

June 7, 2019

Tom Heinlein, District Manager
Bonnie Million, Field Manager
Anchorage Field Office
4700 BLM Road
Anchorage, AK 99507
Sent by Email: BSWI_RMP_COMMENT@blm.gov

Subject: Comments on the Bureau of Land Management (BLM), Bering Sea -Western Interior, DRAFT Resource Management Plan (DRMP) and DRAFT Environmental Impact Statement (DEIS)

Dear Mr. Heinlein and Ms. Million;

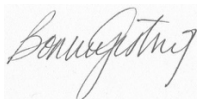
Thank you for the opportunity to provide comments on the Draft Resource Management Plan (DRMP), Draft Environmental Impact Statement (DEIS) phase of the Bering Sea Western Interior Resource Management Plan, which concern management of 13.5 million acres of roadless and undeveloped BLM-managed land for the next 20 to 30 years.

These comments are submitted on behalf of Earthworks, a non-profit organization dedicated to protecting communities and the environment against the adverse impacts of mineral and energy development, while seeking sustainable solutions.

The public lands in the Bering Sea Western Interior region are some of the most undeveloped lands in the nation, containing a broad array of fish, wildlife and plants. Lands within the Bering Sea Western Interior planning area have been valued for their natural qualities and their significance to local communities for traditional and customary uses.

BLM's vision for the Bering Sea-Western Interior planning effort is to "sustain the diverse and intact ecosystems that support traditional subsistence lifestyles while recognizing the importance of BLM lands to rural economies." We commend the agency on this vision but we'd like to highlight the points below where the BLM's preferred alternative fails to meet that stated vision. We urge the Bureau to provide strong protections for the culturally-important, traditional landscapes of the Bering Sea-Western Interior. Please see our substantive comments below.

Sincerely,



Bonnie Gestring
Northwest Program Director
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1) Failure to meet multiple use mandate. BLM's decision in Preferred Alternative C to open all but one percent of the planning area to mining gives sole use of the planning area to mining interests and fails to meet BLM's mandate for multiple use and sustained yield. While BLM continuously refers to its multiple-use mandate, this mandate does not demand that all uses be allowed or permitted on every acre. Rather, it requires a determination of what multiple-uses are compatible and in the public's interest. According to BLM manual No. 1613, mineral withdrawal and establishment of administrative prescriptions are also appropriate uses. BLM's final plan should create better balance for uses other than mining by providing protections from mining for locally-nominated watersheds and ACECs as in Alternative B.

Mining can result in substantial and lasting impacts, and interfere with the dominant other uses and values of the land. For example, recent analysis of the track record of operating U.S. copper mines, accounting for 89% of U.S. copper production in 2010, found that 92% resulted in significant water quality impacts from pipeline spills, tailings impoundment failures and failure to capture and treat wastewater.¹ Another report on the track record of 27 U.S. operating gold mines accounting for 93% of U.S. gold production in 2013, found that water quality impacts occurred at 74% of those mines.² Allowing mining in the entire planning area without proposing protections from mining impacts for more than one percent of the planning area is not balanced nor does it recognize conservation as one of the legitimate multiple uses.

2) Failure to protect relevant and important values in Areas of Critical Environmental Concern. BLM includes no Areas of Critical Environmental Concern (ACEC) in its Preferred Alternative C. In addition, the agency proposes to eliminate 1.8 million acres of existing ACEC protections in its preferred plan, leaving the planning area with few administrative protections from non-renewable extractive activities. BLM has failed to provide justification for and proper consideration of all impacts associated with this proposed change in management.

At the invitation of BLM in 2014, planning area Tribes nominated local watersheds for protection in the planning process. The viewpoints of planning area tribal communities, the only communities that will live with the results of the plan, should be given great weight and consideration by BLM in the planning process. BLM's preferred alternative for the DRMP and DEIS rejects communities' and Tribes' nominations for Areas of Critical Environmental Concern, nominated to protect culturally-important, productive watersheds from mining.

BLM's ACEC Manual explicitly recognizes mineral withdrawal as an appropriate management prescription for protecting ACEC values.³ BLM proposes to retain only one percent of RMP-area lands in withdrawn status. Instead, BLM relies on Required Operating Procedures (ROPs) and Stipulations (Stips) to provide protection to the revoked areas. Reliance on ROPS and Stips provides no assured protection because of the discretionary nature of these "protections." In the

¹ Earthworks, U.S. Copper Porphyry Mines Report: The Track Record of Water Quality Impacts Resulting from Pipeline Spills, Tailings Failures and Water Collection and Treatment Failures, July 2012 (revised 11/2012) https://earthworks.org/cms/assets/uploads/archive/files/publications/Porphyry_Copper_Mines_Track_Record_-_8-2012.pdf

² Earthworks, U.S. Gold Mine Spills and Failures Report: The Track Record of Environmental Impacts Resulting from Pipeline Spills, Accidental Releases and Failure to Capture and Treat Mine Impacted Water," July 2017. <https://earthworks.org/cms/assets/uploads/archive/files/publications/USGoldFailureReport2017.pdf>

³ See BLM Manual No. 1613, Section 33 C - Provision for Special Management Attention.

case of Alternative C, all that remains for protection of critical watersheds nominated as ACECs is Alaska Native Claim Settlement Act (ANCSA) 17 D-1 withdrawals. With BLM proposing to lift all ANCSA public land orders in the preferred alternative, the agency has failed to include sufficiently strong management prescriptions protective of values it has deemed relevant and important.

BLM should create ACECs to protect the relevant and important environmental, cultural, and traditional values revered by local communities and affirmed in BLM's Areas of Critical Environmental Concern Report on Relevance and Importance. We request BLM adopt measures in its final plan that are brought forward from Alternative B to establish High Value Watersheds and Areas of Critical Environmental Concern in which mining is prohibited. Doing so will not only protect the relevant and important values but will also conserve the important cultural and traditional values Tribes seek to protect.

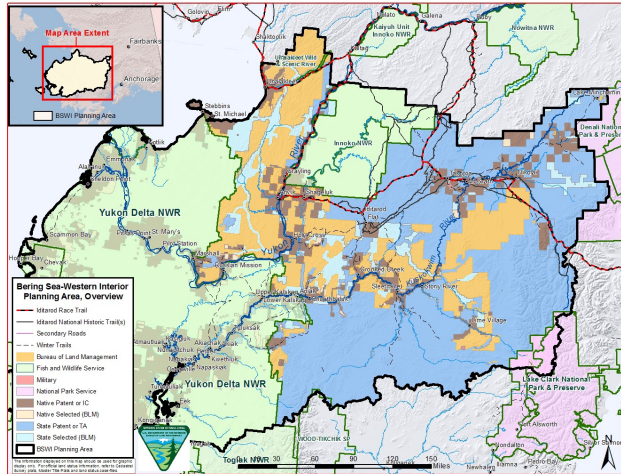
3) Failure to provide notice to impacted communities and Tribes at scoping. BLM failed to provide required notification and invitation on the Bering Sea-Western Interior plan to impacted communities and Tribes in the northern part of the planning area.

The Notice of Intent for Scoping of the Bering Sea-Western Interior plan was published in the Federal Register on August 18, 2013. At that time, no current northern Bering Sea-Western Interior communities or Tribes were within or near the planning area. The Scoping process for the Bering Sea Plan concluded with BLM's publication of the Scoping Summary and Report on May 30, 2014. The Bering Sea-Western Interior 2014 Scoping Report Appendix 8.1.1 lists Federally Recognized Tribes in the BSWI Planning area. Kaltag was included on the list even though it was outside the planning area at the time, but the Nulato, Loudon, Elim, Koyuk and Koyukuk Tribes were not listed.

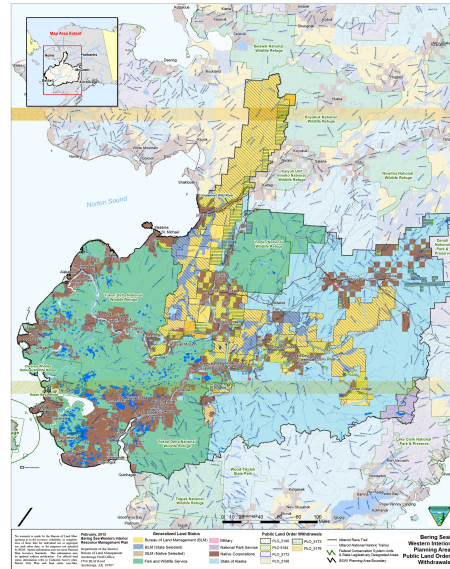
Fifteen months after the Scoping Summary and Report was released, another Federal Register notice was published by BLM on October 7, 2015 announcing a change in the northern boundary of the planning area. The originally-noticed planning area contained 10.6 million acres of BLM-managed land and the amended planning area contains 13.5 million acres, an increase of 2.9 million acres. According to the October 2015 Federal Register notice, the change was 'effective January 9, 2015'. Northern Bering Sea-Western Interior planning area communities in or adjacent to the newly-added 2.9 million acres did not receive this public notice of scoping and did not have the opportunity to participate in the scoping process for the Bering Sea-Western Interior plan because the scoping process was concluded before the official notice of the planning area boundary change.

The land added to the Bering Sea-Western Interior planning area includes at least six large regionally and locally-important watersheds including the Nulato River, the Kateel River, the Tagagawik River, the Inglutalik River, the Ungalik River, the Gisassa River and the Shaktoolik River. None of these watersheds nor the communities that live closely with these rivers were addressed in the Scoping Report and no northern planning area communities or Tribes were given the opportunity to participate in the Bering Sea-Western Interior Scoping process because public notice of the planning area boundary change was not officially available in the Federal Register until fifteen months after the Scoping Summary was released.

Original Planning Area Map



Revised Planning Area Map



BLM failed to notify impacted Norton Sound communities and Tribes like the Shaktoolik Tribe and Koyuk Tribe that are located outside the newly-added area and downstream from major watersheds. Neither of these Tribes are listed in the Bering Sea-Western Interior Scoping Summary and Report and like Nulato, did not receive official notification of the scoping process.

The BLM Planning Handbook states “The land use planning process is issue-driven. Scoping is a collaborative public involvement process to identify planning issues to be addressed in the planning process. . . . Issues include resource use, development and protection opportunities for consideration in the preparation of the RMP.” At least six communities and Tribes including Koyukuk, Nulato, Koyuk, Galena, Loudon and Elim were unable to participate in scoping in the Bering Sea-Western Interior plan to give critical issue or land protection information to BLM that should be addressed in the planning process as required in BLM’s Planning Handbook and 43 CFR 1610.2.

According to federal law regarding Resource Management Planning, 43 CFR 1610.2 (c), noted below, sets requirements for scoping and public participation. The highlighted requirements below were not met for communities outside the original planning area at scoping because those communities were not officially notified of a Bering Sea-Western Interior planning process until after the close of scoping which occurred well before notice of the planning area boundary change.

43 CFR 1620.2 (C) with highlights:

“When BLM starts to prepare, amend, or revise resource management plans, we will begin the process by publishing a notice in the Federal Register and appropriate local media, including newspapers of general circulation in the state and field office area. The Field Manager may also decide if it is appropriate to publish a notice in media in

adjoining States. This notice may also constitute the scoping notice required by regulation for the National Environmental Policy Act (40 CFR 1501.7). This notice shall include the following:

- (1) Description of the proposed planning action;
 - (2) Identification of the geographic area for which the plan is to be prepared;
 - (3) The general types of issues anticipated;
 - (4) The disciplines to be represented and used to prepare the plan;
 - (5) The kind and extent of public participation opportunities to be provided;
 - (6) The times, dates and locations scheduled or anticipated for any public meetings, hearings, conferences or other gatherings, as known at the time;
 - (7) The name, title, address and telephone number of the Bureau of Land Management official who may be contacted for further information; and
 - (8) The location and availability of documents relevant to the planning process.
- (d) A list of individuals and groups known to be interested in or affected by a resource management plan resource shall be maintained by the Field Manager and those on the list shall be notified of public participation activities. Individuals or groups may ask to be placed on this list. Public participation activities conducted by the Bureau of Land Management shall be documented by a record or summary of the principal issues discussed and comments made. The documentation together with a list of attendees shall be available to the public and open for 30 days to any participant who wishes to clarify the views he/she expressed.
- (e) At least 15 days' public notice shall be given for public participation activities where the public is invited to attend. Any notice requesting written comments shall provide for at least 30 calendar days for response. Ninety days shall be provided for review of the draft plan and draft environmental impact statement. The 90-day period shall begin when the Environmental Protection Agency publishes a notice of the filing of the draft environmental impact statement in the Federal Register.
- (f) Public notice and opportunity for participation in resource management plan preparation shall be appropriate to the areas and people involved and shall be provided at the following specific points in the planning process:
- (1) General notice at the outset of the process inviting participation in the identification of issues (See §§ 1610.2(c) and 1610.4-1). . . .

Additionally, because these five Tribes (Koyuk, Koyukuk, Loudon, Nulato, Elim) were not inside or near the Bering Sea Western Interior planning area boundary at the time of scoping, none of the Tribes were invited, as required by the Council on Environmental Quality (CEQ), to become a Cooperating Agency in the Bering Sea-Western Interior planning process. CEQ requires, as a matter of policy, that Federal agencies must affirmatively offer tribal, State, and local agencies formal cooperating agency status. Government entities possessing a jurisdiction by law or special expertise are eligible to become Cooperating Agencies. The five Tribal governments that were left out of scoping notifications are qualified and eligible to participate in the development of Environmental Impact Statements (EIS) as Cooperating Agencies by virtue of special expertise and longstanding traditional knowledge about planning area lands, for which there is limited western science and digital data. Tribal knowledge of the cultural and natural

environments of the areas are essential for the BLM to consider in its process of evaluating consequences of proposed actions on public lands that may affect Tribal interests. The BLM and their third-party contractors do not possess this knowledge; the Tribal governments stand alone in possessing this special expertise.

BLM should be required to go back to a scoping phase and provide lawfully-required public notification and involvement of the Tribes left out of the original Bering Sea-Western Interior plan's scoping process.

4) Alaska Native Claim Settlement Act (ANCSA) public land orders and the public interest.

BLM is contemplating lifting Public Land Orders (PLOs) set in place over forty years ago in ANCSA in its Preferred Alternative. BLM has chosen to use the DRMP/DIS process to meet its obligation to evaluate the public interest in retaining or revoking these withdrawals. The Alaska Native Claim Settlement Act Public Land Orders, if lifted in this RMP, would render millions of acres of undeveloped lands, suddenly open to various forms of development. As a result, the BLM must make the necessary analysis in the DRMP/DEIS of the public interest in the agency's recommendation to revoke all ANCSA 17(d)(1) withdrawals.

Section 17(d)(1) of the Alaska Native Claims Settlement Act (ANCSA) requires the Secretary to review the public lands in Alaska and determine whether any portion of these lands should be withdrawn under authority provided for in existing law to ensure that the public interest in these lands is properly protected.⁴ The DRMP/DEIS revokes ANCSA 17(d)(1) withdrawals on lands consisting of marginal mineral resource values without conducting the requisite public interest analysis and fails to adopt sufficiently stringent management prescriptions.

Congress passed the Alaska Land Transfer Acceleration Act (ALTAA), in 2004, requiring that BLM review the withdrawals to: "Determine if any portion of the lands withdrawn pursuant to that provision [ANCSA] can be opened to appropriation under the public land laws or if their withdrawal is still needed to protect the public interest in those lands."⁵ Under the proposed DRMP/DEIS, BLM recommends revocation of nearly all ANCSA (d)(1) withdrawals to allow mineral leasing on 'low-mineral-potential' lands retained in Federal ownership. BLM continues to emphasize the provisional nature of the original ANCSA withdrawals but neglects another primary intent of the original ANCSA withdrawals 'to protect the public lands until the Secretary could study them and make determinations about permanent withdrawals necessary to protect the public interest'. The DRMP/DEIS fails to contain the requisite public interest analysis and the BLM has failed to comply with ANCSA, the PLOs and Section 207 of ALTAA.

BLM contends that due to the 'low mineral potential' finding, the likelihood of commercial mineral development activities is not high. If the likelihood of development is low, the public interest tips heavily in favor of retaining the withdrawals and prohibiting mining to ensure the protection of the important historic, cultural, subsistence, and fish and wildlife values. BLM has not provided any justification why it is in the public's interest to forgo the withdrawals in favor of unlikely mineral development. Further, BLM has not provided a sufficient analysis of the potential long- term economic benefits of retaining or revoking the withdrawals, nor has it

⁴ ANCSA § 17(d)(1); 16 U.S.C. § 1616(d)(1).

⁵ ALTAA, P.L. 108-452, § 207(1), 118 Stat.3575,3585-86 (2004).

provided any analysis of the what type of mineral potential exists for development in areas of “marginal” mineral value and whether mineral interests poses questions of financial viability and ability to properly and sufficiently mitigate and reclaim any such activities after exploration and development.

Maintaining ANCSA withdrawals in High Value Watersheds is an essential management tool that should be used to protect high-values these lands. In Alternative C, BLM’s management designations that open all watersheds to mining, coupled with discretionary Required Operating Procedures and Stipulations (ROPS and Stips), do not offer the necessary protections because of their discretionary nature of application and the lack of specific standards. BLM has failed to recognize the important and vital contributions of a healthy and intact ecosystem to subsistence, sport and commercial fisheries. Withdrawals are important to protect the sensitive resources within these areas from the impacts of mineral entry and leasing to protect the sustainable plant, wildlife and fish resources that support subsistence use, sport and commercial fisheries. The BLM has failed to justify its decision to revoke the (d)(1) withdrawals for sensitive resource areas and has failed to provide any analysis that revocation of the withdrawals is in the public interest for the entire planning area. If mineral deposits are marginal and there is little potential for development, these lands should remain closed.

BLM failed to provide an adequate analysis of the decision to open the entire planning area to leasable and locatable minerals. Opening virtually the entire planning area to mineral entry is a highly significant management change that will have implications on all current sustainable uses in the planning area. These impacts will be compounded by the discretionary nature and inadequacy of the Required Operating Procedures and Stipulations prescribed in the DRMP/DEIS. We believe it is important that BLM recognize the importance of the pristine wildlife habitat and abundant subsistence resources traditionally used and relied upon by the native peoples of the region. We recommend retention of Public Land Orders in High Value Watersheds and ACECs, in addition to closing these areas to mining, to provide layered protections for the traditional and culturally important values.

5) Low mineral potential finding. BLM staff presentations at public meetings on the DRMP revealed the agency’s reasoning in opening 13.4 million acres of BLM-managed land in the Bering Sea-Western Interior area to mining development is the DRMP/EIS finding the area is designated to have low mineral potential. In public meetings BLM verbally forwarded the flawed inference that with ‘low mineral potential’ no mining will occur. There is no scientific documentation by BLM in the DRMP that the ‘low mineral potential’ designation is current and accurate nor can BLM accurately state whether or not mining will occur, potentially damaging important values on the pristine landscape.

Land use management decisions should be made because use and impacts of the proposed use have been evaluated and mitigated; and are deemed to be the highest and best use of the land. Such is not the case in the Bering Sea-Western Interior, in fact the opposite is spelled out in BLM’s Report on Relevance and Importance in which outstanding values are detailed for locally-nominated watersheds. BLM has not evaluated mining impacts in these important nominated watersheds in the DRMP/EIS to determine if impacts from mining can be mitigated to an acceptable level to protect relevant and important watershed values.

BLM should protect important values on planning area land. BLM should close High Value Watersheds and Areas of Critical Environmental Concern to mining in its preferred alternative, as in Alternative B, because migration and spawning areas for anadromous and local fish species – as well as cultural and traditional values for planning area communities – are dependent on clean water for wellbeing and thriving populations that could be severely damaged by mining. Opening public lands that are known to have low potential for mining and oil and gas development invites speculation at the expense of other land management priorities.

6) Subsistence and wilderness characteristics. The DRMP fails to take a requisite “hard look” at impacts to wilderness characteristics or provide proper mitigation measures to protect these characteristics. The preservation of wilderness values is in alignment with support for subsistence habitats and resources. The Alaska National Interest Lands Conservation Act sets forth a subsistence priority on public lands for rural villages’ federally-qualified subsistence users’ wild food harvesting preference on federal land. The DRMP/EIS fails to provide proper mitigation measures to protect subsistence use and resources in its management of wilderness characteristics. The preservation of wilderness characteristics on BLM managed public lands is consistent with the goal of conservation of habitat for wild food resources and is compatible with the rural, subsistence economy. BLM must provide better protection for wilderness characteristics and closely associated impacts on subsistence in the final plan.

7) No surface occupancy. We support the Preferred Alternative B and C prohibitions on surface disturbance in High Value Watersheds from oil and gas development to protect relevant and important values nominated by planning area communities in ACECs. We ask BLM to continue this provision in the final plan.

8) Right-of-way avoidance. We support local communities’ requests to BLM that High Value Watersheds and ACECs be designated right-of-way avoidance for fiber optics and cell towers, and right-of-way exclusion for roads, transmission lines and pipelines to protect relevant, important, cultural and traditional watershed values while allowing for communication improvements which may bring sustainable economic opportunity to the local communities and the region.

9) Lacking current science on climate change. The Bering Sea-Western Interior DRMP evaluates climate change in the planning area based on the National Climate Assessment Three approved in May of 2014; not the most current National Climate Assessment number four released in November of 2018. Additionally, the plan uses the medium trajectory for climate warming when Alaska has been determined to be on the high climate warming trajectory.⁶

The Alaska National Interest Lands Conservation Act or ANILCA and subsistence. ANILCA provides direction on how BLM must undertake the planning process, especially regarding subsistence. Alaska National Interest Lands Conservation Act Section 810 recognizes that subsistence uses are a priority interest on public land and provides a framework to consider and protect subsistence uses in BLM’s decision-making process. Section 810 does not “prohibit

⁶ Fourth National Climate Assessment (RCP8.5) (see Ch. 2: Climate, Box 2.7 and the Scenario Products section of App. 3)

all federal land use actions which would adversely affect subsistence resources but sets forth a procedure through which such effects must be considered and provides that actions which would significantly restrict subsistence uses **can only be undertaken if they are necessary and if the adverse effects are minimized.**⁷(Emphasis added). BLM has failed to evaluate whether the ‘significant restrictions’ to subsistence are necessary or suggest how the adverse effects are minimized in the RMP/DEIS.

Secretarial Order 3355 effects on the planning process. Requirements under Secretarial Order 3355 for fast-tracking and streamlining National Environmental Policy Act’s Environmental Impact Statements is severely limiting time for local community access to BLM and time for Tribes to meet as Cooperating Agencies with BLM in consideration of final plan language. In a planning area having over 70 federally recognized Tribes in or near the planning area, BLM’s stated current timeline allowing only 7 days for Tribes’ Cooperating Agency meetings after distribution of the DRMP Summary Report is completely insufficient. There are no pressing development projects pushing the completion of this RMP on a fast-tracked basis. In addition to re-doing scoping and issuing a Supplemental Draft RMP, BLM should extend the timeline for the planning process to allow at least 90 days to accommodate at least two meetings with each Cooperating Agency Tribe to consider draft final plan language of the RMP/FEIS. Secretarial Order 3355 does not abrogate the agency’s lawful obligations to Tribes or diminish the agency’s public process responsibilities to local communities.

Conclusion. Because BLM has not met its multiple use mandate and has failed to notify five communities of the original scoping process, it should provide scoping for those communities and then issue a Supplemental Draft RMP/DEIS to respond to concerns we outline above along with comments of local planning area communities received on the DRMP. BLM should strive for creation of a supplemental plan that notifies all planning area communities, as well as one that creates greater balance, providing durable protections for local nominations to protect relevant and important watershed and cultural values. Additionally, BLM must alter the plan timeline to allow adequate time for the numerous Cooperating Agency Tribes to meet with BLM in consideration of final plan language.

⁷ Amoco Production Co. v. Village of Gambell, Alaska, 480 U.S. 531, 544 (1987).

