

May 2, 2024

The Honorable Deb Haaland
Secretary, U.S. Department of the Interior
1849 C Street N.W.
Washington, D.C. 20240

Dear Secretary Haaland:

I write regarding the competitive oil and gas leasing program (the Program) in the non-wilderness Coastal Plain (1002 Area) of the Arctic National Wildlife Refuge (ANWR) that was established under section 20001 of the Tax Cuts and Jobs Act (the Tax Act), and your decision to illegally cancel the leases that were awarded in 2021 pursuant to the Program. It has come to my attention that documents obtained from a Freedom of Information Act (FOIA) lawsuit raise new questions about the cancellation of those leases and the future of the 2024 sale.¹

I. BACKGROUND

In 2017, Congress provided clear approval and a mandate to the to the Department of the Interior (DOI) for commercial leasing, exploration, development, and production in the 1002 Area when it passed the Tax Act and established the Program as a means of improving energy security while generating revenue for the United States.² Specifically, Congress required the Secretary of the Interior, through the Bureau of Land Management (BLM), to develop and maintain an oil and gas leasing program within the 1002 Area and conduct at least two area-wide leasing sales, not less than 400,000 acres each, within seven years, with the first lease sale taking place before December 22, 2021, and the second lease sale before December 22, 2024.³ It also mandated that the Secretary of the Interior grant rights-of-way and easements necessary for the successful development of the oil and gas resources in the 1002 Area and authorizes up to 2,000 surface acres, or 0.01% of ANWR's 19.3 million acres, to be covered by production and support facilities.⁴

¹ See Press Release, Americans for Prosperity, AFP Foundation Files Suit for ANWR Lease Cancellation Documents (Oct. 31, 2023), <https://americansforprosperity.org/press-release/afp-foundation-files-suit-for-anwr-lease-sale-cancellation-documents/>.

² Pub. L. No. 115-97, tit. II, § 20001, 131 Stat. 2054 (Dec. 20. 2017).

³ *Id.* at § 20001(c) (requiring that the first lease sale occur within 4 years of the date of enactment of the TCJA and the second lease sale within 7 years of enactment).

⁴ *Id.*

BLM moved forward with a final EIS and published the ROD for the Program in August 2020.⁵ BLM then responded to Congress' direction when it held the first lease sale on January 6, 2021, pursuant to the ROD, subsequently entering into contracts with three entities for the issuance of 10-year leases that covered nine tracts of land totaling more than 430,000 acres.⁶

It's important to note that the scope of alternatives analyzed in the 2020 final EIS ranged from a "no action alternative" to a maximum development scenario, as required by the National Environmental Policy Act (NEPA). There was and remains no other range of alternatives that could be used. Further, the 2020 ROD was vetted by multiple career attorneys within DOI's Solicitor's office. These attorneys met at least three times each week with professional staff at the BLM and Fish and Wildlife Service (FWS) offices in Alaska.

This painstaking process was done to ensure that the 2020 final EIS comported with each and every law and regulation governing DOI, including section 20001 of the Tax Act. As a United States Senator with oversight responsibilities over the very legislative language that you believe DOI "failed" to properly interpret, we can assure you that the 2020 final EIS and ROD reflect Congress' intent.

II. THE SCOPE OF THE SECRETARY'S AUTHORITY

It is particularly important to detail the scope of authority of the Secretary's authorities with respect to the Program. As discussed, section 20001 of the Tax Act explicitly requires that the Secretary conduct *at least* two lease sales in the 1002 Area, staggered over a 7-year period.⁷ Specifically, the Tax Act required that the first lease sale be held within 4 years of enactment and the second lease sale within 7 years.⁸ Yet despite this direction, BLM stated in the draft supplemental environmental impact statement (SEIS) published this fall that both must occur by December 22, 2024.⁹

BLM therefore has effectively not met its statutory obligation to conduct the first lease sale by December 22, 2021 in cancelling the leases that were issued pursuant to the first sale. BLM is consequently now behind on that schedule, and must hold two lease sales, the first of which should be held *immediately* given Congress' mandate.

More importantly, the Tax Act only provides the Secretary with the authority to "manage" the Program and "administer" it in a manner similar to that of the oil and gas leasing Program in the NPR-A.¹⁰ To that end, the Naval Petroleum Reserves Production Act of 1976

⁵ See Bureau of Land Management, et al., *Coastal Plain Oil and Gas Leasing Program Record of Decision* (Aug. 2020).

⁶ See Bureau of Land Management, *2021 Coastal Plain Lease Sale Bid Recap* (Jan. 6, 2021).

⁷ *Supra* note 2.

⁸ *Id.*

⁹ Draft Coastal Plain Oil and Gas Leasing Program Supplemental Environmental Impact Statement at § 1.3.

¹⁰ Tax Act at § 20001(b)(3).

(NPRPA), the statute governing the oil and gas leasing program in the NPR-A, only provides the Secretary with the authority to “direct or assent to the suspension of operations and production.”¹¹ The only time the NPRPA contemplates the termination of leases is under specific, limited circumstances that are beyond the control of the lessee.¹² It is clear that neither the Tax Act nor the NPRPA delegate you the authority or discretion to terminate a lease, and your actions constitute an abuse of administrative power and violate the law.

III. FOIA FINDINGS

The documents provided in response to the FOIA request shed light on DOI’s decision to cancel the leases and the variety of issues related to that decision. One email in particular demonstrates how officials in the Biden Administration, including DOI’s Office of Budget and the Office of Management and Budget (OMB), were caught off guard and confused by the absence of legal authority for DOI to cancel lease sales in ANWR:

I just saw this press release after [OMB official] Mike Hagan brought it to my attention. Can we arrange a phone call with the appropriate person(s) to discuss this announcement further, especially the ANWR piece. He wants to make sure he completely understands the decision and rationale, and their implications. For example, how was the 2021 lease sale in violation of (“not correctly interpret”) the the [sic] Tax Cut and Jobs Act of 2017? And is it just the existing leases that are not in compliance; e.g. even if these existing leases are cancelled, does BLM still have a statutory obligation under the Tax Cut and Jobs Act of 2017 to conduct a new lease sale?¹³

These officials were right to be skeptical: the Bureau of Land Management (BLM) is violating the law by cancelling the 2021 lease sale. Indeed, budget officials were also concerned by the budgetary impacts because the President’s budget “reflects ANWR revenues.”¹⁴ To date, DOI has not released any information about how ANWR revenues would have been used in the budget, nor has it provided a public estimate of the amount of lost revenue to the federal, state, local, or tribal interests from the cancellation of the lease sale.

The documents also show that there is little-to-no likelihood that DOI will hold the second lease sale required in the Tax Act. In late February 2024, BLM responded to Questions for the Record (QFR) from a September 2023 oversight hearing held by the House Natural Resources Subcommittee on Energy and Mineral Resources. In those QFRs, Chairman Bruce

¹¹ 42 U.S.C. § 6506a(k)(2).

¹² *Id.* at § 6506a(i).

¹³ Email from Bill J. Gordon, Department of the Interior Office of Budget, to Bureau of Land Management Budget Director Jessica Huffman (Sep. 6, 2023), available at <https://bit.ly/4ayIU45>.

¹⁴ *Id.*

Westerman asked if BLM would meet the deadline to conduct the 2024 ANWR lease sale as required under the Tax Act. BLM responded: “Yes, we will follow the law.”¹⁵

But another document confirms my suspicions that the Biden Administration has no plans to conduct and complete the 2024 lease sale. A document prepared for Secretary Haaland’s trip to Ottawa in September 2023, for example, acknowledges this mandate, but clearly implies that the agency has intentions to restrict possible production in the 1002 Area to the point where the lease sale will be effectively cancelled. This is especially troubling, as the Biden Administration is privately suggesting to foreign audiences that it intends to cancel the 2024 lease sale while keeping Americans—and Alaskans—in the dark:

[A]lthough we are mandated by statute to hold a second lease sale before December 2024, we have begun a new, comprehensive analysis of potential environmental impacts from the proposed program. We are working on that analysis – in consultation with several Cooperating Agencies – with the goal of completing that analysis next year.¹⁶

To my knowledge, there are little-to-no public details from the Administration regarding how DOI has carried out the referenced “comprehensive analysis,” including taking into consideration and giving weight to the Alaska Native communities most impacted by DOI’s decision. Indeed, while DOI recently announced that it plans to issue the final SEIS in July, cooperating agencies, including the village of Kaktovik, the only Alaska Native community located in ANWR have yet to review that draft, and the Biden Administration has *still* not revealed the legal or regulatory authority for its actions.

For these reasons, I request written answers to the following questions by June 2, 2024:

1. How does the cancellation of the 2021 lease sale, and likely cancellation of the 2024 lease sale, affect the President’s budget now and in the future?
2. How is the cancellation of the 2021 lease sale, and likely cancellation of the 2024 lease sale, in compliance with the mandate from Congress to hold these lease sales? What federal statute does DOI believe gives it authority to not go forward with the lease sales?
3. Did DOI estimate the revenue loss to local and state governments, Alaska Native corporations, and Native Villages of cancelling the 2021 lease sale? What about if DOI cancels the 2024 lease sale?

¹⁵ Letter from Bureau of Land Management to Chairman Pete Stauber of the House Natural Resources Subcommittee on Energy and Mineral Resources (Feb. 23, 2024).

¹⁶ Email from Fish & Wildlife Service International Affairs Specialist Gilbert Castellanos to Fish & Wildlife Service officials Sara Boario, Wendy Loya, and Bobbie Jo Skibbo with proposed talking points for Interior Secretary Haaland’s trip to Ottawa, Canada (Aug. 28, 2023), available at <https://bit.ly/4aw9ydG>.

4. Does DOI, BLM, and FWS have a plan in place to quickly reinstate the 2021 leases if Congress explicitly overrides the Record of Decision or DOI loses in federal court?
5. What is the “new, comprehensive analysis of potential environmental impacts of the proposed program” in regard to the 2024 lease sale?
 - What is the legal or regulatory authority for the analysis?
 - Who are the cooperating agencies involved?
 - When will it be completed, and will it be released to the public?
6. Do you agree that section 1002(e)(2)(C) of ANILCA requires DOI to make data and information available [related to the exploration of ANWR and the location of likely oil and gas deposits, including 2D seismic, and other data] now that more than “two years [have passed] following any lease sale ...”? If so, what is the process for members of Congress or the public to obtain this information?
7. Is there any scenario where DOI, BLM, and the FWS allow the 2024 ANWR lease sale to complete and result in oil and gas development within the Coastal Plain? What factors would have to be met?

Thank you for your attention to this matter. DOI, FWS, and BLM should reverse course, follow the law, honor the 2021 lease sale, and faithfully conduct the 2024 lease sale. I look forward to your timely response.

Sincerely,



Dan Sullivan
United States Senator

CC: The Honorable Tracy Stone-Manning, *Director, Bureau of Land Management*
The Honorable Martha Williams, *Director, Fish and Wildlife Service*
Steve Cohn, *Alaska State Director, Bureau of Land Management*
Sara Boario, *Alaska Regional Director, Fish and Wildlife Service*