



Yale Law School

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August 28, 2023
The Honorable Deb Haaland
Secretary
U.S. Department of the Interior
1849 C Street, NW
Washington, DC 20240

Dear Secretary Haaland:

The undersigned law school faculty are writing to you because of our deep concern about a legal matter currently progressing through the Department of Interior.

Executing a land exchange, pursuant to Section 1302(h) of the Alaska National Interest Lands Conservation Act (ANILCA), for purposes of building a road through Congressionally designated Wilderness in the Izembek National Wildlife Refuge, is contrary to the clear wording of the law and its legislative history. Moreover, it would jeopardize the protection of over 150 million acres of national public lands. In short, we contend that such an exchange would be both illegal and unwise.

As current and emeriti professors of environmental law, we have a strong interest in protecting the integrity of the rule of law, including ANILCA and the Administrative Procedure Act. ANILCA represents one of the most significant pieces of conservation legislation Congress has ever enacted. Passed with bipartisan support, it safeguards over 50% of our country's Congressionally designated Wilderness, approximately 60% of our National Parks and over 80% of our terrestrial National Wildlife Refuges. ANILCA also provides for Alaska Native and other rural residents to continue to engage in a subsistence way of life, (Section 802(1)). Congress recognized and acknowledged that "the continuation of the opportunity for subsistence uses... is essential to Native physical, economic, traditional and cultural existence. . . ." (Section 801(1)).¹

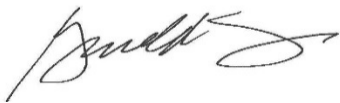
Congress was explicit about providing "a single comprehensive statutory authority", specifically Title XI, for the approval of roads or other transportation and utility systems through any lands protected under ANILCA. (Section 1101 (c)). Regarding roads in designated Wilderness, in a section entitled "Agency Action in Cases Involving Section 1105 or Wilderness Areas," Congress required Presidential and Congressional approval before a road

could be built (Section 1106(b)). Congress did not leave this decision to the discretion of the Secretary.

Attempting to use a minor, inapposite, land exchange provision (Section 1302(h)) to build a road through a National Wildlife Refuge, or other conservation unit, is contrary to the clear wording of the provision itself. Section 1302(h) is explicitly limited to “*acquiring lands for the purposes of this Act.*” ANILCA has only two purposes: conservation and subsistence (Section 101). Allowing the Secretary to authorize a land exchange for any purpose other than enhancing conservation values or aiding subsistence would open the door for future Administrations to exchange any protected land for any extraction, construction or other reason a Secretary favors. Under an Administration hostile to conservation values, it would put at risk all 150 million acres of national public lands protected by ANILCA.

Accordingly, we respectfully urge you not to pursue a harmful and illegal land exchange for the purpose of building a road through Congressionally designated Wilderness in the Izembek National Wildlife Refuge. Moreover, as the Corps of Engineers and others have identified, there are many less damaging alternatives to a road to meet your goals.

Sincerely,



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