

Director's Protest Resolution Report

**Eastern Interior (Alaska)
Proposed Resource
Management Plan and Final
Environmental Impact
Statement**

December 30, 2016



Contents

Reader’s Guide..... 3
List of Commonly Used Acronyms 4
Protesting Party Index..... 5
Issue Topics and Responses..... 6
 NEPA – Need for Supplementation 6
 NEPA – Best Available Information..... 10
 NEPA – Range of Alternatives 13
 NEPA – Public Comments and Adequacy of Public Notice..... 15
 NEPA – Impacts Analysis..... 16
 FLPMA – Multiple Use and Sustained Yield 17
 ANCSA 20
 ANILCA Violations 23
 ANILCA Closures..... 25
 Elimination of Fortymile Plan..... 30
 Withdrawals 33
 Consultation 37
 ACECs..... 40
 Need for Special Management 42
 Wilderness Act of 1964..... 48
 BLM Policy on Wilderness 50

Reader's Guide

How do I read the Report?

The Director's Protest Resolution Report is divided into sections, each with a topic heading, excerpts from individual protest letters, a summary statement (as necessary), and the Bureau of Land Management's (BLM) response to the summary statement.

Report Snapshot

Issue Topics and Responses
NEPA

Topic heading

Submission number

Issue Number: PP-AK-EASTERNINTERIOR-16-20-10

Protest issue number

Organization: The Forest Initiative

Protesting organization

Protester: John Smith

Protester's name

Issue Excerpt Text:

Direct quote taken from the submission

Rather than analyze these potential impacts, as required by NEPA, BLM postpones analysis of renewable energy development projects to a future case-by-case analysis.

Summary

General statement summarizing the issue excerpts.

There is inadequate NEPA analysis in the PRMP/FEIS for renewable energy projects.

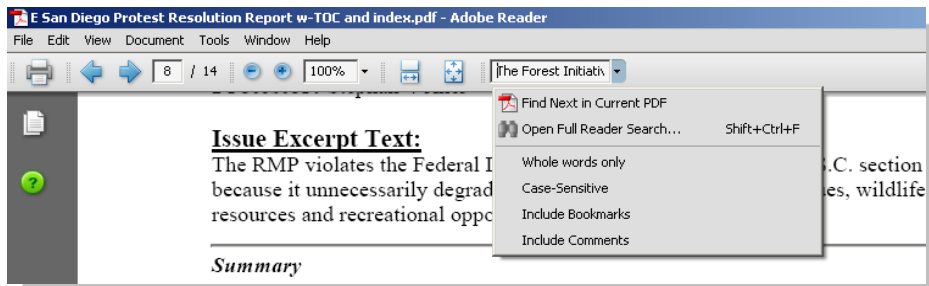
Response

The BLM's response to the summary statement and issues.

Specific renewable energy projects are implementation-level decisions rather than RMP-level decisions. Upon receipt of an application for a renewable energy project, the BLM would require a site-specific NEPA analysis of the proposal before actions could be approved (FEIS Section 2.5.2, p. 2-137). Project specific impacts would be analyzed at that time (including impacts to surrounding properties), along with the identification of possible alternatives and mitigation measures.

How do I find my Protest Issues and Responses?

1. Find your submission number on the protesting party index which is organized numerically by case number.
2. In Adobe Reader do a "find" and search the report for your name, organization or submission number. Key word or topic searches may also be useful.



List of Commonly Used Acronyms

ACEC	Area of Critical Environmental Concern	IM	Instruction Memorandum
ANCSA	Alaska Native Claims Settlement Act	KOP	Key Observation Points
ANILCA	Alaska National Interest Lands Conservation Act	MLA	Mineral Leasing Act
ALTAA	Alaska Land Transfer Acceleration Act	MLP	Master Leasing Plan
AO	Authorized Officer	MOU	Memorandum of Understanding
ARDF	Alaska Resource Data Files	NCA	National Conservation Area
BA	Biological Assessment	NEPA	National Environmental Policy Act of 1969
BLM	Bureau of Land Management	NHPA	National Historic Preservation Act of 1966, as amended
BMP	Best Management Practice	NOA	Notice of Availability
BO	Biological Opinion	NOI	Notice of Intent
CAA	Clean Air Act	NRA	National Recreation Area
CEQ	Council on Environmental Quality	NRHP	National Register of Historic Places
CFR	Code of Federal Regulations	NSO	No Surface Occupancy
COA	Condition of Approval	OHV	Off-Highway Vehicle
CSP	Concentrated Solar Power	OPLMA	Omnibus Public Land Management Act of 2009
CSU	Controlled Surface Use	OST	Old Spanish National Historic Trail
CWA	Clean Water Act	PA	Plan Amendment
DEIS	Draft Environmental Impact Statement	PLA	Potash Leasing Area
DM	Departmental Manual (Department of the Interior)	PLO	Public Land Order
DRMP	Draft Resource Management Plan	PPA	Proposed Plan Amendment
DOI	Department of the Interior	PRMP	Proposed Resource Management Plan
EA	Environmental Assessment	RFD	Reasonably Foreseeable Development
EIR	Environmental Impact Report	RMP	Resource Management Plan
EIS	Environmental Impact Statement	RMZ	Recreation Management Zone
EO	Executive Order	ROD	Record of Decision
EPA	Environmental Protection Agency	ROW	Right-of-Way
ESA	Endangered Species Act	SO	State Office (BLM)
FEIS	Final Environmental Impact Statement	T&E	Threatened and Endangered
FLPMA	Federal Land Policy and Management Act of 1976	TMP	Travel Management Plan
FO	Field Office (BLM)	UDP	Utility Development Protocol
FWS	U.S. Fish and Wildlife Service	USC	United States Code
GIS	Geographic Information Systems	USGS	U.S. Geological Survey
HCP	Habitat Conservation Plan	VRM	Visual Resource Management
IB	Information Bulletin	WA	Wilderness Area
		WMNRA	White Mountains National Recreation Area
		WSA	Wilderness Study Area
		WSR	Wild and Scenic River(s)

Protesting Party Index

Protester	Organization	Submission Number	Determination
Bronk Jorgensen	Individual	PP-AK-EasternInterior-16-01	Denied – Issues and Comments
James Mery	Doyon	PP-AK-EasternInterior-16-02	Denied – Issues and Comments
Ethan Schutt	Cook Inlet Region, Inc.	PP-AK-EasternInterior-16-03	Denied – Issues and Comments
Dick Hammond	Fortymile Mining District	PP-AK-EasternInterior-16-04	Denied – Issues and Comments
David Likins	Individual	PP-AK-EasternInterior-16-05	Denied – Issues and Comments
Marleanna Hall	Resource Development Council	PP-AK-EasternInterior-16-06	Denied – Issues and Comments
Deantha Crockett	Alaska Miners Association	PP-AK-EasternInterior-16-07	Denied – Issues and Comments
Jahna Lindemuth	State of Alaska Attorney General	PP-AK-EasternInterior-16-08	Denied – Issues and Comments
Phil Hanceford	The Wilderness Society	PP-AK-EasternInterior-16-09	Denied – Issues and Comments

Issue Topics and Responses

NEPA – Need for Supplementation

Issue Number: PP-AK-EasternInterior-16-06-3

Organization: Resource Development Council

Protestor: Marlenna Hall

Issue Excerpt Text:

The Proposed Alternative in the FEIS was not included in the DEIS.

Creation of a new “combination” alternative (E) should trigger a new comment period open to the public, in which all aspects could be weighed against A, B, C and D, which the public has previously had a chance to review in detail. Review of the new alternative should not be limited to the 30-day protest.

In addition to Alternative E being a new alternative, it is significantly different to the previously Proposed Alternative. The Draft EIS recommended that a large area of land be open to resource development. As noted later, this plan is significantly different. Further, Alternative E is effectively a new proposal and is not a hybrid of existing alternatives. As a newly introduced alternative, Alternative E should be open to public comment in a Revised Draft EIS (DEIS).

A revised DEIS and review of Alternative E would trigger a review of potential ANILCA violations.

Issue Number: PP-AK-EasternInterior-16-07-10

Organization: Alaska Miners Association

Protestor: Deantha Crockett

Issue Excerpt Text:

1.B. New Issues. The Proposed RMP/FEIS should not be raising new issues that were not within the range of alternatives considered in the Draft RMP, EIS and Supplemental EIS. AMA has found at least five issues that fall into this category:

i.) The Proposed RMP/FEIS contains closures to mineral location for riparian conservation areas and restoration watersheds. These closures were not proposed in previous Alternatives A - D and AMA was not provided the opportunity to comment on them.

Issue Number: PP-AK-EasternInterior-16-07-12

Organization: Alaska Miners Association

Protestor: Deantha Crockett

Issue Excerpt Text:

ii.) The Proposed RMP/FEIS proposes to expand the Mosquito Flats ACEC and close it to mineral location and leasing, proposals not considered in any prior planning document. The two “alternatives” implicit in the supplemental FEDERAL REGISTER publication regarding ACEC proposals were 0 acres and 30,000 acres – 37,000 acres is not within the range of alternatives, nor has the BLM explained why the area was expanded, why the resource use limitations were necessary in the original or expanded areas, and no public comment opportunity was provided. See also comments regarding ACECs in Section 2 of this letter.

Issue Number: PP-AK-EasternInterior-16-07-4

Organization: Alaska Miners Association

Protestor: Deantha Crockett

Issue Excerpt Text:

Part(s) of Plan Protested: New Alternative E
Reason: The BLM's decision is wrong as the public was not provided with the opportunity to review and comment on Alternative E. The Proposed RMP/FEIS presents significant new information that should not have been released without additional opportunity for public comment and subject to only a 30-day protest period. The public must be provided with the opportunity to review and comment on new Alternative E in concert with a Supplemental Draft EIS. Alternative E includes several new or significantly modified proposals which could not have reasonably been expected to generate from the Draft RMP, EIS and Supplemental EIS.

Issue Number: PP-AK-EasternInterior-16-07-8

Organization: Alaska Miners Association

Protestor: Deantha Crockett

Summary:

The BLM violated NEPA by adding a substantively new alternative (Alternative E) between the Eastern Interior Draft Resource Management Plan and Environmental Impact Statement (EI DRMP/DEIS) and the Eastern Interior Proposed Resource Management Plan and Final Environmental Impact Statement (EI PRMP/FEIS), and failing to provide the public with an opportunity to comment.

Response:

NEPA directs agencies to prepare supplements to either draft or final EISs if:

- (i) The agency makes substantial changes in the proposed action that are relevant to environmental concerns; or
- (ii) There are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts (CEQ NEPA Regulations, 40 C.F.R. § 1502.9(c)).

The EI PRMP/FEIS analyzed five alternatives, which are described in Chapter 2. Alternatives A, B, C, and D were considered in the DRMP/DEIS. For the purposes of NEPA, Alternative E does not constitute a "new" alternative. Summary table 2.2.6 (pp. 23-27) highlights the combination of proposed management actions selected across the range of alternatives. These vary in 1) degrees of protection for each resource and use; 2) approaches to management for each resource and use; 3) mixes of allowable, conditional, and prohibited uses in various geographic areas; and 4) levels and methods for restoration. For example, Alternative E provides partial revocation of

Issue Excerpt Text:

The creation of a new "hybrid" Alternative E for a management plan this complex and interrelated should trigger a new comment period open to the public, in which all aspects could be weighed against A, B, C and D, which the public has previously had a chance to review in detail, and in which the management scheme proposed under E can be considered as a whole. The review must also include a Supplemental Draft EIS so the BLM can analyze and the public can review and comment on possible environmental impacts. Review, thorough consideration and analysis of the new alternative and independently pondering its environmental impacts should not be limited to a 30-day period.

Public Land Orders (PLOs) to open 26 percent of the planning area to mineral location and mineral leasing (p. 18; 23-27), while also increasing the number of acres of land managed to maintain wilderness characteristics (p. xlv).

Alternative E of the EI PRMP/FEIS was created in response to analyses of public comments that the EI PRMP/FEIS ease mineral constraints while continuing to afford protections described in the EI DRMP/DEIS. As part of this effort, the BLM also consulted with cooperators and tribal governments, and reviewed BLM policies.

The BLM offered 405 days of comment period for the EI DRMP/DEIS and the Supplemental EIS for the Eastern Interior Planning Area, between March 2, 2012 and April 11, 2013, and held 20 public meetings in various communities in the planning area. These meetings were in Anchorage, Fairbanks, Birch Creek, Central, Circle, Chalkyitsik, Chicken, Delta Junction, Eagle, Eagle Village, Fort Yukon, and Tok. BLM met with the Alaska Miners Association (both Fairbanks and Anchorage chapters) and the Fortymile Mining District, and gave a presentation on the DRMP at the Alaska Miners Association Conference in Fairbanks. The BLM provided an additional 60 days for comment between January 2, 2015 and March 3, 2015 with the notice of additional information on the proposed Fortymile and Mosquito Flats Areas of Critical Environmental Concern (p. 1094, section 5.4 Distribution and Availability of the Draft EIS).

The BLM's Alternative E (Proposed RMP) balances the level of protection, use, and enhancement of resources and services for the planning area. The BLM believes the Proposed RMP represents the best mix and variety of actions to resolve issues and management concerns in consideration of all resource values and programs. Inclusion of Alternative E in the EI PRMP/FEIS does not constitute a substantial change to the proposed action or new circumstances or information that would warrant additional public review and commentary. Inclusion of Alternative E in the EI PRMP/FEIS therefore does not constitute a substantial change to the proposed action or new circumstances or information that would warrant additional public review and commentary.

The BLM published a *Federal Register* Notice providing additional information on ACECs to allow public comment. Implicit in this notice was the assumption that the potential ACEC was a draft under consideration that might change somewhat based on public comment. Several commenters noted that the ACEC did not encompass all of the wetlands on BLM-managed lands and that valuable habitats associated with the relevant and important values for the area were therefore excluded. In response, BLM revised the ACEC boundary to encompass more of the wetlands and exclude some of the uplands (EI PRMP/FEIS p. 1538). Additionally, the Eastern Interior Field Office met with Doyon, Limited on May 12, 2015 to discuss changes to the ACEC boundary as some of the lands involved are Native-selected. Doyon representatives noted in the meeting that there are many unknowns about which lands will or will not get conveyed.

Additionally, Native corporations are over-selected and not all selected lands will be conveyed. Land conveyance under ANCSA and the Statehood Act is an ongoing administrative process and takes precedence over decisions in the EI PRMP/FEIS (pp. 1540, 14). The EI PRMP/FEIS recognizes in multiple citations that some lands within ACECs are selected either by the State or Native corporations and may be conveyed during the life of the RMP, ultimately affecting the

final size of those ACECs (EI PRMP/FEIS pp. 88, 97, 105, 507, 1540, and 1656). The additional ACEC acreage (37,000 vs. 30,000) reflects these considerations.

NEPA – Best Available Information

Issue Number: PP-AK-EasternInterior-16-07-58

Organization: Alaska Miners Association

Protestor: Deantha Crockett

Issue Excerpt Text:

In its planning process, the BLM failed to consult USGS, the independent science agency in the U.S. Department of the Interior specifically responsible for assessment of undiscovered mineral potential under ANILCA. Regulations governing preparation of an EIS require such coordination (see 40 CFR §1502.6 Interdisciplinary preparation and 40 CFR §1502.24 Methodology and scientific accuracy). The USGS has produced recent statewide assessments for five broad groups of strategic and critical minerals and is capable of providing mineral potential assessments for any type of deposit or commodity. In addition, it is not apparent the BLM used any of the USGS' comprehensive GIS-based databases. The Alaska Geochemical Database, for example, includes statewide regional soil, rock, and stream sediment and concentrate

geochemical results, as well as mineralogical observations.

Issue Number: PP-AK-EasternInterior-16-07-59

Organization: Alaska Miners Association

Protestor: Deantha Crockett

Issue Excerpt Text:

The BLM has continued to rely only on outdated (e.g., 1982) and completely inadequate in-house maps and reports, none of which have been peer-reviewed or published externally. The BLM has consistently failed to utilize the mineral resource expertise available at USGS for mineral potential determinations. Information the BLM would have required to evaluate and propose numerous decisions throughout the plan was readily attainable, and the obvious failure to make an effort to procure and attempt to incorporate that necessary information is an abuse of both discretion and authority.

Summary:

The BLM abused its discretion and authority by violating Federal regulations governing interdisciplinary preparation of an EIS in the following ways:

- Failing to consult the U.S. Geological Survey (USGS), the independent science agency in the U.S. Department of the Interior specifically responsible for assessment of undiscovered mineral potential under ANILCA and with the expertise to assess mineral potential in the planning area; and
- Relying instead on outdated and deficient in-house maps and reports, despite availability of recent statewide assessments prepared by USGS and other information, the BLM would have been required to evaluate and propose numerous decisions throughout the plan.

Response:

The BLM used the best available information in assessing the mineral potential in the Eastern Interior Proposed Resource Management Plan/Final Environmental Impact Statement (EI

PRMP/FEIS), relying heavily on USGS data for mineral potential. The mineral potential report is available online at: <https://eplanning.blm.gov/epl-front-office/eplanning/planAndProjectSite.do?methodName=dispatchToPatternPage&PageId=10151>.

The Council on Environmental Quality (CEQ) regulations implementing NEPA require that agencies use “high quality information” (40 CFR 1500.1(b)). NEPA regulations require the BLM to “insure the professional integrity, including scientific integrity, of the discussions and analyses in environmental impact statements” (40 CFR 1502.24).

The BLM NEPA Handbook also directs the BLM to “use the best available science to support NEPA analyses, and give greater consideration to peer-reviewed science and methodology over that which is not peer-reviewed” (BLM Handbook H-1790-1, p. 55). Under the BLM’s guidelines for implementing the Information Quality Act, the BLM applies the principle of using the “best available” data in making its decisions (BLM Information Quality Act Guidelines, February 9, 2012).

The BLM did in fact use USGS’ Alaska Resource Data Files (ARDF), the most current and standardized mineral dataset in Alaska – as well as other sources of expertise from USGS in its determinations. As documented in the Proposed RMP/Final EIS in multiple citations, including at pp. 441-448, 498, the BLM relied heavily on USGS data for the basis of most of the mineral investigations. In addition, the BLM also used its in-house dataset, the Alaska Minerals Information System (AMIS), for site-specific mineral occurrence information.

These datasets were compared against available and recent, peer-reviewed science. Recent, peer-reviewed information is abundantly referenced in the Proposed RMP/Final EIS, particularly in the Affected Environment chapter (Chapter 3, pp. 441-448). Using these references in tandem with the data files provides a sound basis for BLM’s mineral resource estimates under each alternative, including Alternative E, and constitutes a robust approach to ascertain the best available scientific information.

The BLM Alaska State Office also prepared a Mineral Occurrence and Development Potential Report for Locatable and Salable Minerals (BLM 2009b). This report provides more detailed information on locatable mineral occurrence and development potential in the planning area (p. 498-501), and in response to scoping comments (p 1564-1567). Finally, the BLM includes an extensive list of references in the Proposed RMP/ Final EIS at p.1686, among them an extensive list of recent, peer reviewed, best available scientific sources.

The response to comments in the EI PRMP/FEIS at pp. 1509 – 1514 elaborates further regarding how the BLM arrived at mineral potential determinations:

“Currently available data was considered during development of the Draft RMP and the Locatable Mineral Occurrence and Development Report which is available online at: www.blm.gov/ak/eirmp. The most complete, up to date, and planning area wide dataset regarding mineral occurrences and development potential is the USGS’ Alaska Resource Data Files (ARDF) database. Substantial weight was given to the ARDFs since they provide current and standardized information across subunit boundaries. All ARDFs, and Alaska Mineral

Information System (AMIS) sites are based on historic mineral activity. Giving greater weight to documented mineral occurrences and both active and historical mining claims signify acknowledgement of actual mining activities. The 1982 Mineral Terranes maps were used, but were given a lower priority relative to ARDF locations and mining claim. Mineral terranes were also given a lower priority where they had limited access. Metal prices used were averaged over time. Prices did increase from the time of the 2009 analysis.

A complete geologic map is now available for the entire planning area and was considered during development of the Proposed RMP/Final EIS. Regarding regional geochemical sampling, the BLM assumes that the USGS will include significant sediment, rock, concentrate, and soil geochemical anomalies into the ARDF database”.

The BLM has satisfied the requirements of relevant regulations, policies, and guidance concerning high quality information and best available data and scientific methodology, including peer-reviewed science in preparation of the EI PRMP/FEIS.

NEPA – Range of Alternatives

Issue Number: PP-AK-EasternInterior-16-02-13

Organization: Doyon, Limited

Protestor: James Mery

Issue Excerpt Text:

The PRMP improperly proposes to adopt an alternative, Alternative E, which was outside of the range of alternatives presented by the agency and made available for public review and comment. The draft did not discuss potential application of the crucial habitat delineation in the Fortymile Subunit and stakeholders did not have the ability to comment on the delineation.

Issue Number: PP-AK-EasternInterior-16-07-54

Organization: Alaska Miners Association

Protestor: Deantha Crockett

Issue Excerpt Text:

The entire White Mountains National Recreation Area (WMNRA) lies within

geologic terranes considered and mapped by the U.S. Bureau of Mines as favorable for mineral discoveries. Through ANILCA §1312(b), Congress directed the Secretary to objectively consider the mineral values and leasing of the entire WMNRA for minerals. The BLM only considered one alternative (Alternative D of the Supplement EIS) which allowed for any exploration and development of known or undiscovered mineral resources in the WMNRA. The BLM failed to consider or present a genuine and achievable range of alternatives, required by NEPA and planning policies. Alternative D only proposed to open 16% of the lands within the WMRNA for mineral leasing, and most for placer gold mining only. A full range of alternatives would at least have to include a development scenario that would open 100% of the area to allow for prospecting, mineral exploration, leasing, and mine development, and of minerals other than placer gold and Rare Earth Elements.

Summary:

The Range of Alternatives for the Eastern Interior Proposed Resource Management Plan and Final Environmental Impact Statement (EI PRMP/FEIS) is inadequate in violation of NEPA because:

- the BLM's proposal of an Alternative E is outside the range of alternatives provided to the public; and
- the BLM only considered one alternative (Alternative D) which allowed for the exploration and development of mineral resources, thus failing to present a reasonable range of alternatives.

Response:

When an agency prepares an Environmental Impact Statement (EIS), NEPA requires rigorous exploration and objective evaluation of all reasonable alternatives, and for alternatives that are eliminated from detailed study, a brief discussion the reasons for their having been eliminated (40 CFR 1502.14(a)). When there are potentially a very large number of alternatives, the BLM

may only analyze a reasonable number to cover the full spectrum of alternatives (BLM Handbook H-1790-1, Section 6.6.1 quoting Question 1b, CEQ, Forty Most Asked Questions Concerning CEQ's NEPA Regulations, March 23, 1981).

The BLM developed a reasonable range of alternatives that meet the purpose and need of the EI PRMP/FEIS and that address resource issues identified during the scoping period. EI PRMP/FEIS analyzed five alternatives, which are described in detail in Chapter 2. The alternatives analyzed in the Eastern Interior Proposed RMP/Final EIS are summarized in Table 2.2.6 (pp. 23-27). Each alternative varies in: (1) degrees of protection for each resource and use; (2) approaches to management for each resource and use; (3) mixes of allowable, conditional, and prohibited uses in various geographic areas; and (4) levels and methods for restoration.

Specifically:

- Alternative E is not outside the range of alternatives, nor does it not foreclose all mineral development. The EI PRMP/FEIS provides options that range from least to most mineral development. The protest notes that Alternative D proposes opening 16% of the lands within the White Mountains National Recreation Area (WMRNA) for mineral leasing, with an emphasis on recreation. This conforms to the Alaska National Interest Lands Conservation Act ANILCA directive that the BLM manage the White Mountains for public recreation as one of the primary uses. Given the current levels of recreational use and the public cabins and trail system that have been developed since the last resource management plan was approved, the BLM believes that considering leasing on 16% of the WMRNA is a reasonable alternative (EI PRMP/FEIS, p. 1582). In the EI PRMP/FEIS, Alternative E provides partial revocation of Public Land Orders (PLOs) to open 26% of the planning area to mineral location and mineral leasing (EI PRMP/FEIS, pp. 18; 23-27).
- The protest indicates that a development scenario should have been included that would open 100% of the area for mineral development. This alternative is not required under NEPA or CEQ regulations. Notwithstanding, the EI PRMP/FEIS includes options that vary between very few mineral constraints and exclusions (e.g., Alternative D at 80% opened to leasing and entry; p. 20) to few constraints and exclusions on mineral development (Alternative B at 13% opened to leasing and entry; p. 18).

The BLM considered a reasonable range of alternatives in the EI PRMP/FEIS in full compliance with NEPA.

NEPA – Public Comments and Adequacy of Public Notice

Issue Number: PP-AK-EasternInterior-16-07-20

Organization: Alaska Miners Association

Protestor: Deantha Crockett

Issue Excerpt Text:

Any ACEC-related resource use limitation in the Proposed RMP/FEIS or the July 29 Notice of Availability which was not provided in prior FEDERAL REGISTER notices and made available for comment during the 60± -day public review periods,

and which is not required by law, should be considered unenforceable according to federal regulation at 43 CFR §1610.7Q2(b) and should not be considered for adoption. To adopt and/or impose any of the aforementioned restrictions, or any other restriction not appropriately published in the FEDERAL REGISTER for public review, in any of the relevant Records of Decision would both violate and undermine the entire purpose of the regulation.

Summary:

Area of Critical Environmental Concern (ACEC) proposals in the Eastern Interior Proposed Resource Management Plan and Final Environmental Impact Statement (EI PRMP/FEIS) are unenforceable because they did not receive adequate notice in the Federal Register.

Response:

Pursuant to 43 CFR 1610.7-2, the BLM considers areas with potential for designation as ACECs and protective management during its planning processes. The EI PRMP/FEIS considers the designation of four potential ACECs, with their boundaries, size, and management direction varying by Alternative.

The BLM fully complied with the regulations by issuing a February 24, 2012 *Federal Register* Notice of Availability (NOA) for the proposed Steese, Salmon Fork, and Fortymile ACECs (77 FR 11154). Subsequently, the BLM on January 2, 2015, issued a *Federal Register* Notice of Availability of Additional Information on Proposed Areas of Critical Environmental Concern (ACECs) (80 FR 52) regarding a newly proposed ACEC (Mosquito Flats) and possible changes to the already proposed Fortymile ACEC. Each *Federal Register* notice provided for public comment on the proposed ACECs in compliance with 43 CFR 1610.7-2. For these reasons, the BLM has complied with the regulations governing ACECs in a timely and appropriate manner.

NEPA – Impacts Analysis

Issue Number: PP-AK-EasternInterior-16-09-2

Organization: The Wilderness Society

Protestor: Phil Hanceford

Issue Excerpt Text:

Specifically, the BLM’s decision to not consider impacts to lands with wilderness characteristics in site specific NEPA

analysis and project planning is in violation of the law and policies, even if BLM is choosing to emphasize other resource values and multiple uses over those wilderness characteristics. BLM can and should remedy this management issue before approving the RMP.

Summary:

The BLM’s decision not to consider impacts to Lands with Wilderness Characteristics in future NEPA analyses does not comply with law and BLM policy.

Response:

The section referred to by the protestor was not a decision; rather, it was a statement of rationale. The BLM will clarify in the EI RMP RODs that BLM will consider impacts to lands with wilderness characteristics in future site -pecific NEPA analysis and project planning, consistent with agency policy in the BLM 6320 Manual, which allows for the protection of wilderness characteristics through management of other uses. The EI PRMP/FEIS (Alternative E) would manage 3.5 million acres (more than half of BLM-managed lands in the planning area) to allow for other uses while applying management restrictions to reduce impacts to wilderness characteristics (see Maps 73, 77, and 81; p. 1665). These lands include Wild and Scenic River corridors; riparian conservation areas; ACECs; and Primitive, Semi-Primitive, and Backcountry recreation management zones. The BLM will manage these areas consistent with wilderness characteristics (e.g., naturalness, solitude, opportunities for primitive recreation) and expects conflicts to be limited.

FLPMA – Multiple Use and Sustained Yield

Issue Number: PP-AK-EasternInterior-16-02-6

Organization: Doyon, Limited

Protestor: James Mery

Issue Excerpt Text:

Further, in its response to comments, the PRMP states:

“The Proposed RMP (Alternative E) would manage 3.5 million acres (more than half of BLM-managed lands in the planning area) to allow for other multiple uses while applying management restrictions to reduce impacts to wilderness characteristics (Maps 73, 77, and 81). These lands include wild and scenic rivers, areas of critical environmental concern, Primitive, Semi-Primitive, and Backcountry recreation management zones, and riparian conservation areas. We will manage these areas in a manner consistent with maintaining wilderness characteristics (naturalness, solitude, opportunities for primitive recreation) over the life of the RMP” (Id. § L.4.12.1 (emphasis added)). Again, this suggests an unlawful and inappropriate expansion of the roles of each of these land designation categories. For instance, it suggests that rather than impose special management prescriptions for an ACEC only to address the values and resources for which an ACEC is designated, BLM will impose additional prescriptions on uses in the ACEC to maintain (i.e., avoid impacts to) wilderness characteristics. Such an expansion of BLM’s land management planning authority is arbitrary and capricious and contrary to FLPMA.

Issue Number: PP-AK-EasternInterior-16-07-65

Organization: Alaska Miners Association

Protestor: Deantha Crockett

Issue Excerpt Text:

Under Alternative E, only 26% of BLM land will be open to mineral leasing and/or mineral location, and only then after the revocation of land use withdrawals. This is a substantial loss of opportunity, with little to no verifiable justification, data or opportunity for public input, which does not credibly satisfy the BLM’s multiple use mandate or the considerations it is required to make under FLPMA. It will receive less tax revenue.

Issue Number: PP-AK-EasternInterior-16-07-66

Organization: Alaska Miners Association

Protestor: Deantha Crockett

Issue Excerpt Text:

The Proposed RMP/FEIS assumes mineral development and recreation are mutually exclusive, despite a long history in the planning area which demonstrates the opposite, and precludes the opportunity to allow both uses to successfully coexist. The Proposed RMP/FEIS focuses on a “single use” style of land management, segregating users with no demonstration of conflict or known impacts, contrary to BLM’s multiple use mandate.

The BLM disregards AMA’s previous comments on this point as “not substantive” and relegates them to Section L2 of the Response to Comments, which is simply a listing of “general concerns”. As such, no explanation has been provided for this approach or its consistency with the multiple use mandate and federal provisions for the recognition and accommodation of mining activities.

Summary:

By focusing on “single-use” land management and restricting mineral development in the Eastern Interior Proposed Resource Management Plan and Final Environmental Impact Statement (EI PRMP/FEIS), the BLM has violated the FLPMA mandate to manage public lands for multiple use and sustained yield.

Response:

The EI PRMP/FEIS is consistent with the principles and precepts of FLPMA, including Sections 102 and 103.

Section 102(a)(7) of FLPMA declares that it is the policy of the United States that management of the public lands be on the basis of “multiple use” and “sustained yield”. Section 103(c) of FLPMA defines “multiple use” as the management of the public lands and their various resource values so that they are utilized in the combination that will best meet the present and future needs of the American people.

FLPMA’s multiple use mandate does not require that all uses be allowed on all areas of the public lands. Rather, FLPMA - the BLM’s organic act - obliges the agency to evaluate and select an appropriate balance of resource uses through the land use planning process, a process that inherently involves tradeoffs between competing uses. The BLM has wide latitude to allocate the public lands to particular use and to employ the mechanism of land use allocation to protect certain resource values or, conversely, to develop some resource values to the detriment of others, short of unnecessary or undue degradation.

Withdrawals are defined by Section 103(j) of FLPMA as follows:

“...the term ‘withdrawal’ means withholding an area of Federal land from settlement, sale, location, or entry, under some or all of the general land laws, for the purpose of limiting activities under those laws in order to maintain other public values in the area or reserving the area for a particular public purpose or program; or transferring jurisdiction over an area of Federal land...from one department, bureau or agency to another department, bureau or agency” (43 USC 1702(j)).

All alternatives allow some level of uses or protection for resources present in the planning area, in a manner that is consistent with applicable statutes, regulations, and BLM policy. The alternatives considered in the EI PRMP/FEIS, as described on page 1569 of the FEIS, provide an appropriate balance of uses for the public lands in the planning area. The public had sufficient opportunity to comment on the range of minerals availability in the Draft EIS, as the public comment period was open for 13 months (EI PRMP/FEIS, p. 1094 and p. xlii). Additionally, a 60-day public comment period was offered in 2015 (EI PRMP/FEIS p.1096 and p. xliii), which included recommendations on the closure of ACECs to mining.

The BLM also adequately disclosed the tradeoffs in making its decision to protect or develop resources. For example, The EI PRMP/FEIS provides an in-depth discussion of impacts from mining by identifying the effects from leasable minerals as well as locatable minerals (p. 591). For solid leasable minerals, the EI PRMP/FEIS explains that exploration activities could occur in

any areas open to leasing and in the unlikely event that leasing of other solid minerals would occur; impacts to vegetative communities could be similar to that of large lode mines described below. With regard to locatable mineral extraction operations expected to occur in the planning area, suction dredging could impact riparian vegetation through long-term camping activities, and may disturb and/or displace wildlife in the immediate vicinity of the operation, but typically would not impact riparian vegetation directly. Additionally, travel to and from suction dredge operations was determined to potentially impact vegetation, depending on available access.

The PRMP/FEIS also discussed the effects of placer mines on riparian and near-stream vegetation, resulting in possible downstream effects on riparian vegetation. Recovery of habitats from placer mining is highly variable and may be very slow. The PRMP/FEIS states: “It may require 50 years or more (following end of mining) in some areas for riparian area habitat quality to approach pre-mining conditions. Some mine sites remain in operation for many years, with a portion of the mine area disturbed for the duration of mining. Reclamation often does not proceed as planned due to changing of operators or financial or logistical difficulties” (p. 591). Therefore, the BLM’s decision to make certain lands unavailable to minerals development is both clear and reasoned.

The EI PRMP/FEIS satisfies FLPMA’s multiple use policy and does not improperly or unfairly withdraw public land from mineral development.

ANCSA

Issue Number: PP-AK-EasternInterior-16-07-46

Organization: Alaska Miners Association

Protestor: Deantha Crockett

Issue Excerpt Text:

The new Alternative E proposes to retain 17(d)(1) withdrawals on 74% of the planning area, all of which was withdrawn for a different purpose and which currently prohibits or limits a comprehensive suite of uses specifically to serve those purposes. The BLM dismissed AMA's concerns on this matter with a one-sentence statement on p. 1522: "The BLM has determined that retaining ANCSA (d)(1) withdrawals until securing new withdrawals under FLPMA is legally sound".

Issue Number: PP-AK-EasternInterior-16-08-1

Organization: State of Alaska Attorney General

Protestor: Jahna Lindemuth

Issue Excerpt Text:

ANCSA § 17(d)(1) authorized the Secretary of Interior to withdraw lands in Alaska to allow selection by Alaska Native and Village Corporations. These withdrawals are known as "d- 1 withdrawals". ANCSA § 17(d)(2) authorized the withdrawal of 80 million acres for the future establishment of conservation system units ("d-2 withdrawals"). The vast majority of these withdrawals have fulfilled their intended purpose - either for ANCSA selection purposes or because ANILCA legislatively converted them to part of the 100-million acre system of conservation system units and other specially designated lands in Alaska. Additionally, extensive federal and state environmental and natural resource regulatory authorities now protect natural

resource values on federal public lands. The Plan should recommend lifting the ANCSA withdrawals that have fulfilled their original purpose, as no current justification for retaining them exists.

Issue Number: PP-AK-EasternInterior-16-08-3

Organization: State of Alaska Attorney General

Protestor: Jahna Lindemuth

Issue Excerpt Text:

The Eastern Interior Plan, however, deviates from this precedent and the recommendations of the 2006 Report and instead expressly seeks to curtail mineral exploration and development in an area that has significant mineral potential and rich mining history, including the oldest mining district in the state. The Plan doubles down on this effort by failing to recommend lifting any existing withdrawals until new substitute withdrawals are in place. The Eastern Interior Plan's new approach unnecessarily and unjustifiably complicates land management in the planning area and will likely result in the retention of ANCSA withdrawals in the planning area in perpetuity.

Issue Number: PP-AK-EasternInterior-16-08-8

Organization: State of Alaska Attorney General

Protestor: Jahna Lindemuth

Issue Excerpt Text:

The State protests the Plan's failure to recommend lifting all ANCSA withdrawals and portions thereof that are no longer necessary to fulfill ANCSA land selection requirements and ANILCA requirements

because it impairs the State's ability to finalize its statehood land selections.

Summary:

The Eastern Interior Proposed Resource Management Plan and Final Environmental Impact Statement (EI PRMP/FEIS) violates the Alaska Native Claims Settlement Act (ANCSA) by retaining the 17(d)(1) withdrawals.

Response:

The EI PRMP/FEIS does not violate ANCSA provisions regarding 17(d)(1) withdrawals. Section 17(d)(1) of ANCSA authorizes the Secretary "to review the public lands in Alaska and determine whether any portion of these lands should be withdrawn under authority provided in existing law to ensure the public interest in these lands is properly protected. Any further withdrawal shall require an affirmative act by the Secretary under his existing authority, and the Secretary is authorized to classify or reclassify any lands so withdrawn and to open such lands to appropriation under the public land laws in accord with his classifications. Withdrawals pursuant to this paragraph shall not affect the authority of the Village Corporations, the Regional Corporations, and the State to make selections and obtain patents within areas withdrawn pursuant to Section 11".

The authority for implementation or revocation of public land orders rests with the Secretary (FLPMA § 204(a), 43 U.S.C. § 1714(a)). The BLM is limited to making withdrawal recommendations through the land use planning process. Therefore, the EI PRMP/FEIS cannot immediately open areas to mining; rather, additional action would be required by the Secretary of the Interior to implement this decision (EI PRMP/FEIS, p. 1569).

The BLM is not proposing to retain 17(d)(1) withdrawals on 74% of planning area. Rather, the EI PRMP/FEIS recommends temporarily retaining 17(d)(1) withdrawals on only 2.5 million acres, or 38% of the planning area (EI PRMP/FEIS p. xl Summary Table, 1264, Table 3.G). An additional 2.2 million acres are within the Steese National Conservation Area (NCA), White Mountains National Recreation Area (WMNRA), Birch Creek Wild and Scenic River (WSR), and wild segments of the Fortymile Wild and Scenic River (WSR). These areas (34% of planning area) are withdrawn by ANILCA and the EI PRMP/FEIS does not recommend retaining the ANCSA withdrawals in these areas (EI PRMP/FEIS, p. 1264, Table G.3 and EI PRMP/FEIS, p. 1261, Table G.2).

The EI PRMP/FEIS recommendation to retain withdrawals on 2.5 million acres would only be in place until they can be replaced with new FLPMA withdrawals for the protection of fish and wildlife resources as outlined in the plan, and is intended to ensure that the public interest in these lands is properly protected in the interim. The EI PRMP/FEIS also recommends revocation of 17(d)(1) withdrawals on 4 million acres and, ultimately, eventual revocation of all 17(d)(1) withdrawals (approximately 6.5 million acres) (EI PRMP/FEIS, p. 1264, Table G.2). See also EI PRMP/FEIS pp. 116, 126, 180, 188, 211, 216, 271, 279 and map 93.

ANILCA Violations

Issue Number: PP-AK-EasternInterior-16-02-8

Organization: Doyon, Limited

Protestor: James Mery

Issue Excerpt Text:

To the extent that the PRMP requires the maintenance of wilderness characteristics and contemplates the same restrictions and prohibitions as those applicable in wilderness areas under the Wilderness Act, the PRMP also is inconsistent with both the letter and spirit of the “no more provision of Section 1326 of ANILCA”. Section 1326 expressly limited the authority of the executive branch to establish or expand conservation areas in the state, based upon Congress’ determination that “ANILCA established a proper balance between the reservation of national conservation system units and those public lands necessary and appropriate for more intensive use and disposition”. Contrary to this provision, by effectively creating de facto wilderness, the PRMP seeks to strike a new balance that further favors the protection of wilderness characteristics and diminishes the availability of lands for multiple uses that may be inconsistent with the protection of such characteristics.

Summary:

The Eastern Interior Proposed Resource Management Plan and Final Environmental Impact Statement (EI PRMP/FEIS) is inconsistent with the provisions of the Alaska National Interest Lands Conservation Act (ANILCA) that seek to ensure balance between resource protection and economic development, by impeding access to lands and resources.

Response:

The EI PRMP/FEIS (Alternative E) is fully consistent with the provisions of ANILCA governing the balance of resource protection and development, including Section 1326. As noted in the EI PRMP/FEIS at p.1597, “The Proposed RMP (Alternative E) identifies lands that would be managed to emphasize other resource values and multiple-use while applying management

Issue Number: PP-AK-EasternInterior-16-03-3

Organization: Cook Inlet Region, Inc.

Protestor: Ethan Schutt

Issue Excerpt Text:

The Eastern Interior PRMP/FEIS is problematic in that it is fundamentally inconsistent with the provisions of ANILCA that were carefully drafted to ensure this balance between resource protection and the realization by Alaska Native Corporations of the economic development opportunities that were to be open to them as a fundamental element of ANCSA’s settlement of aboriginal land claims. BLM’s responses to comments found in sections L.4.19.5.2.2, L.4.19.9.7, and L.4.27.9 at least purport to recognize the importance of ANILCA; however, such responses are grossly insufficient to preserve the economic and social opportunities that ANILCA was intended to ensure would be available to CIRI’s Alaska Native shareholders and others in the State of Alaska. Any attempt by BLM to reset this balance through this planning process, including by in any way impeding access to, and use of, CIRI lands and resources, is inconsistent with the policies and goals of these critically important statutes.

restrictions to reduce impacts to wilderness characteristics. Like all public lands, they will be managed by the BLM in accordance with land use plans and all applicable provisions of law, the arrangement that Congress presumed in ANILCA Section 101(d) when it deemed its 'designation and disposition of the public lands in Alaska' to afford 'sufficient protection,' and represent 'proper balance.' No new conservation system units, national conservation areas, or national recreation areas will be established by the RMP".

The EI PRMP/FEIS will maintain wilderness values on certain lands with wilderness characteristics without sacrificing the principles of multiple-use and sustained yield. As noted in the EI PRMP/FEIS at p. 1490, "The Proposed RMP (Alternative E) would manage these areas [interspersed with Doyon lands] to emphasize other multiple uses while applying management restrictions to reduce impacts to wilderness characteristics. This type of management would not be a basis for the BLM to deny or unreasonably restrict access to Doyon lands. If the lands in question are conveyed, decisions in the RMP would no longer apply. Access to non-federally owned land surrounded by public land will be permitted per ANILCA, Section 1323".

Further, as noted in the EI PRMP/FEIS at p. 1492, "The BLM has carefully considered restrictions on ANILCA protected uses to ensure that decisions in the RMP do not conflict with ANILCA. [The BLM] revised the wording in Section 2.6.2.11 to remove the list of 'generally incompatible' activities. The Proposed RMP (Alternative E) would maintain wilderness characteristics through compatible management of Areas of Critical Environmental Concern (ACECs), wild and scenic rivers, recreation objectives, and riparian conservation areas".

ANILCA Closures

Issue Number: PP-AK-EasternInterior-16-06-5

Organization: Resource Development Council

Protestor: Marlenna Hall
Other Section: 11.1

Issue Excerpt Text:

Alternative E will likely result in a violation of ANILCA. Alternative E allows for 1.7 million acres, a fraction of the EI, to be open to possible resource extraction, while recommending the other 4.8 million acres be closed to mining. This mineral extraction closure affects approximately 74% of the federally managed land in the EI area.

This action by BLM appears to be an attempt to restrict resource development and economic opportunity in the EI, and effectively withdraws an additional one million acres of land from development through a derivative of a wilderness designation.

Issue Number: PP-AK-EasternInterior-16-06-8

Organization: Resource Development Council

Protestor: Marlenna Hall

Issue Excerpt Text:

Moreover, RDC raises concerns with Alternative E, including the proposal for 745,000 acres of lands that are to be managed as park lands, which we believe violates the “no more” clause of ANILCA.

Issue Number: PP-AK-EasternInterior-16-07-28

Organization: Alaska Miners Association

Protestor: Deantha Crockett

Issue Excerpt Text:

Lastly, when it comes to mineral entry and leasing closures, a prescription shared by all three proposed ACECs, established management tools governing these uses more than address any articulated resource concerns. In June 2006, the BLM submitted a Report to Congress to comply with Section 207 of the Alaska Land Transfer Acceleration Act (ALTAA). In its report, entitled, “Section 207 Alaska Land Transfer Acceleration Act: A Review of D-1 Withdrawals” (2006 Report), the BLM itself noted 95% of the lands presently withdrawn from mineral entry and leasing in Alaska can be opened, consistent with the public interest, in large part because “additional administrative procedures (NEPA/decisional)” would be required “before any development can take place”.

Issue Number: PP-AK-EasternInterior-16-07-51

Organization: Alaska Miners Association
Protestor: Deantha Crockett

Issue Excerpt Text:

The fact Congress believed the Fortymile River possessed outstandingly remarkable values was evident in the designation. The fact Congress did not believe mineral entry posed a threat to or compromised those values was evident when it closed the “Wild” segment and left the remainder open.

Lacking any evidence in the Proposed RMP/FEIS that this decision merits reconsideration, or that conditions have changed so significantly since 1980 as to warrant an expansion of the closure, the

proposal to close these areas to mineral entry unduly contravenes congressional intent and unlawfully interferes with the overall implementation and operation of ANILCA.

Issue Number: PP-AK-EasternInterior-16-07-62

Organization: Alaska Miners Association

Protestor: Deantha Crockett

Issue Excerpt Text:

There must be an opportunity for historic activity for it to be “one of the best indicators of future activity”. There has been no mineral exploration on BLM land in this area in the past 48 years because it has been off limits to any such activity. In that time, we have seen huge advances in technology for mineral exploration and technological advances that have improved access to remote lands. The BLM proposes an enormous and highly prohibitive closure over the entire upper reaches of the Black River in order to prevent the kind of activity that would legitimize this line of reasoning. This closure would include the resource potential for vanadium, a strategic metal that occurs widely in the area. There is also the loss of any future exploration activity in the Kandik, where numerous occurrences of lead and zinc have been reported, but little or no exploration has been possible since 1968. The Pogo Mine, on state land within the planning area that was open to mineral exploration, provides a good example of a large mineral deposit that was discovered and developed during the time period when the

BLM lands were off limits to exploration.

Issue Number: PP-AK-EasternInterior-16-07-63

Organization: Alaska Miners Association

Protestor: Deantha Crockett

Issue Excerpt Text:

The BLM has failed to adequately consider the mineral resources of the Steese-White Mountains areas that, under ANILCA, were assigned to the BLM to manage in part because Congress recognized there was mineral potential that needed to be evaluated in future land use planning for these areas. Government surveys have found a wide array of mineral occurrences in these areas but, since 1968, industry has had no opportunity to undertake organized exploration.

To close these areas based on a flawed assumption regarding resource potential is both pointless and disingenuous to the spirit and purpose of the land use planning process. Further, if the area in fact lacks resource potential, such a finding would actually favor the area finally being opened to mineral entry with very minimal risk or anticipated management demand. Justification for this large-scale prohibition is insufficient and inconsistent with the BLM’s mandate to manage for multiple use, to put our public lands to their best use, while ever mindful of legitimate and unbiased resource concerns.

Summary:

The Eastern Interior Proposed Resource Management Plan and Final Environmental Impact Statement (EI PRMP/FEIS) has failed to adequately consider the negative effects of proposed closures in respect to mineral entry and exploration because:

1. the BLM is attempting to restrict resource development and opportunity, effectively withdrawing additional land from development for the support of wilderness designations;

2. the BLM's mineral entry and leasing closures identified in the plan contradict its previous statements regarding 17(d)(1) withdrawals in its June 2006 report to Congress submitted pursuant to Section 207 of the Alaska Land Transfer Acceleration Act (ALTAA);
3. the BLM's proposal to close areas to mineral entry contradicts Congressional intent and unlawfully interferes with ANILCA;
4. the BLM proposes a significant prohibitive closure to mineral exploration, which has been off limits in this area for the last 48 years, and will hamper new technological advances and resource potential; and
5. the BLM has failed to adequately consider the mineral resources of the Steese-White Mountains areas, which Congress recognized possessed mineral potential that needed to be evaluated.

Response:

In response to the above assertions, the BLM offers the following rationale and explanation:

When exercising its discretion under FLPMA, the BLM is not obliged to allow development on every acre of land in a planning area. Other uses may have greater value or are more appropriate, depending on a variety of circumstances. In setting restrictions on mineral development, the BLM considered the most relevant data at appropriate scales when factoring in the mineral potential in the Eastern Interior Proposed Resource Management Plan and Final Environmental Impact Statement (EI PRMP/FEIS) planning area and balancing the protection versus development of all resources within the planning area. This approach is consistent with all provisions of ANILCA. Mineral withdrawals do not equate to the designation of wilderness areas.

As stated in the 2006 ALTAA report, decisions on minerals availability and potential are most properly made through the BLM's land use planning process. This RMP, in part, is satisfying those goals by analyzing the impacts of revoking existing mineral withdrawals and making recommendations after a full environmental analysis. The report can be accessed online at: http://www.blm.gov/ak/st/en/prog/lands_realty/d1_withdrawals.html

3. Section 1326(a) of ANILCA outlines a process for withdrawing lands in Alaska, indicating that Congress did envision the possibility of future mineral withdrawals. Appendix G of the EI PRMP/FEIS (p. 1262) describes the process the BLM will follow to enact new FLPMA withdrawals. Requirements for the withdrawal process are covered at 43 CFR 2300 and involve filing a petition/application with the Secretary of the Interior and the completion of reports and studies. In Alaska, any new withdrawals over 5,000 acres are also subject to Section 1326(a) of ANILCA which states, "...the President or the Secretary may withdraw public lands in the State of Alaska exceeding five thousand acres in the aggregate, which withdrawal shall not become effective until notice is provided in the Federal Register and to both Houses of Congress. Such withdrawal shall terminate unless Congress passes a joint resolution of approval within one year after the notice of such withdrawal has been submitted to Congress". The RMP contemplates that the Secretary will follow this process when implementing recommended new withdrawals (EI PRMP/FEIS, p.1597 and Appendix G).

4. The EI PRMP/FEIS recommends opening 1.7 million acres to mineral entry. Beyond this, many parts of the planning area contain existing federal mining claims which predate the withdrawals and therefore have continued standing. The Fortymile region, which has been continuously mined since 1887 (EI PRMP/FEIS, p. 445), contains 10,000 acres of current federal mining claims in the subunit (EI PRMP/FEIS, p. 689). Additionally, there are state mining claims within the bed of the Fortymile Wild and Scenic River with active suction dredging operations. There are 7,200 acres of federal mining claims in the Steese Subunit (EI PRMP/FEIS p. 802) and many more state mining claims on adjacent state lands (p. 859, Figure 4.6). There are 4,000 acres of existing mining claims in the White Mountains Subunit near Livengood (EI PRMP/FEIS p.341). As shown in EI PRMP/FEIS Table 3.34 (p. 447), as of 2008 1.3 million acres in the planning area had federal and state mining claims, state prospecting sites, and state mining leases. Table 4.1 (EI PRMP/FEIS p. 519) estimates 15,111 active state mining claims in the planning area as of 2013.

5. With regard to the Steese NCA and White Mountains NRA, both were closed to mining by Congress through ANILCA. As noted in the response to comments on EI PRMP/FEIS, pp. 1520-1521, The EI PRMP/FEIS (Alternative E) recommends maintaining the ANILCA withdrawals for the Steese National Conservation Area and White Mountains NRA. It also recommends to the Secretary that the ANCSA 17(d)(1) withdrawals (PLOs 5180 and 5179) be removed from these areas. These withdrawals are duplicative of the ANILCA withdrawals and thus not needed. Additionally, PLO 5180 does not close the National Conservation Area to location of metalliferous mining claims (such as gold), so its protective effect is limited. Removing the 17(d)(1) withdrawals would clean up the public land record by removing duplicative withdrawals. Lifting the 17(d)(1) withdrawals would not allow for new mining claims in the Steese National Conservation Area or the White Mountains NRA as those areas would remain withdrawn from mining by ANILCA.

The EI PRMP/FEIS considers mineral potential in the Steese and White Mountains in Alternatives C and D which analyze opening 20% to 46% of the Steese NCA to mineral entry (Table 2.17, p. 186). Alternative D considers opening 16% of the White Mountains NRA to leasing of locatable minerals and 44% to fluid and solid leasable minerals (Table 2.25 p. 276). The BLM considered a range of reasonable alternatives in full compliance with NEPA.

The BLM used the Alaska Resource Data File (ARDF) database as the basis of most of the mineral investigations because it is the most current and standardized mineral dataset in Alaska. As discussed on the ARDF website: “The records in the database are generally for metallic mineral commodities only but also may include certain high value industrial minerals such as barite and rare earth elements.” The Eastern Interior Mineral Occurrence and Development Potential Report does not cite every reference used in the ARDFs. The RMP relies on the ARDF to include the latest and most thorough literature review of each quadrangle. Individual sources, where cited, are included in the list of references for the mineral occurrence and potential report. Any bias in research would be created by reliance on the ARDFs. As for mineral potential trends crossing national borders, the trend in mineral occurrences and claim locations in Yukon Territory is carried across the border and through the planning area. If a rare earth mineral occurrence was significant enough to be an ARDF site it was recognized and given consideration. Full Metal Zinc’s deposit and surrounding ARDF sites were identified and

assessed. These are included in the LWM High Mineral potential area. The BLM is not aware of the high vanadium assays in the Black River area, but would be interested to learn the reference where it is cited.

Both the State of Alaska and Doyon, Limited selected lands primarily for economic development potential. Thus, many of the lands with higher mineral potential have been conveyed (EI PRMP/FEIS pp.529, 1499, 1522, and 1539). Approximately 3 million acres of Native Corporation owned lands and 11 million acres of State lands in the planning area are generally open for mineral exploration and development (EI PRMP/FEIS p. 4, Table 1.1, p. 529). Although no existing mining claims exist in the Black River Subunit, Doyon-owned lands in the region are available as are State lands underlying navigable rivers. As stated on p. 1512 of the EI PRMP/FEIS, "...the lands [in the Black River Subunit] were open and available for exploration and location into the early 1970s, but there is no evidence of claims being located or other mining activities at that time and there has been little significant minerals related activity on the open lands surrounding the lands since."

Elimination of Fortymile Plan

Issue Number: PP-AK-EasternInterior-16-01-2

Organization: Individual

Protestor: Bronk Jorgensen

Issue Excerpt Text:

The proposed RMP is a violation of ANILCA in which all separate units in ANILCA were to have their own specific plan. Not be lumped into one huge document of hundreds of pages of paper. The Fortymile cannot be lumped in with thousands of acres of land elsewhere in Alaska that have no specific connection to the Fortymile Region. The Fortymile region currently has a plan that was required by Congress and has worked without problems for the last thirty years.

Issue Number: PP-AK-EasternInterior-16-04-3

Organization: Fortymile Mining District

Protestor: Dick Hammond

Issue Excerpt Text:

The District asserts that by the action of BLM in placing the entire Eastern Interior of Alaska into one massive Resource Management Plan,

it is violating Sec.605.(d) of ANILCA. The proposed Final RMP calls for the Fortymile to be a subunit of the RMP. According to BLM's website at : <https://eplanning.blm.gov/epl-front-office/eplanning/planAndProjectSite.do?methodName=renderDefaultPlanOrProjectSite&projectId=1100>

The Final RMP will replace three existing plans, including the Fortymile plan. Replacing our congressionally mandated 1980 & 1983 Management Plans and demoting the Fortymile to a subunit of a larger, massive plan is a direct violation to the intent of ANILCA!

Issue Number: PP-AK-EasternInterior-16-05-2

Organization: Individual

Protestor: David Likins

Issue Excerpt Text:

BLM is attempting to violate Federal Law. ANILCA required BLM to prepare a detailed Development and Management Plan for EACH CSU. ANILCA also said no more withdrawals greater than 5000 acres without Congressional approval.

Summary:

The BLM was wrong to incorporate the plan for the Fortymile region into the much larger Eastern Interior Proposed Resource Management Plan and Final Environmental Impact Statement (EI PRMP/FEIS) rather than creating a specific, stand-alone plan. The other areas included in the EI PRMP/FEIS have no connection to the Fortymile region.

Response:

The BLM correctly included the Fortymile region within the larger context of the EI PRMP/FEIS as is explained in the Dear Reader letter, which specifies that the BLM will approve four Records of Decision (RODs) on four approved RMPs, one for each subunit including the Fortymile Subunit (EI PRMP/FEIS p. 3 and p. 88). The BLM used one EIS to analyze the impacts to each of these areas in the context of the overall region, but each subunit will have its

own area-specific ROD and Approved RMP. Additionally, the Fortymile Wild and Scenic River (WSR) Plan only applies to the river corridor.

As to whether the Fortymile River Resource Management Plan is required to be a stand-alone plan, ANILCA Section 605 (d) states: "...With respect to the river components designated in parts A and B of this title, the Secretary shall take such action under said Section 3(b) at the same time as, and in coordination with, the submission of the applicable conservation and management plans for the conservation system units in which such components are located." This Section requires that for rivers within National Parks and National Refuge Areas, the administering agency shall "take such action under said Section 3(b)" (i.e. determine the boundaries and the classification) at the same time, and in coordination with, the conservation and management plans for the Conservation Sub-Units (CSUs) surrounding the river. It does not state that the rivers designated under Part C (i.e. BLM-managed rivers and the Alagnak) must have stand-alone plans; this section is silent on Part C rivers.

As noted in the Response to Comments in the EI PRMP/FEIS at p. 1558: "The Fortymile Management Framework Plan is considered in the No Action Alternative. Retaining the management framework plan does not meet the BLM's purpose and need for the RMP. Replacing the management framework plan with an RMP is consistent with BLM policy and regulation."

Summarized below are the relevant laws supporting this decision:

- ANILCA Section 605(d) states that the agencies have to publish a map and legal description of the WSR in the Federal Register and file with Congress.
- ANILCA Section 605(d) also requires the Secretary to develop detailed boundaries and formulate detailed development and management plans within 3 years of enactment. It does not say that these management plans must be submitted to Congress.
- The WSRA directs the agency to establish detailed boundaries and determine the classification (i.e. "wild", "scenic" or "recreational") within a year, unless otherwise directed in the enabling legislation. (In this case, the enabling legislation [ANILCA] dictates within 3 years.) The boundaries and the classification are to "be published in the Federal Register and shall not become effective until 90 days after they have been forwarded to the President of the Senate and the Speaker of the House of Representatives."
- Neither ANILCA nor the WSRA says that the management plan or any revisions to that plan needs to be forwarded to Congress. They say that the maps, legal descriptions, boundaries and classification need to be forwarded to Congress. This was done in 1983. The BLM complied with this directive in 1983 through the development of the River Management Plan: Fortymile River Component of the National Wild and Scenic Rivers System and a Federal Register Notice (FR Vol. 48. No. 86, May, 3 1983).
- To amend the boundaries of the Fortymile WSR, the BLM would have to publish the amendment in the Federal Register and the boundary amendment would not become effective until 90 days after being forwarded to Congress. Note that Section 103 (b) has provisions for correcting errors and making changes to boundaries increasing or decreasing the area of the WSR of less than 23,000 acres by writing to Congress of the

intent. The RMP does not propose to change the boundaries of the Fortymile WSR corridor.

Withdrawals

Issue Number: PP-AK-EasternInterior-16-07-45

Organization: Alaska Miners Association

Protestor: Deantha Crockett

Issue Excerpt Text:

AMA could not find anywhere in Appendix G or in the Response to Comments where the BLM acknowledges the ALTAA or how the recommendations for withdrawals in the Proposed RMP/FEIS are consistent with the policy BLM articulated to Congress in its 2006 Report.

More significant than violating its own stated policy, the BLM's repurposing of the 17(d)(1) withdrawals violates Section 1326 of ANILCA. The BLM acknowledges on p. 1519 that "the ANCSA 17(d)(1) withdrawals need modification." The BLM has also made it clear in Appendix G (pp. 1272Q74) that new withdrawals are required to close BLM lands to mineral entry under the Mining Laws and, if over 5,000 acres in the aggregate, the new withdrawals will need to comply with the requirements in ANILCA §1326, including a joint resolution of approval from Congress. Where the BLM errs in the Proposed RMP/FEIS is retention of existing, outdated withdrawals pending the establishment of new withdrawals.

Issue Number: PP-AK-EasternInterior-16-07-47

Organization: Alaska Miners Association

Protestor: Deantha Crockett

Other Section: 4

Issue Excerpt Text:

Even putting aside any legal dispute regarding the co-opting of prohibitions that, by their own terms, no longer apply and apply to something

entirely different, the BLM has not even justified the need to retain the existing 17(d)(1) withdrawals pending new withdrawals. Throughout the Proposed RMP/FEIS, the BLM states that the existing withdrawals are obsolete and need to be revoked. According to the plan itself, much of the planning area is access prohibitive and non-selected lands trend towards low to no economic potential. No risks or threats to resource values have been identified that would accrue were the obsolete withdrawals to be revoked.

Further, the plan cannot lawfully be implemented through the unauthorized use of 17(d)(1) withdrawals and the unauthorized conditioning of their revocation on the establishment of new withdrawals. Under the ANILCA §1326 process BLM agrees needs to be followed (see Appendix G.2), the authorization to implement the plan through withdrawals must come from Congress. The Proposed RMP/FEIS includes the administrative withdrawal of more than 5,000 acres in the aggregate. It does not matter that the means to accomplish this is the retention of conveniently present, unrelated and essentially expired withdrawals – the action is the same.

Issue Number: PP-AK-EasternInterior-16-07-49

Organization: Alaska Miners Association

Protestor: Deantha Crockett

Issue Excerpt Text:

6. Part(s) of Plan Protested: Retention of land withdrawals that result in the mineral closure of all BLM lands within the "Scenic" and "Recreational" segments of the Fortymile National Wild and Scenic River.

Reason: The unilateral and unjustified

continued closure of lands intentionally left open unlawfully disturbs the balance established by Congress in ANILCA. Previous Comments: in April 11, 2013 comments on the draft RMP/EIS, see p. 2 (objection to mineral closures)

The Proposed RMP/FEIS calls for retaining existing withdrawals and establishing new withdrawals to close the “Scenic” (100,000 acres) and “Recreational” (3,400 acres) segments of the Fortymile National Wild and Scenic River to mineral entry. Following extensive debate and study, these lands were specifically left open to mineral entry by Congress in Section 606(a) of ANILCA and the Wild and Scenic Rivers Act. In its proposal to close these lands, the BLM has undermined the appreciation, respect and finesse exhibited by Congress in making this significant decision, and based on almost no justification or verifiable concern.

Issue Number: PP-AK-EasternInterior-16-08-11

Organization: State of Alaska Attorney General

Protestor: Jahna Lindemuth

Issue Excerpt Text:

ANILCA § 606(a) specifies the boundaries for wild and scenic rivers designated by the Act, and states that they shall include an average of not more than six hundred and forty acres per mile on both sides of the river, not including State and private lands. ANILCA § 606(a) also specifies that mineral withdrawals apply to federal lands that constitute the bed or bank or are situated within one-half mile of the bank of any wild river. The Plan recommends FLPMA withdrawals outside the mineral withdrawal and statutory boundary established for the Birch Wild and Scenic River by ANILCA and the WSRA, and is thus inconsistent with the river’s enabling legislation. As with other areas, the Plan violates ANCSA § 1326(a) by

recommending that existing ANCSA withdrawals remain until the new FLPMA withdrawals are in place.

Issue Number: PP-AK-EasternInterior-16-08-13

Organization: State of Alaska Attorney General

Protestor: Jahna Lindemuth

Issue Excerpt Text:

Finally, as discussed above for issues one and two, the Plan is inconsistent with ANILCA § 1326(a) because it fails to address lifting the underlying ANCSA withdrawals should Congress not approve the new withdrawals. The State protests the arbitrary and capricious recommendation for new mineral withdrawals within and outside the Birch Creek wild and scenic river corridor. The State also protests the Plan’s inconsistency with ANILCA § 1326(a).

Issue Number: PP-AK-EasternInterior-16-08-2

Organization: State of Alaska Attorney General

Protestor: Jahna Lindemuth

Issue Excerpt Text:

The State protests the Plan’s failure to lift existing withdrawals until new FLPMA mineral withdrawals are ordered by the Secretary and approved by Congress because it violates the intent of Sections 101(d) and 1326(a) of ANILCA.

Issue Number: PP-AK-EasternInterior-16-08-9

Organization: State of Alaska Attorney General

Protestor: Jahna Lindemuth

Issue Excerpt Text:

The State protests the Plan's failure to recommend lifting all ANCSA withdrawals and portions thereof that are no longer

necessary to fulfill ANILCA, ANCSA and statehood land selection requirements because it contradicts the policy BLM reported to Congress and other Alaska RMPs.

Summary:

The BLM erred in recommending the retention of existing withdrawals, contrary to ANILCA and the policy it expressed in its June 2006 report to Congress.

Response:

Please also refer to the responses to withdrawal-related issues raised in Sections 6, 7, and 8.1 of this protest report.

Section 1326(a) of ANILCA outlines a process for withdrawing lands in Alaska, indicating that Congress did envision the possibility of future mineral withdrawals. The RMP contemplates that the Secretary will follow this process when implementing recommended new withdrawals (p.1597 and Appendix G).

The BLM's proposal to retain existing withdrawals was a balanced decision, fully compliant with ANILCA and consistent with its June 2006 Report to Congress under ALTAA. The Report to Congress states that "...it may be appropriate to lift many of the d-1 withdrawals and the most effective and preferred means in managing this process is through BLM's land use planning process." The currently proposed withdrawal related recommendations were developed through BLM's land use planning process, and thus are consistent with the Report to Congress.

It is inaccurate to state that the EI PRMP/FEIS does not recommend lifting the ANCSA 17(d)(1) withdrawals. In fact, the EI PRMP/FEIS only recommends retaining 2.5 million acres until they can be lifted and replaced with new FLPMA withdrawals for the protection of fish and wildlife resources. The EI PRMP/FEIS also, however, recommends revocation of 17(d)(1) withdrawals on 4 million acres. The EI PRMP/FEIS recommends eventual revocation of all 17(d)(1) withdrawals, or approximately 6.5 million acres (EI PRMP/FEIS, p. 1264, Table G.2). For additional details, also refer to the EI PRMP/FEIS at pp. 116, 126, 180, 188, 211, 216, 271, 279 and map 93.

With regard to withdrawals in wild and scenic rivers, ANILCA river classifications are based on how much development was occurring on those rivers at that particular time. The Wild and Scenic Rivers Act (WSRA) requires that the BLM not exceed development at the time of classification and also requires the BLM maintain and protect water quality, free flow, and outstandingly remarkable values (ORVs). Therefore, withdrawal is appropriate to protect water quality and ORVs. Please refer to the EI PRMP/FEIS at pp. 1244-1245, which discloses several segments of the river that have outstandingly remarkable historic values based on historic mining. Mining using modern methods would potentially destroy the historic ORVs. One such example is Wade Creek, which has outstandingly remarkable recreational values, one of which is gold panning. A withdrawal in this instance is entirely appropriate to prevent the recreational

gold panning area from being encumbered by mining claims and no longer available for recreation (EI PRMP/FEIS, pp. 1240-1241).

The WSRA withdraws wild river segments. ANILCA expands the congressional withdrawal to ½ mile but does not preclude other types of withdrawals. Section 1326(a) of ANILCA provides a process to implement such new withdrawals.

The BLM is not expanding the designated corridor for Birch Creek. The EI PRMP/FEIS recommends withdrawal from locatable minerals of small pieces of the corridor located outside the ½ mile withdrawal, riparian conservation areas, and the special recreation management area along Birch creek (EI PRMP/FEIS, p. 180). These recommendations are based on watershed boundaries extending outside the corridor, and are not in violation of ANILCA (EI PRMP/FEIS p. 1223, Findings for Birch Creek).

ANILCA 401(b) identifies Caribou Range and Birch Creek as two special values of the Steese National Conservation Area (NCA) to be considered in the future planning and management of the NCA.

ANILCA Section 1326(a) would apply to any new withdrawals. Modification of existing Congressional withdrawals such as those under ANILCA or the WSRA is outside the scope of this RMP process. The EI PRMP/FEIS (Alternative E) recommends retaining existing ANCSA withdrawals until new withdrawals under the authority of FLPMA can be established in order to ensure that the public interest is properly protected in the interim per 17(d)(1) of ANCSA. Appendix G and maps 90-93 provide more detailed discussion on this topic.

Consultation

Issue Number: PP-UT-EasternInterior-16-02-10

Organization: Doyon, Limited

Protestor: James Mery

Issue Excerpt Text:

The planning decisions made in the planning process, including with regard to the designation of ACECs and other special management areas, could have a substantial and direct effect on Doyon and its resources. Doyon appreciates having had the opportunity for a consultation meeting with BLM on May 12, 2015 to discuss its comments on the draft plan. See PRMP § 5.3.1. Neither during this meeting nor at any other time, however, did BLM ever seek Doyon's input on the specific changes to the Fortymile ACEC boundaries adjacent to Doyon lands or the new delineation of crucial caribou and Dall sheep habitat. Given the agency's consultation obligations to ANCs and the agency's knowledge of the substantial economic, historic, and cultural interest of Doyon and its shareholders in the area, BLM should have engaged in further consultation with Doyon regarding the specific proposed revisions to the ACEC boundaries in an effort to address Doyon's access concerns.

Issue Number: PP-UT-EasternInterior-16-02-9

Organization: Doyon, Limited

Protestor: James Mery

Summary:

The BLM did not adequately consult with Alaska Native Claims Settlement Act (ANCSA) corporations during the planning process for the Eastern Interior Proposed Resource Management Plan and Final Environmental Impact Statement (EI PRMP/FEIS), as required by

Issue Excerpt Text:

[The] BLM Failed to Adequately Consult with Doyon on the Designation of the Fortymile ACEC. With the Boundaries Identified in Map 63, and Doyon's continuing concerns regarding access to and use of its lands effectively enveloped by the ACEC.

Issue Number: PP-UT-EasternInterior-16-03-1

Organization: Cook Inlet Region, Inc.

Protestor: Ethan Schutt

Issue Excerpt Text:

CIRI requested formal consultation on this issue pursuant to Executive Order 13175, Consultation and Coordination with Indian Tribal Governments (Nov. 6, 2000); 5 161, Pub. L. 108-199 (Jan. 23, 2004). We were not consulted properly, as required under EO13175.

Issue Number: PP-UT-EasternInterior-16-03-2

Organization: Cook Inlet Region, Inc.

Protestor: Ethan Schutt

Issue Excerpt Text:

CIRI has not been consulted with, despite our explicit request, and this PRMP/FEIS should not be effective until the BLM's legal consultation requirements have been fulfilled.

Executive Order (EO) 13175.

Response:

The BLM adequately and lawfully consulted with Alaska Native corporations when preparing the EI PRMP/FEIS. Per August 2012 DOI Policy on Consultation with Alaska Native Claims Settlement Act (ANCSA) Corporations, the provisions in Section VII, entitled Consultation Guidelines, of the Tribal Consultation Policy shall be used when consulting with ANCSA corporations, with adjustments as appropriate given the unique status, structure, and interest of ANCSA corporations.

As detailed in the EI PRMP/FEIS at p. 1092 (paraphrased), the BLM notified Alaska Native corporations with lands in the planning area of the planning process and included them in mailings including distribution of the scoping report, notification of the Draft Resource Management Plan and Draft Environmental Impact Statement (DRMP/DEIS), Supplement to the DRMP/DEIS, and PRMP/FEIS. Several corporations participated in the planning process by submitting comments during public comment periods. Cook Inlet Region Incorporated (CIRI) contacted the BLM in early 2015 with comments on proposed ACECs in the Fortymile Subunit. The BLM sent CIRI a letter on March 11, 2015, initiating consultation and offering to meet with the corporation, but did not receive a response. In this letter, the BLM clarified that designation of ACECs would not conflict with Section 101(d) of ANICLA, that withdrawals proposed in the resource management plan would not withdraw the lands from selection by Native corporations, and that the BLM would follow the withdrawal process as required by Section 1326(a) of ANILCA. Language in the EI PRMP/FEIS was clarified to emphasize that decisions in the plan would not preclude selection or conveyance of validly selected lands.

The Doyon, Limited (Ltd.) provided comments on the EI DRMP/DEIS, Supplement to the DRMP/DEIS, and the proposed ACECs. The BLM consulted with Doyon, Ltd. on May 12, 2015, regarding their comments. As a result of this consultation, the BLM: (1) added additional references to ANILCA Titles 11 and 13; (2) clarified that lands selected by Doyon, Ltd. were selected for development and economic opportunity, not subsistence; and (3) added the following management direction to Section 2.6.3.3 of the Proposed RMP:

“Provide access to non-federally owned lands, including ACECs, adequate to secure the owner the reasonable use and enjoyment of such lands as required by Section 1323(b) of ANILCA. Access across ACEC lands is not precluded by ACEC designation. Proposals for access across ACEC lands to private lands would be considered and evaluated on the basis of environmental impacts”.

At the May 12, 2015 meeting with Doyon, Ltd., the BLM also discussed the possibility of a corridor through the Fortymile ACEC into the Mount Harper area to help address Doyon, Ltd.’s concerns about access. Doyon, Ltd. indicated it would be too difficult to define the most suitable corridor at the time.

The BLM also modified the boundary of the Fortymile ACEC to exclude the Fortymile WSR corridor, partially in response Doyon Ltd.’s request (EI PRMP/FEIS, Map 63).

Finally, in the EI PRMP/FEIS at p. 1540, the BLM explains how the EI PRMP/FEIS would not adversely affect the selection and conveyance process:

“Decisions in the Proposed RMP/Final EIS to retain ACEC lands in federal ownership would not affect the conveyance process, the State’s entitlement under the Statehood Act, or Doyon’s entitlement under ANCSA. Nor would it prevent Cook Inlet Regional Corporation from selecting lands in the ACEC. These processes are ongoing administrative actions and take precedence over decisions in the PRMP.

“Decisions in the PRMP to retain lands would prevent these lands from being disposed of through FLPMA sale or exchange after conveyances are completed. Designation of the ACEC would not prevent access to inholdings. Regardless of designation or non-designation, applications for access across BLM lands would be evaluated through the NEPA process and appropriate terms and conditions to mitigate impacts to resources would be applied to the permit.”

ACECs

Issue Number: PP-AK-EasternInterior-16-02-2

Organization: Doyon, Limited

Protestor: James Mery

Issue Excerpt Text:

The PRMP similarly continues to fail to adequately support a decision to designate certain lands in the Fortymile Subunit, with the boundaries set forth in the PRMP, as the Mosquito Flats ACEC, to protect wetlands,

moose calving habitat, and waterfowl nesting and resting habitat, and to impose certain restrictions and prescriptions to protect those resources and values. Neither the need for these ACECs, with these boundaries, nor the special management measures identified in the PRMP to protect the resources and values identified by BLM as the basis for establishing the ACECs, is scientifically justified.

Summary:

The Eastern Interior Proposed Resource Management Plan and Final Environmental Impact Statement (EI PRMP/FEIS) violates laws, regulations and policies associated with ACECs because:

- the BLM fails to support a decision to designate certain lands in the Fortymile subunit as the Mosquito Flats ACEC to protect wildlife and critical habitat; and
- neither the need for these ACECs, nor the special management measures identified, is scientifically justified.

Response:

The BLM used the best available data and analysis in the Eastern Interior Proposed Resource Management Plan and Final Environmental Impact Statement (EI PRMP/FEIS) to evaluate areas for consideration as ACECs. The BLM determined that some areas met the relevance and importance criteria as required for ACEC designation, and therefore considered those areas for ACEC designation in at least one action alternative. However, the BLM determined that some areas did not meet the relevance and importance criteria as required for ACEC consideration, and therefore did not consider those areas for ACEC designation in any of the action alternatives.

In regards to the allegation that the BLM fails to support a decision to designate certain lands in the Fortymile subunit as the Mosquito Flats ACEC to protect wildlife and critical habitat, the BLM must carry forward all potential ACECs as recommended for designation in at least one alternative in the EI DRMP/DEIS (BLM Manual Section 1613.22.B). There is, however, no requirement to carry forward potential ACECs into the EI PRMP/FEIS.

The BLM has full discretion in the selection of ACECs for the various alternatives. A comparison of estimated effects and trade-offs associated with the alternative leads to development and selection of the EI PRMP/FEIS. BLM Manual Section 1613.33.E provides direction for when the BLM may choose not to designate potential ACECs. The BLM also justifies the need for these ACEC designations. All potential ACECs were recommended for designation in at least one alternative in the EI DRMP/DEIS. Based on the impacts analysis and goals and objectives of the

EI PRMP/FEIS, the BLM selected certain potential ACECs to be included in the EI PRMP/FEIS. The BLM will describe the process it used to delineate crucial caribou and Dall sheep habitat in an Appendix to the Approved RMPs.

In the effects analysis of the EI PRMP/FEIS as well as in the public response to comments in Appendix L, the BLM described ACECs as including more or less of caribou calving and post calving habitat as well as Dall sheep habitat and the potential effects of the calving. The crucial caribou and Dall sheep habitat areas are identical or similar to ACEC boundaries in one or more alternatives, and the BLM refers to this in several places of the EI PRMP/FEIS, including the effects analysis, which states: “In Alternative E, the Fortymile ACEC is reduced in size relative to Alternative C, but closes essentially the same area to mineral location, entry, and leasing. In Alternative E, management provisions very similar to those of the ACEC in other alternatives (but not including mineral closures) are applied to a larger area delineated as crucial caribou and Dall sheep habitat. This could result in slightly lower priority given to habitat values relative to other resources and uses than in the Alternative C ACEC (Section 4.4.1.7, Wildlife Fortymile Subunit, p. 735).

Appendix C, “Evaluation of ACEC Nominations”, describes importance and sensitivity of Fortymile caribou calving and post calving habitat and Dall sheep habitat, as do responses to comments and the “Additional Information Regarding Areas of Critical Environmental Concern”. The BLM believes that the nominated areas meet the relevance and importance criteria for wildlife. Specifically, the proposed Fortymile ACEC includes essential habitats, including mineral licks (salt licks), for Yukon-Tanana Uplands populations of Dall sheep and caribou. The ACEC includes habitat that supports several isolated populations of Dall sheep. The Fortymile caribou herd is one of the most important subsistence game populations in Interior Alaska, and calving and post calving habitats are considered the most sensitive seasonal habitats. The ACEC contains large portions of the recent calving and post calving habitat for the Fortymile herd, and was delineated using caribou telemetry data collected from 1992 to 2008. The BLM lands in the proposed Fortymile ACEC include approximately one-third of the most concentrated recent calving habitat. The goal of the protection and maintenance of the value of crucial caribou and Dall sheet habitat is discussed in PRMP/FEIS, Section 2.7.2.4.1.6 – Wildlife (p. 110), stating that the BLM will “delineate 685,000 acres as crucial caribou and Dall sheep habitat (Map 103) to protect values, which include: concentrated caribou calving and post calving habitat for the Fortymile caribou herd, ungulate mineral licks, and Dall sheep habitat. Management of these areas will give priority to maintaining habitat effectiveness – the ability of habitats to support Dall sheep and caribou...” and include detailed management as described in this section.

The BLM properly considered the designation of the Fortymile ACEC and the Mosquito Flats ACEC and adequately justified the need for these ACECs in the EI PRMP/FEIS. The BLM determined that these ACECs meet the relevance and importance criteria, qualifying these areas for potential ACECs for protection of wildlife and critical habitat. The BLM documented the basis for its determination in the EI PRMP/FEIS, Section 4.4.1.7 p. 735 and Appendix C, p. 1132.

Need for Special Management

Issue Number: PP-AK-EasternInterior-16-02-3

Organization: Doyon, Limited

Protestor: James Mery

Issue Excerpt Text:

The PRMP fails to explain why existing management is not sufficient to protect the resource or value from risks or threats of damage/degradation. Moreover, it fails to provide adequate justification for why the restrictions and prescriptions that would be imposed in the Fortymile ACEC are required to protect and prevent irreparable damage to the asserted relevant and important values and resources, including caribou and Dall sheep habitat.

Issue Number: PP-AK-EasternInterior-16-02-4

Organization: Doyon, Limited

Protestor: James Mery

Issue Excerpt Text:

Despite evidence that harvest management, wolf control, weather, and overabundance are the dominant factors affecting the Fortymile caribou population, and evidence that harvest management and wolf control measures already in place have been successful in restoring the population, BLM concluded in its evaluation of the Fortymile ACEC in Appendix C that “[w]ithout long-term special management the value of these areas as wildlife habitat will likely be reduced” (Id., App. C at 1149). BLM fails to sufficiently support this conclusion, as well as its conclusion that mineral leasing/location closures and OHV restrictions are necessary “special management attention”.

Issue Number: PP-AK-EasternInterior-16-07-27

Organization: Alaska Miners Association

Protestor: Deantha Crockett

Issue Excerpt Text:

Management of the Fortymile subunit, where the proposed Fortymile and Mosquito Flats ACECs are located, also includes a non-seasonal prohibition on salable mineral disposal within one mile of mineral licks. Such disposal is strictly regulated under 43 CFR Part 3600, offering multiple points at which discretion can be exercised to safeguard and provide for unfettered use of the mineral licks by wildlife.

Issue Number: PP-AK-EasternInterior-16-07-34

Organization: Alaska Miners Association

Protestor: Deantha Crockett

Issue Excerpt Text:

For example, in the inquiry regarding whether special management is needed, the Proposed RMP/FEIS notes “[w]ater quality in Salmon Fork and Grayling Fork should be maintained to support nesting Bald Eagles and restrictions on industrial activity in vicinity of nests should be enacted.” Despite the limited areas of concern, this appears to be applied to the entire proposed designation. But no mention is made of federal and state authorities governing water quality, or the Bald and Golden Eagle Protection Act, or the Bureau’s memorandum of understanding with the US Fish and Wildlife Service. Likewise, the associated management prescription to maintain water quality to support salmon habitat makes no mention of federal, state and international authorities regarding both salmon and habitat, or the Magnuson-Stevens Fishery Conservation and Management Act.

Issue Number: PP-AK-EasternInterior-16-07-38

Organization: Alaska Miners Association

Protestor: Deantha Crockett

Issue Excerpt Text:

Section 1613.2.22 of the BLM Manual provides that “[a]t least one management prescription for each potential ACEC must be developed which provides special management attention”. Since noted limitations in each of the three proposed ACECs also apply outside of the designated areas, the Proposed RMP/FEIS has not provided any management prescriptions which apparently require ACEC designation.

Issue Number: PP-AK-EasternInterior-16-07-39

Organization: Alaska Miners Association

Protestor: Deantha Crockett

Issue Excerpt Text:

The most obvious examples of this are the management prescriptions proposed for the Fortymile ACEC, the vast majority of which apply to all areas classified as “crucial habitat” for caribou and/or Dall sheep. This includes the “limited” off-road vehicle designation and seasonal use restrictions within one mile of ungulate mineral licks, noted in the first two FEDERAL REGISTER notices. This also includes prescriptions exclusive to the Proposed RMP/EIS, such as the closure to commercial timber sales and the requirement for a Caribou and Dall Sheep Impact Assessment and Mitigation Plan. Were the proposed Fortymile ACEC designation withdrawn, these restrictions would remain under the “crucial habitat” classification.

Issue Number: PP-AK-EasternInterior-16-07-42

Organization: Alaska Miners Association

Protestor: Deantha Crockett

Issue Excerpt Text:

The Proposed RMP/FEIS does not provide a single management prescription AMA could find which only applies to the proposed ACEC designations. Neither does it provide any management practices or uses unique to those designations. Lacking any reference to or indication of special management attention, the proposed ACECs cannot lawfully be designated under FLPMA or its implementing regulations.

Issue Number: PP-AK-EasternInterior-16-07-70

Organization: Alaska Miners Association

Protestor: Deantha Crockett

Issue Excerpt Text:

The Proposed RMP/FEIS also uses plans [of operations] to easily satisfy requirements addressing resource concerns, such as reducing impacts to restoration projects in watersheds (2.6.2.3). There is no explanation as to why ACEC designation is needed to require or request a Plan of Operations.

Issue Number: PP-AK-EasternInterior-16-07-71

Organization: Alaska Miners Association

Protestor: Deantha Crockett

Issue Excerpt Text:

[regarding the Salmon Fork ACEC] According to the analysis in Appendix C, eligible resource values include fish, wildlife and natural systems. And while the analysis presents general assumptions about potential land use impacts to those resource values, at no time does the plan explore the wealth of existing

protections that would be managing those impacts and preventing harmful effects.

Issue Number: PP-AK-EasternInterior-16-08-14

Organization: State of Alaska Attorney General

Protestor: Jahna Lindemuth

Issue Excerpt Text:

The Eastern Interior Plan concludes that special management attention is necessary in the case

of ACECs (Appendix C), but it does not explain how or why BLM determined that mineral closures, the most restrictive management action possible, were necessary. BLM's justification for mineral closures in other resource protection areas is similarly lacking. Without consideration of existing environmental laws, regulations, and policies in the analysis, the Plan fails to justify mineral closures in ACECs and other resource protection areas and these decisions are arbitrary and capricious.

Summary:

The Eastern Interior Proposed Resource Management Plan and Final Environmental Impact Statement (EI PRMP/FEIS) fails to provide consistent management prescriptions and adequate justification for the proposed ACEC designations in regards to important resources and values, and therefore cannot lawfully be designated under FLPMA because:

- the BLM is proposing to apply management prescriptions for all areas, not just within designated ACECs, and it is not proposing to provide management practices or uses unique to designated ACECs, nor does it explain why existing management is not sufficient to protect the resources or values from risks or threats of damage or degradation;
- it does not consider that the management of the Fortymile ACEC includes a non-seasonal prohibition on salable mineral disposal which is strictly regulated under 43 CFR Part 3600, offering multiple points at which discretion can be exercised to safeguard and provide for unfettered use of the mineral licks by wildlife;
- despite the limited areas of concern, management appears to be applied to the entire proposed designation, with no mention of federal, state and international authorities regarding both salmon and habitat, or the Magnuson-Stevens Fishery Conservation and Management Act;
- it does not provide a justification as to why ACEC designations are needed in order to require or request a Plan of Operations;
- even though the BLM's analysis presents general assumptions regarding potential land use impacts to these resource values, it does not mention any existing protections that would manage these impacts; and
- the BLM does not justify how or why it determined that mineral closures would be necessary, thereby providing decisions that are arbitrary and capricious.

Response:

The Eastern Interior Proposed Resource Management Plan and Final Environmental Impact Statement (EI PRMP/FEIS) provides consistent management prescriptions and adequate justification for the proposed ACEC designations in regards to important resources and values.

To be designated as an ACEC, an area must require special management attention to protect the important and relevant resources (BLM Manual 1613). “Special management attention” refers to management prescriptions developed during preparation of a land use plan expressly to protect the important and relevant values of an area from the potential effects of actions permitted by the plan, including proposed actions deemed to be in conformance with the terms, conditions, and decisions of the plan. Management prescriptions exist, which would not be necessary and prescribed if the critical and important features were not present. A management prescription is considered to be special if it is unique to the area and includes terms and conditions specifically to protect the important and relevant value(s) in that area. Management prescriptions providing special management attention will include more detail than prescriptions for other areas and should establish priority for implementation (Appendix C, p. 1133).

The EI PRMP/FEIS appropriately proposes to protect the resources and values from risks and threats of damage and degradation, which is the reason the BLM proposes management prescriptions through various portions of the plan. The EI PRMP/FEIS states: “Applicants proposing to conduct surface-disturbing activities or other intensive activities will, at the determination of the AO, be required to submit an approved plan (Caribou and Dall Sheep Impact Assessment and Mitigation Plan) describing methods to minimize impacts to caribou and Dall sheep and their habitat. This plan must describe the proposed project, the design and mitigation alternatives considered, the amount and quality of habitat to be affected, the mitigation and restoration to be applied, the residual impacts predicted, and the monitoring to be undertaken to confirm mitigation success” (Chapter 2, Alternatives, p. 117). No law, regulation or policy says that similar management prescriptions cannot occur outside of ACECs. It is the suite of management decisions within particular ACECs that is special.

For example, the suite of management actions for the Mosquito Flats ACEC differs from the remainder of the Fortymile Subunit. Decisions to limit all permitted uses and development of facilities for permitted uses to activities that would not degrade aquatic and wetland habitat and annual monitoring program, in addition to seasonal restriction on OHV and mining closures, are unique to Mosquito Flats (Chapter 2, Alternatives, p. 118). Although management is similar in crucial caribou/Dall sheep habitat outside the Fortymile ACEC, additional management in the ACEC includes closure to leasable minerals and recommended withdrawal from mining (Chapter 2, Alternatives, p. 117).

The BLM must rely on just the management tools for which it has authority. Some of the management applying within ACECs will also apply outside ACECs, but for different reasons. For example, the EI PRMP/FEIS also recommends mineral withdrawals in the scenic and recreational segments of the Fortymile WSR to protect water quality and outstandingly remarkable values of the river. Mineral withdrawals are recommended in Mosquito Flats ACEC to protect relevant and important wetlands.

In regards to the allegation that no justification exists as to why ACECs are needed for a Plan of Operation, 43 CFR 3809.11 requires a Plan of Operations within designated ACECs. A plan of operations can only be required in areas or circumstances defined in the regulations, one of which is ACEC designation. The EI PRMP/FEIS does not require a plan of operations

specifically for vehicle uses; rather, use of larger vehicles than allowed under the OHV designations can be authorized through a plan of operations or other type of permit.

The BLM's Land Use Planning Handbook discloses that land use planning decisions identify areas open or closed to mineral materials disposal in concert with the protection of natural resources (Appendix C, p. 25: Mineral Materials). In regards to the allegation that no consideration was given to the prohibition on salable minerals, the BLM has documented the need for this prohibition, given that the value of these lands for both caribou and Dall sheep has been documented in ACEC worksheets contained in Appendix C of the EI PRMP/FEIS, as well as in the Impacts Analysis on p. 624. Similarly, the BLM understands that mineral licks are crucial for Dall sheep and discusses this in the EI PRMP/FEIS at p. 54, Table 2.4 and there should be protected by closing these deposits to commercial mineral extraction.

In regards to the assertion that BLM does not justify how or why it determined mineral closures would be necessary, the FEIS describes the effects of mining on caribou, Dall sheep, fish and aquatic habitat, soils, and vegetation at: EI PRMP/FEIS p. 387, Factors Affecting Fish Habitat and Production; pp. 631-634 effects of mining on soils and water; p. 645 effects of mining on vegetation; p. 621 effects of mining on wildlife; pp. 676-678 effects of mining on caribou and Dall sheep; pp. 609-617 effects of mining on fish and aquatic habitats; p. 990 effects of mining in the Salmon Fork ACEC; p. 991 effects of ACEC designation without mineral closures; p. 790 indirect effects of mining on wildlife; and pp. 795-796 effects of ACEC designation without mineral closures, among other sections. Alternative D analyzed designation of a smaller ACEC and no mineral closures (EI PRMP/FEIS p. 741).

In regards to the allegation that despite what appears to be limited areas of concern, management is applied to the entire proposed designation, the Fortymile ACEC boundary is based on caribou and sheep telemetry data and encompasses a polygon which includes about 50 percent of the calving locations for the Fortymile Caribou herd from 1992 to 2008 (EI PRMP/FEIS p. 1540). Since additional caribou calving/post calving habitat exists outside of the proposed ACEC, it is appropriate to apply management to the entire ACEC. The Mosquito Flats ACEC encompasses most of the wetland under BLM-management. Upland areas were excluded, as were existing summer OHV routes (EI PRMP/FEIS p. 1538 and p. 768).

The Magnuson-Stevens Fishery Conservation and Management Act (Public Law 94-265) defines essential fish habitat as those waters and substrate necessary to fish for spawning, breeding, feeding, or growing to maturity. The EI PRMP/FEIS includes management direction for essential fish habitat (FEIS p. 40) and adopts recommended conservation measures for essential fish habitat set forth in the *Final Environmental Impact Statement for Essential Fish Habitat Identification and Conservation in Alaska, Appendix G -Non-fishing Impacts to Essential Fish Habitat and Recommended Conservation Measures* (NMFS 2005) (EI PRMP/FEIS Appendix I.6).

The Fortymile Caribou herd is an important subsistence resource (EI PRMP/FEIS p. 391, p. 635, pp. 1148-1149, p. 504 Table 3.49, p. 1385) and has been the subject of an international planning effort to restore the herd to its historical range and increase the population (EI PRMP/FEIS p. 1149). As part of this planning process, a habitat needs assessment was completed (EI

PRMP/FEIS p. 1654). Calving and post calving habitats are considered the most sensitive habitats (EI PRMP/FEIS p. 857) and therefore protected by the EI PRMP/FEIS.

The EI PRMP/FEIS recognizes international treaty obligations for Yukon River salmon (p. 8 Fisheries Management), Migratory Bird Treaty Act (p. 11 Planning Criteria; p. 53; p. 1121 Standard Operating Procedures; and p. 1489), and the U.S. Canadian Porcupine Caribou Treaty (p. 1485). The EI PRMP/FEIS additionally recognizes other laws and regulations (p. 11 Planning Criteria) including the Bald/Golden Eagle Protection Act (pp. 398, 408, 1489, and 1533), Endangered Species Act (pp. 35, 56, 43, 404, 1093, and 1124), and the 43 CFR 3809 regulations (pp. 38-39, 63). For example, the EI PRMP/FEIS estimates that approximately 150-200 miles of stream has been mined or reclaimed within the planning area since the 43 CFR 3809 regulations were implemented in the early 1980s. To date, few, if any, of these stream miles are known to have achieved desired stream and riparian habitat conditions (EI PRMP/FEIS, p. 385). The EI PRMP/FEIS also recognizes EO 11988 Floodplain Management (EI PRMP/FEIS, p. 49) and EO 11990 Wetland Protection (EI PRMP/FEIS, p. 1477), which require federal agencies to avoid destruction or modifications of wetlands whenever there is a practical alternative.

The EI PRMP/FEIS provides consistent management prescriptions and adequate justification for the proposed ACEC designations in regards to important resources and values, as designated under FLPMA and discussed above.

Wilderness Act of 1964

Issue Number: PP-AK-EasternInterior-16-06-5

Organization: Resource Development Council

Protestor: Marlenna Hall

Other Section: 8.1

Issue Excerpt Text:

Alternative E will likely result in a violation of ANILCA. Alternative E allows for 1.7 million acres, a fraction of the EI, to be open to possible resource extraction, while

recommending the other 4.8 million acres be closed to mining. This mineral extraction closure affects approximately 74% of the federally managed land in the EI area. This action by BLM appears to be an attempt to restrict resource development and economic opportunity in the EI, and effectively withdraws an additional one million acres of land from development through a derivative of a wilderness designation.

Summary:

The Eastern Interior Proposed Resource Management Plan and Final Environmental Impact Statement's (EI PRMP/FEIS) proposed maintenance of lands with wilderness characteristics and wilderness areas will negatively affect resource development and opportunity, and is inconsistent with Section 1326 of ANILCA, which limits the authority of the executive branch to establish or expand conservation areas in the State of Alaska.

Response:

The BLM's authority for managing lands to protect or enhance wilderness characteristics is derived directly from Section 202 of FLPMA, which gives the Secretary of the Interior authority to manage public lands for multiple use and sustained yield.

FLPMA makes it clear that the term "multiple-use" does not mean that every use is appropriate for every acre of public land, but rather that the Secretary can "make the most judicious use of the land for some or all of these resources or related services over areas large enough to provide sufficient latitude for periodic adjustments in use..." (FLPMA, Section 103(c)). Further, FLPMA directs that the public lands be managed in a manner "that, where appropriate, will preserve and protect certain public lands in their natural condition" (FLPMA, Section 102(a)). FLPMA authorizes the Secretary of the Interior to use land use planning as a mechanism for allocating resource use, including wilderness character management, amongst the various resources in a way that provides for current and future generations.

The BLM believes that management decisions for lands with wilderness characteristics in the EI PRMP/FEIS are appropriate. Alternative E would manage 3.5 million acres (more than half of BLM-managed lands in the planning area) to allow for other multiple uses, while applying management restrictions to reduce impacts to wilderness characteristics (EI PRMP/FEIS, Maps 73, 77 and 81). The BLM will manage these areas in a manner consistent with maintaining wilderness characteristics (naturalness, solitude, opportunities for primitive recreation) over the life of the RMP.

“The BLM has carefully considered restrictions on ANILCA protected uses to ensure that decisions in the RMP do not conflict with ANILCA”. The BLM “...revised the wording in Section 2.6.2.11 to remove the list of ‘generally incompatible’ activities. The PRMP (Alternative E) would maintain wilderness characteristics through compatible management of Areas of Critical Environmental Concern, wild and scenic rivers, recreation objectives, and riparian conservation areas” (PRMP/FEIS, p. 1492).

Alternative E in the Eastern Interior PRMP/FEIS identifies lands that would be managed to emphasize other resource values and multiple-use while applying management restrictions to reduce impacts to wilderness characteristics. Like all public lands, they will be managed by the BLM in accordance with land use plans and all applicable provisions of law, the arrangement that Congress presumed in ANILCA Section 101(d) when it deemed its “designation and disposition of the public lands in Alaska” to afford “sufficient protection” and represent “proper balance”. No new conservation-system units, national conservation areas, or national recreation areas will be established by the PRMP.

ANILCA Section 1326(a) would apply to any new withdrawals. Modification of existing Congressional withdrawals such as those under ANILCA or the Wild and Scenic Rivers Act, for example, is outside the scope of the Eastern Interior PRMP/FEIS. Alternative E also recommends retaining existing ANCSA withdrawals in some areas until new withdrawals under the authority of FLPMA can be established to ensure that the public interest is properly protected in the interim Per 17(d)(1) of ANCSA. Appendix G and maps 90 and 93 in the Eastern Interior PRMP/FEIS provide more detailed discussion on this topic.

The BLM’s proposed maintenance of lands with wilderness characteristics is consistent with ANILCA’s establishment of “a proper balance between the reservation of national conservation system units and those public lands necessary and appropriate for more intensive use and disposition” by finding a balance that enhances conservation of wilderness characteristics while simultaneously providing for the availability of multiple-use. Maintenance of lands with wilderness characteristics does not equate to the establishment of conservation areas under ANILCA Section 1326.

BLM Policy on Wilderness

Issue Number: PP-AK-EasternInterior-16-02-7

Organization: Doyon, Limited

Protestor: James Mery

Issue Excerpt Text:

Designation of certain areas in the Fortymile Subunit as areas where wilderness characteristics would be maintained is not supported by BLM policy and guidance governing the consideration of lands with wilderness characteristics in land use planning.

Issue Number: PP-AK-EasternInterior-16-09-9

Organization: The Wilderness Society

Protestor: Phil Hanceford

Issue Excerpt Text:

In the proposed RMP, BLM effectively establishes three tiers of management for lands with wilderness characteristics in the Eastern

Interior planning area. This approach reflects the range of options laid out in Manual 6320. BLM Manual 6320 at .06(A). Under the most protective management approach, BLM would prioritize protection of wilderness characteristics over other resources. The Eastern Interior proposed RMP would not prioritize protection of wilderness character for any of the 6.4 million acres found to meet LWC criteria. Eastern Interior Proposed RMP at 109, 173, 208 and 266. Instead, BLM asserts that it will take a “coincidental approach to management of wilderness characteristics”, where restrictions and prohibitions for other resources (e.g., caribou calving, wild and scenic river corridors, riparian resources, certain types of recreational experiences) will likely provide corresponding benefits to the resource. Eastern Interior Proposed RMP at 1493.

Summary:

The Eastern Interior Proposed Resource Management Plan and Final Environmental Impact Statement (EI PRMP/FEIS) violates BLM policy because:

- the policy does not support the designation of the maintenance of lands with wilderness characteristics in certain areas of the Fortymile ACEC; and
- the policy does not prioritize protection of lands with wilderness characteristics as reflected in guidance provided in BLM Manual 6320, only taking a coincidental approach to management of lands with wilderness characteristics.

Response:

Under BLM Manual 6320, the BLM can manage areas to emphasize other resource values and multiple uses while applying management restrictions to protect wilderness characteristics (EI PRMP/FEIS, Chapter 2, Section 2.10.2.4.17). The EI PRMP/FEIS accurately interpreted existing lands with wilderness characteristics policy in relation to the BLM Policy. Wilderness characteristics inventory may be based on “available information (e.g., existing maps, photos, records related to range projects, monitoring data)” (BLM Manual 6310.05.B). The policy further states that its “inventory process directive does not mean that the BLM must conduct a completely new inventory and disregard the inventory information that it already has for a particular area. Rather, the BLM must ensure that its inventory is maintained” (BLM Manual 6310.05.B). Additionally, when making determinations whether or not to manage lands

possessing wilderness character for that character, the BLM is given discretion to consider both the effective manageability of the unit and other resources/resource-values that may be present (BLM Manual 6320.06.A.1.a). The EI PRMP/FEIS properly analyzed this inventory as part of the land use planning process, and identified decisions that would protect or preserve the wilderness characteristics within the area (BLM Land Use Planning Handbook H-1601-1, Appendix C, p. 12).

The EI PRMP/FEIS states that:

“BLM Manual 6320 outlines several outcomes of considering wilderness characteristics in the land use planning process, including, but not limited to: (1) emphasizing other multiple uses as a priority over protecting wilderness characteristics; (2) emphasizing other multiple uses while applying management restrictions (conditions of use, mitigation measures) to reduce impacts to wilderness characteristics; and/or (3) the protection of wilderness characteristics as a priority over other multiple uses. Alternatives in the PRMP/FEIS consider outcomes (1) and (2). Measures would be applied to reduce impacts to size, naturalness, opportunities for solitude, and outstanding opportunities for primitive and unconfined recreation. The impacts to wilderness characteristics would be analyzed in the associated NEPA document (PRMP/FEIS, Chapter 2, Section 2.6.2.11, p. 50).

“Proposed management of the [Fortymile] ACEC will be sufficient to maintain wilderness characteristics. The Proposed RMP (Alternative E) emphasizes other resource values (caribou and Dall sheep) and multiple uses while applying management restrictions to reduce impacts to wilderness characteristics. The BLM recognizes that there may be some impacts to wilderness characteristics, but would minimize these impacts through the NEPA process” (PRMP/FEIS, p. 1490).

The size of the Fortymile ACEC is such that even if an access road went through the area, the polygons on either side of the road would be large enough to meet the criteria for lands with wilderness characteristics. BLM Manual 6310, “Conducting Wilderness Characteristics Inventory on BLM lands” (C.2.b.iii) states that human impacts outside of the area will normally not be considered in assessing naturalness of an area and (C.3.b) when establishing boundaries of lands with wilderness characteristics do not create a setback or buffer from the physical edge of the imprint of man. Thus, a road traversing a large polygon of lands with wilderness characteristics would split the polygon into two smaller units, but would only remove a small amount of land within the footprint of the road from the lands with wilderness characteristics.

The BLM is not making decisions to restrict or prohibit certain activities in an area simply to maintain wilderness characteristics; however, restrictions or prohibitions are being made to protect other resources or values. The BLM recommends that these areas be closed to both mining and mineral leasing for reasons other than wilderness characteristics.

The Eastern Interior PRMP/FEIS followed policy cited from BLM Manual 6320 and has decided to take a coincidental approach to the support of lands with wilderness characteristics, supporting the maintenance of wilderness characteristics in certain areas of the Fortymile ACEC.