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TALKING POINTS FOR CALL TO LEE THOMAS RE: ANWR EIS

Background: An EPA Regional Office Director wrote to the Assistant Secretary of the Interior for Fish, Wildlife, and Parks on June 1, 1987 presenting EPA's comments on Interior's Legislative Environmental Impact Statement (L-EIS) on oil and gas development in Arctic National Wildlife Refuge.

A June 9 AP wire story described the EPA letter as "challenging the adequacy of an Interior Department study."

EPA's own letter said the L-EIS "remains in need of corrective measures that require substantial changes, including the expansion of the range of alternatives..."

- o The President's views on oil exploration and development in ANWR are clear. Opening ANWR to development is part of our energy security policy.
- o Given the President's views, it is an agency head's responsibility to see that those views guide the policy implementation process.
- o That did not happen here. EPA's behavior is unacceptable.
 - First, why did this get delegated out to a Regional Office? EPA's standard operating procedure is for the letter to go from Washington. EPA says that it asked Bill Horn, the Assistant Secretary for Fish, Wildlife and Parks, if he had any problem with the request, and says he did not. This obscures the issue:
 - An issue which has had Presidential involvement should not be delegated out three levels with hopes for the best.
 - (If you really want to hit him:) Was this motivated by a desire in Washington to undermine the policy and leave someone in the Regional Office to be the fall guy?
 - EPA's behavior did not support the President's decision.
 - If EPA had problems, there are other ways of communicating them than in so sharp a letter.
 - The letter didn't have to be so harsh; it could have mixed more praise with the objections.
 - EPA could have done more to work informally with Interior to register objections.



U.S. ENVIRONMENTAL PROTECTION AGENCY

REGION 10

1200 SIXTH AVENUE

SEATTLE, WASHINGTON 98101

REPLY TO
ATTN OF:

WD-136

June 1, 1987

Honorable William P. Horn
Assistant Secretary for Fish and Wildlife and Parks
United States Department of the Interior
18th and C Streets, NW
Washington, D.C. 20240

Re: Arctic National Wildlife Refuge Report
Final Legislative Environmental Impact Statement

Dear Mr. Horn:

The Environmental Protection Agency (EPA) has reviewed the final Legislative Environmental Impact Statement (LEIS) and Report to Congress concerning the proposal to allow oil exploration, development, and production within the Arctic National Wildlife Refuge (ANWR). This letter, with its enclosure, provides EPA's comments on the recommended action and alternatives that were considered.

On February 6, 1987, EPA commented on the draft LEIS and recommended that several elements of the document were in need of revision or expansion. The final LEIS has undergone significant revision since the draft LEIS. Although additional discussion has been provided in response to many of our comments, the majority of EPA's concerns have not been adequately addressed in the final LEIS. In several important instances, EPA's level of concern has been increased by the revisions made to the document.

In reviewing the final LEIS, EPA found a document incomplete in its presentation of scientific data that would support the impact conclusions and the Secretary's recommendation. A large body of scientific information on the 1002 area's resources has been collected in recent years by the U.S. Fish and Wildlife Service (FWS). Likewise, information specific to the existing environmental regulatory program (including monitoring information) is available. Yet, this information does not appear to be reflected in the final LEIS.

The final LEIS constitutes the first step in the Secretary's recommendation for Congressional decision-making that must balance economic needs and environmental risks. Greater attention to, and better use of, the

resource data that have been generated in ANWR and elsewhere on Alaska's North Slope can provide for a better understanding of the following environmental priorities:

Assurance that the overall significance of environmental impacts, including cumulative impacts, and the ability to mitigate them are properly stated. In particular, we do not believe it appropriate to suggest that the Prudhoe Bay experience would be duplicated in ANWR. The data in the LEIS are insufficient to support such a conclusion.

A wider range of limited exploration/development leasing alternatives are developed and considered. The impacts of the limited leasing alternative (Alternative B) as revised in the final LEIS are now of the same high level of concern as for full leasing (Alternative A).

Identify potential regulatory conflicts which may involve interagency coordination. We are concerned about potential regulatory conflicts if, for example, leasing were proposed in environmentally sensitive areas for which the granting of other necessary permits would be inconsistent with existing laws and policies.

These and other concerns are discussed further in the enclosure which represents a summary of our more detailed technical review comments.

Based upon the inadequacy of the information presented in the final LEIS, EPA would normally recommend that a revised document be prepared. The final LEIS remains in need of corrective measures that require substantial changes, including the expansion of the range of alternatives, in order for it to be an adequate basis for any Congressional action. Since Congressional hearings have already begun, EPA recommends that the Secretary of the Interior's final recommendation to Congress be modified to better reflect the available scientific information.

Thank you for the opportunity to review the final LEIS. If the Department of Interior has questions about EPA's comments, please feel free to contact me directly or Mr. Alvin L. Ewing, EPA's Assistant Regional Administrator in Anchorage. We look forward to answering your questions and helping you prepare the final recommendation to Congress.

Sincerely,

Robie G. Russell
Regional Administrator

Enclosure

EPA REVIEW COMMENTS
ARCTIC NATIONAL WILDLIFE REFUGE
FINAL LEGISLATIVE ENVIRONMENTAL IMPACT STATEMENT

The primary issues and concerns identified during EPA's review of the ANWR final LEIS are outlined below. Comments are broadly organized under three major headings; Responsiveness to Comments, Technical/Scientific Issues, and Alternatives Analysis.

RESPONSIVENESS TO COMMENTS

The final LEIS has acknowledged most of EPA's concerns expressed in our comments on the draft document. However, an adequate analysis of the impacts associated with these issues is not apparent. Detailed analysis of the following issues, as referenced from our previous correspondence, remains a prerequisite to rational decision-making.

Air quality: Available knowledge of Prudhoe Bay development effects was not utilized, evaluation is deferred to future analyses.

Water and gravel supply needs: Significant shortages are acknowledged, but the final LEIS has not presented an adequate analysis to show whether water quantity/gravel quantity are sufficient to support the recommended action. The final LEIS assumes that major adverse effects can be handled in a manner which will not result in adverse impacts to water quality or habitat.

Marine transportation facilities: Existing significant impacts due to causeways around Prudhoe Bay are not reflected.

Wetlands: Only a very limited evaluation of large-scale hydrologic impacts and habitat fragmentation has been conducted. If the hydrologic impacts are greater than the brief discussions imply, the large amount of wetland acreage that could be affected could be greater.

Mitigation: The effectiveness of proposed measures is not evaluated. Discussions about rehabilitation are incomplete.

Regulatory processes: There is no discussion of how the new authorities requested by the Secretary in his recommendation would relate to existing environmental laws, other than that a leasing program 'might' require compliance with NEPA, the Clean Water Act, and the Clean Air Act.

Noise impacts: There is no quantitative evaluation of noise levels which makes it difficult to reliably assess the disturbance effects on sensitive wildlife species.

Cumulative effects: The final LEIS acknowledges cumulative effects by providing a list of projects which might occur but does little to actually evaluate their effects.

Subsistence impacts: An expanded discussion of the off-ANWR effects on distant inland native settlements has been provided. The impacts to the exchange network from the recommended action have not been evaluated.

These issues remain important even from a programmatic perspective. Their significance is increased by the Secretary's proposed recommendation that the final LEIS be statutorily adopted as the EIS for the leasing program itself. We disagree that this document is adequate for that purpose. Specifically, the leasing program inferred from the final LEIS might not provide the opportunity to consider alternatives for individual lease block deletions. Such deletions could be aimed at locally reducing risk to environmentally sensitive tracts. A greater degree of site-specific information (e.g. a tiered EIS) is necessary to evaluate such a program.

TECHNICAL/SCIENTIFIC ISSUES

In a variety of instances, the final LEIS conclusions and the Secretary's Recommendations do not appear to be well substantiated by the information provided in the draft and final LEIS.

Definitions of Impact Significance:

Definitions of significance of impacts are inappropriate in many cases. For example, impacts are not considered "major" in the final LEIS unless they exceed 30 years or more duration. For many fish and wildlife species, several generations could be adversely affected within this time, leading to severe population- and community-level impacts.

The final LEIS is inconsistent in its application of impact definitions. Often discussions in the text describe a "moderate" effect, but it is labeled in the conclusions as "minor."

Also, impacts are in many cases down-graded from the draft LEIS without any explanation or justification. The final LEIS has numerous examples of impact conclusions that are minimized in this manner. It is not clear on what basis these changes were made in the preparation of the final LEIS. As one example, modification of 12,650 acres of wetlands was evaluated in both the draft and final LEIS. The draft labeled this as a "moderate" effect, but in the final it was down-graded to "minor" with no explanation. Considering the potential for hydrologic disruption and habitat fragmentation, the impact could be "major".

Underestimation of Impacts:

Potential underestimation of impacts occurs throughout the LEIS. This is particularly true of impacts predicted for the Porcupine Caribou Herd (PCH), largely because they are based on selectively-chosen data from the Central Arctic Herd (CAH) in the vicinity of Prudhoe Bay. For example, the text notes that although the CAH no longer calves where development occurs around Prudhoe Bay, it has nonetheless increased in size. This is used as a basis to conclude that development in the 1002 area (and subsequent displacement) should similarly not affect the PCH. However, the text notes a variety of important differences between these two herds which include:

- 1) the CAH has a much lower population density;
- 2) the majority of the CAH's important calving grounds have not experienced development activities;
- 3) the CAH's calving grounds have not become overcrowded (even with displacement due to development around Prudhoe Bay); and
- 4) predation by wolves and brown bears on the CAH has been minimized.

These differences strongly suggest that the LEIS predictions, based on data for the CAH, are likely to underestimate impacts to the PCH.

Placing such emphasis on CAH data is not necessary. A large body of data on the PCH (summarized in the 1002 Area Final Baseline Report) has been gathered by FWS in the last few years. The Final Baseline Report contains additional PCH data that appear to not be adequately reflected in this final LEIS. The final LEIS conclusions are apparently not based on all the available information.

Mitigation:

The mitigation discussions throughout the final LEIS raise several concerns. The entire 1002 area has been designated Resource Category 2. However, several discussions in the text make a distinction in habitat value. The overall "2" designation is not supported by the information in the final LEIS. The final LEIS indicates that site-specific habitat designations will be conducted during the site-specific development/production phase. Characterization of habitat after leasing and exploration has occurred could result in habitat being upgraded to Resource Category 1. The impacts may not be mitigatable.

Mitigation discussions in the final LEIS are incomplete. The final LEIS assumes that mitigation measures will be both consistently implemented and completely successful. No analysis or references are provided to support these assumptions. Rather, the final LEIS states that the experience at Prudhoe Bay provides a basis for minimizing or eliminating adverse effects through the careful application of mitigation measures tested in that area. As the Corps of Engineers noted in its comments on the draft LEIS, industry has been reluctant to apply compensatory mitigation and restoration techniques on the North Slope, except in very limited experimental circumstances. EPA's own extensive experience with the major operators at Prudhoe Bay supports this conclusion; rehabilitation technology for the North Slope is particularly lacking.

Cumulative Effects:

Cumulative effects are not adequately evaluated in the final LEIS. The final LEIS provides a list of criteria for determining which actions should be included in the cumulative effects analysis. The criteria appear to be unduly restrictive and narrow the focus of the analysis. By using these criteria, a list of projects that constitute the cumulative case scenario has been developed for the final LEIS. Use of the criteria has resulted in only existing projects being considered. The potential for future large-scale development of offshore Beaufort Sea leases, oil and gas development in the Canadian Arctic, and construction of large diameter gas pipelines are only marginally considered.

The final LEIS suggests a particular development infrastructure that may result from ANWR leasing; however, other scenarios are possible. No useful cumulative effects analysis is presented either for those projects and activities listed or for other reasonably foreseeable scenarios. For any scenario, an adequate effects analysis must begin with a full reflection of existing impacts. For example, the LEIS could have described the existing cumulative effects to anadromous fish attributed to causeway construction in the Prudhoe Bay area. These effects are "major" by the final LEIS definitions. Conclusions regarding level of impacts should include the cumulative effects that are reasonably foreseeable.

Air Quality:

The final LEIS does not adequately assess primary and secondary air quality impacts. Secondary air quality effects (e.g., arctic haze and acidification of tundra) may result from upset situations and normal low level emissions even if standards are being met. Impairment of visibility is a potential impact where there is increasing concern relative to existing north slope emission sources.

ALTERNATIVES ANALYSIS

Alternative B, limited leasing, has been substantially revised in the final LEIS. This alternative is purported to reduce the impacts to the PCH; it implies that the most important calving area would be protected by setting aside the area where multiple years of heavy use overlap. However, the basic concept behind the limited leasing alternative appears to be flawed. The "overlap" area is merely the FOCUS of where concentrated calving has repeatedly occurred in the most recent years.

Alternative B is further complicated by other assumptions within the final LEIS. For example, the document states that only 27 percent of the "concentrated" calving area for the PCH exists in the 1002 area. In contrast, the draft LEIS stated that 80 percent of "core" calving was in the 1002 area. Although both statements may be statistically correct, the final LEIS does not point out that the 1002 area's 27 percent of the PCH's "concentrated" calving grounds has experienced approximately 85 percent of the PCH's total calving. The question of whether this small area can physically support calving for a significant proportion of the PCH casts doubt on the potential for Alternative B to satisfactorily reduce identified environmental risks.

Changes made to Alternative B have reduced the geographical area slated for maximum protection within the 1002 study area. The rationale for these changes have not been tied to a biological foundation. Therefore, Alternative B is now of the same high level of concern as Alternative A (full leasing). EPA believes that a new limited leasing option should be developed that can achieve the stated objective of substantially reducing impacts to the PCH while still allowing for development of oil resources. Alternative C, further exploration only, remains environmentally preferred should Congress consider only those alternatives presented by the Department of the Interior. Independent expert review of all information generated during the exploration activities outlined in Alternative C should be encouraged.

EPA's "309 Review" Process

Section 309 of the Clean Air Act states:

"(a) The Administrator shall review and comment in writing on the environmental impact of any matter relating to duties and responsibilities granted pursuant to this chapter or other provisions of the authority of the Administrator, contained in any (1) legislation proposed by any Federal department or agency, (2) newly authorized Federal projects for construction and any major Federal Agency action (other than a project for construction) to which Section 4332(2)(C) of this title applies, and (3) proposed regulations published by any department or agency of the Federal Government. Such written comment shall be made public at the conclusion of any such review.

(b) In the event the Administrator determines that any such legislation, action, or regulation is unsatisfactory from the standpoint of public health or welfare or environmental quality, he shall publish his determination and the matter shall be referred to the Council on Environmental Quality."

This section was added to the Clean Air Act in 1970, at the time the National Environmental Policy Act (NEPA) was passed and the EPA was formed. The rationale was that the EISs that Federal agencies would be developing under NEPA should have an independent review and that the newly formed EPA should perform it.

EPA developed implementing procedures in 1971 to carry out this responsibility and, in conjunction with the Council on Environmental Quality (CEQ), has refined those procedures since then. Operating procedures are contained in the manual, "Policies and Procedures for the Review of Federal Actions Impacting the Environment" (revised in 1984).

In accordance with these operating procedures, EPA reviews, comments, and makes those comments available to the public, on all Federal draft and final EISs, proposed environmental regulations, and other proposed major actions we consider to have significant environmental effects. EPA has reviewed all of the approximately 14,000 draft and final EIS's produced since the passage of NEPA.

The major elements of the 309 review process include the following:

- ° EPA reviews and comments on both the adequacy of the analysis and the environmental impacts of the proposed action itself.
- ° EPA comments on issues related to our "duties and responsibilities," which include all environmental media (i.e., air, water, etc.), methodologies related to media-impact assessment, and areas related to our regulatory responsibilities.

- ° In general, the degree to which the Agency gets involved in attempting to modify a proposed project depends on the level of environmental impacts, the ability and willingness of the proposing Federal agency to mitigate those impacts, and the level of responsibility EPA has over the type of impact at issue.
- ° If the action is a federal project to be located in or on a specific site the appropriate EPA Regional office has the jurisdiction and delegated responsibility for carrying out the §309 CAA review and working with the proposing Federal agency to resolve any problems. If the action by the proposing Federal department/agency is legislative or regulatory, generally the §309 CAA review will be conducted directly in EPA HQ.
- ° For federal project cases, EPA Headquarters becomes involved if the Region finds that the proposed action in the draft EIS is "environmentally unsatisfactory." In these cases, headquarters must approve the Regional comment letter before it is sent. In addition, EPA headquarters works with Regional personnel in informing interested parties about the EPA action and will assist the Region, as needed, in meeting with the proposing Federal agency to resolve the issues. The CEQ is always notified of a DEIS which has been rated "unsatisfactory" by EPA.
- ° If the Region finds that the subsequent final EIS is still "environmentally unsatisfactory," the Region recommends to the Administrator, through the Office of External Affairs, that the matter be referred to the President's CEQ for resolution. At this time, EPA HQ becomes significantly involved in the factual determination and judgment on the EIS.
- ° The process is carried out so as to ensure the independence of the EPA review responsibilities and to coordinate in a manner which emphasizes consultation with the lead agency and informing interested parties on the EPA actions and concerns.