

January 14, 2008



BLM Director (210)
Attn: Brenda Williams
1620 L Street NW, Suite 1075
Washington, D.C. 20036

Re: Bay Proposed Resource Management Plan/ Final Environmental Impact Statement



EARTHWORKS™

Dear Ms. Williams,

Nunamta Aulukestai, Alaska Wilderness League¹, Earth Works, Alaska Conservation Solutions, and Alaska Center for the Environment, The Wilderness Society, Alaska Sportsman's Lodge and Alaska Bear Trail Sportsman's Lodge submit the following protest of the Bay Proposed Resource Management Plan and Final Environmental Impact Statement (RMP/FEIS). This protest is filed in accordance with 43 C.F.R. § 1610.5-2 and contains:



- (1) a description of the interests of the protesting parties;
- (2) a statement of the parts of the RMP/FEIS being protested;
- (3) concise statements explaining the parts of the plan being protested and why the Bureau of Land Management (BLM) has acted unlawfully or in error; and
- (4) we have attached a copy of the comment letters submitted in regards to the Draft RMP/EIS.²



Where appropriate, we have included citations to comments previously submitted to demonstrate that issues raised in this protest were raised before BLM, but either ignored or inadequately addressed by the agency.

With the understanding that a great deal of community involvement, hard work, and interagency coordination went into this process, we respectfully submit that our organizations do not find the final proposed alternative to strike a sufficient balance between conservation of resources and development, within the planning area.

Nunamta Aulukestai and the parties identified in this protest have been intimately involved throughout the planning process for the Bay RMP, by among

¹ Alaska Wilderness League (AWL) is signing on behalf of itself and the Alaska Coalition. The Alaska Coalition was highly involved in the planning process for the Bay RMP/EIS, and participated in public meetings and commenting opportunities throughout the process. In April of 2007, The Alaska Coalition became a program and named entity of the Alaska Wilderness League. All of the program work and funding of the Alaska Coalition has transferred completely to the Alaska Wilderness League.

² The attached comments have been modified to include BLM's responses as well as to identify comments that were not addressed.

other things submitting comments and attending public meetings during the planning process. We have submitted comments for the record throughout this planning process, including the submission of scoping comments on March 4, 2005, and comments on the Draft RMP/EIS on February 5, 2007.

We are protesting the proposed RMP/FEIS over the issues of:

1. BLM failed to adopt proposed ACECs for essential wildlife and fisheries habitats.
 - A. Carter Spit ACEC.
 - B. Bristol Bay ACEC.
2. BLM has improperly found that no rivers in the planning area are suitable for designation as a Wild and Scenic River.
3. The RMP/FEIS revokes ANCSA 17(d)(1) withdrawals on lands consisting of marginal mineral resource values without conducting the requisite public interest analysis, fails to respond to substantive public comment, and fails to adopt sufficiently stringent management prescriptions.
4. The RMP/FEIS fails to provide an adequate analysis of cumulative impacts.
5. The RMP/FEIS fails to analyze a reasonable range of alternatives.
6. The RMP/FEIS fails to take a requisite “hard look” at impacts to subsistence use and resources in the planning area and fails to provide proper mitigation measures to protect subsistence.
7. The RMP/EIS has failed to adequately address comments and provide a meaningful opportunity for public review.
 - A. Response to public comment.
 - B. The timing of public review for Bay Plan DEIS and FEIS failed to provide a meaningful opportunity for public participation.
8. BLM has failed to provide an adequate analysis of the decision to open entire are leasable and locatable minerals.
 - A. Required Operating Procedures (ROPs).
 - B. Oil and Gas Leasing Stipulations.
 - C. Dismantling, Removal & Restoration (DR&R).
9. BLM failed to provide an adequate inventory and analysis of wilderness in the planning area.

We thank you for the opportunity to participate in the resource planning process and to assist BLM in tailoring the plan objectives to meet the best interests of the natural resources, wildlife habitat, and all users of the approximately 1.9 million acres of public lands. Our goal is to ensure that future generations enjoy the benefits of clean air and water, beauty, wildlife, subsistence resources, and recreation opportunities available on BLM Alaska’s multiple-use lands.

1. **BLM failed to adopt proposed ACECs for essential wildlife and fisheries habitats.**

Areas of Critical Environmental Concern (ACECs) are an important management tool for the BLM in the land use planning process.³ The ACECs in Alternative C of the proposed RMP/FEIS, are excellent concepts recommended by the BLM resource specialists and public land users who are most familiar with the significant resource values and the associated existing or potential threats. We urge BLM to act as a responsible land steward and designate these ACECs, prohibit mineral development within these ACECs and adopt strong protective management directives for each of the special areas. These directives should first and foremost focus management priority on the protection of the renewable resources of the region instead of resource extraction of southwestern Alaska's public resources.

BLM failed to address comments on the DEIS pertaining to the ACEC Manual, which explicitly recognizes mineral withdrawal as an appropriate management prescription for protecting ACEC values. *See* BLM Manual No. 1613, Section .33.C. - Provision for Special Management Attention. BLM simply states that special stipulations and additional methods can be established to protect ACEC values. Response to comment 69-3 at I-52. However, BLM provides no specific stipulations to adequately protect these valuable resource areas. Further, in the Purpose and Need statement, BLM states they will analyze impacts and make recommendations for *retention* and revocation of ANCSA 17 (d)(1) withdrawals. RMP/FEIS at 1-3. Yet BLM proposes to retain a nominal percentage of RMP-area lands in withdrawn status. Moreover, BLM relies upon Required Operating Procedures (ROPs) and Stipulations (Stips) to provide the requisite protection to the revoked areas. Response to comment 69-15 at I-48. However, reliance on ROPS and Stips provides no assured protection because of the discretionary nature of these "protections."⁴ We object to BLM's failure to include sufficiently strong management prescriptions, particularly in the areas recommended for revocation of ANCSA 17(d)(1) withdrawals within proposed ACECs.

One of the goals outlined in RMP/FEIS at 2-53 is to "highlight areas where special management is needed to protect and prevent irreparable damage to important historic, cultural and scenic values, fish and wildlife resources or other natural systems or processes through designation of ACECs." Despite this, the BLM has not only not designated ACECs' but has instead proposed that the Alaska Native Claims Settlement Act (ANCSA) 17(d)(1) withdrawals be revoked. This proposed action will place these special areas at greater risk. In fact, BLM acknowledges that the industrial activities that will be allowed given the proposed revocation of withdrawals, could cause irreparable damage to the planning area. RMP/FEIS at 4-145, 4-147, 4-149 and 4-150.

³ ACECs are identified as those "areas within the public lands where special management attention is required (when such areas are developed or used or where no development is required) to protect and prevent irreparable damage to important historic, cultural, or scenic values, fish and wildlife resources or other natural systems or processes, or to protect life and safety from natural hazards." 43 U.S.C. § 1702(a).

⁴ The inadequacies of the ROPS and Stips are further discussed in Section 8 below.

A. Carter Spit ACEC

We protest BLM's decision to only designate 36,220 acres of the Carter Spit in the Goodnews Bay region as an ACEC. Furthermore, we protest BLM's failure to provide requisite protection for the Carter Spit ACEC by revoking mineral withdrawals. Protection of this area is essential to the conserving the area's threatened Stellar's Eiders, sensitive fish and wildlife habitat, subsistence resources, and dependent commercial industries. To lift the mineral withdrawals in this sensitive area is not in the public's interest. Consequently, we protest BLM's failure to include the entire 61,251 acres of the Carter Spit area in the ACEC, as proposed in Alternative C, and protest BLM's proposal to lift the withdrawals in the ACEC.

In reviewing public comment 40-1, we concur that the possibility of establishing two separate ACECs from the Carter Spit ACEC may be the best way to offer the greatest protection. The concern of the commenter was in regards to the confusion over the separation of the two areas. We however feel that there could be another more appropriate reason for establishing two separate ACECs: mineral potential. The Carter Spit area within the ACEC, according to the mineral potential and mineral occurrence maps (3.30 and 3.33) in the proposed RMP/FEIS, shows no mineral potential. The remaining inland Twin Mountain area of the ACEC has varying values from zero potential to moderate potential. Establishing separate ACECs, with the Carter Spit being closed to mineral development and the remaining Twin Mountain area remain closed until mineral potential is known and public interest analysis is performed, may be the best way to offer protection to shoreline habitat of the threatened Stellar's Eiders.⁵

We strongly oppose allowing mineral entry to occur within these sensitive areas, which are recognized as critical habitat. The wildlife habitat and sustainable uses in this area are far too fragile to endure the disruptive effects of industrial activity. As noted throughout this protest, withdrawals are an acceptable management tool under the multiple-use mandate. In fact, the RMP/FEIS notes that land in the Bay area is considered to currently have "limited multiple-uses" because it is *only* being used for subsistence, sport, commercial and recreation. RMP/FEIS at 1-11. Yet, opening the entire planning area to mineral entry would make resource extraction a priority over current uses. Once mineral claims are in place, there is little to no statutory protections for renewable resources and local socio-economic values.

Many public entities, groups and members of the public have expressed concern over the RMP's ability to maintain the health and integrity of this intact ecosystem and the communities that depend upon it. While BLM states "that there is an interest in developing mineral resources," this limited and undefined "interest" cannot and should not outweigh the public interest of the local communities, businesses, individuals and organizations that have overwhelmingly expressed concern for the protection of these important historic, cultural, and scenic values, as well as the renewable fish and wildlife resources. The current and historic uses of these lands are not compatible with the type of development that BLM would allow under this

⁵ Another way to manage the area would be to have different management prescriptions within the same ACEC: Carter spit area withdrawals maintained and Twin Mountain area closed until open. This same management was used by the BLM in the East Alaska RMP/FEIS for the Bering Glacier RNA. (East Alaska Proposed RMP/FEIS 2-163, Map 24)

RMP. BLM is obligated to review comments from the public and develop management strategies which protect the public interest. Historic and present-day use and economic prosperity of the area is dependent on a relatively pristine and vibrant ecosystem. The decision to allow mineral development is simply incompatible with the historic and present-day uses.

Placing the value of questionable short-term economic gain over that of the known sustainable historic uses is irresponsible and will undoubtedly be detrimental to the health of the region. The agency has failed to explain how it will mitigate impacts of increased development throughout the region. Placer mines are the most likely development in the Goodnews Bay region. RMP/FEIS at 4-9. The vast majority of the streams and rivers, throughout the entire planning area as well as in the Goodnews Bay region, are anadromous streams. According to BLM, these mines:

might generate a small amount of income for the region; however, such developments taken cumulatively with other developments on State and Native-owned lands could have a negative impact on the existing subsistence economy, the commercial fishing industry, and the sports hunting and fishing guiding industries. RMP/FEIS at 2-84.

Past placer mine activity has indicated that this type of mining is incompatible with protection of fish habitat and all the recognized historic and current uses that depend upon salmon. For example, the Salmon River Placer mine, **a federal mineral claim**, and the only active mine operation currently in the planning area (RMP/FEIS, 3-15) demonstrates that mining jeopardizes salmon habitat and is therefore incompatible with the historic uses as well as protection of the fish and wildlife resources of this special management area. As the BLM, itself notes:

After decades of mining, there have been considerable changes to the hydrological characteristics of the Salmon River basin. Tailings composed of porous gravel and cobble-sized material as high as 50 feet now occupy areas once filled with fine particulate material necessary to support proper river functions. During periods of low flow, the Salmon River becomes a discontinuous river in sections where the tailing porosity is too great to support the surface flow of the river. This discontinuity of river flow at times prevents access to anadromous fish spawning habitat. RMP/FEIS at 3-15.

Mineral development is not compatible with the existing uses in the area. It has already proven to be detrimental to key economic resources. Increasing the development on BLM lands is irresponsible, especially in light of the proposed development on adjacent State and Native lands. Development and economic activities for the Carter Spit area need to be based on activities that promote and protect this healthy and vibrant ecosystem.

B. Bristol Bay ACEC

It is widely acknowledged that the most critical unifying element within the Bristol Bay region is the world-renowned runs of salmon. This fishery drives the economy, culture, and the ecology of the Bristol Bay ecosystem. For thousands of years, Native people throughout the region have relied upon healthy salmon runs which form the basis of subsistence. Today, there

are 25 communities that depend on the health of the ecosystem and the wildlife it supports. Economies throughout the region depend directly upon the stability of the wild salmon runs in the Bristol Bay ecosystem. Bristol Bay’s rich salmon fishery is the world’s largest supplier of wild salmon, employing thousands of workers and generating over \$300 million in revenue annually through commercial fisheries. In addition, the region is a world-class sport fishing destination, and the backbone of an economy heavily based on recreation and tourism. Sport anglers and hunters generate \$120 million in annual revenue. The region also provides critical habitat for caribou, bears, migratory birds and countless numbers of seals, whales, walrus and fish, which Alaska Native communities and local residents depend upon for subsistence resource values.⁶

For decades, Bristol Bay has been acknowledged locally, nationally and internationally for its values. As stated in AWLs comment letter for the Bay Area RMP/DEIS, the Department of the Interior first proposed special status for the public lands in the Bristol Bay region, recommending to Congress in the 1970s that either a National Wildlife Range or a Special Resource Range be designated. Later, Congress specified that the first purpose of management of the region would be “to conserve the fish and wildlife and other significant natural and cultural resources within the region.” ANILCA § 1203(b)(1); 16 U.S.C. § 3183 (b)(1). In order to achieve this purpose, the BLM unencumbered lands in the Bristol Bay region must be designated as an ACEC, and closed to all mineral development.

According to map 3.32 in the RMP/FEIS, there are no mineral values on unencumbered BLM lands in the Bristol Bay area. Therefore, there is no economically viable reason to open these lands to mineral entry, especially in light of the jeopardy such an act poses to the known economic value of the sustainable and renewable resources. Vibrant, functional ecosystems and healthy natural resources are vital to maintain the cultural, spiritual, and economic health of the 25 communities throughout the region.

BLM has failed to provide adequate reasoning and analysis for its decision not to designate the area as an ACEC. According to the criteria provided in 43 C.F.R. § 1610.7-2 and found at page B-13 of the RMP/FEIS, we have provided ample rationale for ACEC designation in the table below:

Relevance: An area is considered relevant if it contains one or more of the following:	Relevance Value	Bristol Bay values that meet the standards for designation.
	A significant historic, cultural, or scenic value (for example, rare or sensitive archaeological resources and religious or cultural resources important to Native Americans);	According to the RMP/FEIS a “cultural resource important to Native Americans” is an example of relevance. The historical subsistence uses indisputably date back thousands of years.
	A fish and wildlife resource (for example, habitat for endangered, sensitive, or threatened species or	As a fishery renowned as the world’s largest <i>sustainable wild</i> salmon fishery the region is

⁶ Duffield, John; Goldsmith, Oliver; Neher, Chris; Patterson, David. 2006. *The Economics of Wild Salmon Watersheds, Bristol Bay, Alaska*. (available at << http://www.iser.uaa.alaska.edu/Publications/sg_bb0706.pdf>>)

	habitat essential for maintaining species diversity).	deserving of the designation that will protect and maintain that status.
Importance: The value, resource, system, process, or hazard described above must have substantial significance to satisfy the importance criteria, which generally means it is characterized by one or more of the following:	Importance Value	Bristol Bay value that meets the standards for designation.
	Has more than locally significant qualities that give it special worth, consequence, meaning, distinctiveness, or cause for concern, especially compared to any similar resource;	Indisputably, Bristol Bay fish and wildlife provide economic value not just to the communities in the region but to the economies of Alaska and the nation. ⁷
	Has qualities or circumstances that make it fragile, sensitive, rare, irreplaceable, exemplary, unique, endangered, threatened, or vulnerable to change;	According to American Rivers, the Kvichak and Nushagak Rivers in Bristol Bay comprise one of the top 10 most endangered systems in the United States. ⁸
	Has been recognized as warranting protection to satisfy national priority concerns or to carry out FLPMA mandates;	As mentioned earlier and in comments submitted on the RMP/DEIS, the Department of the Interior proposed special status for the lands in Bristol Bay in the 1970's as either a National Wildlife Range or a Special Resource Range.
	Has qualities that warrant highlighting to satisfy public or management concerns about safety and public welfare.	The public has continuously expressed concern over the health of the system, not only concern for activities on BLM unencumbered lands but also for the cumulative impacts of development on adjacent lands: specifically the Pebble Mine.

The Bristol Bay lands not only meet the minimum of one of these requirements but easily meet every one of the standards outlined by the agency, without dispute. BLM has failed to demonstrate how this area lacks national value or rebut the existence of any of the values provided in the table above. Further, BLM's decision runs counter to the previous recommendation from the Department of the Interior for protection of this area. BLM has failed to explain this fundamental change from previous management recommendations. This area should therefore be designated as an ACEC and closed to mineral entry.

⁷ Duffield, John; Goldsmith, Oliver; Neher, Chris; Patterson, David. 2006. *The Economics of Wild Salmon Watersheds, Bristol Bay, Alaska*. Available at: http://www.iser.uua.alaska.edu/Publications/sg_bb0706.pdf

⁸ *America's Most Endangered Rivers of 2006*. American Rivers. Washington, DC. (available at <<http://www.americanrivers.org/site/DocServer/BristolBay_MER2006.pdf?docID=3862>>).

2. BLM has improperly found that no rivers in the planning area are suitable for designation as a Wild and Scenic River.

As required by both the National Wild and Scenic Rivers Act (WSRA) and BLM Manual 8351, the BLM must consider potential additions to the National Wild and Scenic Rivers System as an integral part of revising resource management plans. *See* 16 U.S.C. §§ 1273(b), 1275(a), 1276(d); BLM Manual 8351, *Wild and Scenic Rivers – Policy and Program Direction for Identification, Evaluation and Management* (Dec. 22, 1993) (*hereinafter* “BLM Manual 8351”). The BLM Manual 8351 provides guidance for BLM when considering rivers for inclusion in the WSRA system. Additional clarification is also found in a BLM Instruction Memorandum issued by the Washington Office. *See Clarification of Policy in the BLM Manual Section 8351, Wild and Scenic Rivers, with Respect to Eligibility Criteria and Protective Management*, Instruction Memorandum No. 2004-196. (June 21, 2004) (*hereinafter* “BLM IM No. 2004-196”).

Specifically, BLM is required to review whether rivers within the planning area are “eligible” and/or “suitable” for designation as a Wild, Scenic, or Recreational River under the WSRA. *See* 16 U.S.C. §§ 1273(b), 1275(a), 1276(d); BLM Manual 8351 § .06(B). Eligibility is primarily a scientific or technical matter involving the physical characteristics of the river. *See* 16 U.S.C. § 1273(b); BLM Manual 8351 § .31. In order to be eligible for designation, “a river segment must be ‘free-flowing’ and must possess at least one river-related value considered to be ‘outstandingly remarkable.’... No other factors are considered in determining the eligibility of a river segment.” 16 U.S.C. § 1273(b); BLM Manual 8351 § .31(A).

Of significant importance, there is no minimum length for free-flowing segments. In fact, the BLM Manual states that “Congress has designated a segment as short as .4 miles. A river segment is of sufficient length if a specific outstandingly remarkable value(s) can be protected (a factor in the suitability determination, not eligibility determination) should the segment be designated.” BLM Manual 8351 § .24A. A “river” also need not be perennially flowing or even “floatable or boatable” at any time of the year. BLM Manual 8351 § .31B(1).

Further, adjoining land need not be entirely BLM land. According to the BLM Manual, “(i)n cases where a particular river segment is *predominately* non-federal in ownership and contains interspersed BLM-administered lands, BLM shall evaluate only its segment as to eligibility and defer to either the State or private landowners’ discretion as to their determination of eligibility.” BLM Manual 8351 § .06(B) (emphasis added).

If the segment of river is found to be “free-flowing,” BLM must determine if any Outstandingly Remarkable Values (ORVs) are present. The BLM Manual defines “outstandingly remarkable values” as “(v)alues among those listed in Section 1(b) of the [National Wild and Scenic Rivers] Act: ‘scenic, recreational, geological, fish and wildlife, historical, cultural, or other similar values....’ Other similar values may be hydrological, scientific or research values.” BLM Manual 8351 at 39 and § .31C.

If a river segment is eligible for designation, BLM must recommend the classification of the segment as either “wild,” “scenic” or “recreational.” BLM Manual 8351 § .32. Upon a determination of eligibility and assignment of tentative classification(s), BLM must provide

“adequate protection” to the free-flowing nature of the “river,” the ORV(s) and the tentative classification (a “wild” classification cannot be allowed to degrade into a “scenic” classification, etc.). BLM Manual 8351 § .32C.

Suitability, by contrast, is a determination based on a variety of policy concerns. See BLM Manual 8351 § .33(A); BLM Policy Clarification, IM No. 2004-196, at *3 (June 21, 2004). Section 4a of the WSRA identifies criteria for determining suitability, including: (1) characteristics that make the river corridor a worthy addition; (2) status of land ownership and uses in the area; (3) reasonably foreseeable potential uses of the land and water that would be enhanced, foreclosed, or curtailed if the river were designated; (4) public, state, local or other interests in designating the river; (5) estimated costs of acquiring necessary lands and interests in lands, and of administering the river if designated; (6) ability of the agency to manage the river and protect identified values; (7) historical or existing rights that would be adversely affected by designation; and (8) other issues and concerns identified in the land use planning process. 16 U.S.C. § 1275(a).

Of the 45 rivers and river segments reviewed for suitability in the Bay planning area, only three were found eligible for designation as a Wild and Scenic River and none were found suitable under BLM’s preferred alternative. We protest these eligibility and suitability findings.

First, according to Table A.1 in the DEIS, the following four rivers were deemed eligible under the WSRA: (1) 98.4 miles of the Alagnak River (Fisheries and Recreational ORVs, and tentative classification as Wild); (2) 44.4 miles of the Kvichak River (Fisheries, Recreational and Subsistence ORVs, and no tentative classification); (3) 15.1 miles of the Goodnews River (Fisheries and Subsistence ORVs, and tentative classification as Wild); and (4) 38.6 miles of the Middle Fork of the Goodnews River (Fisheries ORV, and tentative classification as Wild). However, the text of Appendix 1 of the DEIS omits any analysis of the Kvichak River and concludes that only three rivers were deemed eligible. *See id.* at A-4. In the RMP/FEIS, the BLM claims that the Kvichak River was not included in the eligibility analysis because BLM does not have jurisdiction over this river. *See RMP/FEIS* at B-7. However, several other rivers that had no segment on BLM managed land were reviewed, including the Alagnak River, Canyon Creek, Goodnews River, Goodnews River Middle Fork, Iliamna River, Napotoli Creek, Nautilus Creek, Nushagak River, Squaw Creek, and the Upper Talarik Creek. *RMP/FEIS* at B-3 to B-5. BLM’s treatment of the Kvichak River therefore is entirely inconsistent with the review of the other river segments, especially in light of the fact that the Kvichak River is home to the largest sockeye salmon run in the world. *RMP/FEIS* at 3-121.

Second, the reported resource values in the Appendix for the reviewed river segments are inconsistent with the resource values provided in the text of the RMP/FEIS itself. For example, the Resource Values provided for the Kvichak River range from 3 to 4 for cultural, historic, fish habitat, scenic, recreation, subsistence, or wildlife (which values are inconsistent with the fact that the Kvichak River bears the largest sockeye salmon fishery in the world). *RMP/FEIS* at B-6. However, in discussing fisheries, the RMP/FEIS states that the Kvichak River was the only river to receive a value of 1. *RMP/FEIS* at 3-121. This apparent inconsistency in resource values renders the entire eligibility analysis arbitrary and capricious.

Additionally, BLM asserts that the majority of the subsistence and recreational fishing activity occurs within those rivers that receive a value of 2 or 3. RMP/FEIS at 3-121. However, of the values assigned for fisheries, subsistence or recreation, only three rivers, the Goodnews, Goodnews Middle Fork, and Alagnak receive a value of 2. We protest BLM's finding that only three of the 45 rivers have a value of 2 or 1 under the categories of fisheries, recreation, subsistence, or cultural. We further find it highly suspect that the only river segments to receive a value of 2 or 1 (and thus deemed to contain an ORV) are three rivers that have no portion which runs through BLM managed lands. This finding is further difficult to accept given that numerous rivers and creeks throughout the planning area contain exemplary or unique attributes.

BLM determined that the 42 remaining rivers and river segments have no Outstanding Resource Values (ORVs). According to Glossary-9, an ORV can be "a rare, unique, or exemplary feature that is significant at a regional or natural scale." Values can be recreational, scenic, geological, historical, cultural, biological, botanical, ecological, heritage, hydrological, paleontological, scientific, or research-related. 16 U.S.C. § 1271. The RMP/FEIS acknowledges the value of subsistence for the communities in the planning area, but did not use it as a basis for finding ORVs present in the reviewed river segments. We protest this arbitrary and capricious decision because the rich salmon runs that would be protected, maintained and enhanced by designation comprise recreational, biological, ecological, hydrological and scientific or research related ORVs.

Furthermore, the BLM assessment of resource values is not supported by the record. The RMP/FEIS provides a table of assigned resource values, as determined by seven BLM resource specialists. RMP/FEIS at B-7. However, the RMP/FEIS fails to incorporate by reference or provide the actual analyses, assessments, studies, or reports prepared by these specialists. As a result, it is impossible for the public to challenge any of the assigned resource values. The inability to review these assignments is further heightened by the glaring inconsistencies found between the text of the RMP and the table provided in Appendix B. Overall, the analysis of Wild and Scenic Rivers provided in the RMP/FEIS, as well as the information provided in Appendix B is lacking in requisite detail. We protest all findings of eligibility and suitability made in the RMP/FEIS based on a flawed and unsupported analysis.

According to the response to comment 69-49, the BLM justifies its eligibility/suitability decision on complications associated with the patchwork of land ownership. RMP/FEIS at 2-56. While three river segments were found both eligible and suitable for designation under Alternative C, none of these three rivers were found to be suitable for designation under the preferred Alternative. RMP/FEIS at 2-56 to 2-57. We protest BLM's finding. The fact that the rivers were found to be suitable for designation under Alternative C, where the same problem of a complicated patchwork of land ownership exists indicates that the problems with suitability for the preferred Alternative do not in fact exist, or that if management problems pertaining to ownership do exist they can be as easily overcome for Alternative D as they apparently are for Alternative C.⁹

⁹ Further, BLM's justification of ownership complications lacks merit as there are circumstances where rivers have been designated despite a patchwork of ownership. For example, in the Draft South Yuba River Comprehensive Management Plan, three rivers were designated on State of California land. The rivers were "state designated" and according to the plan the BLM will develop management actions to support the designation as well

BLM also asserts that it did not move forward with any eligible and suitable river determinations because “(based on formal scoping)...there is a demonstrated lack of support by residents using the rivers.” RMP/FEIS at 2-56. We contest this statement by pointing out conflicting information found in the RMP/FEIS which states that:

Twenty eight rivers, river segments, streams, and lakes were nominated by the public during scoping to be evaluated for their eligibility for nomination to the Wild and Scenic River System. RMP/FEIS at 1-13.

BLM’s findings are not supported by the record or by the submitted public comment.

We protest BLM’s eligibility and suitability findings for all 45 river segments. BLM has failed to provide an adequate description of ORVs; failed to properly apply the thirteen suitability criteria set forth in BLM Manual 8351, provided internally inconsistent resource values for river segments, failed to include the underlying analyses, reports, or studies that support its ORV value determinations, failed to properly assess ORVs, improperly removed river segments from the eligibility analysis, improperly confused the eligibility and suitability analyses for rivers, and failed to provide sufficient rationale for its non-suitability determinations. We request that the Wild and Scenic River eligibility and suitability be reevaluated for the entire planning area, with an open comment period accepting new nominations for rivers and river segments. All areas that are found suitable during this review should be recommended for designation. In the alternative, we request that the Anchorage Field Office of BLM follow the lead of the Glennallen Field Office and defer its final suitability determinations until after the State and Native selection process is complete. In addition, we request that BLM “provide strong interim management of eligible river corridors, including prohibition of mineral exploration and development,” and to “commit to conduct a future valid suitability assessment of all eligible rivers that are retained under permanent BLM management.”

3. The RMP/FEIS revokes ANCSA 17(d)(1) withdrawals on lands consisting of marginal mineral resource values without conducting the requisite public interest analysis, fails to respond to substantive public comment, and fails to adopt sufficiently stringent management prescriptions.

As presented in our comment letter on the draft Bay RMP, Section 17(d)(1) of the Alaska Native Claims Settlement Act (ANCSA) provided that:

The Secretary shall review the public lands in Alaska and determine whether any portion of these lands should be withdrawn under authority provided for in

as create a Wild and Scenic River Management Plan. These rivers have been designated administratively, without the approval of Congress (per a request from the Governor of California to the Secretary of the Interior). See Draft South Yuba Comprehensive Management Plan. 2005 (available at <<http://www.nac.oshkosh.net/AlertsAdvisoriesUpdates/South_Yuba_proposed_action_01-25-05.pdf>>).

existing law to insure that the public interest in these lands is properly protected. ANCSA § 17(d)(1); 16 U.S.C. § 1616(d)(1).

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

Under the proposed RMP/FEIS, BLM recommends revocation of all ANCSA (d)(1) withdrawals to allow for mineral leasing on lands retained in Federal ownership. RMP/FEIS at 2-30. Approximately 1,101,134 acres of unencumbered BLM lands and any State-selected or Native-selected lands whose selections are relinquished or revoked would be open to fluid mineral leasing and 1,102,489 acres of unencumbered BLM lands and any selected lands (817,464 acres) of which selection is revoked or relinquished would be available for locatable mineral entry. RMP/FEIS at 2-36. We protest the BLM's decision to recommend lifting the (d)(1) withdrawals.

The BLM continues to emphasize the provisional nature of the withdrawals but neglects another primary intent: to protect the public lands until the Secretary could study them and make determinations about permanent withdrawals necessary to protect the public interest. A mandatory lifting of withdrawals was not prescribed upon conveyance of land.

In the Purpose and Need section, it is established that “this document will analyze impacts and make a recommendation for retention and revocation of ANCSA 17(d)(1) withdrawals.” RMP/FEIS at 1-3. Yet, despite public concern and the highly valued cultural, subsistence, commercial, sport and recreational values the withdrawals are being revoked. According to PLO 5180, which withdrew 2,564,500 acres of public lands across Alaska, including the Bristol Bay planning area, lands in the Bristol Bay area would be reviewed for their public value to ensure that those values would be protected by permanent withdrawals or designations. Similar language appears in several other PLOs issued under the ANCSA § 17(d)(1) authority.

BLM has chosen to utilize the RMP/EIS process to meet its obligation to evaluate the public interest in retaining or revoking the withdrawals. As a result, the BLM must make the necessary analysis of the public interest in the BLM's recommendation to revoke all 17(d)(1) withdrawals within the RMP/EIS. Missing from this analysis are, amongst other things, studies on: (1) inventory and assessment of trails; (2) detailed soil surveys; (3) recreation use information; (4) definitive Special Status Species and habitat occurrence (plant and animal), delineation of identification and conservation measures;(5) riparian assessments; (6) key wildlife seasonal and life function habitat occurrences, use/concentration identification and delineation; (7) watershed assessments; and (8) cultural Resource inventories of uplands and smaller drainages. *See* RMP FEIS at 4-17. These major studies are important to understanding the planning area and development impacts. BLM states that, “[b]ecause of these deficiencies, some

impacts can not be quantified” and goes on further to state that, “project- level analysis will provide the opportunity to collect and examine site-specific inventory data.” RMP/FEIS at 4-18. The appropriate timing for these studies is during the RMP/EIS process.

While Chapter 3 of the FEIS indicates that many lands within the RMP area possess wildlife, subsistence, and other public values that are worthy of continuing protection, the RMP/FEIS fails to draw any connection between these values, including the public interest in these values, and its proposal to revoke virtually all of the 17(d)(1) withdrawals.¹⁰ The RMP/FEIS therefore fails to contain the requisite public interest analysis and the BLM has failed to comply with ANCSA, the PLOs and Section 207 of ALTAA.

Although the likelihood of commercial mineral development activities within this area may not be high¹¹, 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. Further, if the likelihood of development is low, the public interest tips heavily in favor of retaining the withdrawals: to ensure the protection of the important historic, cultural, subsistence, and fish and wildlife values. BLM has not provided any justification for 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 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.¹²

Maintaining the withdrawals throughout the entire designated area is an essential management tool to protect the values of these lands. BLM’s special management designations, coupled with discretionary ROPS and Stips, do not offer the necessary protections because of their discretionary nature 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 the commercial fishery.

¹⁰ Chapter 3 only provides a table pertaining to the 17(d)(1) withdrawals. RMP/FEIS at 3-96. This table contains no analysis of the public’s interest in retention or revocation of the withdrawals. Further, the table provides no information for the public to understand where these withdrawals are across the planning area. While the RMP/FEIS refers to studies in the 1980s (RMP/FEIS at 3-95), the EIS provides no citations, nor any detail about the results of these studies. Because these studies are unknown to the public, they are not properly incorporated by reference and cannot be properly relied upon by the BLM in this RMP/FEIS. Finally, the Secretary’s Report to Congress, pursuant to Section 207 of ALTAA, fails to provide the requisite public interest analysis to support the BLM’s 17(d)(1) determination made in this RMP/FEIS.

¹¹ While BLM provides an estimate of what the likelihood of mineral extraction activities is, there is no way of knowing what mineral exploration and development would occur.

¹² In regards to the potential state fish refuge, BLM has already stated, in response to comment 69-8, that it would “reevaluate decisions made within this RMP concerning lands adjacent to said refuge within a plan amendment or revision.” While we appreciate the commitment to reevaluate the status of the lands, such a reevaluation is not satisfactory at this time. We request that withdrawals be maintained until the status of the refuge can be determined in order to prevent development that may hinder the inclusion of land in the refuge and ensure the health of the system.

While BLM continuously refers to its multiple-use mandate, this mandate does not demand that all uses be allowed or permitted. Rather, it requires a determination of what of the multiple-uses are compatible and in the public's interest. According to BLM manual No. 1613, mineral withdrawal and wilderness are appropriate uses. Proper study, beyond the minimal EIS review of the lands is required before a determination regarding the withdrawals can be made.

One of the objectives spelled out in the plan is to "use and develop" land "in a responsible manner that benefits the public." RMP/FEIS at A-37. There is more value and benefit to the public if these lands remain closed to mineral development than if these marginal deposits are open to entry. The withdrawals are important to protect the sensitive resources within these areas from the impacts of mineral entry and leasing to protect the sustainable and world-class fishery that supports subsistence use, and 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.

4. The RMP/FEIS fails to provide an adequate analysis of cumulative impacts.

The cumulative impacts analysis conducted in the RMP/FEIS underestimates the scope of development and the impacts it will have on the predominantly pristine lands in the planning region. The cumulative impacts discussion is short, general and conclusory, offering virtually nothing in the way of specific, detailed, and quantified analysis. For example, in response to comment 69-10, the RMP states that "an assignment of low mineral potential indicates that BLM anticipates low exploration and/or development activity during the life of the plan."

The BLM may have underestimated the likelihood of mineral exploration and development in the planning area. According to mineral interests commenting on the even more remote Alaska locations in the Kobuk Seward Peninsula planning area:

"Much of the delay in developing mines is directly tied to the price of metals....If metal prices remain high, or if grade deposits are found, they can be developed in a much shorter time frame....Alternative D paragraph one states "it is expected that no new hard rock mines will be developed in the life of this plan..." This is not correct....Further, nearly all metal prices are now high (both precious metals and base metals) and if that continues the probability of new mines is even greater." Kobuk Seward Peninsula Proposed RMP/FEIS response to comment 52-54, J-69.

This same comment can be applied to the Bay planning area, where market prices will influence an influx of mineral interests to the area for even marginal mineral deposits. Across the west, high commodity prices, including record gold prices, are driving a dramatic increase in claim-staking on federal public lands. Analysis of government records shows that in 12 Western states, the total number of active mining claims has increased from 207,540 in January 2003 to 376,493 in July 2007-a rise of more than 80 percent. Between September 2006 and May 2007 alone,

companies and individuals staked more than 50,000 claims (BLM 2007).¹³ A blanket lifting of withdrawals is a significant change in management. Before lifting these withdrawals, BLM must have an accurate assessment of development potential and must fully analyze the impacts to the planning area.

While BLM has provided a list of potential exploration and development, it has failed to provide any meaningful assessment of the impacts associated with this potential development. Furthermore, beyond already recognized potential exploration and development, BLM has failed to assess the likelihood of a rush of development that may be spurred by the lifting of withdrawals. BLM must consider the cumulative impact of all potential exploration and development in the EIS. *See Neighbors of Cuddy Mountain v. United States Forest Serv.*, 137 F.3d 1372, 1380 (9th Cir. 1998). A mere list of potential development does not amount to a meaningful quantified and detailed assessment of the cumulative impacts associated with these potential exploration and development activities. Additionally, refusing to address the impacts because of an assumption that actual exploration and development will be low is speculative and inaccurate, especially in light of rising gold prices, which at the time of this protest have risen to their highest levels ever of \$900 per ounce.

The vast amount of potential exploration and development adjacent to BLM unencumbered lands raises further concern in regards to the health and adaptability of the resources in the region. BLM has failed to consider the cumulative impacts of this action, along with the past, present and reasonably foreseeable actions that have or may take place on surrounding non-federal land.

In addition, comments submitted on the draft we addressed concerns about the ecosystem level changes brought on by climate change. These changes will continue to have profound impacts on the landscapes, wildlife habitat, resources and local communities. The RMP/FEIS cumulative impacts analysis as it pertains to climate change impacts is inadequate for several reasons.

First, the cumulative impacts analysis of the RMP/FEIS only focuses on emissions contributions associated with the RMP. This limited approach fails to assess and discuss other aspects of climate change and the resulting impacts of development activities under this Plan cumulatively with changes that are likely to come as a result of climate change. While emissions contributions are an important aspect of climate change, BLM, as a land manager, must look at the climate change impacts occurring in the planning area, as well as those impacts that are expected in the future, and then determine what cumulative impact the associated development activities allowed pursuant to the RMP will have in combination with the ongoing climate change impacts on the environment and ecosystem. For example, climate change is resulting in changes to the permafrost, which is melting as a result of warming. RMP/FEIS at 4-136. However there is no discussion of the cumulative impact of the ongoing climate change impacts to permafrost along with the allowed mineral exploration and development on permafrost. Nor is there any analysis of the impacts that warming of permafrost will have on water quality. Changes in permafrost may result in increased sedimentation. This will have significant deleterious affects on salmon spawning and rearing and there may be cumulative impacts when

¹³ http://www.ewg.org/sites/mining_google/US/analysis.php

the permitted activities under the RMP are taken into account.¹⁴ Further, increasing water temperatures as a result of warming trends or changes in water flow may also have a cumulative impact on salmon and salmon habitat when associated impacts from mineral exploration and development are taken into account.¹⁵ These are but a few of the types of climate change-related impacts to the ecosystem and thus subsistence uses and commercial and sport fisheries that must be considered in the cumulative impacts analysis.

Second, BLM's approach to addressing emissions contributions and resulting impacts is flawed. While climate change is a global problem, assessing potential emissions contributions solely in the global context will always result in an assessment that the impacts associated with federal land management are de minimis. However, the significant problem with climate change is that when taken in total, the apparent de minimis contributions add up to significant contributions that result in climate change impacts. BLM needs to first assess what emissions are likely as a result of the Plan so that the public can better understand what associated activities pursuant to the RMP contribute to global greenhouse gas emissions.

Furthermore, because many of the resulting future impacts from climate change are unknown it is imperative that BLM take a conservative and precautionary approach towards climate change-associated impacts. As a result, it is important to not compound additional pressures to the ecosystem as it adjusts and changes as a result of climate change. BLM has failed to assess the cumulative impacts of climate change along with the permitted activities under the proposed RMP on the landscape, the ecosystem and the historic and current uses in the planning area.

5. The RMP/FEIS fails to analyze a reasonable range of alternatives

BLM has failed to analyze a reasonable range of alternatives. As required under NEPA, environmental analysis documents must "rigorously explore and objectively evaluate all reasonable alternatives." 40 C.F.R. § 1502.14(a). One of NEPA's fundamental requirements is that the agency "study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources." 42 U.S.C. § 4332(2)(E) (2000). The existence of a "viable but unexamined alternative renders [the] Environmental Impact Statement inadequate." Muckleshoot Indian Tribe v. United States Forest Serv., 177 F.3d 800, 814 (9th Cir. 1999). Alternative D is substantially more similar to alternative B than it is to striking a balance between the conservation and development alternatives. The alternatives present an all or nothing approach and do not give serious consideration to other alternatives.

The RMP/FEIS preferred alternative opens over 99% of the planning area to mineral exploration and leasing. Only Alternative C (other than the No Action Alternative) limits the extent of the revocation of withdrawals by retaining withdrawals for the 61,251 acre proposed

¹⁴ White, D. , Hinzman, L., Alessa, L., et al. *The Arctic Freshwater System: Changes and Impacts*. Journal of Geophysical Research-Biogeosciences. In press.

¹⁵ Glass, R.L. (2004) *Water Quality in the Cook Inlet Basin, Alaska*. 1998-2001. Reston, Va: U.S. Department of the Interior, U.S. Geological Survey.

Carter Spit ACEC. This does not present an adequate range of alternatives. BLM should have considered intermediate alternatives that would propose the lifting of withdrawals within smaller portions of the planning area. According to BLM manual No. 1613, mineral withdrawal and wilderness are appropriate uses. BLM has failed to give proper consideration to alternatives that would not revoke virtually all of the withdrawals.

Beyond failing to provide a reasonable range of alternatives with regards to the lifting of the (d)(1) withdrawals, BLM has also failed to provide a reasonable range of alternatives to address Visual Resource Management (VRM) objectives. For example, under all the alternatives, none of the planning area is classified as class I or II. Alternative B is 100% VRM class IV, alternative C is 50% class III and 50% class IV and Alternative D has designated 90% of the planning area as class IV, which permits extensive development. The other 10% is designated as class III which also permits a large amount of development not consistent with the current and future uses in the area. RMP/FEIS at 2-21 and 2-22. Even in the Carter Spit ACEC, the VRM promotes and allows development instead of designating the area for primitive uses that are necessary to protect the qualities that warrant the protective designation. Thus the RMP/FEIS fails to analyze a reasonable range of alternatives on various levels.

6. The RMP/FEIS fails to take a requisite “hard look” at impacts to subsistence use and resources in the planning area and fails to provide proper mitigation measures to protect subsistence use and resources.

Under title VIII of ANILCA, BLM is required to be mindful of subsistence impacts. RMP/FEIS, response to comment 12-1. BLM has stated, in the East Alaska RMP, that its multiple-use mandate prevents the agency from managing for a single resource or use, such as subsistence. East Alaska RMP at 5-24 and 5-27. However, protecting wild areas for subsistence is not management of public lands for a single use. Management of these areas would not only include subsistence, which would take priority over sport and commercial uses in restriction circumstances, but would include management for the economic stability of the area for the wildlife, fisheries, recreation, and sport and commercial uses. Further, BLM is required to craft land use plans that cause “the least adverse impact possible on rural residents who depend upon subsistence uses of the resources of such lands.” 16 U.S.C. § 3112.

BLM is taking an all-or-nothing approach to development on unencumbered land as well as taking the position that in order to eliminate threats to the use, occupancy or disposal of land needed for subsistence, the agency would have to prohibit all other uses of the land. The agency has not taken a “hard” look at middle ground alternatives that reduce the use, occupancy or disposition of those lands. A subsistence analysis would assess the impacts on undisturbed wild lands or areas open to development as they impact subsistence resources.

The RMP has received valuable input from experts, residents and users of the area. Yet, the value assessment of the lands has yet to offer any protection for subsistence uses. The BLM states that development on BLM land “taken cumulatively with other developments on State and Native-owned lands could have a negative impact on the existing subsistence economy, the commercial fishing industry, and the sports hunting and fishing guiding industries.” RMP/FEIS

at 2-84. Given this finding the BLM failed to provide an adequate analysis pursuant to the first criteria of tier-I under ANILCA § 810, which require the agency in determining whether to withdraw, reserve, lease, or otherwise permit the use, occupancy, or disposition of public lands to “evaluate the effect of such use, occupancy, or disposition on subsistence uses and needs.”

Development scenarios and ROPs and Stips that claim to mitigate disturbance and impacts to subsistence and wildlife must further undergo a tier-II analysis. Extensive development can not be conducted in these pristine, undeveloped and sensitive areas without posing significant impacts to subsistence use.

Pages 1-17 and 18 of the RMP/FEIS state that BLM will: “identify, designate and protect special management areas; include preservation, conservation and enhancement of resources.” There is nothing in the BLM’s preferred alternative that meets this goal. An ACEC has been designated but preservation, conservation and enhancement of the resources in the ACEC have not been offered.

Under title VIII of ANILCA, BLM is required to be mindful of subsistence impacts. RMP/FEIS, response to comment 12-1. We recommend that BLM do more than simply be mindful of the impacts and take serious action towards prevention. ANILCA distinguishes Native subsistence as something exceptional and cultural.

"[T]he opportunity for subsistence uses by rural residents of Alaska...is essential to Native physical, economic, traditional, and cultural existence and to nonNative physical, economic, traditional, and social existence."¹⁶

One way to protect subsistence uses is to incorporate the knowledge and expertise of the WACH working group into the RMP/FEIS and employ this knowledge with any and all potential future development. We also recommend that this knowledge be used to ensure that development does not occur in sensitive areas. We commend the BLM for the suggested development of a working group for the Mulchatna Caribou Herd but in the absence of such a group and to accommodate the time frame in which to construct such a group, the BLM should utilize the WACH working group knowledge.

BLM failed to address comment submitted on the draft in regards to the acclimation of subsistence animals to industry. We would like to reiterate the importance of undeveloped lands to the animals and how important BLM unencumbered lands will become with the increased development on adjacent lands. We recommend the review of a study from Polar Research that documents the impacts of disturbance on caribou in the arctic from petroleum and mineral exploration:

“This development may adversely affect populations of reindeer/caribou (*Rangifer tarandus*) which are the basis of subsistence economies for northern indigenous peoples. Our purpose is to present a survey of the literature that has investigated the response of reindeer/caribou to human activities. Individuals and

¹⁶ Thorton, Thomas F. Alaska Native Subsistence: A matter of Cultural Survival. Cultural Survival Quarterly. September 30, 1998. Vol 22.3.

groups of reindeer/caribou: 1) move away from point sources of disturbance; 2) increase activity and energy expenditure near disturbance; 3) delay crossing or fail to cross linear structures; 4) shift away from areas of extensive and intensive development; and 5) are killed by collisions with vehicles and by hunting along roads. Cows and calves during the calving season are the most easily disturbed group.”¹⁷

Further, under this plan, the BLM is considering issuance of additional Special Recreation Permits. This will increase the number of guides/outfitters in the area and may add further pressure on subsistence resources. Due to the development in this plan accessibility to these lands for non-local hunters will increase. BLM has the discretion to deny these permits and we believe that it should deny any new permits until the impacts to subsistence from the implementation of this plan are known. RMP/FEIS at 4-144. The loss of the ability to participate in subsistence lifestyle, as acknowledged by the plan, is a loss of “physical, social and spiritual wellbeing” for communities in the planning area. RMP/FEIS at 4-148.

7. The RMP/EIS has failed to adequately address comments and provide a meaningful opportunity for public review.

A. Response to comments.

AWL, as well as others, submitted detailed comments on the DEIS. Pursuant to NEPA, the agencies “shall assess and consider comments” and respond in the FEIS by either: modifying alternatives, developing and evaluating alternatives not previously given serious consideration, supplementing or improving its study, making factual corrections, or explaining why the comments do not require a response. 40 C.F.R. § 1503.4(a). In addition, the FEIS should reflect critical views of others to whom copies of the DEIS were provided and respond to opposing views. Robertson v. Methow Valley Citizens Council, 490 U.S. 332 (1989). NEPA requires that, in preparing a final EIS, BLM must discuss “any responsible opposing view which was not adequately discussed in the draft statement and indicate the agency’s response to the issue raised.” 40 C.F.R. § 1502.9. The Council on Environmental Quality interprets this requirement as mandating that an agency respond in a “substantive and meaningful way” to a comment that addresses the adequacy of analysis performed by the agency. *Forty Most Asked Questions Concerning CEQ’s National Environmental Policy Act Regulations*. BLM’s NEPA Handbook elaborates upon this requirement, providing that: comments relating to inadequacies or inaccuracies in the analysis or methodologies used must be addressed; interpretations of analyses should be based on professional expertise; and where there is disagreement within a professional discipline,” a careful review of the various interpretations is warranted.” Handbook H-1790-1, Section V.B.4.a., p. V-11. The agencies’ responses to comments in the proposed RMP/FEIS do not meet these standards.

¹⁷ Scott A. Wolfe, Brad Griffith, Carrie A. Gray Wolfe. (2000). Response of reindeer and caribou to human activities. *Polar Research* 19 (1), 63–73.

BLM's Land Use Planning Handbook identifies that the BLM must respond to substantive comments. BLM Handbook H-1601-1 at 23-24. BLM identifies that nonsubstantive comments are those that include opinions, assertions, and unsubstantiated claims. *Id.* at 23. Substantive comments are those that reveal new information, missing information, or flawed analysis that would substantially change conclusions. *Id.* at 23-24. In another EIS prepared by the BLM, it identified examples of substantive comments. *See* Draft EIS for the Silverton Outdoor Learning and Recreation Center Proposed PRMP Amendment/EIS.¹⁸ Those examples include:

- 1) Comments that provide new information pertaining to the proposed action, preferred alternative, or other alternatives considered in the analysis.
- 2) Comments that identify a new issue or expand upon an existing issue.
- 3) Comments that identify a new alternative that meets the purpose and need for the proposed action.
- 4) Comments that provide an opinion regarding one or more alternatives and includes the rationale for that opinion.
- 5) Comments that point out a specific flaw in the analysis.
- 6) Comments that identify a different source of credible research which, if used in the analysis, could result in different effects.

Examples of non-substantive comments include, but are not limited to:

- 1) Comments that constitute a vote for an alternative without giving supporting rationale or opinion.
- 2) Comments regarding a subject outside the scope of the analysis.
- 3) Comments that lack the necessary specific information to support a change in the document or to permit a meaningful response.

Importantly, BLM acknowledges that comments that include opinions as to one or more alternatives and include a rationale for the opinion are substantive comments. BLM has dismissed several comments on unsubstantial grounds and in a manner inconsistent with its own set examples.

BLM has either provided inadequate responses or failed to respond to Nunamta Aulukestai, AWL, and others pertaining to numerous comments. For example, Nunamta Aulukestai commented about the importance of protecting key watersheds and identified concern over lacking scientific studies on freshwater fish habitat and spawning times. (38-1) BLM responded that a reference to an ADF&G study has been cited in the plan. However, no real language has been provided nor have any measures been taken to mitigate/reduce the impacts that can result during spawning times. BLM's response to the remainder of Nunamta Aulukestai's comments and recommendations was similarly non-responsive. For example, Nunamta Aulukestai's comments on the Draft RMP/EIS identified concern over noise impacts and the resulting impacts to subsistence hunts where the villages of Nondalton, Newhalen and Iliamna now have to travel at least 300 miles round trip to find moose and caribou. BLM failed to address this comment and respond as to how the RMP would or would not address noise impacts on displacement of moose and caribou.

¹⁸ Available at <<http://www.blm.gov/content/etc/medialib/blm/co/field_offices/san_juan_public_lands/solrc_eis/final.Par.0048.File.dat/Chapter_4.pdf>>.

BLM demonstrated an incredible lack of response to substantive comments and concerns from both communities and organizations. For example, several comments from the Alaska Coalition, listed below, have either been addressed unsatisfactorily or not at all.

Ignored Comments		
p. 1	Substantive comment on similarities of Alternative D and B, as well as the lack of balance between conservation and development.	
p. 4	Substantive recommendation to maintain mineral withdrawals in ACECs.	
p. 4	Substantive comment request priority for protective management over development in ACECs	
p.6	Substantive comment recommending the designation of the Bristol Bay ACEC.	
p. 7	Substantive comment recommending BLM set standards on unencumbered BLM lands at or above standards for the BOF fish refuge in Bristol Bay area.	
p. 7	Substantive comment that the significance of the planning area is downplayed in the RMP and needs to be adequately addressed.	
p. 8	Substantive comment recommending that lands remain withdrawn due to low mineral potential and high resource values.	
p. 12	Recommendation that an adequate spectrum of development and preservation alternatives be presented to avoid NEPA violation.	
p. 12-13	Several comments about the intent of withdrawals and the lack of future utilization to protect values.	
p. 14	No analysis to support determinations on revocation of withdrawals.	
p. 17	Substantive comment: mineral development can not occur without significantly restricting subsistence uses.	
p. 18	Substantive comment: there is no guarantee that subsistence animals will be acclimated to industry and human activity.	
p. 22	Substantive comment: 1872 mining law prevents BLM from prohibiting certain actions.	
p. 22	Substantive comment: BLM must fully analyze impacts of hard rock mineral exploration.	
p. 26	Analysis of the pros and cons of maintaining or revoking withdrawals should be conducted.	

p. 28-29	All comments on interim management and selected lands ignored. Five total comments ignored.	
P 37	Recommend that suitability decisions for Wild and Scenic Rivers not be made in the RMP. Analysis should be done and decisions made after conveyances.	
P. 38-39	4 of 5 comments in regards to wilderness designations ignored.	
Unacceptable Response		Response
Comment 69-1	Comment on cumulative impacts from various mineral development projects and potential projects.	Thank you for your comment.
Comments 69-4, 69-5	Various comments on protections in ACECs, such as withdrawals.	Repeated response: BLM mandate for rational and orderly development of resource
Comment 69-7	Mining operations will likely be required to show an ability to ensure conservation of water quality if the Fish Refuge is established.	Thank you for your comment.
Comment 69-14, 69-16 and 69-17	Draft fails to offer a reasonable range of alternatives for locatable mineral entry. B and D too similar.	Simple restates that Alternative D strikes a balance between C and D.
Comment 69-15	Lack of analysis and reasoning for the revocation of mineral withdrawals.	Response does not address all of issues raised.
Comment 69-21	BLM has not responded to public concern to maintain withdrawals.	Did not properly address the question, simply cited land health standards that have nothing to do with the public interest in maintaining withdrawals.
Comment 69-34	No working group for the Mulchatna herd, so BLM should examine the findings of the WACH working group for impacts to herds.	BLM is not going to utilize the WACH working group and instead added language to develop a group that will not be able to provide information during the development of the RMP.
Comment 69-35	Request that BLM examine the study of predicted and actual water quality impacts from hardrock mines.	State and federal regulations will be followed.

While the table focuses on the Alaska Coalition comments, we are significantly concerned that many more comments from other individuals were also neglected and that pertinent information and recommendations have been ignored and removed from consideration.

The proposed Bay FEIS lists a total of 258 public comments that were submitted by the public in Appendix I of the document. Of this total, 136 comments received the agency response of “No substantive comment.” Other comments received a virtual non-response stating “Thank you for your comment.” What is most concerning is that the majority of comments receiving

these responses were from Alaska Native individuals, tribal entities and local residents. It appears that vital comments with important recommendations and pertinent information were ignored, even though their consideration would have led to important corrections and improvements in the FEIS, based primarily on *stylistic* differences in communication – not on the failure of the commenters to convey their opinions or to make meaningful recommendations. Our concerns are heightened by the agency’s lack of effort to include in its public commenting process any methods and input based on Traditional Knowledge. Traditional Knowledge is observation-based, accumulated by a community from direct experience on the land over generations. Though based in tradition, it is a living and contemporary body of knowledge. Furthermore, Native styles of communication are unique and different from non-native individuals. By failing to accommodate the differing styles of communication, the BLM may not only have improperly classified comments as not “substantive,” but also prevented or discouraged others from submitting their comments at all.

When the BLM fails to provide for imparting Traditional Knowledge regarding the management of Native lands and addressing Native concerns and, instead, holds these comments to an overly restrictive definition of “substantive comments,” the agency is essentially precluding comment and disenfranchising Alaska Native residents. NEPA requires the BLM to “make diligent efforts to involve the public in preparing and implementing their NEPA procedures” (40 C.F.R. § 1506.6(a)) and highlights “public scrutiny” as “essential to implementing NEPA.” 40 C.F.R. § 1500.1(b).

Additionally, while BLM acknowledges the need to cooperate with state and federal agencies, native corporations, tribes, municipal governments and interested groups and individuals, it has failed to do so. *See* RMP/FEIS at 1-17 and 1-18. The cooperation with tribes, municipal governments and interested groups and individuals has not taken place on the issue of greatest concern: protection of the undeveloped resources. In particular, the BLM’s lack of effort to accommodate Native Alaskan concerns in commenting is compounded in the agency’s treatment of the tribal entities. As acknowledged by the BLM (and emphasized in its “A Desk Guide to Cooperating Agency Relationships”) tribal entities are to be treated as cooperating agencies based on their “jurisdiction by law” or “special expertise.” *See*, 43 C.F.R. § 1601.0-5(d)(2), **40 C.F.R. § 1508.5. In addition to having jurisdiction by law over the management of** many of the resources affected by the Bay RMP, the Alaska Native tribal entities clearly have special expertise, based on their connection with the affected lands and people. 40 C.F.R. §§ 1508.15 (jurisdiction by law), 1508.26 (special expertise).

Designation as a cooperating agency provides that entity with special opportunities to participate in the planning process and requires the BLM to make special efforts to accommodate its concerns. In fact, effective in 2005, during preparation of the DEIS, the BLM revised its internal guidance and applicable regulations to clarify that inviting the participation of relevant agencies as cooperating agencies and the involvement of cooperating agencies in nearly every step of the planning process was mandatory. The regulations now state that:

When developing or revising resource management plans, BLM State Directors and Field Managers will invite eligible Federal agencies, state and local governments, and

federally recognized Indian tribes **to participate as cooperating agencies**. 43 C.F.R. § 1610.3-1(b) (emphasis added).

Cooperating agencies are required to be involved in: identification of issues (43 C.F.R. § 1610.4-1); development of planning criteria (43 C.F.R. § 1610.4-2); inventory data and information collection (43 C.F.R. § 1610.4-3); analysis of the management situation (43 C.F.R. § 1610.4-4); formulation of alternatives (43 C.F.R. § 1610.4-5); estimating effects of alternatives (43 C.F.R. § 1610.4-6); selection of preferred alternative (43 C.F.R. § 1610.4-7); and selection of resource management plan (43 C.F.R. § 1610.4-7). See also, BLM's "A Desk Guide to Cooperating Agency Relationships."

By failing to accommodate comments from communities and tribal entities, the BLM has limited the input from these most qualified entities on the import of effects on natural resources and on the preferred approach to managing these potentially devastating effects. Comments, particularly from the communities, have not been properly acknowledged, let alone sought out and addressed as required by NEPA and BLM's regulations and policy, resulting in a failure to incorporate the traditional knowledge and insight into the RMP/FIES.

In this situation, the BLM has failed to comply with the requirements of NEPA and its own policies regarding public commenting and responding to comments. To remedy these violations, the BLM must: (1) expand its definition of substantive comments to include subjects similar to the examples identified above and taking into account stylistic differences arising from the participation of Alaska Natives; (2) reassess and respond to the comments of Alaska Native individuals, tribal entities and local residents; and (3) provide an opportunity for imparting Traditional Knowledge and respond to additional information received. This must occur *before* a Record of Decision is issued.

B. Timing of public review for Bay plan documents failed to provide a meaningful opportunity for public participation.

As stated in letters submitted to the BLM, Senators Stevens and Murkowski, Governor Palin, and the Director of the Council on Environmental Quality, we object to the timing of the release of the Proposed RMP/FEIS. It was entirely inappropriate and negligent that the plan was released during the holiday season when groups and individuals would have difficulty with coordination and obtaining assistance from agencies and organizations.

We believe that the coordination of the release was intentionally timed to undermine the ability of the public to adequately participate. BLM's actions were a malevolent violation of NEPA. This is not the first incident that has resulted in limited public participation. The BLM also coordinated the release of the Draft RMP/EIS during subsistence harvest when it was difficult for individuals to attend meetings or compile and submit comments. We appreciate that BLM elected to extend the comment period, per request, to allow for public participation. It is unfortunate that requests to delay the release or extend the protest period for the RMP/FEIS were not addressed as satisfactorily.

8. 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 serious and drastic 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 RMP/FEIS.

BLM claims to have analyzed the effectiveness of the ROPs and Stipulations in Appendix A. However, BLM has not effectively analyzed the implications of the outdated 1872 Mining Law, the state and federal standards, or the ROPs and Stips in the RMP/FEIS. Had BLM performed this analysis, it would be apparent that BLM cannot mitigate or manage for the impacts that mineral development poses to the pristine lands and in turn the communities and economy that rely upon its health. We request that BLM take a serious look at “Comparison of Predicted and Actual Water Quality at Hardrock Mines: The reliability of predictions in Environmental Impact Statements” from Dr. Ann Maest and Jim Kuipers. An examination of this study highlights our concerns for the inadequacies of the NEPA process and applicable laws in evaluating the impacts of hardrock mining. This study emphasizes the failure of mitigation measures to effectively offset the impacts identified within the NEPA process.

In our comments on the draft RMP/EIS, we identified concerns with several of the stipulations and required operating procedures for mineral leasing and hardrock mining. In the final RMP/EIS, while BLM has addressed certain issues, it has not fixed the problems that we raised, and we therefore repeat them here as part of this protest. We request that the ROPs and stipulations be strengthened in order to ensure that sensitive resources on BLM lands are given adequate protection.

A. Required Operating Procedures.

BLM has established Required Operating Procedures to ensure the protection of the lands during development. But these “required” procedures appear to be optional and not clearly defined.

ROP Water 5e: Allows for exception to developing permanent structures within the high water mark or 500 feet (whichever is greater) if it can be proven that impacts will be minimal.

Because “minimal” is not defined, we are concerned about the vagueness of this ROP and implementation. We request a requirement for monitoring when this exception is permitted to ensure that the impact claims are accurate. Finally, this exception should not be permitted in known critical salmon habitat.

ROP FW-2c and FW-4b both state that roads will be routed and concentrated to minimize habitat fragmentation.

This ROP should establish migration corridors where mineral exploration and development is prohibited.

ROP FW-3b and 3d: prescribe inspection for caribou two weeks prior to activity.
Presence of caribou prohibits temporary activities.

The arrival of caribou at anytime after the inspection should warrant the halting of temporary activity as well. Designating a single inspection two weeks ahead of a scheduled activity is too limited. If the goal is to decrease the disturbance of caribou then there should also be inspections scheduled closer to the development time frame.

ROP Sub-1a: “BLM will consider” actions to eliminate, minimize or limit the effects of permitted activities on subsistence. A-33 and 34

The BLM should do more than merely give consideration to subsistence needs. The RMP must place greater emphasis on the communities who live in and off the area through collaboration and a stronger commitment to utilize the traditional knowledge of Native Communities in the planning area.

B. Oil and Gas Leasing Stipulations.

“Stipulations are conditions, promises, or demands that are to be made part of a lease when the environmental and planning record demonstrates the necessity for the stipulations.” RMP/FEIS at A-44.

Stip-1: Drilling is prohibited in rivers and streams, as determined by the active floodplain, and in fish-bearing lakes.

Stip-2: The establishment of permanent oil and gas support facilities within the area from the ordinary high water mark or the mean high water mark of water bodies to the outer edge of riparian vegetation or 500 feet, whichever is greater, is prohibited.

Stip-9: No surface use or occupancy is allowed within 300-feet of the following rivers: East and South Fork Arolik, Faro Creek, South Fork Goodnews River, and Klutuk Creek.

Providing exceptions to these stipulations is unacceptable. Greater mandatory protections must be provided for waterways and fish habitat.

Stip-6: Exploration and development restrictions to May 15 to June 15.

The AO can modify, waive or provide exceptions to complying with this stipulation. We find that the permanence of a waiver in this case is not acceptable. Due to the variation in caribou migration patterns it is difficult to say where they may be from year to year and to allow the migration patterns of one year determine the use of the area for the life of a development scenario is irresponsible. The objective of this stipulation is to “minimize disturbance to calving

caribou,” areas that are known for their use as calving grounds should not be subject to unchecked year round development.

Stip-7: Exploration activities from May 20 through August 31. Construction of production facilities and production activities may occur (no work over rigs).

Again, the AO can modify, waive or provide exceptions to complying with this stipulation. Such a result is unacceptable. Allowing a waiver is irresponsible given the variability of migratory patterns. Exceptions should only be allowed when to the BLM can ensure that caribou have not changed migration patterns and will not be disturbed.

C. Dismantling, Removal, and Restoration (DR&R)

The BLM’s 3809 Mining Regulations have been weakened since Clinton enacted improved mining rules in October of 2000. The intent of these improvements was to define standards for mining operations, reclamation and closure. Despite support from Interior Secretary Gale Norton, the Bush Administration rolled back almost the entire rule that would have ensured that “the full costs of any mine reclamation or environmental damage are borne by the mining operator and not the U.S. taxpayer.”¹⁹ Administrative changes eliminated the ability to apply an overarching standard for reclamation, leaving reclamation to be defined on a site-by-site basis (typically by the mining company) and therefore under funded and incomplete. Clean-up can be very costly and typically takes more time and money than mining operations are financially assured for. In the United States, there are several issues that result in pollution from closed and abandoned mineral development:

- “Inadequate reclamation and closure planning remains the norm in all states;
- All states continue to have significant regulation weakness, such as failing to adequately account for agency costs, allowing non-cash equivalent forms of guarantees, and disregarding potential environmental impacts.”²⁰

According to Kuipers, realistic financial assurances are lacking in the mining industry. Costs are always higher than anticipated because the extent of disturbance and contamination is greater than expected, the potential for bankruptcy is very real, default costs are greater than expected and agency costs for reclamation and closure are typically higher than mining company estimates.

In light of Kuipers’ study, RR&D should not be determined on a site-by-site basis and standards should be prescribed in the RMP that will ensure the health and sustainability long after short-term development is gone. The RMP/FEIS should include:

1. Concurrent and incremental reclamation;
2. Trust funds, established by the mining company and separate from bonds, that would cover long-term reclamation originally unforeseen;

¹⁹ Kuipers, Jim. Putting a Price on Pollution. Mineral Policy Center. Washington D.C. Issue Paper No. 4. March 2003.

²⁰ Id.

3. Reclamation and closure estimates are conducted by third parties;
4. Surety companies for potential reclamation;
5. Eliminate corporate self-guarantees;
6. Require financial assurance as a precondition for development; and
7. “Establish meaningful reclamation definitions and standards such as:
 - a. topsoil salvage and replacement;
 - b. recontouring;
 - c. revegetation;
 - d. slope stability;
 - e. stream protection;
 - f. air and water resource protection;
 - g. public health and safety standards;
 - h. wildlife habitat and restoration; and
 - i. visual and other aesthetic impacts.”²¹

Loss of primitive recreation opportunities, view sheds, wild land settings, wildlife and resulting experiences, in addition to turning the natural into industrial- can both cause irretrievable and irreversible loss of lifestyle, character, and economic health to the local, regional, and state tourism, subsistence and commercial businesses. Direct impacts will result to travel, recreation, cultural resources, and aquatic health which will alter the integrity of the planning area. It must be realized that minerals, gas, and oil are finite resources and the adjacent natural values held in wildlife habitats, subsistence, recreation and waterways are not.

9. BLM failed to provide an adequate inventory and analysis of wilderness in the planning area.

The BLM is required to complete resource inventories and land use plans under the authority of FLMPA §§ 201 and 202. None of the alternatives identify areas within the planning area that may warrant consideration for a designation of Wilderness or Wilderness Study Area (WSA). Wilderness is a compatible multiple use²² for the planning area, particularly given the historic and current uses.

Instruction Memoranda (IMs) Nos. 2003-274 and 2003-275, formalize BLM’s policies concerning wilderness study and consideration of wilderness characteristics, prescribing that BLM can continue to inventory for and protect land “with wilderness characteristics,” The memoranda defines wilderness characteristics as naturalness, providing opportunities for solitude or providing opportunities for primitive or unconfined recreation. The IMs further provide for management that emphasizes “the protection of **some or all of the wilderness characteristics** as a priority,” even if this means prioritizing wilderness over other multiple uses. *See* IM 2003-275 (emphasis added).

²¹ In regards to recommendation number 7, we realize that some of these standards have already been prescribed in the RMP. However, we would like to see the BLM take the standards further.

²² Federal Land Policy and Management Act of 1976 (43 U.S.C. §§ 1701(a)(8), 1702(c)).

Courts have confirmed the BLM's obligations to consider the value of wilderness characteristics and the potential impacts of decisions on this resource when making land use planning decisions. In a recent decision, a federal court found that BLM's failure to re-inventory lands for wilderness values and to consider the potential impact of decisions regarding management of a grazing allotment violated its obligations under NEPA and FLPMA, then enjoined any implementation of the decision until the agency reinventoried the lands at issue and prepared an environmental document taking into account the impacts of its decisions on wilderness values. *See Oregon Natural Desert Association v. Rasmussen*, CV 05-1616-AS, Findings and Recommendations (D. Or., April 20, 2006); Order (D. Or., December 12, 2006).

BLM is similarly obligated to consider both additions to wilderness values and evaluate the potential impacts on those wilderness values from its management decisions in this RMP. In the most recent ruling on the Utah Settlement challenge (*State of Utah v. Norton*, Case No. 2:96-CV-0870, Order and Opinion (D. Utah, September 20, 2006)), the court found that the agency can provide virtually the same protection for lands with wilderness characteristics through administrative decisions as it can through designation of new WSAs, with the only material difference being that, while the agency can alter its own management decisions, only Congress can change a WSA designation. The court stated: “[b]oth Utah and the BLM acknowledge that the BLM has the discretion to manage lands in a manner that is **similar to the non-impairment standard** by emphasizing the protection of wilderness characteristics as a priority over other potential uses.” Order and Opinion, p. 41 (emphasis added).

In a subsequent briefing to the U.S. Court of Appeals for the 10th Circuit, the Department of the Interior and the BLM reiterated that “the settlement does not preclude BLM from **inventorying public lands for wilderness-associated characteristics**” and that “the land management decision obtained through FLPMA § 202 process may **resemble management under FLPMA § 603’s non-impairment standard.**” In discussing how BLM will manage lands with wilderness characteristics, the brief refers to the “BLM’s discretion under FLPMA § 202 to **preserve their wilderness-associated characteristics.**” Brief of the Federal Appellees, *State of Utah v. Kempthorne*, Case No. 06-4240 (February 26, 2007), pp. 40, 43 (emphases added). Similarly, the BLM here can and should protect lands with wilderness characteristics from the damage likely to result from ongoing and future mineral and oil and gas development.

In 1980, Section 1320 of ANILCA authorized BLM to determine areas in Alaska that are suitable as wilderness. Unfortunately, BLM has conducted no wilderness reviews nor has it made any wilderness recommendations since the passing of this authorization because of the memorandum put forth from Secretary of the Interior James G. Watt. Secretary Watt put forth “that no further wilderness inventory, review or consideration” is needed by the BLM in Alaska. However, this directive was overridden by Secretary of the Interior Bruce Babbitt, in 2001. Secretary Babbitt instructed that BLM identify and recommend suitable wilderness areas.

Secretary Norton has echoed Watt’s sentiment on wilderness. In 2003, Secretary Norton instructed that only reviews that are broadly supported by elected Alaskan officials would be conducted. Secretary Norton claimed that Alaska BLM lands have been exhaustively reviewed for wilderness but no such reviews have been conducted, as required by FLPMA 201 and 202.

BLM has failed to act in the best interest of the public and conduct these reviews as required to ensure wilderness areas are designated and protected.

CONCLUSION

We appreciate the opportunity to participate in the planning process for the Bay Resource Management Plan. However, certain aspects of the RMP/FEIS require additional modifications and improvements before the plan complies with all legal requirements and is capable of adequately guiding the long-term, multiple-use management of these valuable natural, subsistence and cultural resources, wildlife habitat, and recreation opportunities.

Sincerely,

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