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February 14, 2024

Bureau of Land Management, Alaska State Office
Attn: ANCSA 17(d)(1) Withdrawals EIS
222 West 7th Avenue, #13
Anchorage, Alaska 99513

Comments sent electronically to:

<https://eplanning.blm.gov/eplanning-ui/project/2018002/595/8020037/comment>

Re: Comments on EIS for ANCSA 17(d)(1) Withdrawal Revocations

Dear State Director Cohn:

The Alaska Miners Association (AMA) offers the following comments on the Draft Environmental Impact Statement (DEIS) for the Alaska Native Claims Settlement Act (ANCSA) 17(d)(1) withdrawals dated December 2023.

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.

AMA supports and recommends BLM adopt Alternative D. We support Alternative D because:

- 1) It is the only alternative that recognizes that the d-1 withdrawals long ago served their purpose - to allow BLM to classify and make available land for Alaska Native corporation selection. The original actions were called for in 1971 by the Alaska Native Claims Settlement Act (ANCSA). Temporary Public Land Orders (PLOs) were instituted in 1972 and 1973 to allow this land classification. These PLOs are now more than 50 years old. State and Native land selections have already been made, conveyances are nearly complete, and the Alaska National Interest Lands Conservation Act (ANILCA) has already established national conservation system units. The need for these has clearly passed.
- 2) The Executive Summary of the DEIS clearly explains that the purposes for these withdrawals are complete. Alternative D is the only logical and reasonable result.
- 3) Alternative D is the only alternative consistent with BLM's 2006 report to Congress that was required by Section 207 of the Alaska Land Transfer Acceleration Act (ALTAA). In the 2006 report, BLM stated that all decisions on ANCSA 17(d)(1) withdrawals would be made through BLM's Resource Management Plans (RMPs), and their EIS processes.
- 4) Alternative D is the only alternative that is reasonably consistent with the Records of Decision for the five RMPs.

- 5) Alternatives A, B and C do not meet BLM's Multiple Use mandate as it pertains to making BLM land available for mineral exploration and development.
- 6) Alternative D is the only alternative that meets BLM's Multiple Use mandate established by the Federal Land Policy and Management Act of 1976 (FLPMA).
- 7) Alternative D is the only alternative that is consistent with the "proper balance" intent of the ANILCA, as laid out in ANILCA Section 101(d).
- 8) Alternative D is the only alternative that adheres to the intended **20-year** limit for land withdrawals of greater than 5,000 acres, without Congressional approval as required by FLPMA Section 204 and to a similar limitation in ANILCA Section 1326(a).

AMA is also concerned that throughout Chapter 3 of the DEIS, the Affected Environment and Environmental Consequences, there are significant biases shown in the assumptions and analysis. The resource summaries and assessments of impacts in Chapter 3 and various appendices inadequately address mineral resources and economics. Without detailed analysis or justification, the DEIS suggests that mineral and other important development projects cannot be done in a manner that protects natural resources and subsistence uses. Beyond the inappropriate use of these in Federal decision-making, they foster misperceptions among stakeholders that jeopardize the nation's ability to advance critical and strategic mineral projects that can bring significant benefits at the local, regional, state, and national levels.

The following comments elaborate on several of these points:

The d-1 withdrawals long ago served their purpose.

The ANCSA Section 17(d)(1) withdrawals were put in place to allow the Secretary of Interior to protect the public interest, to study and classify lands and make land available for ANCSA selections. The Executive Summary of the DEIS clearly explains that the purposes for these withdrawals are complete.

The DEIS fails to consider the historical context of the 1972-73 d-1 withdrawals. Both ANCSA Section 17(d)(1) and ANCSA Section 17(d)(2) were passed prior to the FLPMA in 1976 and ANILCA in 1980. Congress passed FLPMA four years after the initial withdrawals were put in place. FLPMA requires BLM to prepare land use plans and includes numerous provisions to protect the public interest that meet the intent of the d-1 withdrawals. FLPMA also requires that withdrawals of over 5,000 acres of BLM lands be limited to twenty years unless approved by Congress. This is similar to language in ANILCA Section 1326(a). In both instances, the intent of Congress was that executive branch withdrawals, such as the ANCSA 17(d)(1) withdrawals, were limited in duration or size unless approved by Congress, yet these d-1 withdrawals have now been in place for more than **FIFTY** years.

The DEIS fails to recognize that ANILCA in 1980 set aside over 100 million acres of former BLM lands for conservation. The balance envisioned in passage of ANILCA was based on an understanding that remaining BLM lands would be available for multiple use, and for conveyance to the state to fulfill Statehood Act land obligations. This balance seems to have been lost on the Department of Interior and BLM. See ANILCA Sections 101(d) and 1326(a).

AMA is aware that some Alaska Native Corporations (ANCs) have remaining ANCSA entitlements that need to be fulfilled before d-1 withdrawals in specific areas should be revoked. We encourage BLM to work directly with ANCs to address these concerns.

Conformance With the Alaska Land Transfer Acceleration Act (ALTAA), Section 207.

The DEIS completely ignores Section 207 of ALTAA and BLM's June 2006 report to Congress. ALTAA and the BLM's Report to Congress required by ALTAA Section 207 are NOT mentioned ANYWHERE in the DEIS, including in Section 1.5, Relationship to Statutes, Regulations and Other NEPA Documents. ALTAA is not referenced in Chapter 4, Literature Cited. Instead, the DEIS rewrites the history of the ANCSA 17(d)(1) withdrawals and subsequent conservation measures. Omitting any reference to ALTAA and the Section 207 report to Congress is an egregious error in the DEIS.

Alternative D is the only alternative consistent with BLM's 2006 report to Congress that was required by Section 207 of ALTAA. In their 2006 report, BLM stated that decisions on ANCSA 17(d)(1) withdrawals would be made through BLM's RMP process. That report reiterates that these withdrawals, established in the early 1970s, were intended to be temporary, lasting only the duration of the land settlement process in Alaska.

Eighteen years ago, BLM's ALTAA Section 207 report to Congress determined that the withdrawals were largely outdated and unnecessary. The following is from page 5, the Summary section of the Executive Summary of the "*Report to Congress June 2006 Sec. 207 of the Alaska Land Transfer Acceleration Act*":

"The ANCSA withdrawals were intended to protect resources, to prevent encumbrances that could interfere with State or Native entitlements, and to study lands for further inclusion into conservation units. In the early 1970s when the lands were withdrawn under Section 17(d)(1) and (d)(2) of the ANCSA, there were few regulations to oversee the development of the public lands and protect important natural resources. Since then Congress has passed significant legislation for the orderly development of the public lands and to protect the environment from adverse impacts. The BLM has 1) developed extensive oil and gas lease stipulations, required operating procedures (ROPs), and surface management regulations for miners, which are now in place and sufficient to assess and protect the resources in most situations, 2) the selection period is over and the BLM is completing conveyance of State and Native entitlements, and 3) more than 102,097,900 acres have been withdrawn by ANILCA and incorporated into CSUs sufficient to protect those lands.

*In summary, there are more than 158,958,000 acres of d-1 withdrawals in Alaska. Many of these d-1 withdrawals have outlived their original purpose. It may be appropriate to lift many of d-1 withdrawals and the most effective and preferred means in managing this process is through BLM's land use planning process. **Approximately 152,181,400 acres or 95% of these withdrawals could be lifted consistent with the protection of the public's interest.**" (emphasis added)*

Alternative D is the only alternative that is reasonably consistent with the Records of Decision for the five RMPs.

Since Congress' recognition in 2004 that Alaska land transfer processes needed to be accelerated, BLM has spent thousands of work hours developing Resource Management Plans for 5 major regions of

Alaska. Throughout their development and review, AMA has consistently recommended for revocation of ANCSA 17(d)(1) withdrawals. This position is justified in our previous, lengthy comments during development of the Bay, Bering Sea-Western Interior, East Alaska, Kobuk-Seward Peninsula, and Ring of Fire RMPs.

A major flaw in BLM's DEIS is the failure to abide by decisions made in these RMPs. Alternative D is the only alternative presented that is reasonably consistent with these previous decisions. To adopt Alternatives A, B, or C, BLM would need to scrap or significantly revise all five RMPs, explaining why their previous data gathering and decision making were incorrect. This DEIS fails to indicate how Alternatives A, B, or C could be made congruent with existing Records of Decision that resulted from the RMP process.

Each of those 5 RMPs was supported by an EIS that more completely addressed the potential impacts of various alternative actions regarding revocation of the (d)(1) withdrawals. Those five RMPs were subject to extensive public review, including public meetings in numerous communities.

The DEIS fails to explain why the decisions made in the 5 RMPs should be changed.

These plans have approved Records of Decisions (RODs). BLM has already evaluated the impacts of the revocation of the (d)(1) withdrawals in five RMPs and their associated EISs. Only Alternative D is consistent with the RODs issued for the following RMPs:

BLM Bay RMP (Bristol Bay). ROD Issued: 11/14/2008, signed by BLM State Director Tom Lonnie. From page 4 of the ROD: "The RMP recommends the Secretary of Interior revoke all ANCSA 17(d)(1) withdrawals as described in Public Land Orders 5174, 5179, 5180, 5181, 5184, and 5186."

BLM Bering Sea – Western Interior RMP. ROD Issued January 20, 2021, signed by BLM Director David Bernhardt. "Additionally, all four of the action alternatives (Alternatives B-E) consider the revocation of existing ANCSA 17(d)(1) withdrawals."

BLM East Alaska RMP. ROD Issued: 09/07/2007, signed by BLM State Director Tom Lonnie. From page 6 of the ROD: "The primary management decisions in the Approved Plan are to... Recommend revocation of 84% of the existing ANCSA 17(d)(1) withdrawals (Note – on page 7 it says 80%), 6.0 million acres available to locatable mineral entry."

BLM Kobuk – Seward Peninsula RMP (NW Alaska). ROD Issued: 09/04/2008 signed by BLM State Director Tom Lonnie. From page 15 of the ROD: "The Approved RMP recommends revocation of all ANCSA Section 17(d)(1) withdrawals." Also see language on page 12.

BLM Ring of Fire RMP. ROD Issued: 03/21/2008, signed by BLM State Director Tom Lonnie. From page 12 of the ROD: "The BLM recommends the revocation of the existing ANCSA 17(d)(1) withdrawals within the planning area".

Alternatives B and C do not meet BLM's Multiple Use mandate as it pertains to making BLM land available for mineral exploration and development.

FLPMA Sections 102(a)(12), 103(c) and 103(l) clearly state that minerals are one of the "principal or major" multiple uses to be allowed on BLM lands.

In Alternative B (Partial Revocation) the DOI would revoke partial withdrawals that would only allow the State top filed Priority 1 and 2 lands to convert to effective selections where conflicts with natural resources, cultural resources, subsistence resources, recreational resources, or proposed or existing areas of critical environmental concern (ACECs) would be minimized. All other lands would remain withdrawn. Alternative B is only trivially different than Alternative A. It removes half a dozen small areas that the State has requested but keeps 99% of the PLOs intact. It also establishes BLM as the sole determiner of any perceived “conflicts” with no criteria, boundaries or independent review defined.

Alternative C (Partial Revocation) is misleading as it pertains to mineral entry as it also revokes very little and provides too many unsupported “reasons” (e.g. inadequate ACECS) for even further limiting areas open to mineral entry.

Under Alternative C DOI would revoke in full the withdrawals for those portions of the 17(d)(1) withdrawals that have “high mineral potential” (as determined solely by BLM), including State top filed Priority 1 and 2 lands. Under Alternative C the DOI would also revoke in part the withdrawals on any remaining Priority 1 and 2 top filings outside of the high mineral potential areas for the limited purpose of opening those lands to selection under the Alaska Statehood Act. All other lands would remain withdrawn.

AMA strongly disagrees with BLM’s criteria for determining “high mineral entry”. Under Alternative C, BLM would revoke only small areas immediately adjacent to existing claims, which is NOT the same as “high mineral potential”. See AMA’s comments below on the minerals analysis.

Specific examples as to how BLM’s definition of “high mineral potential” greatly limits 17(d)(1) withdrawal revocation to allow for mineral entry include:

- Bay RMP – Alternative C – Only a half dozen small parcels (possibly areas of existing claims) are revoked, 95% of planning area d-1 withdrawn lands are fully retained.
- East Alaska RMP – Alternative C – Only tiny areas East and South of Paxson are lifted, the majority of d-1 withdrawn lands in the planning area are “partially retained”.
- Bering Sea – Western Interior RMP – Alternative C – The majority of d-1 withdrawals are fully retained, less than 1/3 are revoked.
- Ring of Fire RMP – Alternative C - There is very little BLM land in this plan area. Some areas of d-1 withdrawals near Eklutna Lake and the Northern Chugach Mountains are revoked, more than 50% are fully retained.
- Kobuk – Seward Peninsula RMP – Alternative C - 3 small areas East of Point Hope are partially revoked. More than 60% of d-1 withdrawals are fully retained.

Retained withdrawals include areas South of the Imuruk Basin which will impact Graphite Creek, and in the Darby Mountains, which will impact exploration for rare earth elements, uranium, and

other minerals. AMA strongly recommends that the d-1 withdrawals in this area be revoked because of these mineral resources.

Alternatives B and C improperly tie decisions regarding d-1 withdrawal revocations to Areas of Critical Environmental Concern (ACECs).

In previous comments on RMPs, AMA has repeatedly voiced concerns that consistent with Congress' intent in FLPMA, ACECs are not an appropriate tool to for designating large blocks of land for general conservation purposes. Congress intended their use to be a vehicle to provide special management prescriptions to protect important resources from "irreparable" damage within the context of FLPMA's multiple use mandate. They were not intended to create de facto Conservation System Units. The proposed d-1 rule stretches ACECs beyond their statutory basis by using ACECs to justify retention of d-1 withdrawals.

Chapter 3 - Affected Environment and Environmental Consequences.

Throughout Chapter 3, there are significant biases shown in the assumptions and analysis, including:

- 1) That resource development and subsistence are incompatible land uses.
- 2) That State land transfers that might occur as the result of d-1 revocations will significantly impact subsistence.
- 3) That subsistence use is the exclusive primary use of many BLM lands in Alaska, which is inconsistent with their Multiple Use mandate.

Chapter 3 Generally

BLM is a Multiple Use land manager, but Chapter 3 is focused on fish, wildlife, and social issues, giving short shrift to many basic components which should be considered in the analysis. The number of pages in Chapter 3 devoted to description of the subtopics clearly demonstrates a bias by the authors away from physical earth resources and toward biologic systems and social science.

The Chapter 3 Sections on Economics (Section 3.5), Minerals (3.8) and Subsistence (3.14) provide examples of this disproportionate emphasis. Much of the DEIS analysis is based on the amount of Federal land that loses subsistence priority under ANILCA Title 8. Very little is mentioned about the economic and social impacts of retaining these withdrawals and limiting the potential for future economic and mineral development on 28 million acres of BLM Multiple Use lands. This is not a Supplemental EIS, but a stand-alone DEIS that needs to provide balanced assessment of all resources, not just those that were allegedly not adequately dealt with previously. For example, in Chapter 3 – impacts – the Economics analysis (section 3.5) is 17 pages, the Minerals analysis (Section 3.8) is 20 pages, while the Subsistence analysis (Section 3-14) is 60 pages plus 424 pages in Appendix G.

Section 3.8 - Minerals

As noted, only 20 of 392 pages of text are devoted to minerals – one of the most consequential natural resources to be found in Alaska.

The introduction to section 3.8 Minerals states: *“The analysis for locatable, leasable, and salable minerals focuses on mineral **availability**. ““Availability” is not what should be evaluated, since it is a projection based on assumptions about access, metal prices, economics, and extractive technology methods. Known mineral occurrences and mineral potential are the appropriate features that BLM should be balancing with other existing resources.*

Mineral Data and the United States Geological Survey (USGS). It does not appear that the USGS, the science agency for the Department of the Interior, provided any minerals analysis for this DEIS. Further, there is little evidence (other than a few citations for water or physiographic data) to any use of the USGS. Within the Department of Interior, USGS is the principal provider of objective scientific data. In Chapter 4, Literature Cited, it says under *“Minerals”* – “no citations are included in the EIS Mineral section.” There are numerous recent USGS publications illustrating statewide mineral resource potential for a wide variety of strategic and critical minerals. The DEIS fails to even cite a single USGS reference for known mineral occurrences, let alone any maps of mineral potential.

Reasonably Foreseeable Development scenarios for Mining. *“The area more likely to be developed for locatable minerals is the 17(d)(1) withdrawals within 1 mile of existing State or Federal mining claims, as described in the RFD.”* These “reasonably foreseeable development RFD” scenarios are based on the entirely wrong assumption that an existing claim has any more economically viable mineral potential than any other given parcel of land.

To reiterate AMAs comments from previous RMPs: “Many BLM lands subject to these withdrawals have been off limits to staking of mining claims for over 50 years”. As a result, the location of existing claims is not an effective evaluation of currently perceived, or true mineral, potential and therefore development likelihood.’

None of the RFD scenarios even mention or consider the locations of known mineral occurrences, which one could, with reasonable certainty assume to be sites of interest as soon as they were made open to staking.

Continued withdrawal of public lands ensures that exploration will never take place and will preclude any effective means of evaluating lands for strategic and critical minerals. In addition, before any major exploration work or development could occur the project would be subject to extensive review under existing federal and state laws and regulations.

Section 3.14 - Subsistence Analysis

The subsistence analysis is flawed and misleading for several reasons.

Throughout the discussion of subsistence, the DEIS focuses on the loss of ANILCA’s Title VIII rural subsistence priority. The significance of this impact is overstated for several reasons. First, the only land that may be transferred out of Federal ownership because of revocation of d-1 withdrawals are Federal lands that could be conveyed to the State. According to the figures in the Executive Summary, the maximum amount of State priority 1 and 2 lands that are likely to be made available and conveyed is 343,000 acres, or less than 3% of the area.

Second, even on lands transferred to the State, subsistence uses will occur on that State land, as the State of Alaska provides a priority for subsistence use on State lands. The primary difference is that the State, under Alaska's Constitution as affirmed by the Alaska Supreme Court, cannot provide a rural-only subsistence preference.

Third, the Federal government is required under Section 6 of the Statehood Act to convey to the State their remaining approximately 5 million acres. If these lands are not taken from d-1 lands included in this DEIS, then the State will eventually take title to Federal lands elsewhere in Alaska. Because the DEIS has considered subsistence impacts to such a geographically broad range of communities, many of these same communities will see Federal lands that are currently State selected but not encumbered by d-1 withdrawals conveyed to the State. On a statewide scale, the amount of additional land that will be conveyed to the State and lose Federal subsistence priority will be the same regardless of the decisions made regarding d-1 lands.

Section 3.6 - Environmental Justice Analysis

This section assumes the only Environmental Justice issue is loss of Federal subsistence priority. This section should also recognize that by not revoking d-1 withdrawals, potential development opportunities are lost that would provide jobs and a tax base for impoverished local communities. The existing Red Dog mine in Northwest Alaska has provided both significant employment and income for many residents of impoverished communities in the region, as well as a substantial tax base (through payments in lieu of taxes) to the Northwest Arctic Borough, tax revenue that provides for better schools and other public services. The mine also provides support to Alaska Native residents statewide through ANCSA section 7(i) and 7(j) revenue sharing provisions distributed to Regional and Village Native Corporations. Oil and gas development in the North Slope Borough has provided decades of tax revenue to support schools and public services in local communities.

Section 3.9 - Paleontological Resources

This section lacks references to any paleontological data or geologic maps, or academic information concerning fossils in Alaska.

In previous RMP comments, AMA has raised concerns about BLM's "Potential Fossil Yield" Classification, a system BLM developed for previous RMPs, which no other agency or academic institution uses, and which demonstrates a very limited understanding of invertebrates, microfossils, and the variability of the field of paleontology. The classification system inappropriately uses non-scientific terms as:

- "highly" fossiliferous (there is no global definition of such and the DEIS does not provide a meaning),
- "predictably" produce fossils (fossils within a given geologic unit vary by orders of magnitude within meters)
- "significant" fossils - significant to whom? And what for? A dinosaur skull has one significance - a not-visible-to-the-eye radiolarian that can date a completely unknown-age unit has a completely different, but equal "significance".

Chapter 5 - List of Preparers

The BLM provides no information on the qualifications, academic credentials, experience, or suitability of any of these individuals to provide data analysis, nor does it indicate any involvement of the US Geological Survey, other scientific agencies, or academic institutions in the preparation of this document.

This list includes abbreviations and acronyms (ABR, DOWL, SWCA, NEI) which are not identified in the list of Abbreviations, and which have no other explanation.

Appendix A - Figures - Documentation of Sources and Data

In Appendix A, figures contain the following note: “No warranty is made by the BLM as to the accuracy, reliability, or completeness of these data for individual or aggregate use with other data. Original data were compiled from various sources. This information may not meet National Map Accuracy Standards. This product was developed through digital means and may be updated without notification.”

There is no documentation of the derivation of these maps, nor any descriptions or citations of the individual data layers used, or their source. If the BLM GIS is continually updated, this is tantamount to saying “trust us, we found some data somewhere at some unknown time” that is represented here. Citations are critical to document any scientific product, so that readers can examine original sources and determine if the conclusions derived are supported by the facts.

Appendix D - Reasonably Foreseeable Development Scenario

The act of withdrawal revocation itself does not trigger any of the development actions in the scenarios. Any future development of d-1 lands will require extensive Federal and State, and in some areas, borough, approvals. All future development on BLM land, and any significant activity on State land, will require compliance with NEPA.

Few mining projects are likely to be developed on lands currently withdrawn from mining under 17(d)(1) withdrawals. Years of exploration are required before any potential deposits are discovered and staked. From the time of discovery to actual development is often more than 20 years, especially if recent projects in Alaska are any indication.

Where the development scenario attempts to quantify “acres of priority conveyances more likely to be developed on 17(d)(1) withdrawals”, the acreage figures are often absurdly high. These acreage figures should be deleted. For example, on page 3 of Appendix D, the acreage figure for the Ring of Fire planning area in table 2 is 10,000 acres. This is greater than the total current acreage of land subject to oil and gas development in the planning area, and likely, most developable oil and gas land is already owned by ANCSA Corporations or the State. Currently leased acreage may be greater, but surface development is much smaller. Similarly, table 2-2 on page 4 of Appendix 4 shows 43,000 acres “to be developed” for oil and gas, in an area where, to our knowledge, there are NO lands currently developed for oil and gas.

Section 5 of Appendix 4 should either be deleted, or it needs to be stated that 17(d)(1) withdrawals DO NOT prevent BLM from issuing a ROW on BLM lands.

Insufficient time for public to review and provide meaningful comments on the 1090 pages that make up the DEIS and 7 appendices.

AMA was unable to provide detailed comments on much of the DEIS as the public review period was much too short. This issue has a long and complicated history and has long-term implications for vast areas of Alaska. It is unreasonable to expect the public or interest groups to review the 1090-page document in 60 days. The draft was released only a few days before the Christmas and New Year's holidays, when many of our potential reviewers are focused on family and social engagements. In addition, the draft review period coincided with comment deadline on for several other federal issues – including the Ambler Road SEIS.

Thank you for the opportunity to comment.

Sincerely,



Deantha Skibinski
Executive Director