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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA**

NORTHERN ALASKA
ENVIRONMENTAL CENTER, *et al.*,

Plaintiffs,

v.

DEBRA HAALAND, in her official
capacity, *et al.*,

Defendants,

and

AMBLER METALS, LLC, *et al.*,

Intervenor-Defendants.

Case No. 3:20-cv-00187-SLG

DEFENDANTS' MOTION FOR VOLUNTARY REMAND

Northern Alaska Envtl. Center v. Haaland,
DEFS.' MOTION FOR VOLUNTARY REMAND

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Plaintiffs here challenge Defendants’ actions to approve the Ambler Road Project, which envisions a surface transportation corridor along the southern edge of the Brooks Range connecting the Dalton Highway and the Ambler Mining District. Plaintiffs’ opening merits brief has presented their claims to the Court, alongside those in the related case *Alatna Village Council v. Heinlein*, No. 3:20-cv-00253-SLG. In *Alatna Village Council*, Defendants have moved, in lieu of a response on the merits, for voluntary remand without vacatur of the challenged agency decisions issued by the Department of the Interior. *See id.*, Defs.’ Mot. for Voluntary Remand, ECF No. 111. Defendants hereby move for a similar order here to accompany an order granting their motion in *Alatna Village Council*.

The *Alatna Village Council* motion provides the basis for this motion and is incorporated here by reference. “Voluntary remand is consistent with the principle that ‘[a]dministrative agencies have an inherent authority to reconsider their own decisions, since the power to decide in the first instance carries with it the power to reconsider.’” *Nat. Res. Def. Council, Inc. v. U.S. Dep’t of Interior*, 275 F. Supp. 2d 1136, 1141 (C.D. Cal. 2002) (quoting *Trujillo v. Gen. Elec. Co.*, 621 F.2d 1084, 1086 (10th Cir. 1980)); *see also Lute v. Singer Co.*, 678 F.2d 844, 846 (9th Cir. 1982). In response to a challenge to agency action, “the agency may request a remand, without confessing error, to reconsider its previous position” or “the agency may request a remand because it believes that its original decision was incorrect on the merits and it wishes to change the result.” *N. Coast Rivers All. v. U.S. Dep’t of the Interior*, No. 1:16-cv-307-LJO-MJS, 2016 WL 8673038, at *3 (E.D. Cal. Dec. 16, 2016) (quoting *SKF USA Inc. v. United States*, 254 F.3d 1022,

1027-28 (Fed. Cir. 2001)). “Generally, courts only refuse voluntarily requested remand when the agency’s request is frivolous or made in bad faith.” *Cal. Cmty. Against Toxics v. U.S. Env’t Prot. Agency*, 688 F.3d 989, 992 (9th Cir. 2012). If the Court were to reach the merits of Plaintiffs’ arguments for the purposes of determining whether to vacate the decisions, doing so would undermine a principal rationale for remand: “preserv[ing] scarce judicial resources by allowing agencies ‘to cure their own mistakes.’” *Carpenters Indus. Council v. Salazar*, 734 F. Supp. 2d 126, 132 (D.D.C. 2010) (quoting *Ethyl Corp. v. Browner*, 989 F.2d 522, 524 (D.C. Cir. 1993)). It makes little sense for the Court to undertake an evaluation on the merits of decisions that the agencies seek to revisit. There is no need to vacate the challenged decisions, because the Department of the Interior has indicated that it intends to suspend the right-of-way permits while the agencies conduct further proceedings on remand. *See* Declaration of Tommy Beaudreau ¶ 12, attached as Exhibit 1.

The Court should decline further consideration of the merits, and grant Defendants’ motion for voluntary remand without vacatur.

Respectfully submitted this 22nd day of February, 2022.

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CERTIFICATE OF SERVICE

I hereby certify that on February 22, 2022, a copy of the foregoing was served by electronic means on all counsel of record by the Court's CM/ECF system.

/s/ Paul A. Turcke
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**DECLARATION OF DEPUTY SECRETARY OF THE DEPARTMENT OF THE
INTERIOR**

Northern Alaska Env't Center v. Haaland
DECLARATION OF DEPUTY SECRETARY

Case No. 3:20-cv-00187-SLG

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1. My name is Tommy P. Beaudreau and I am the Deputy Secretary of the Department of the Interior (Department). I was confirmed by the Senate for this position on June 17, 2021. As the Deputy Secretary, I am the Chief Operating Officer for the Department. I assist the Secretary of the Interior in supervising and administering all operations and activities of the Department, including those of the Bureau of Land Management (BLM) and National Park Service (NPS). The Department's mission is to protect and manage the Nation's natural resources and cultural heritage; provide scientific and other information about those resources; and honor its trust responsibilities or special commitments to American Indians, Alaska Natives, and affiliated Island Communities.

2. On behalf of the Department, I have reviewed the records underlying the following decisions challenged in the above-captioned matter: (1) the July 23, 2020 decision approving issuance of a Federal Land Policy and Management Act (FLPMA) Title V right-of-way (ROW) to the Alaska Industrial Development and Export Authority (AIDEA) for an industrial access gravel road across BLM-managed lands in northwest Alaska; (2) the associated BLM ROW permit; (3) the July 23, 2020 decision approving issuance of an Alaska National Interest Lands Conservation Act (ANILCA)-authorized ROW to AIDEA for an industrial access gravel road (Ambler Road) across Gates of the Arctic National Preserve; and (4) the associated NPS ROW permit. The records underlying these challenged decisions include the Alaska National Interest Lands Conservation Act (ANILCA) Section 810 Evaluation, National Historic Preservation Act (NHPA) Programmatic Agreement, environmental impact statement, decision records, and related materials.

3. The Department has identified substantial concerns regarding (1) the analysis of impacts to subsistence uses under ANILCA Section 810 and (2) the adequacy of government-to-government consultation with Tribes and related consideration of impacts under the NHPA to properties of traditional religious and cultural importance to federally recognized Tribes.

4. The BLM and NPS jointly engaged in the ANILCA Section 810 process, with the BLM serving as the primary author of the Section 810 Evaluation. I am aware that the challenged decisions rely upon the Section 810 Evaluation.

5. There are deficiencies in the analysis of impacts to subsistence use contained in the Section 810 Evaluation. The Section 810 Evaluation did not sufficiently analyze the extent or necessity of Ambler Road-related significant impacts to subsistence uses. These procedural deficiencies, in concert with broader trends impacting critical subsistence resources, necessitate remand of the decisions for a renewed Section 810 Evaluation and determination.

6. In particular, the Section 810 Evaluation: (1) lacks sufficient discussion of impacts on caribou forage vegetation and the resultant adverse impacts on subsistence; and (2) lacks sufficient discussion of water impacts that would occur in connection with construction and operation of the Ambler Road, including the dewatering of streams and groundwater as part of mining operations, and the impacts of such activities on salmon, sheefish, and other fish species; spawning areas, and other aquatic habitat; and related subsistence uses. These deficiencies are compounded by new information, not considered in the decisions, indicating significant declines in salmon and caribou populations critical to subsistence communities.

7. The BLM and NPS jointly engaged in the NHPA Section 106 process, with the BLM serving as the designated lead agency consistent with 36 C.F.R. § 800.2(a)(2). The BLM led development of a programmatic agreement as an alternative process for implementing

Section 106 in a phased approach under 36 C.F.R. § 800.14(b)(3). I am aware that the challenged decisions rely upon the programmatic agreement.

8. The programmatic agreement is deficient because the BLM did not engage in adequate consultation with Tribes prior to executing it. The administrative record shows that the priority of achieving a programmatic agreement within the timeframe established by the Department constrained the options for Tribal consultation, and that Tribes were afforded only a secondary role in the ultimate adoption of the programmatic agreement. Such limited consultation with Tribes is a deficiency necessitating remand of the decisions for a renewed Section 106 process, to include revisiting whether Tribes should be included as invited signatories to a programmatic agreement.

9. To ensure compliance with ANILCA and the NHPA and applicable Executive and Secretarial Orders and Departmental policies regarding Tribal consultation—including Executive Order 13175, Secretary’s Order 3403, and the January 26, 2021 Presidential Memorandum: Tribal Consultations and Strengthening Nation-to-Nation Relationships—the Department has determined to undertake additional analysis and consultation under ANILCA Section 810 and NHPA Section 106.

10. In addition to correcting ANILCA Section 810 and NHPA Section 106 deficiencies, the Department also intends to supplement the applicable environmental impact statement to more thoroughly assess the impacts and resources identified as areas of concern in this litigation.

11. The review process will entail reinitiating the NHPA Section 106 process, including meaningful and thorough consultation with Tribes; reinitiating analysis of impacts to subsistence uses under ANILCA Section 810, including publishing a draft and final 810

evaluation; and publishing a draft and final supplemental environmental impact statement. The Department is committed to undertaking the necessary consultation, analysis, and supplementation in a timely manner.

12. While this review process is ongoing, the Department intends to suspend the ROW permits based on the deficiencies noted in the preceding paragraphs in order to preserve the environmental status quo. Any such suspensions will be issued after completing internal review and coordination by the BLM, NPS and the Solicitor's Office.

13. Pursuant to 28 U.S.C. § 1746, I certify under penalty of perjury that the foregoing is true and correct.

Executed this 22nd day of February 2022, in Washington, D.C.



Tommy P. Beaudreau
Deputy Secretary
Department of the Interior

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Case No. 3:20-cv-00187-SLG

[PROPOSED] ORDER ON MOTION FOR VOLUNTARY REMAND

Before the Court at Docket 113 is Defendants' Motion for Voluntary Remand. Defendants have indicated that the Department of the Interior intends to suspend the right-of-way permits while the agencies conduct further proceedings on remand. *See* Declaration of Tommy Beaudreau ¶ 12, Docket 113-1. Good cause being shown, the motion is GRANTED. IT IS ORDERED that Defendants' decisions, including the Bureau of Land Management and Army Corps of Engineers Joint Record of Decision, BLM_0016710-17028; the National Park Service and Federal Highway Administration Joint Record of Decision, NPS_0009716-84; the Bureau of Land Management Right-of-Way, ACE_0102319-60; and the National Park Service Right-of-Way, NPS_0049696-

791; are each remanded to Defendants without vacatur for further administrative proceedings.

Dated this of _____, 2022.

HON. SHARON L. GLEASON
United States District Judge