ALASKA MINERS ASSOCIATION

121 W. Fireweed Suite 120 | Anchorage, Alaska | 99503 | 907.563.9229 | alaskaminers.org

May 28, 2024

BLM Director
Attn: Protest Coordinator (HQ210)
Denver Federal Center, Building 40 (Door W-4)
Lakewood, Colorado 80226
submitted online and via U.S. Mail

Dear Director Stone-Manning,

Pursuant to 43 C.F.R. §1610.5-2, the Alaska Miners Association (AMA) protests specific issues in the Proposed Central Yukon Resource Management Plan (CYRMP; Plan) and associated Final Environmental Impact Statement (EIS), dated April 2024, with significant adverse effects on its interests and the interests of its members. AMA asserts the decision to adopt hybrid Alternative E is wrong and contrary to law, including the Alaska Statehood Act, P.L. 85-508, Alaska Native Claims Settlement Act (ANCSA), P.L. 92-203, Alaska National Interest Lands Conservation Act (ANILCA), P.L. 96-487, and Federal Land Policy and Management Act (FLPMA), P.L. 94-579.

AMA is a professional membership trade organization established in 1939 to represent the mining industry in Alaska. We are composed of more than 1,400 members that come from eight statewide branches: Anchorage, Denali, Fairbanks, Haines, Juneau, Kenai, Ketchikan/Prince of Wales, and Nome. Our members include individual prospectors, geologists, engineers, suction dredge miners, small family mines, junior mining companies, and major mining companies, Alaska Native Corporations, and the contracting sector that supports Alaska's mining industry.

This protest is timely filed. Prior comments are incorporated by reference and attached hereto:

- AMA Comments on Draft Resource Management Plan (RMP) and Environmental Impact Statement (EIS), dated June 7, 2021 (Draft RMP comments).
- AMA Comments on Preliminary Alternatives, dated March 17, 2017 (Prelim comments).
- AMA Comments on Nominations for Areas of Critical Environmental Concern (ACEC), dated August 29, 2014 (ACEC comments); and
- AMA Comments on EIS Scoping, dated January 17, 2014 (Scoping comments).

PROTEST

I. ISSUE: The Plan refuses to revoke and instead repurposes outdated ANCSA 17(d)(1) withdrawals without committing to pursue the required withdrawal process.

AMA protests the CYRMP's failure to revoke 17(d)(1) withdrawals and, where justified, further withdraw the lands under "existing authority" to protect the public interest in that classification. Passively retaining 50+year-old temporary withdrawals to enforce Plan classifications interferes with equitable application of the public land laws, exploration and location of strategic mineral resources, agency accountability to the public, and 40+year-old congressional standards for all withdrawals.

A. Parts of the Proposed Plan Under Protest

a. Vol. 1: pp. 1-7, 1-10, 1-11, 1-12, 1-13, 2-6, 2-58, 2-67, 2-69, 2-72
b. Vol. 1, Ch. 3: pp. 3-1, 3-55, 3-68, 3-69, 3-93, 3-119, 3-123, 3-154, 3-159, 3-160, 3-198, 3-228, 3-229, 3-250, 3-260
c. Vol. 2, Appendix: E, J.4, J.7
d. Vol. 3, Appendix: pp. M-6, M-88, M-90, M-91, M-117, M-136

B. AMA Comments During the Planning Process

a. Scoping: p. 2
b. ACEC: pp. 1, 4, 7
c. Prelim: pp. 1, 2
d. Draft RMP: pp. 2, 5, 14

C. The State Director's Decision is Wrong, Arbitrary, Capricious, and Contrary to Law

The Secretary is not authorized to administer 17(d)(1) withdrawals indefinitely, including the use of discretionary amendments that lift withdrawals in certain areas or for certain uses and/or user groups until all the laws apply. This approach overlooks the stated purposes and authority under which those lands were withdrawn: the **Pickett Act of 1910**. That act authorized the President to "temporarily withdraw" and reserve lands for "water-power sites, irrigation, classification of lands, or other public purposes to be specified in the order of withdrawal, and such withdrawals or reservations shall remain in force until revoked by [the President] or by an Act of Congress" 43 USC §141 (1970) (emphasis added); authority delegated to the Secretary of Interior in Exec. Order 10355, 17 FR 4831 (May 28, 1952).

a. 17(d)(1) withdrawals were transitional safeguards pending study, review, and classification of unappropriated lands. The CYRMP satisfies these purposes.

Anxious in part that the early-20th Century oil boom could remove America's oil wealth from public ownership, including resources necessary to transition the Navy from coal to oil, then-Interior Secretary Richard Ballinger and President Taft issued withdrawal orders closing millions of acres pending "legislation affecting the use and disposition of the petroleum deposits on the public domain". E.g., Temporary Petroleum Withdrawal No. 5 (1909). To address concerns the President was not authorized to make those interim withdrawals, Congress provided authority in the Pickett Act to "temporarily withdraw" lands, safeguarding the nation's oil and gas resources while a proper disposal program could be designed and instituted.

Similarly, anxious in part that a mid-20th Century statehood compact and indigenous land claims settlement could remove desirable areas from the federal estate, including resources necessary to satiate a growing environmental movement, Congress froze unappropriated lands in Alaska for 90 days – from December 18, 1971, to March 17, 1972 – allowing then-Interior Secretary Rogers Morton to issue withdrawal orders closing millions of acres pending study, review, classification, and protection of the public interest.

ANCSA 17(d)(1) directed these withdrawals of unappropriated, frozen lands "under authority provided for in existing law to ensure that the public interest in these lands is properly protected." Dozens of land orders followed using existing Pickett Act authority to "temporarily withdraw" land for certain purposes, typically repeating the purpose "to classify or reclassify any lands withdrawn" and occasionally opening "lands to appropriation under the public lands laws in accord with" those classifications; see examples below. Congress rescinded the Pickett Act in 1976, granting the Secretary a more restrictive, time-limited withdrawal authority in FLPMA. FLPMA limits withdrawals of 5,000 acres or more to twenty years (43 U.S.C. Sec 1714).

Public lands withdrawn using Pickett Act authority pursuant to 17(d)(1) include the following Public Land Orders (PLOs).

PLOs 5169 and **5171-5178** are "reserved for study and review by the Secretary of the Interior for the purpose of classification or reclassification of any lands not conveyed pursuant to section 14 of [ANCSA]". 37 FR 5572, 5574-79 (Mar. 16, 1972).

> Modified in **PLO 5191** to include lands "reserved for study and review for the purpose of determining the proper classification of the lands, and for the protection of the public interest in the lands" and to delete lands that "have been and continue to be withdrawn for classification, and protection of the public interest in the lands, pursuant to section 17(d)(1) of [ANCSA]." 37 FR 6090 (Mar. 24, 1972).

PLO 5179 are "reserved for study and review by the Secretary of the Interior for the purpose of classification or reclassification as appropriate" 37 FR 5583.

Modified in **PLO 5192** to include lands "reserved for study and review for the purpose of determining the proper classification of the lands, and for the protection of the public interest in the lands." 37 FR 6091-92.

PLO 5180 are "reserved for study to determine the proper classification of the lands under [17(d)(1)] and to ascertain the public values of the land which need protection." 37 FR 5583.

Modified in **PLO 5193** to include lands "reserved for study and review to determine the proper classifications of the lands under [17(d)(1)] and to protect the public interest in the lands." 37 FR 6092.

PLO 5184 are "reserved for study and review by the Secretary of the Interior for the purpose of classification or reclassification of any lands not conveyed pursuant to section 14 of [ANCSA]". 37 FR 5588.

Partially revoked in **PLO 5403** to add areas withdrawn "for classification of the lands and protection of the public interest in the lands" to PLO 5186. 39 FR 1592 (Jan 11, 1974).

PLO 5186 are "reserved for study and review to determine the proper classification under [17(d)(1)] of lands not selected by the State of Alaska, so that the public interest in the lands will be protected." 37 FR 5589.

Partially revoked in **PLO 5242** to withdraw some of the same lands from location, entry, leasing, and state selections to be "reserved for study and review by the Secretary of the Interior for the purpose of classification or reclassification of any lands not conveyed pursuant to section 14 of [ANCSA]." 37 FR 15514 (Aug. 3, 1972).

Consistent with protecting the public interest in the planning area, the CYRMP classifies lands withdrawn for classification consistent with protecting the public interest, **yet no withdrawals will be revoked** beyond allowing allotment selections for Alaska Native Vietnam Veterans and their heirs. The Secretary cannot invent reasons to keep temporary withdrawals once the specific purposes are satisfied. The CYRMP's classification of the lands reserved for classification is a terminating circumstance warranting revocation unless other stated purposes are specified and unmet. The ability to classify or reclassify and protect the public interest does not transform "temporarily withdraw" into "perpetually close" with endless planning exercises. If 17(d)(1) withdrawals continue after 52 years, after study and review in an RMP/EIS, with classifications and reclassifications to protect the public interest, the word "temporarily" has no meaning.

b. The purposes of the 17(d)(1) withdrawals are satisfied through land use planning. The CYRMP repurposes these withdrawals without modifying the PLOs.

For decades, BLM has acknowledged **classification and protection of the public interest are satisfied in the RMP process**. This could include classifying lands as open to selection for Veteran allotments, or important areas for subsistence, or essential to "further the programs of the Secretary of the Interior" (p. 3-161) and closed to various appropriations to protect those uses. Congress directed such action be executed by "further withdrawal" using "existing authority". This would not include 17(d)(1) withdrawals, executed at a vanishing moment when uncertainty prompted more information gathering before determining the public interest in these lands and the ideal classification to protect it. The CYRMP is the determination 17(d)(1) was all about.

In the East Alaska RMP (p. 2-116), BLM described the intent of 17(d)(1) withdrawals "was to limit appropriation of the lands in order to complete inventories of resources and assessment of values" in the RMP. In the Ring of Fire RMP (p. 2-13), BLM described 17(d)(1) withdrawals as "temporary in nature, allowing the selection and classification of lands", noting it "uses the RMP document to complete the classification." In a report to Congress, BLM observed many 17(d)(1) withdrawals had "outlived their original purpose", present an "unnecessary encumbrance on the public land records complicating interpretation of the title record by the public," are "no longer critical for the protection of the public's interest", and "95% of these withdrawals could be lifted consistent with the protection of the public's interest." Alaska Land Transfer Acceleration Act §207: Review of D-1 Withdrawals, pp. 5-6 (June 2006). Planning efforts in the 1980s-90s called for and resulted in revocation of many 17(d)(1) withdrawals in the CYRMP region.

BLM asserted in the Eastern Interior RMP (appx. G) that 17(d)(1) withdrawals might endure to protect the public interest pending "further withdrawal" **requiring "an affirmative act by the Secretary."** Executing a "further withdrawal" upon classification aligns with the authority to "temporarily withdraw" lands for classification. Delay unreasonably avoids congressionally protected interests and the suite of management tools that evolved over the last five decades. As BLM stated in the Kobuk-Seward Peninsula ROD (p. 15), revoking the 17(d)(1) withdrawals "would replace large scale prohibitions on these activities with site-specific Required Operating Procedures and lease stipulations." The Bay RMP (p. 2-30) even recommended revocation inside a proposed ACEC, noting it is still closed to saleable mineral entry and "Stipulations, Required Operating Procedures, and additional constraints as identified through project-specific NEPA analysis would be used to protect recognized resources within this area."

However, instead of following required processes to revoke old ANCSA withdrawals and initiate new FLPMA withdrawals on classified lands, as needed, the Secretary initiated a brand-new NEPA process and co-opted the CYRMP process to make temporary withdrawals enforce non-temporary classifications, violating the withdrawal authority and disregarding the public interest determinations. **Proceedings must begin immediately for new withdrawals to enforce RMP classifications in Alaska.** BLM classified, reclassified, and protected the public interest; while these duties transcend an RMP, they do not

authorize the Secretary to "eternally withdraw" land. It is past time to bring Alaska in line with five decades of land status changes, expanded toolkits, and public commitments, including review and renewal every 20 years, 43 USC §1714 (1976), and congressional resolutions of approval for large-scale withdrawals, 16 USC §3213 (1980).

II. ISSUE: The Plan refuses to revoke the outdated PLO 5150 and allow for state top-filings to facilitate the overdue priority transfer to state management.

AMA protests the CYRMP's failure to revoke PLO 5150, an ANCSA 17(c) withdrawal enabling construction of the Trans-Alaska Pipeline, a project completed in the 1970s. PLO 5150 also uses Pickett Act authority to "temporarily withdraw" lands in Alaska for specified public purposes. Following designation, construction, study, and review, over half the originally withdrawn lands were released and transferred to state management. Remaining withdrawals have no apparent purpose and interfere with access to communities and millions of acres of non-federal lands rich in minerals, including critical minerals, building materials, and rare earth elements essential to our national security, global environment, energy future, and domestic manufacturing revival.

A. Parts of the Proposed Plan Under Protest

a. Vol. 1, Ch. 2: pp. 2-6, 2-58, 2-67, 2-69, 2-72
b. Vol. 1, Ch. 3: pp. 3-2, 3-47, 3-56, 3-69, 3-100, 3-101, 3-123, 3-145, 3-154, 3-159, 3-160, 3-161, 3-196, 3-197, 3-228, 3-229, 3-244, 3-262
c. Vol. 2, Appendix: C, J.7
d. Vol. 3, Appendix: M.6, M.9; pp. Q-71, Q-72, Q-75, Q-76, U-56, U-61, U-76

B. AMA Comments During the Planning Process

a. Scoping: p. 2
b. ACEC: p. 7
c. Prelim: pp. 2, 4
d. Draft RMP: pp. 2, 4, 5

C. The State Director's Decision is Wrong, Arbitrary, Capricious, and Contrary to Law

Days after ANCSA passed, then-Assistant Secretary of Interior Harrison Loesch used Pickett Act authority to "temporarily withdraw" a 5.3M acre strip through Alaska to reserve "as a utility and transportation corridor within the meaning of section 17(c) of [ANCSA] in aid of programs for the U.S. Government and the State of Alaska". ANCSA 17(c), 43 USC 1616(c), declares that:

> *In the event that the Secretary withdraws a utility and transportation corridor across public lands in Alaska pursuant to his existing authority, the State, the Village Corporations and the Regional Corporations shall not be permitted to select lands from the area withdrawn.*

PLO 5150 withdrew "public lands for a utility corridor" from selection but does not explain why the wholesale withdrawal from leasing and partial withdrawal from "prospecting, location, and purchase under the" mining laws was also necessary in those areas. Mining has long co-existed with surface and subsurface utilities and transportation corridors, including the Alaska Railroad. Enough, at least, to expect closure would be specified and not implied, especially with provisions that expressly limit potential surface and subsurface owners and do not limit mineral entry.

Even assuming mineral withdrawals were an intended part of providing utility and transportation access, the Secretary cannot continue those withdrawals to provide a rural subsistence priority in the corridor. E.g., CYRMP, p. Q-75 ("revocation of PLO 5150…would affect subsistence access and harvest provisions provided under federal subsistence management regulations"); pp. E-2, Q-76, M-139 (selections "would no longer be considered public lands as defined by ANILCA" and "would leave federal management" meaning "local residents would not retain federal subsistence priority access", generating "increased competition for harvest of moose, caribou, and Dall sheep", impacting "subsistence resource abundance and availability" and the "residents' ability to harvest sufficient quantities" or "to use firearms to harvest wildlife and to use snowmachines to access subsistence hunting and trapping areas"). The Trans-Alaska Pipeline Authorization Act only mentions fish, wildlife, and other resources "relied upon by Alaska Natives, Native organizations, or others for subsistence or economic purposes" in the context of strict liability to everyone damaged "in connection with or resulting from activities along or in the vicinity of the proposed trans-Alaska pipeline right-of-way". 34 USC §1653. This protection exists whether the subsistence priority applies or not. And while snowmachine access and other tools are currently prohibited under State law, there is no indication that would stay the law under a change in circumstances like revocation.

Even assuming mineral withdrawals and the subsistence priority are part of providing utility and transportation access, the Secretary cannot continue using temporary withdrawals to prohibit selections once the purposes stated in the withdrawal orders are satisfied, as outlined in Issue I. The Trans-Alaska Pipeline is celebrating its 47th operational anniversary this year. The Dalton Highway, constructed at the same time as a supply route, continues to serve that function today, the only means of access between northern Alaska and the rest of Alaska across a multi-million-acre belt of National Conservation System lands, logistically impracticable, and litigation-enforced ROW exclusion areas. Corporations and the State finished selecting lands 30 years ago; over 2M acres are top-filed by the State and much of the corridor is already conveyed, undermining the Plan's concern about the "intactness of management of a national oil and gas transportation system" (p. 3-197). There is no cause to infer the State would fail to safely and responsibly manage the corridor in the national interest (e.g., p. 3-197), stewarding the lands Congress granted for economic self-sufficiency. If lands need to be retained in federal ownership for some purpose, including priorities for Veterans and subsistence users, that may form the basis for new withdrawals. Otherwise, once again, the word "temporarily" has no meaning.

The CYRMP warns "conveyances to the State" from "a partial or full revocation of PLO 5150" would "potentially create a long linear block of state-owned lands that would impede the BLM's ability to grant access from the Dalton Highway to the local communities or to other federal agencies for management purposes" (pp. 3-161, 3-196). The Alaska Department of Natural Resources Division of Mining Land and Water regional managers determine the appropriate land use authorization when there is a long-term need to use, access, or cross state land. If the process explained at https://dnr.alaska.gov/mlw/lands/easements/ is followed, there should be no undue impediment to granting access from the Dalton Highway to the BLM, local communities, or other federal agencies. To our knowledge, the State has never prevented access across State land to communities or federal lands. AMA is much more concerned with BLM policies impeding that access. In fact, federal land managers have prevented access to communities.

III. ISSUE: The Plan fails to offer a meaningful assessment of the mineral potential, socioeconomic impact, and development likelihood in the planning area, in favor of typecasting mining and multiple use as incompatible with priority non-uses. The FEIS inadequately addresses the impacts the extensive designation of ACECs and restrictions on access will have on mineral exploration, discoveries and development, and access to these resources on BLM lands and adjacent state and ANCSA Corporation lands.

AMA protests the CYRMP focus on closing entry to identified prospects or to identify prospects in the planning area, including in new administrative designations. Minerals on and near federal land are a critical national security resource developed under stringent environmental regulations and safety practices that protect the public interest, the federal estate, and other uses. Multiple use management is required by FLPMA and allows access to responsibly explore, locate, lease, and develop the nation's mineral resources consistent with the public interest in these lands.

A. Parts of the Proposed Plan Under Protest

a. Vol. 1, Ch. 2: pp. 2-16, 2-17, 2-25, 2-32, 2-71, 2-72, 2-74, 2-75
b. Vol. 1, Ch. 3: pp. 3-21, 3-47, 3-55, 3-78, 3-150, 3-196, 3-233, 3-248, 3-250, 3-258, 3-259
c. Vol. 2, Appendix: G, J.7
d. Vol. 3, Appendix: L.4, M.5, M.6, M.9, N.4, N.5, N.8, N.10, Q.7, U

B. AMA Comments During the Planning Process

a. Scoping: p. 1
b. ACEC: pp. 3, 4, 5
c. Prelim: p. 2
d. Draft RMP: pp. 1, 3, 5, 6, 12, 13, 14, 15, 25, 26, 27

C. The State Director's Decision is Wrong, Arbitrary, Capricious, and Contrary to Law

Due to the 17(d)(1) withdrawals and supporting land freezes, most of the planning area has never been explored with modern methods or technology, significantly undercutting the ability to make informed land use decisions. We know the planning area is rich in rare earth elements, possibly the highest potential lands in Alaska, as well as critical and strategic elements, each one uniquely essential for industry, technology, innovation, national defense, and countless future applications. National policy encourages "resilient, diverse, and secure supply chains" and "facilitating greater domestic production" to achieve them. Exec. Order 14017 (Feb. 24, 2021). Yet the RMP rarely mentions mineral presence as an opportunity and remains largely silent on the likely presence of critical, strategic, and rare earth elements.

The Plan and EIS fail to adequately consider that the planning area includes some of the highest potential lands in Alaska for several critical and strategic minerals, including rare earth elements. The Plan does not present impacts of stranding or limiting access to minerals as negative, even with urgent need, little data, and tested mitigation practices. Surface disturbances are presented as negative and any restrictions as beneficial (e.g., pp. 3-263, M-52), either directly or in the way contextual information is scattered in hundreds of dense pages.

For example, the Plan says "areas with high potential for locatable minerals that are open to locatable entry contain" 13% tundra habitat, with potential effects to priority species that can use that habitat (p. Q-66), without connecting that to "practicable mitigations to minimize surface disturbance and reduce impacts on sheep habitat and sheep movement" (p. I-6), including "reclamation standards" (p. L-1), or clarifying only 2% of "community subsistence use areas of high potential" will be "open to locatable mineral entry" (p. Q-70). The Plan separately observes "development potential in the planning area is difficult to predict but is expected to be limited to continued exploration" (p. N-23), but also "assume[s] that the State would facilitate mineral production on newly acquired State lands" under the Plan (p. M-123). "Data on the location and scale of [sand/gravel pits and locatable mining] are not available at this planning-level stage to analyze quantitatively" until "quantitative NEPA analysis [is] performed as specific development plans are submitted to the BLM for approval" (p. M-26).

Read together, a few thousand acres could be open to mineral entry in areas used by subsistence harvesters that may or may not overlap with areas capable of being used by Dall sheep, where no mineral entry is expected and where mitigation and reclamation would minimize disturbances. Impacts from development "can only be described qualitatively because resource and impact data are unavailable and because project details are unknown" (p. M-54). This typical Alaska management scenario is why the tin, tungsten, niobium, germanium, gallium, zirconium, and other critical and strategic

materials will stay wherever they are in the planning area. This is why only 0.02% of the decision area "may be selected and then conveyed" under the Plan (p. 3-196). What little information there is does not add up.

Overall, in the FEIS and the CYMP, BLM assumes that development of minerals and environmental protection cannot co-exist. However, it provides no supporting evidence of this finding. The facts are that modern mining has a strong record of environmental protection in Alaska and throughout the U.S. especially with monitoring and mitigation applied through Federal and State permits at the project level. The fact that severe restrictions and, in some cases, prohibitions are placed on critical and strategic mineral development without any documentation of the adverse effects of such decisions is especially egregious. Moreover, in Alaska, many mineral deposits are in remote areas without existing infrastructure and must rely on ROWs for access and power. As a result, the restrictions on ROWs in vast areas could also preclude essential mineral exploration and development.

A further example of the lack of attention to mineral values or the impact of Plan designations on mining is the lack of any reference in the Plan or FEIS to a series of recent U.S. Geological Survey (USGS) State-wide assessments of mineral potential which clearly indicate "high and very high" potential for a wide variety of minerals. These include USGS Open File Report (OFR) 2016-1191, OFR 2021-1041, Fact Sheet 2017-3012, and some later references as well. **Most importantly, USGS OFR 2015-1021 was prepared specifically for the BLM Central Yukon Planning area.** This report clearly indicates many areas with both "high potential" and "high certainty", which deserve mention in any evaluation of withdrawals. They have assumed all "known" prospects are a detriment and have ignored mineral "potential" which should be treated as a resource value on a par (or in some instances higher) than other resources.

IV. ISSUE: The Plan retains large area ACEC designations and designates new ACECs without clear justification and without meaningful consideration in the FEIS of the impacts on mineral exploration, discoveries and development, economic development and access. Furthermore, the Plan uses ACEC designations to inappropriately justify retention of ANCSA 17(d)(1) withdrawals that were established for other purposes.

AMA protests the Plan's retention of existing and designation of new ACECs without a FLPMA withdrawal and clear justification that specific resources on BLM-administered lands require the special management attention that comes with designation at the RMP level. The Final EIS is deeply flawed because it assumes the smallest level disturbances in the 3.6 million acres designated as ACECs and RNAs will cause significant effects. This is done without any basis in terms of actual demonstrated impacts, including no recognition of protections provided by existing Federal and State laws and regulations. AMA further protests blanket entry closures in ACECs and other designations without evidence the uses

are incompatible or analysis of resulting impacts to the economy, research, access, and the critical material supply chain.

A. Parts of the Proposed Plan Under Protest

a. Vol. 1, Ch. 2: pp. 2-6, 2-29, 2-30
b. Vol. 1, Ch. 3: 3.4.1; pp. 3-39, 3-55, 3-57, 3-78, 3-94, 3-107, 3-108
c. Vol. 2, Appendix: F.3, J.2, J.5, J.6, J.7
d. Vol. 3, Appendix: M.6, M.9, U; pp. Q-86, Q-87

B. AMA Comments During the Planning Process

a. Scoping: p. 2
b. ACEC: pp. 3, 4, 5, 7, 8
c. Prelim: p. 4
d. Draft RMP: pp. 3, 8, 13, 14, 25

C. The State Director's Decision is Wrong, Arbitrary, Capricious, and Contrary to Law

AMA contends that the proposed ACECs within Alternative E go well beyond the definition of an ACEC. To be considered an ACEC under FLPMA and BLM's current regulations, it must not only be relevant but also important. Importance generally applies to areas with unique features critical to the resources that need to be protected. Moreover, BLM must also demonstrate that special management attention is required throughout the area to be designated necessary to protect the significant resource value present to justify an ACEC designation. The draft CYMP does not even attempt to justify ACEC designations under the existing regulatory framework, rather the justifications provided mirror BLM's new regulatory language regarding ACEC designations in its Public Lands Rule (Conservation and Landscape Health Rule), which was not even published in the Federal Register in its final form at the time the draft or final CYMPs were issued and does not go into effect until June 10, 2024. Moreover, as AMA and other commentors noted in the rulemaking process, the Conservation and Landscape Health Rule illegally expands the role of ACECs in the planning process beyond what congress intended in FLPMA, by ignoring the statutory criteria for designation and using them to "protect ecological intactness and habitat connectivity."

For example, the Final EIS does not examine the adverse impacts of large-scale ACEC designations on the future development of mineral resources, including impacts to scientific knowledge, renewable energy, national security, local hire, domestic supplies, and essential infrastructure, affecting present and future generations at the local, regional, and state-wide levels. Cursory, area-wide assessments of mineral development potential are insufficient especially where much of the geology of the planning area has yet to be fully defined. Significant restrictions on, and in many cases prohibition, of minerals exploration and development are a reasonable expectation resulting from the ACEC designations.

Consistent with NEPA requirements, the Final EIS must be withdrawn and revised to include an assessment of the significant environmental and social effects of each alternative associated with impacts on mineral development on BLM lands as well as adjacent lands where access may be required across BLM lands. General statements like "mineral development could bring economic benefits" do not do justice to the significant benefits that can provided as evidenced by the existing mining projects in Alaska. AMA fully supports the comments provided by Doyon, Ltd. that indicate the CYMP will not allow them to develop resources and infrastructure on adjacent ANCSA lands. These effects are especially important to document because of the potential impacts on environmental justice communities in western Alaska. Further, it is fully supported by this Administration's own Executive Orders and Congressional direction recognizing the importance of increased domestic production of critical and strategic minerals. In summary, the Final EIS is not a sound or legally defensible evaluation because it is so heavily biased on the perceived benefits of designating ACECs without documenting the adverse effects they may have. Closure is not justified by repeating ACEC characteristics as if only restricted uses benefit habitat and any disturbance for mining purposes is intolerable.

Examples of the Plan and FEIS' failure to address the impacts to mining, the economy and access that result from ACECs (and other plan designations) are abundant. More importantly, the definitive claim that "mineral development activities and infrastructure … could degrade the ACEC's [relevant and important] values" places geological, biochemical, and other resource values apart from and a risk to surface values BLM deems relevant and important. The Plan consistently reinforces this viewpoint, e.g., there is no subheading in section 3.2, Resources, to examine the Affected Environment and Environmental Consequences for mineral resources. Minerals are analyzed in terms of their use (section 3.3.3) and associated uses are analyzed as threats to inventoried resources, e.g., pp. 3-21 (air); 3-24, 3-28, 3-36, 3-37, 3-38 (soils); 3-40, 3-46, 3-55, 3-56, 3-57 (water); 3-62, 3-70 (vegetation); 3-72, 3-73, 3-78, 3-79 (wetlands); 3-82, 3-83, 3-92, 3-93 (fish); etc. While none of the ACECs are based on relevant or important mineral resource values, it does not follow that they are irrelevant, unimportant, and ineligible for special management attention. And while BLM asserts that access to mineral resources threatens the proposed ACECs, their relevant and important values, and basically every inventoried resource in the planning area, it does not follow that closure (or ACEC designation) is required to mitigate (or even eliminate) those anticipated threats.

If BLM proceeds with ACEC designations, it must withhold ACEC designations larger than 5,000 acres in the aggregate unless and until Congress issues a joint resolution of approval consistent with ANILCA §1326(a). Any report to Congress should include an accurate assessment of mineral potential, particularly those minerals identified by Congress as critical to our nation. ACECs should be targeted to the areas necessary for protection of specific resources in balance with the loss of other uses and potential.

V. ISSUE: The Plan preemptively curtails public access through the introduction of "ROW Exclusion Areas" with indiscernible conservation gains and without the appropriate procedures and accountability.

AMA protests the use of ROW Exclusion Areas without specific needs and measurable outcomes based on the best available information, public use data, and local knowledge. Designations that foreclose Congressionally protected access require more than re-purposed withdrawals and pre-decisional assumptions. These gratuitous ultimatums suspend northern communities in the past.

A. Parts of the Proposed Plan Under Protest

a. Vol. 1, Ch. 2: pp. 2-23, 2-32, 2-43, 2-55
b. Vol. 1, Ch. 3: pp. 3-21, 3-37, 3-54, 3-55, 3-56, 3-57, 3-70, 3-92, 3-109, 3-144, 3-149, 3-196
c. Vol. 2, Appendix: E, F.2, I.3, J.2, J.5, J.6, N.6
d. Vol. 3, Appendix: M.6, M.9; pp. Q-55, Q-61, U-13, U-89

B. AMA Comments During the Planning Process

a. Scoping: p. 2
b. ACEC: pp. 7, 8
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d. Draft RMP: pp. 3, 7, 8, 25, 26

C. The State Director's Decision is Wrong, Arbitrary, Capricious, and Contrary to Law

Contrary to its stated goal to meet public needs for rights-of-way, the CYRMP definitively states, in areas identified as ROW Exclusion Areas, the BLM would not issue any ROW for any reason. ROWs are not only allowed under Alaska-specific laws designed to address and cultivate Alaska's nascent infrastructure, they are necessary for all future access in the planning area, including for pipeline construction and removal, drinking water treatment, fiber optic and transmission lines, railroad and grid expansions, access to subsistence resources, community relocation, and travel between communities with minimal impact on sensitive areas. As noted in previous comments, FLPMA specifically recognizes ROWs as one of the codified "principal or major uses" of the public domain. 43 USC §1702(l).

The Plan does not explain why or how this designation provides the necessary management tools (i.e., prohibition) to satisfy some human need or ecosystem service. If the only economically feasible or least environmentally damaging route goes through a ROW Exclusion Area, there will be no reckoning with the public interest in those lands considering future proposed uses. **This preemptive veto lacks any empirical or legal foundation** in Alaska where Congress, through ANILCA Title VIII, expressly authorized ROWs for transportation and utility systems through designated areas, making ROW Exclusion Areas more restrictively managed than Wilderness Areas under ANILCA. It is

unlikely Congress expected a more restrictive category than Wilderness would take shape on multiple use lands, but it did bar the Executive Branch from administrative withdrawals larger than 5,000 acres without Congressional approval. 16 USC §3213. No 17(d)(1) withdrawal specified a need or purpose related to ROWs, other than general removal from appropriations laws. If 17(d)(1) withdrawals will be used to enforce these designations (e.g., withdrawal from leasing), "further withdrawal" is required.

The Plan gives no indication "further withdrawal" will be sought to enforce the ROW Exclusion Areas or whether those larger than 100k acres will be submitted for Congressional review under FLPMA for eliminating "one or more of the principal or major uses for two or more years". 43 USC §1712(e)(2). The BLM should withhold ROW Exclusion Areas larger than 5,000 acres in the aggregate unless and until Congress issues a joint resolution of approval consistent with ANILCA §1326(a). The Plan does not explain how BLM will comply with ANILCA §1323 in preventing instead of providing reasonable access to stranded non-federal parcels and interests.

VI. ISSUE: The Plan administratively precludes multiple use throughout the planning area despite specific authorities and procedures for Alaska contained in ANILCA.

AMA protests proposed restrictions and administrative designations in the CYRMP that violate specific public use provisions and thresholds in ANILCA, e.g., §§101(b), 811, 1110, 1320, 1323, and 1326. These provisions are part of the bargain Congress struck with Alaskans to remove the constant threat of administrative designations, make exceptions in national programs to continue the Alaska way of life, and balance the national interest in Alaska's public lands with enduring provisions for Alaskans' social, cultural, and economic wellbeing. This includes access for travel and subsistence (including OHVs) and the use and development of inholdings, weather stations, campsites, cabins, and caches. This further includes procedures for new withdrawals, prohibitions on studying lands for withdrawal, and no room for outdated and de facto withdrawals that interfere with congressional direction for Alaska and multiple use management.

AMA protests designation of core and critical habitat areas with unrelated restrictions that solve no problems, frustrate scientific progress, and are never mentioned in the outdated withdrawals used for implementation. These designations are not essential to the reverence and obligation all public land users share for the care and sustainability of all fish, wildlife, and their habitats.

A. Parts of the Proposed Plan Under Protest

a. Vol. 1, Ch. 2: pp. 2-29, 2-33, 2-34, 2-38, 2-56, 2-62, 2-63
b. Vol. 1, Ch. 3: pp. 3-38, 3-46, 3-56, 3-72, 3-116, 3-124, 3-142, 3-144, 3-145, 3-150, 3-196, 3-197, 3-249
c. Vol. 2, Appendix: E, F.2, F.5, I.1, J.2, J.5, J.6
d. Vol. 3, Appendix: L.3, M.6, M.9, N.7, U; pp. Q-58, Q-61, Q-76, Q-85

B. AMA Comments During the Planning Process

a. Scoping: p. 2
b. ACEC: pp. 2, 3, 4
c. Prelim: pp. 2, 4
d. Draft RMP: pp. 2, 3, 6, 8, 9, 10, 12, 17, 18, 21

C. The State Director's Decision is Wrong, Arbitrary, Capricious, and Contrary to Law

ANILCA is not dualistic about public use, resource protection, land management, or wilderness, contradicting the Plan's chosen characterization of lands as either managed for people or for their absence. For example, the Plan distinguishes "lands with wilderness characteristics" (96% of the decision area) as "managed to protect wilderness characteristics as a priority over other multiple uses" or "managed to emphasize other multiple uses, while applying management restrictions to reduce impacts on wilderness characteristics". There is no category for lands with wilderness characteristics managed for multiple use, including the protection of wilderness characteristics and other multiple uses, even though the Plan acknowledges "wilderness characteristics would persist on most lands in the decision area" (p. 3-150) with negligible impacts for the foreseeable future (p. M-135), including in the alternative with the highest level of use. ANILCA's unique provisions for the co-existence of public use and designated Wilderness in Alaska demonstrate Congress' appreciation for the Alaska way of life and respect for the Alaskans that live, work, harvest, and maintain relationships, economies, and traditions in these wild spaces, including AMA members, their employees and families.

Several Action Alternatives considered in the draft CYRMP provided for compliance with certain ANILCA provisions, but not others. For example, under the table entries for "Land Use Authorizations" (pp. 2-56) and "Land Management Allocations (Appendix J), access to non-federally owned lands and interests required by §1110 and §1323 are provided. ANILCA access provisions have their own appendix (E) and almost no mention elsewhere in the Plan or FEIS. E.g., p. Q-85 ("OHV travel would be limited to existing routes on 4,007,000 acres (91 percent) of community subsistence user areas"). Allowing "commercial use authorizations of cabins (trapping)" or "BLM-authorized camps and support facilities" or "public use cabins and shelters" overlooks substantial allowances for new and existing cabins in §1303. Making lands "available to federal and state agencies and research organizations for needed administrative and support facilities", including "cabins and tent frames", does not mention ANILCA §§1303, 1306, 1310, and 1316. Not every provision needs to be listed, but one table directs that such facilities be "environmentally feasible and compatible with management objectives" and another bans them in 100-year floodplains, an area the Plan admits is "difficult to accurately map without extensive ground surveys" (p. F-24) – **these criteria are not in the ANILCA provisions or implementing regulations allowing these and other facilities on federal lands**.

In ANILCA §201(4)(b), Congress recognized potential need for surface access from the Dalton Highway to the Ambler Mining District and authorized a route across the "boot" of Gates of the Arctic National Park and Preserve. Determining the exact route would result from an "environmental and economic analysis solely for the purpose of determining the most desirable route for the right-of-way and terms and conditions which may be required for the issuance of that right-of-way." Somehow, because BLM manages a small portion of any potential route using the Dalton Highway, BLM is controlling the authorization process. Congress directed the Secretaries to jointly agree on the most desirable ROW and its terms. No one in the Department (BLM) has discretion to do anything else. No other part of ANILCA (§810) can be interpreted to nullify this direction.

AMA continues to support designating the Ambler Utility & Transportation Corridor to be consistent with Congressional intent for this area and working with affected communities on a plan that meaningfully includes their needs and vision for the corridor. Unless specified in the operative land use withdrawal, the BLM should withhold any prohibitive habitat classification until Congress issues a joint resolution of approval consistent with ANILCA §1326(a).

VII. ISSUE: The Plan violates or nullifies the "no more" clauses, critical ANILCA provisions that preserve a balance of available land uses in the public interest.

AMA protests BLM's assiduous avoidance of ANILCA §1326, particularly the aforementioned examples. These instances and the Plan's overall approach further fail to apply Congressional intent and direction in ANILCA §101(d) and other provisions commonly known as the "no more" clauses. These guarantees assured that at least the 96th Congress and President Carter believed provisions in ANILCA represented a "proper balance" warranting a high bar and strong cautions to future Congresses and land managers that additional designations would upset the balance. The current bar for prohibitive administrative designation is arguably satisfied for every acre in the planning area. The clearest differentiation between designated and undesignated areas is not in surface or subsurface characteristics, but in whether existing withdrawals can support desired prohibitions; just another way to avoid ANILCA §1326.

A. Parts of the Proposed Plan Under Protest

a. Vol. 1, Ch. 2: pp. 2-37
b. Vol. 1, Ch. 3: pp. 3-108, 3-109, 3-243; Glossary
c. Vol. 2, Appendix: F.2, I.1, I.3, J.2, J.4, J.7
d. Vol. 3, Appendix: M.6, Q.7; pp. U-13, U-111, U-128, U-147, U-148

B. AMA Comments During the Planning Process

a. Scoping: p. 2
b. ACEC: p. 5
c. Prelim: p. 4

d. Draft RMP: pp. 2, 25, 27, 28

C. The State Director's Decision is Wrong, Arbitrary, Capricious, and Contrary to Law

In the discussions leading up to ANILCA, Congress and the Interior Department were clear that there needed to be a balance between conservation and development opportunities to resolve the future use of Federal lands in Alaska. ANILCA's various "no more" clauses reflect this balance. BLM's "Alternative E", with an almost exclusive focus on conservation violate the intent and specific provisions of ANILCA.

The first paragraph of a 1973 report by the local U.S. Fish and Wildlife Service office on the fish and wildlife resources of Alaska presciently noted:

> *Almost as if to expiate the public conscience for past transgressions to the environment, Americans everywhere seem to have adopted Alaska as their symbol for atonement. To them Alaska is more than just the 49th state. It is a State of Mind capable of generating heated, diverse opinions, often with too little light to illuminate the subject and eliminate the source of friction.*[1]

This reflection tracks the debates that followed in Congress regarding control over the national interest in Alaska—from its vast resource wealth to its geopolitical position to its largely undeveloped ecosystems—while achieving parity in quality of life and opportunity for those that live and do business there. Congress and President Carter sought to balance all of this in the bipartisan passage of ANILCA in 1980, including a yea vote from then-Senator Joe Biden.

As to whether the public conscience could rest easy in the 105 million acres ANILCA set aside in "conservation system units" (CSUs) and other unique provisions "to preserve for the benefit, use, education, and inspiration of present and future generations certain lands and waters in the State of Alaska", President Carter stated at the signing ceremony:

> *Never before have we seized the opportunity to preserve so much of America's natural and cultural heritage on so grand a scale. . . . With this bill we are acknowledging that Alaska's wilderness areas are truly this country's crown jewels and that Alaska's resources are treasures of another sort. How to tap these resources is a challenge that we can now face[.]*

On the 25th Anniversary of ANILCA's passage, at an Alaska-based event, he further observed:

[1] Alaska Area U.S. Fish and Wildlife Service, Alaska's Fish and Wildlife: A 10-Year Program, p. 1 (Oct. 1, 1973).

We see so many controversial issues in our country from a global perspective. And I think it should be a great source of pride to every citizen of Alaska, the Governor, the Lieutenant Governor, the Legislature, the business interests, the oil interests, the timber interests, the environmentalists, to realize that here, in Alaska, it is the greatest test of a global question about environment versus development and jobs. There is no other in the world that comes close to being this sharply drawn and this controversial and complicated.

And, in my judgment, with the foundation of ANILCA, as administered since that time, and as afforded by Alaskans, and as still attempting to be modified by Alaskans, this has been a tremendous success. You have demonstrated to the entire globe, and although there is still some argument, that there is a way to resolve successfully this global question, can you preserve the beauty of God's world and still take care of the daily needs of the people that live in it.

This is an argument and a question the CYRMP resolves in the negative, favoring risk avoidance through large-scale prohibition with scientifically indefensible damage to local communities and the Alaska economy. Well-organized commenters click to "save" Alaska without ever reckoning with the consequences or doing any work on their own to live more sustainably. Organizations can keep fundraising on these comment campaigns, fighting any development in Alaska without making anyone restore an acre of pristine landscape, or making any member sacrifice a moment of joy, comfort, or extraction from their public lands.

The Plan's approach to management is to only approve the non-use and development of pristine ecosystems, exported as expiation and atonement for modernity and erasing Alaskans from the landscape as collateral damage. ACECs, Research Natural Areas, High-Value Watersheds, High-Value Habitats, Class I-II Viewsheds, Lands Managed for Wilderness Character, ROW Exclusion and Avoidance Areas, Stream Order-Based 100-Year Floodplain Buffer Areas, Backcountry Conservation Areas, Travel Management Areas, Core/Critical Ranges, Movement Corridors, and Habitat Areas for agency-selected Special/Priority Status megafauna—all serving a "national interest" Alaskans can only protect with their absence. The Plan does not consider how Alaska and the people who know it best can "save" others and protect the national interest through more than the still-pristine ecosystems where they have lived, worked, and harvested for millennia.

While the BLM is free to name and classify lands and apply the appropriate management response, the Plan is not an opportunity to deviate from multiple use management without Congressional action. Under the hard-fought compromise that became ANILCA, section 101(d) explained the intent to balance conservation and development and the high bar for disturbing the reasonable solution ANILCA provides. Section 1326(a) clarified any Executive Branch action withdrawing more than 5,000 acres in Alaska requires notification

to both Houses of Congress before it becomes effective and requires a joint resolution of approval before it terminates a year from notification. Section 1320 exempts BLM from FLPMA §603's direction to manage lands recommended for wilderness designation to the non-impairment standard, meaning there is no change in how an area is managed while it is considered for Wilderness designation. These and other provisions are commonly known as the "no more" clauses. The Alaska State Legislature referred to them as "an improvement over conditions which would otherwise prevail under the Antiquities Act and other executive and administrative actions should no Alaska land legislation be enacted." Legis. Res. No. 2, SJR 13, Finance Committee Substitute (1979).

Where the limitations proposed in the numerous land use categories rely on a land use withdrawal, ANILCA §1326(a) requires congressional approval over 5,000 acres. This does not include ANCSA §17(d)(1), see Issues I and IV above, it only includes a joint resolution of approval for "further withdrawal" under "existing authority". If BLM is authorized to apply the limited management response, as in an ACEC, this is the required process. Re-purposing the 17(d)(1) withdrawals is an abuse of process that tips the scales away from accountability to those affected. ANILCA demands more to safeguard its balanced, bipartisan compromise.

VIII. ISSUE: The Plan uses BEACONS benchmarks and Connectivity Corridors that allow reconsideration and amendment without a public process.

AMA protests use of Adaptive Management approaches that allow land managers to alter or nullify decisions in the approved Plan without engaging the public. Congress excluded multiple use lands from conservation system units so they would be managed as multiple use lands, not as more restrictively managed buffers and pathways between units, and not as places that shut local residents out of conversations about necessary changes in management.

A. Parts of the Proposed Plan Under Protest

a. Vol. 1: pp. 1-8, 1-9, 2-6, 2-21, 2-28, 2-55
b. Vol. 1, Ch. 3: pp. 3-258
c. Vol. 2, Appendix: G, J.5, J.6
d. Vol. 3, Appendix: pp. M-88, M-126, M-127, U-110, U-116, U-148

B. AMA Comments During the Planning Process

a. Draft RMP: pp. 10, 18, 20, 21, 22, 23, 26

C. The State Director's Decision is Wrong, Arbitrary, Capricious, and Contrary to Law

The Plan ignores BLM's mission and statutory mandates in applying the BEACONS approach (Boreal Ecosystems Analysis for Conservation Networks), Connectivity

Corridors, Ecological Benchmarks, and other subjective, poorly defined categories for asserting fish, wildlife, and plants at the surface are BLM's management priority, primary responsibility, and area of expertise. Resource development projects co-exist with ecological protection every day in northern Alaska. BLM has failed to show where realistic development scenarios can cause ecosystem-level effects or cannot adapt to a changing environment.

There is little acknowledgement of the substantial priority, responsibility, and expertise in these resources delegated outside the BLM, and every project-specific analysis and authorization by federal and state agencies with these mandates. There is no acknowledgement of the subsurface resources in BLM's care, or the local residents, businesses, and communities surrounded by Conservation System Units that rely on lands managed for multiple use. These benchmarks are expressly targeted at maintaining "intact, hydrologically connected areas large enough to accommodate natural disturbance regimes" (p. M-126) as somehow necessary for land managers to adapt to climate change. Managers need to adapt in thinking human activities are at odds with and separate from natural disturbance regimes.

IX. ISSUE: The Plan includes repetitive, vague, and overly specific standard operating procedures that cumulatively will make it difficult, if not impossible, for small mining operations to occur on BLM lands.

AMA protests the Plan's monolithic treatment of the mining industry and its deleterious effect on small mining operations. The Plan does not justify application of standard operating procedures across all activities or consider the benefits and costs of implementing everything all the time. No accommodation is made for inevitably unjust outcomes for small family placer miners.

A. Parts of the Proposed Plan Under Protest

a. Vol. 1, Ch. 2: Tables 2-22, 2-23, 2-24
b. Vol. 1, Ch. 3: p. 3-263
c. Vol. 2, Appendix F
d. Vol. 3, Appendix L

B. AMA Comments During the Planning Process

a. Prelim: p.2
b. Draft RMP: pp. 3, 13, 16,17, 18, 19, 20, 21

C. The State Director's Decision is Wrong, Arbitrary, Capricious and Contrary to Law

The Plan largely ignores the potential for small mining operations, most often placer operations. Many of the standard operating procedures will be economically impossible to implement on small mining operations. The FEIS does not address either the potential for

small mining operations. The FEIS does not analyze the impact of plan designations or the plan's proposed standard operating procedures on placer mining operations.

X. CONCLUSION

The AMA appreciates your consideration of the comments and concerns expressed in this letter. We urge BLM 1) Reconsider and reevaluate its position on retaining outdated ANCSA 17(d)(1) withdrawals; 2) Reconsider and reevaluate its position on retaining PLO 5150; 3) prepare a supplemental EIS to address the impact on mineral exploration development, economics and access resulting from retention of ANCSA 17(d)(1) withdrawals and ACEC designations; 4) Reconsider and revise the plan to meet the multiple use mandate of FLPMA and restore the balance between conservation and development required by ANILCA; and 5) Delete the BEACONS benchmarks and Connectivity Corridor provisions in the Plan.

Sincerely,

Deantha Skibinski
Executive Director

Attachments:

- AMA Comments on Draft Resource Management Plan (RMP) and Environmental Impact Statement (EIS), dated June 7, 2021 (AMA Comments CYRMP 2021)
- AMA Comments on Preliminary Alternatives, dated March 17, 2017 (AMA Comments CYRMP Preliminary Alternatives)
- AMA Comments on Nominations for Areas of Critical Environmental Concern (ACEC), dated August 29, 2014 (AMA Comments BLM ACEC CYRMP)
- AMA Comments on EIS Scoping, dated January 17, 2014 (AMA BLM Central Yukon RMP Scoping - Jan 2014)