substantive formal and informal comments during the various stages of the planning process, including review opportunities provided by the USFS at the Assessment Phase, Scoping, and the Draft CNFP and Environmental Impact Statement (EIS). The State's comments throughout the plan development process are incorporated herein by reference. While some issues raised by the State during the planning process were resolved, the following issues remain unresolved. Due to the significant departure from ANILCA's mandates, and the potential public and economic impacts, the State is submitting this objection and seeks thoughtful consideration of these issues.

SUMMARY OF OBJECTION ISSUES

1. The 2019 CNFP incorrectly implies the Portage Curve Multimodal Pathway and other similar pathways, located within the Alaska Department of Transportation and Public Facilities' (ADOT&PF) Seward Highway Right-of-Way (ROW), are connecting segments of the Iditarod National Historic Trail (INHT).

The State provided substantive comments on the draft CNFP/EIS that identified language indicating the Portage Curve Multimodal Pathway project would establish the INHT, a recreational facility and conservation system unit (CSU) designated by Congress under the Alaska National Interest Lands Conservation Act (ANILCA), within ADOT&PF's Seward Highway ROW. The State requested the objectionable language be removed or clarified that the Portage Curve Multimodal Pathway project was not the INHT. While objectionable language was removed from the final plan, new language having the same effect was added in its place.

The final plan is now additionally inconsistent with changes the Forest Service made at the project level to address the State's concerns. If unresolved, the Portage Curve Multimodal Pathway project cannot proceed as part of the Seward Highway 75-90 Project. The current language in the plan would also complicate the permitting and delivery of the planned

multimodal paths at ADOT&PF's Snow River Bridges, near MP 17 of the Seward Highway.

II. The 2019 CNFP misidentifies the Resurrection and Williwaw administratively designated National Recreation Trails (NRTs) as conservation system units (CSUs) under ANILCA.

The State provided substantive comments on the draft CNFP/EIS that explained how the Resurrection and Williwaw NRTs were misidentified in the plan as CSUs designated by ANILCA. Under ANILCA and the National Trail System Act (NTSA), CSUs may only be established or modified by Congress. The Resurrection and Williwaw NRTs were designated by executive action, not Congress; therefore, the trails are not CSUs. The State requested the plan either clarify that the two NRTs are not CSUs or detail the legal authorities for attempting to establish new CSUs by executive action. In the response to comments, the Forest Service indicated they disagreed with the State and made no changes to the plan; however, the 2002 plan used to say the two NRTs were being managed [ldquo]as if[rdquo] they were CSUs, whereas the 2019 plan strengthens that claim by stating the NRTs are CSUs designated by ANILCA. Claiming administratively designated trails are[mdash]or are being managed [ldquo]as if[rdquo] they are[mdash]CSUs can lead to unjustified public use and access restrictions and inflate project costs. This was the exact result in the context of the State's Sterling Highway MP 45-60 (Cooper Landing Bypass) project, which resulted in the diversion of approximately \$18 million in highway safety funds to build USFS recreation facilities as unwarranted mitigation for constructing a highway bridge over the Resurrection Pass NHT.

III. The 2019 Wilderness and Wild and Scenic River studies and recommendations violate ANILCA.

The State provided substantive comments throughout the CNFP/EIS planning process¹, objecting to the Forest Service's wild and scenic river and wilderness studies on the basis that they violate Section 1326(b) of ANILCA, which prohibits studies that consider the establishment of new CSUs in Alaska unless authorized in ANILCA or a further Act of Congress. Designated wilderness and wild and scenic rivers are CSUs. The State requested the plan defer to the original wilderness recommendations that were submitted to Congress within the limits identified in ANILCA Section 704 and rescind the wild and scenic river recommendations.

Contrary to ANILCA, the final plan retains the new wilderness and wild and scenic river recommendations. Further, USFS management as de facto wilderness and de facto wild and scenic rivers, absent congressional designation, could lead to unjustified public use and access restrictions and increase project costs and mitigation requirements for roadway projects. For example, the State's Sterling Highway and Seward Highway rights-of-way are located within the newly established management corridors for rivers deemed recommended or eligible for wild and scenic designation; because highway safety and capacity improvements require construction and right-of-way realignments in these new management corridors, these necessary public

infrastructure projects will be hindered and made more expensive by the USFS's heightened restrictions implemented without congressional authorizations.

DISCUSSION OF ISSUES

1. The 2019 Chugach National Forest Plan incorrectly implies the Portage Curve Multimodal Pathway, located within the Alaska Department of Transportation and Public Facilities's Seward Highway Right-of-Way, is a connecting segment of the Iditarod National Historic Trail.

The ADOT&PF worked cooperatively with the USFS for several years to develop workable, cost-effective solutions for the Portage Curve Multimodal Pathway project to be incorporated into the design concept for the Seward Highway Milepost 75-90 Road and Bridge Rehabilitation project. The proposed trail provides a safer transportation alternative for foot and bicycle traffic within the highway ROW and also provides a connection to other recreation facilities and segments of the INHT located outside of the highway ROW.

The trail was identified in the USFS's project environmental assessment (EA) scoping notice as a connecting link to historic segments of the INHT, implying that once constructed it will be a segment of the INHT, a congressionally designated unit of the National Trails System. As such, it could also be considered an ANILCA CSU. Should the Seward Highway need to be relocated or expanded in the future, requirements in ANILCA Title XI would apply, which would complicate the permitting process. Section 4(f) of the Transportation Act would also apply, and as a recreational facility, it would be much more difficult for the State to defend a determination of the inapplicability of Section 4(f) of the Transportation Act, resulting in increased design and construction costs.

1 Substantive comments on this issue were submitted by the Alaska Department of Natural Resources on 12/10/13 at the Assessment Phase; the Alaska Department of Fish and Game on 2/25/16 at scoping; and the Alaska Department of Natural Resources on 11/1/18 on the Draft Land Management Plan and Environmental Impact Statement.

The NTSA recognizes that due to subsequent development as motorized transportation routes, many historic trail segments may no longer be available for travel as a trail and as such, can be identified as segments which link to the historic trail (NTSA, Section 5(b)(11)(a)). Section 7(c) of the NTSA states [ldquo]When a national historic trail follows existing public roads, developed rights-of-way or waters, and similar features of man[rsquo]s non-historically related development, approximating the original location of a historic route, such segments may be marked to facilitate retracement of the historic route, and where national historic trail parallels an existing public road, such road may be marked to commemorate the historic route.[rdquo]

In recognition of this and other relevant information provided in the State[rsquo]s comments on the project EA and the Draft CNFP/EIS, which clearly recognize these connecting segments are not part of the designated historic trail, the State worked with the USFS to resolve the issue in the context of the EA for the Portage Curve Multimodal Pathway project. We also requested in our comments on the draft CNFP/EIS that specific language in the CNFP be removed or revised to clarify the proposed trail and other historic segments located within the Seward Highway and Alaska Railroad ROWs are not segments of the INHT, units of the NTS, or CSUs under ANILCA. While objectionable language was removed, new language was also added to the CNFP with the stated intent of addressing the State[rsquo]s concerns (page 20, CNFP, Volume I and page 20 and page 57, Management Approach, SA-INHT-MAP). While it appears to be the result of a misunderstanding, the added language to the [ldquo]Management Approach[rdquo] for the INHT refers to the pathway as a trail, which is a recreational facility, thereby raising the same Section 4(f) issues described above, and further implies segments of the pathway located within the Seward Highway ROW would be segments of the INHT, a CSU under ANILCA. The State is unwilling to risk being burdened with additional project costs and complications associated with the permitting process should the Seward Highway need to be relocated or expanded in the future.

This would also complicate the permitting and delivery of the planned multimodal paths at ADOT&PF[rsquo]s Snow River bridges, near MP 17 of the Seward Highway.

Representatives of ADOT&PF met with representatives of USFS on October 17, 2019 to discuss the State[rsquo]s concerns with the CNFP and the State[rsquo]s proposed resolutions. By letter to the Alaska Department of Natural Resources, dated October 24, 2019, the USFS Forest Supervisor informed the State of Alaska that the Management Approach language of SA-INHT-MAP would be removed from the plan. With that resolution, ADOT&PF will be able to proceed to procurement of construction of the Portage Curve Multimodal Pathway project as part of the Seward Highway Milepost 75-90 Road and Bridge Rehabilitation project. The State truly appreciates the cooperative resolution of this issue.

II. The 2019 Chugach National Forest Plan incorrectly states the Resurrection and Williwaw administratively designated National Recreation Trails are conservation system units under ANILCA.

The CNFP misidentifies the Resurrection Pass NRT and the Williwaw NRT as CSUs as defined by ANILCA (Page 60). Under ANILCA and the NTSA, CSUs may only be established or modified by Congress. In fact, Congress did not even permit studies to establish new CSUs in Alaska unless authorized in ANILCA or a future

Act of Congress (ANILCA Section 1326(b)). Congress did not designate the Resurrection Pass NRT or the Williwaw NRT (both trails were designated by executive action) and, therefore, these trails are not CSUs.

The 2002 Chugach Forest Plan states that [ldquo]consistent with ANILCA, the following areas on the Chugach National Forest shall be managed as if they were Conservation System Units (CSUs): the Wilderness Study Area; areas recommended for Wilderness designation: rivers recommended for Wild, Scenic and Recreational River designation: and, National Recreation Trails (including Resurrection Pass National Recreation Trail and Williwaw National Recreation Trail)[rdquo] (Page 3- 42 (*italics added*)). Placing the NRTs in the same category as recommended wilderness and wild and scenic rivers (where legally allowed [ndash] see also objection issue III), inaccurately implies interim management is being applied to the NRTs while the USFS awaits a decision from Congress. These NRTs have been administratively designated under Section 4 of the NTSA; there is no pending congressional action.

The State[rsquo]s comments on the Draft CNFP/EIS requested that this error be corrected to explain that the Resurrection Pass NRT and Williwaw NRT are not CSUs, or alternatively, if the USFS was attempting to establish new CSUs by executive action, contrary to the requirements of ANILCA and the NTSA, to detail the legal authorities and public processes followed to do so. In response to these comments, the USFS stated it disagreed with the State on whether the NRTs were CSUs and that no changes were made to the plan (Page 64, Appendix C). However,

changes were made in the 2019 plan, which now states the Resurrection and Williwaw NRTs are

CSUs as defined by ANILCA (Page 60, CNFP).

Inaccurately claiming administratively designated NRTs are or are managed as if they are CSUs can lead to unjustified public use and access restrictions and inflate project costs. For example, mitigation for impacts to the Resurrection Pass NRT in the Sterling Highway 45-60 (Cooper Landing Bypass) project, which in accordance with the 2002 CNFP was being managed as if the trail was a CSU, resulted in the diversion of approximately \$18 million in highway safety improvement funds to construct USFS recreational facilities in mitigation for affecting the improperly declared CSU. If the USFS can administratively designate trails CSUs, other State infrastructure and development projects crossing those trails could see similar increased costs for the construction of USFS recreation facilities as mitigation.

The USFS[rsquo]s declaration of national recreational trails as CSU[rsquo]s is also inconsistent with other federal land management agencies in Alaska. Currently, the BLM is the only Department of Interior agency that manages national recreation trails in Alaska (i.e., Pinnell Mountain NRT and the Campbell Tract Loop NRT), and those trails are not considered to be, or managed by BLM, as ANILCA CSUs. For consistency with other federal agencies in Alaska, and compliance with ANILCA, the USFS should rescind the amendment to the 2019 CNFP that declared the Resurrection Pass NRT and Williwaw NRT are CSUs.

III. 2019 Wilderness and Wild and Scenic River Recommendations Violate ANILCA.

Referencing the USFS national planning rule at 36 CFR 219, the USFS conducted a new wilderness study for the purpose of determining whether to recommend lands for wilderness designation (CNFP, Volume I, Appendix A, page 251). The draft Record of Decision states [ldquo]Based on our analysis and input from stakeholders, my recommendation is for 1,387,510 acres within the Nellie Juan-College Fiord Wilderness Study Area to be included in the National

Wilderness Preservation System[hellip][rdquo] (page 10-11)

Under direction from the USFS national planning rule at 36 CFR 219, the USFS updated the 2002 wild and scenic river study, which was conducted for the purpose of determining whether to recommend rivers for wild and scenic river designation (2002 Chugach National Forest Plan, page 1-1). The draft Record of Decision for the 2019 CNFP states [ldquo]My decision carries forward the 2002 land management plan revision recommendations to designate nine suitable river segments for inclusion in the National Wild and Scenic Rivers System[hellip]the final land management plan includes measures designed to retain the free-flowing condition, water quality, and outstandingly remarkable values of these rivers until such time they may be officially designated by Congress.[rdquo] (page 11)

Both of these studies violate provisions in ANILCA, which preclude studies or other administrative actions intended to establish or modify CSUs in Alaska, absent explicit direction from Congress. The USFS national planning rule does not override ANILCA or other governing statutes. Further, the Forest Service[rsquo]s own planning regulations at 36 CFR 219.1(f) state: [ldquo]Plans must comply with all applicable laws and regulations[hellip][rdquo] As stated in Alaska[rsquo]s comments throughout this planning process for CNFP and on the draft 2012 planning rule, several provisions of ANILCA preempt the USFS national planning rule[rsquo]s requirement to conduct studies in Alaska for the purposes of recommending new CSUs or for other similar purposes, including:

ANILCA Section 101(d):

This Act provides sufficient protection for the national interest in the scenic, natural, cultural and environmental values on the public lands in Alaska, and at the same time provides adequate opportunity for satisfaction of the economic and social needs of the State of Alaska and its people[hellip] Congress believes that the need for future legislation designating new conservation system units[hellip] has been obviated thereby. [emphasis added]

Section 708(4):

Unless expressly authorized by Congress the Department of Agriculture shall not conduct any further statewide roadless area review and the evaluation of National Forest System Lands in the State of Alaska for the purpose of determining their suitability for inclusion in the National Wilderness Preservation System. [emphasis added].

ANILCA Section 1326(b):

No further studies of Federal lands in the State of Alaska for the single purpose of considering the establishment of a conservation system unit, national recreation area, national conservation area, or for related or similar purposes shall be conducted unless authorized by this Act or further Act of Congress. [emphasis added]

Only congressionally designated wilderness and wild and scenic rivers are CSU[rsquo]s. Furthermore, in Alaska, only congressionally designated wilderness and wild and scenic rivers can be managed and regulated as CSUs. The Forest Services[rsquo] 2019 wilderness and wild and scenic rivers recommendations stem from

new studies not authorized by ANILCA or a subsequent Act of Congress and thus violate ANILCA Section 1326(b) and the overall intent of Congress as

expressed in ANILCA Section 101(d). These provisions clearly show that Congress retained for itself the sole authority for studies or reviews for the purpose of creating additional CSUs in Alaska. Congressional intent was further clarified in ANILCA Section 1326(b) with the prohibition on studies that would even be [ldquo]for related or similar purposes[rdquo] as CSUs, national recreation areas or national conservation areas.

ANILCA Section 704 provides the only limited authorization from Congress to study USFS lands in Alaska for consideration as designated wilderness. Specifically, Section 704 designated the Wilderness Study Area and directed a review of the designated lands in accordance with section 3(c) and (d) of the Wilderness Act. ANILCA explicitly directed the Forest Service to

issue a report on the area[rsquo]s suitability or non-suitability to the President and Congress within three years of the passage of the Act in 1980. Congress has provided no further direction to conduct additional studies on USFS lands in Alaska for potential wilderness designation; therefore, including a new wilderness study in the plan revision (i.e. wilderness inventory and evaluation) violates ANILCA Section 1326(b).

ANILCA also amended the Wild and Scenic Rivers Act and designated all of the wild and scenic rivers that became CSUs, and the entirety of rivers designated for study. None of these rivers are located on USFS managed lands. Congress has provided no further direction to the USFS to conduct wild and scenic river studies in Alaska. Neither the wild and scenic river recommendations that stem from the previous 2002 study nor the updated 2019 study stem from an ANILCA directed study or a study authorized in a subsequent Act of Congress and, therefore, these studies violate ANILCA Section 1326(b).

ANILCA[rsquo]s legislative history emphasizes the importance of Section 1326 in the Act.²

2Title XII [ndash] Administrative Provisions

[ldquo]No More[rdquo] The Committee bill contains two provisions which I think are absolutely necessary to reassert Congress' authorities in the matter of land designations: (1) the revocation of the monuments and the other FLPMA withdrawals which were made last year by the Administration to put pressure on the legislative process, and (2) the exemption of Alaska from the wilderness study provisions of FLPMA in the just belief that with passage of this bill "enough is enough".

However, one further critical provision is lacking. With the designation of over 100 million acres by this bill, coupled with the 50 million acres of units already existing in Alaska, nearly 40 percent of the land mass of the State would be within conservation systems. Surely that sufficiently meets even the most generous allocation of land for this specific purpose to the exclusion of most other land uses. Should this bill become law, we in

Alaska must have some assurance that this represents a final settlement of the nation's conservation interests. We cannot continue to be exposed to the threats and intimidation of a zealous Executive which may feel in the future that the Congress did not meet the Administrations desires for land designations in Alaska.

Thus, absent from this bill is a provision barring further conservation system designations through administration action such as the Antiquities Act. Obviously, the Congress could act again in the future if it were so inclined, but the arbitrary permanent removal of federal lands from the public domain can no longer be left to the Executive in Alaska. Deletion of such a provision in this bill is a serious deficiency which must be corrected prior to any final

action.[rdquo] (Senate Report No. 96-413, pg. 446, Senator Gravel)

A later version of the Alaska lands legislation, the so-called Tsongas Substitute for H.R. 39, was amended to include the language now found in ANILCA Section 1326. During the August 18, 1980 Senate floor debate on the Tsongas Substitute, Senator Stevens explained that the Alaska State Legislature had asked the Alaska delegation to address seven consensus points that were not originally contained in the bill:

USFS policy circumvents the prohibition on studies[mdash]and usurps Congress[rsquo]s exclusive authority[mdash]since the CNFP requires management of USFS-studied and -recommended wild and scenic rivers as fully-fledged CSUs even though the recommendation never receives congressional approval. According to the plan (pages 79-81), management direction for river segments determined both eligible and suitable³ will remain in force by agency policy until the USFS-recommendation is revoked by Congress.⁴ To make matters worse, Congress may never get a chance to consider and revoke the USFS[rsquo]s unauthorized recommendation as the USFS may never forward to Congress the list of rivers found eligible or determined suitable in the unauthorized study. In both situations, although Congress may never even be given the opportunity to take action, the rivers will still be managed in accordance with the Wild and Scenic Rivers Act pending congressional designation.

The rivers recommended in the Forest Service[rsquo]s 2002 agency-directed study have been managed as congressionally designated wild and scenic rivers for almost 20 years now; the decision in the 2019 plan will extend that unauthorized designation for another 10-20 years, depending on the

[ldquo]I have uniformly responded to questions in those areas [Alaska communities] concerning the revised Tsongas substitute. This substitute now is a version of the Senate Energy Committee bill, but it does not satisfy the seven points that our State legislature asked us to address in connections with this legislation.

I have told Alaskans that while I cannot vote for the Tsongas substitute, I think it has to be judged as being a compromise that is better than the existing situation under the national monuments and certainly better than those the President has indicated he will impose if a bill does not pass.

Our State legislature asked us to address seven points. We call them the consensus points[hellip][hellip].

The fifth injunction of the legislature was to be sure that there is what we call a no-more provision. This was a provision I insisted on in 1978. It was in the so-called Huckaby bill. It was in the bill that almost was approved in 1978. That clause is not in the committee bill. It is in the revised Tsongas substitute because the agreement we had in committee that when the bill had reached its final version on the floor of the Senate, the committee would agree to the no more clause. Realizing that the Tsongas revised substitute may be final version, the Senator from

Massachusetts, at my request, has included that.[rdquo] (Congressional Record [ndash] Senate August 18, 1980, pg. S11047) Senator Stevens later in the floor debate formally introduced Amendment No. 1967 to H.R. 39 for the following purpose:

[ldquo]To provide congressional oversight for major modifications of areas established or expanded by this Act and to require congressional approval for future major executive withdrawals of certain public lands in Alaska.[rdquo]

The amendment containing the essential wording of Section 1326 was adopted and became part of the Tsongas substitute. That bill was approved by the Senate on August 19, 1980 and by the House on November 12, 1980.

3 Eligible river segments are those that have been identified as [ldquo]eligible[rdquo] for inclusion in an agency directed wild and scenic river study. Suitable river segments have been studied and determined suitable for recommendation by the agency.

4 Forest Service Handbook 1909.12, Section 84.3: [ldquo]Forest Service-identified eligible and suitable rivers must be protected sufficiently to maintain free flow and outstandingly remarkable values unless a determination of ineligibility or non-suitability is made.[rdquo]

life of the plan.⁵ Managing these rivers as wild and scenic rivers when they have not been designated by Congress is not legally justified, sends a confusing message to the public, and could easily result in unnecessary restrictions on use and access. Take for example, the State[rsquo]s Seward Highway, Sterling Highway and Portage Glacier Road that are each located in areas designated by the USFS in the 2002/2019

wild and scenic river recommendations (Appendix E, Wild and Scenic Rivers Evaluation and associated maps). The plan's maps appear to exclude the current alignment for the Seward and Sterling highway rights-of-way from the USFS areas designated for increased protection (See, Map 9 and Map 10; but see Map 6 that does not depict an exclusion for ADOT&PF's Portage Glacier Road); but these maps do not remedy the problems associated with highway improvements in an area managed as if it was a CSU,

especially since the "interim management" directive does not provide a management exception for highway and utility safety improvements. Constructed highway safety improvements (e.g., straightening curves, additional lanes, pedestrian facilities) will require the realignment of the highway centerline, which will require adjustments to the highway ROW boundaries into these heightened protection areas. As recently experienced in the context of the Sterling Highway MP 45-60 project, receiving right-of-way approval from the USFS in an area managed as if it was a CSU adds years to the planning process and requires many millions of dollars for USFS mitigation projects.

The USFS's policy direction that requires protecting the river's eligibility and related river values is inconsistent with intent in Wild and Scenic Rivers Act for congressionally authorized study rivers, which places a time limit on interim protections, such as the 3-year time limit for the study rivers authorized under ANILCA. The Act provides no legal authority to apply protective measures to rivers identified through an agency-directed study and ANILCA explicitly prohibits agency-directed studies in Alaska. Further, the plan indicates that Congress has not acted on the 2002 recommendations (page 81); however, the plan does not include or reference documentation showing that the 2002 recommendations were ever submitted to Congress.⁶ The policy direction to apply protective interim management pending congressional action (USFS Handbook 1909.12 Wild and Scenic Rivers, 84-Interim Management of Eligible or Suitable Rivers) would logically only apply to wild and scenic river recommendations that are actually submitted to Congress so that Congress has something to respond to. Not only is there is no documentation in the plan that shows the 2002 recommendations were ever submitted to Congress; there is also no commitment to an alternative action (e.g., to rescind recommendations and remove protections) should the Chief of the Forest Service, Secretary of Agriculture, or the President of the United States not forward the Forest Supervisor's "preliminary administrative recommendation" to Congress (Draft ROD, page 11).

The USFS has previously taken the position that when wilderness and wild and scenic river reviews are housed within a larger land management plan they are not conducted for the "single purpose of considering the establishment of a CSU" and therefore do not conflict with ANILCA

⁵ While the plan (page 1) indicates the life of the plan would be 10-15 years, plan revisions can take years to complete. For example, the planning process for the current revision of the CNFP began in 2012 and is not expected to be completed until 2020.

⁶ Based on verbal conversations with USFS staff, there is no documentation of recommendations being submitted to Congress because they were not submitted to Congress for action.

Section 1326(b).7 The USFS's position is inconsistent with the Court's Order in Sierra Club v. Lyons that found no ANILCA violation for the very limited purpose of "the Forest Service conduct[ing] a study or the rivers for their eligibility as wild and scenic for the purposes of a general land management plan."8 The Forest Service's current purpose for conducting wild and scenic rivers studies and incorporating the recommendations into land management plan to achieve de facto CSU development restrictions goes well beyond the general land management plan inquiries approved by the Court. When CNFP's incorporation of recommendations from wild and scenic river studies result in the de facto establishment of CSUs, there can be little doubt that the studies are being conducted for the single purpose of establishing CSUs.

A recent unanimous ruling by the United States Supreme Court in *Sturgeon v. Frost*, 139 S. Ct. 1066 (2019), confirmed that state and private lands and waters within CSUs are not subject to federal regulations that apply solely to the public lands within those units, i.e., federally-owned lands and waters (ANILCA Section 103(c)). Further, ANILCA Section 606 states that the boundaries of any rivers designated by ANILCA do not include any lands owned by the State, including state submerged lands. Therefore, the plan cannot apply interim protective management to state navigable rivers.

The Court in *Sturgeon v. Frost* also repeatedly reminded the federal government that Alaska is unique, and should be "the exception, not the rule." The same holds true for all federal land

management agencies implementing ANILCA. The USFS's interpretation of ANILCA Section 1326(b), noted above, and the current position that the Forest Service's national planning rule takes precedence over statute, are simply inaccurate. USFS policy and regulations, and the CNFP, must all be consistent with ANILCA.

PROPOSED RESOLUTIONS

1. Proposed Resolution for Objection Issue I

The State proposes the following options for resolving this issue:

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* Option 1: Remove SA-INHT-MAP from the INHT section of the plan (page 57) and similar language regarding the INHT in the CNFP/EIS, Volume I, page 20.

[middle dot] Option 2: Revise the following sentence as noted to remove references to the pathway as a trail: "New section of trail/multimodal pathway that parallel the primary route of the Iditarod National Historic Trail and are built within the highway right-of-way will not be included in any future recommendation to the Secretary of Agriculture for inclusion as part of the Iditarod National Historic Trail."

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Letter dated 4/22/15 from Maria Lisowski, USFS, to Sylvia Kreeel, DNR/OPMP.

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Sierra Club, et al. v. James R. Lyons and USFS, consolidated with Alaska Forest Association, et al. v. USFS, et al. (U.S. District Court Alaska, Case Numbers J00-cv-0009 (JKS) and J99-cv-0013 (JKS)) Order on Motions for Summary Judgment at Docket Number 47, at page 31.

II. Proposed Resolution for Objection Issue II

The State proposes the following options for resolving this issue:

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* Option 1: Remove language and indicates the NRTs are CSUs and replace with language that clarifies the establishment of trails by executive order under the NTSA: [ldquo]The Resurrection Pass National Recreation Trail, an administratively designated trail under the National Trail System Acta conservation system unit as defined by ANILCA[hellip]; The Williwaw National Recreation Trail, an administratively designated trail under the National Trail System Acta conservation system unit as defined by ANILCA[hellip][rdquo]

* Option 2: Reverse the changes made in the 2019 Plan so that the Plan continues to state

the trails are managed [ldquo]as if[rdquo] they are CSUs. This is consistent with the USFS[rsquo]s response to comments (Appendix C, page 64) that stated: [ldquo]The Forest Service and the state of Alaska disagree on whether these trails are conservation system units; therefore, the references to them as national recreation trails have not been modified.[rdquo] Additionally, explain in the ROD that the USFS[rsquo]s management of the trails [ldquo]as if[rdquo] they are CSUs (i.e., de facto CSU) would include allowing at a minimum, public use and access allowed in ANILCA CSUs (e.g., allowances for cabins and motorized methods of access), but not trigger ANILCA Title XI or enhanced mitigation requirements that may be required if the property was an actual CSU established by Congress.

*

* Option 3: Explain in the ROD the justification and authority for USFS[rsquo]s administrative designation of the Resurrection Pass Trail and Williwaw Trail as CSUs, without any action by Congress to designate those trails as CSUs.

III. Proposed Resolution for Objection issue III

The State proposes the following options for resolving this issue:

*

* Option 1: Defer to recommendations submitted to Congress in response to the wilderness study authorized in ANILCA Section 704 and rescind the 2002 wild and scenic river recommendations that are being carried forward in the 2019 CNFP.

* Option 2: Preserving the State[rsquo]s objection that these studies and recommendations are not authorized by ANILCA, defer to any recommendations submitted to Congress in response to the wilderness study authorized in ANILCA Section 704 and revise the wild and scenic river decision to terminate the recommendations and associated interim protections if the 2002/2019 recommendations are not submitted to

Congress for action within one year. Additionally, clarify in the ROD that management of the recommended wild and scenic rivers would include allowing public use and access allowed in ANILCA CSUs (e.g., allowances for cabins and motorized methods of access), but will not trigger ANILCA Title XI or enhanced mitigation requirements that may be required if the property was designated by Congress as a CSU.

* Option 3: Explain in the ROD how the USFS planning rule requirement to conduct agency-directed wilderness and wild and scenic river studies is consistent with ANILCA Section 1326(b).

CONCLUSION

On behalf of the State of Alaska, I respectfully submit this objection to the 2019 CNFP and request an opportunity meet with the USFS to discuss these issues, pursuant to 36 CFR 219.57(a). The State values our cooperative relationship with the USFS and looks forward to resolving the issues raised in this objection. Please direct all future communications and correspondence regarding this objection to my attention.

Respectfully,

Susan Magee

State ANILCA Program Coordinator

cc: Corri A. Feige, Commissioner, Alaska Department of Natural Resources

John MacKinnon, Commissioner, Alaska Department of Transportation & Public Facilities Kip Knudson,
Director of State and Federal Regions, D.C. Office of the Governor