



October 17, 2022

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

Comments submitted electronically and via email to rajones@blm.gov

Re: Notice of Intent To Prepare an Environmental Impact Statement To Consider the Impacts of Opening Lands Subject to ANCSA 17(d)(1) Withdrawals, Including Lands Within the Bay, Bering Sea-Western Interior, East Alaska, Kobuk-Seward Peninsula, and Ring of Fire Planning Areas; Alaska [LLAK941000.L14100000.ET0000.223]

Thank you for providing Doyon, Limited (“Doyon”) the opportunity to submit the following comments in response to the “Notice of Intent To Prepare an Environmental Impact Statement To Consider the Impacts of Opening Lands Subject to ANCSA 17(d)(1) Withdrawals, Including Lands Within the Bay, Bering Sea-Western Interior, East Alaska, Kobuk-Seward Peninsula, and Ring of Fire Planning Areas; Alaska,” published by the Bureau of Land Management (“BLM”) on August 18, 2022. 87 Fed. Reg. 50875 (Aug. 18, 2022). This process is a matter of substantial economic and historic and cultural importance to Doyon and its shareholders, as it raises important issues relating to the fulfillment of the land entitlement and realization of the economic development opportunities promised to Alaska Natives as fundamental elements of the settlement of aboriginal land claims in the Alaska Native Claims Settlement Act (“ANCSA”).

I. Introduction

Doyon is one of the thirteen Native regional corporations established by Congress under the terms of the Alaska Native Claims Settlement Act (“ANCSA”). Headquartered in Fairbanks, Doyon is the largest private landowner in Alaska, with a land entitlement under ANCSA of more than 12.5 million acres.

Doyon holds ownership interests in approximately 2.5 million acres of lands in the Bering Sea - Western Interior (“BSWI”) Planning Area. Doyon participated actively in the planning process for the BSWI Planning Area Resource Management Plan, which, among other things, evaluated and provided recommendations on the future of the ANCSA 17(d)(1) withdrawals in the Planning Area.

Doyon's mission is to promote the economic and social well-being of our present and future shareholders, to strengthen the Native way of life of our Alaska Native shareholders, and to protect and enhance our land and resources. Voting shares of stock in Doyon originally were issued to 9,061 Alaska Natives who are the indigenous people of the region and whose ancestors inhabited the region for thousands of years. In March 1992 and 2007, shareholders approved giving stock to Native children born after 1971, missed enrollees, and Elders who were age 65 by December 1992. Today, Doyon has more than 20,000 shareholders.

II. Comments

A. BLM's Process Must Meaningfully Consider the Substantial History, Spanning More Than Fifteen Years, Supporting Lifting of the 17(d)(1) Withdrawals

At the outset, Doyon continues to be disappointed and frustrated with the decision of the Department of the Interior ("DOI") to delay the implementation of the Public Land Orders ("PLOs") that led unnecessarily to this separate environmental impact statement ("EIS") and related actions. BLM determined more than fifteen years ago that the 17(d)(1) withdrawals had outlived their usefulness and could be revoked consistent with the public interest. The recent resource management planning processes for the planning areas covered by the noticed EIS—all of which included consultation with Tribes and Alaska Native Corporations ("ANCs") and significant opportunity for public participation—also concluded that it is time for most of the remaining 17(d)(1) withdrawals to go. Despite BLM's recognition that the agency's land use planning process is the most effective and preferred process for considering the lifting of withdrawals, BLM has cast that process aside in order to undertake a separate review. Provided that DOI and BLM are unwilling to revisit their decision to move forward with this revisitation of these decisions in the first instance, BLM's review must give due consideration to the prior reviews and decisions, and the substantial input that ANCs, the State, and others already have provided BLM on this issue.

As various reports and plans have concluded since the 2004 Alaska Land Transfer Acceleration Act ("ALTAA"), Pub. L. No. 108-452 (2004), the ANCSA section 17(d)(1) withdrawals—which were intended to be temporary—have served their purpose and can be lifted consistent with the protection of the public's interest.

Section 17(d)(1) withdrew all unreserved public lands in Alaska from appropriation under the public land laws for a period of 90 days. 43 U.S.C. § 1616(d)(1). During that period, the Secretary of the Interior was directed to review the public lands in Alaska and determine whether portions of these lands should be withdrawn under other existing authorities to properly protect the public interest in the lands. *Id.* Section 17(d)(1) authorized the Secretary to classify or reclassify public lands pursuant to those determinations, and to open such lands to appropriation in accordance with those classifications. *Id.*

As part of an effort to help facilitate the completion of land conveyances in Alaska, the ALTAA directed the Secretary of the Interior to review the 17(d)(1) withdrawals and to submit a report to Congress within 18 months identifying any portion of the lands withdrawn under section 17(d)(1) that could be opened to appropriation under the public land laws consistent with protection of the public interest in those lands. ALTAA, § 207.

BLM completed its report responding to section 207 of the ALTAA in June 2006. Sec. 207 Alaska Land Transfer Acceleration Act: A Review of D-1 Withdrawals (BLM, June 2006) (“Section 207 Report”). BLM provided a 90-day opportunity for public notice and comment in connection with its development of the report, and the report incorporated input from the public, the State of Alaska, and other Federal agencies. *Id.*, p. 5. The report includes an entire chapter describing public involvement in the report’s development. *Id.*, pp. 65-144.

The Section 207 Report concluded that almost all of the 17(d)(1) withdrawals “could be lifted consistent with the protection of the public’s interest.” *Id.*, p. 5. The 17(d)(1) withdrawals were intended to be temporary, and their original purpose has long since been fulfilled. As the Section 207 Report explained:

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

...

In summary, there are more than 158,958,000 acres of d-1 withdrawals in Alaska. Many of these d-1 withdrawals have outlived their original purpose. It may be appropriate to lift many of d-1 withdrawals and the most effective and preferred means in managing this process is through BLM’s land use planning process. . . .

A majority of these lands have low to medium locatable mineral potential with a few scattered areas of high potential. Very few of these lands have any known potential for coal, oil or gas. Most lands with medium to high locatable mineral potential, or known leaseable mineral potential, were previously opened, or selected by the State of Alaska or Native corporations. This and more stringent requirements for managing development, means the original protections from the d-1 withdrawals are no longer

critical for the protection of the public's interest. The d-1 withdrawals are an unnecessary encumbrance on the public land records complicating interpretation of the title records by the public."

Id., pp. 5-6

According to BLM, "the most effective and preferred means" for managing the process for lifting of withdrawals is through the agency's land use planning process.¹ Section 207 Report, p. 5. Accordingly, when it undertook its resource management planning processes for the planning areas that are the subject of the noticed EIS, BLM considered the future need for the remaining 17(d)(1) withdrawals and, after consideration of public comment, consultation, and other information, developed certain recommendations relating to their disposition. The Record of Decision on the Bering Sea – Western Interior ("BSWI") Resource Management Plan, for instance, recommended that "the Secretary of the Interior revoke all ANCSA 17(d)(1) withdrawals." Bering Sea – Western Interior Record of Decision and Approved Resource Management Plan (Jan. 2021) ("BSWI RMP"), p. II-57. As the Record of Decision explained, "Revocation of ANCSA 17(d)(1) withdrawals will allow top filings by the State of Alaska to become valid selections, thereby segregating those lands. Revocation of ANCSA 17(d)(1) withdrawals would also make lands that are vacant, unappropriated, and unreserved available for qualified veterans under the Dingell Act (Public Law 116-9)." BSWI RMP, p. I-11 (emphasis added).

Doyon participated extensively—through both consultation and public comment—in the development of the BSWI RMP, as it is currently doing in the development of the Central Yukon RMP, and does in the development of all of the BLM resource management plans touching our region.

It is incredibly frustrating when we engage in years-long land management planning processes with the understanding that it is those processes through which management decisions and recommendations relating to withdrawals will be made—only to have the decisions and recommendations made through those processes revisited with every change in power. It is even more frustrating when, rather than provide a meaningful explanation of the basis for its decision to revisit these planning decisions, the agency repeatedly resorts to vague assertions of "certain" procedural and legal defects, including:

¹ *Id.*, p. 5; *see* Scoping Report for the Central Yukon Resource Management Plan, p. 20 (BLM, March 2015) ("The BLM is required to review all existing withdrawals during the planning process and determine whether they should be retained, modified, or revoked. The ANCSA withdrawals were issued by the Secretary of the Interior and as such, can only be modified or revoked by the Secretary. Therefore, the Draft RMP/EIS will only make recommendations to the Secretary on the disposition of the withdrawals.").

- “insufficient analysis under NEPA,” without any explanation as to how specifically it believes the analysis was insufficient;
- “failure to follow section 106 of the National Historic Preservation Act (NHPA),” again, without specific explanation and despite BLM’s significant and documented consultation efforts during the planning processes;
- “*possible* failure to adequately evaluate impacts under section 7 of the Endangered Species Act (ESA),” without explanation as to the specific nature of that *possible* failure;
- “failure to secure consent from the Department of Defense (DOD) with regard to lands under DOD administration as required by Section 204(i) of FLPMA (43 U.S.C. 1714(i)),” without identifying the lands to which this pertains and explaining why a narrower review would not have been sufficient to address this alleged failure;
- “failure to adequately analyze potential impacts on subsistence hunting and fishing,” despite BLM’s significant and documented consultation efforts during the planning processes and extensive analyses under section 810 of the Alaska National Interest Lands Conservation Act (“ANILCA”); and
- “reliance on *potentially* outdated data in EISs prepared in 2006 and 2007,” without identifying what information it asserts *might* be outdated and despite the fact that the Final Environmental Impact Statement for the BSWI Planning Area, for instance, was released in December 2020. 87 Fed. Reg. at 50875 (emphasis added).

B. BLM’s Process, Including This Environmental Review, Must Fully Consider Potential Impacts on Fulfillment of the State of Alaska’s and ANCs’ Respective Land Entitlements

DOI’s and BLM’s actions pursuant to which this EIS is being prepared effectively postpone the subject PLO orders from April 2021 until April 2023, if the Department allows them to proceed at all. The openings under these orders were poised to go into place, and to open and make available more federal lands for selection. Despite the Department’s obligations under federal law and policy, with some degree of irony, the Department took this action without first consulting with Alaska Native Tribes and ANCs. This action has an impact on over 28 million acres of land in Alaska, and affects the interests of Alaska Natives and Alaska Native groups across a large area of the State.

It has been 50 years since the settlement of aboriginal land claims established ANCs’ entitlement to 44 million acres of lands in Alaska. Yet millions of acres have yet to be conveyed to these Alaska Native groups. And, it has been more than 60 years since the State

of Alaska was admitted to the Union. Yet approximately 5 million acres of the State of Alaska's entitlement under the Alaska Statehood Act remains outstanding. Alaskans, and Alaska Natives in particular, have waited long enough to receive the lands to which they are entitled under federal law.

BLM's decisions with regard to the PLOs and whether or not to recommend lifting the 17(d)(1) withdrawals have significant potential impacts on the completion of conveyances to the State of Alaska under the Alaska Statehood Act and ANCs under ANCSA, which must be meaningfully addressed in the EIS.

A recommendation by BLM to revoke these outdated 17(d)(1) withdrawals, if acted upon by the Secretary of the Interior, will allow land selections top-filed by the State under Section 906(e) of ANILCA to become valid selections under the Alaska Statehood Act, thereby making those selected lands available for conveyance to the State in fulfillment of its land entitlement under that Act. Currently, these outdated withdrawals impede fulfillment of the State's land entitlement by preventing some of the State's high priority top-filed selections from attaching. Because this impediment to completion of the State's conveyances prevents clearance of certain overlapping State / ANC selections, these withdrawals in turn prevent completion of conveyances to ANCs in fulfillment of their entitlements under ANCSA. Thus, progress towards completion of the State's conveyances would facilitate completion of the conveyancing of Doyon's and other ANCs' remaining ANCSA entitlements—aiding ANCs in finally settling their land claims after almost 50 years.

After it pulled back the PLOs, BLM recognized the impact of its decision on Alaska Native Vietnam era Veterans, and acted to increase land available for selection by Alaskan Native Vietnam era Veterans under the Dingell Act. In this process, BLM must similarly recognize the impact of its decision on the State and ANCs, and act in a manner that advances the fulfillment of the State's statehood land entitlement and ANCs' ANCSA land entitlement.

C. BLM's Review of the Potential Impacts of Revoking the 17(d)(1) Withdrawals Must Reflect a Reasoned Analysis

As discussed above, the potential impacts of revoking the 17(d)(1) withdrawals already have been thoroughly assessed in the Section 207 Report and respective RMP environmental review processes. The Notice of Intent nonetheless suggests an entirely new EIS process (rather than a "supplemental" review), without any reference to tiering to or incorporating by reference those prior reviews. Given BLM's and stakeholders' substantial efforts and contributions to date with regard to identifying and analyzing these potential impacts, this new process raises important questions and concerns, and BLM must commit that this process will be both objective and transparent.

It is essential that BLM's review reflect a reasoned analysis. As part of this, any assumptions to be made with regard to potential activity resulting from the proposed action must be reasonable and fully explained in the Draft EIS. Consistent with BLM's NEPA Handbook, this includes, for resource development, developing and using "reasonably

foreseeable development (RFD) scenarios,” providing a “baseline projection for activity for a defined area and period of time.” BLM NEPA Handbook, H-1790-1, p. 56.

Much of the discussion since BLM initiated this process has been focused on mining, and the suggestion that lifting the withdrawals would open these areas to mineral leasing and mining on a grand scale, wreaking havoc on natural and cultural resources. Such suggestions are overblown. As the Section 207 Report recognized, mineral potential for the majority of these lands is limited, with most lands with higher or known potential were either previously opened or selected by the State or ANCs. Moreover, even if the 17(d)(1) withdrawals are lifted, certain lands will be subject to other restrictions under the applicable RMPs that would continue to limit certain activities on those lands. BLM’s review must take a hard look at the mineral potential on the lands covered by the proposed action as well as the likelihood of future mineral activity on those lands.

BLM’s review also must take into account the history of resource development (or lack thereof) and other activity on lands where 17(d)(1) withdrawals already have been lifted. Specifically, the review should assess the fact that some of the 17(d)(1) withdrawals already have been modified, opening millions of acres of land to operation of the mineral leasing laws and the general mining laws, and without leading to substantial, widespread mining activity. *See, e.g.*, Modification of Public Land Order Nos. 5173, 5180, and 5184; Classification and Opening of Lands, 46 Fed. Reg. 61472 (Dec. 14, 1981) (PLO 6098).²

Finally, BLM’s review must consider the “more stringent requirements for managing development” that it has said “mean[] the original protections from the d-1 withdrawals are no longer critical for the protection of the public’s interest.” Section 207 Report, p. 6.

III. Request for Individual Consultation Meetings

Doyon appreciates BLM’s recognition that “[t]he input of Alaska Native Tribes and Corporations is of critical importance to this EIS.” 87 Fed. Reg. at 50876. As reflected in these comments, Doyon has significant concerns regarding this EIS and related actions concerning the affected PLOs. The Notice of Intent states that “BLM will hold individual consultation meetings upon request.” *Id.* Doyon hereby formally requests that BLM contact us to hold individual consultation meetings on this EIS.

² *See* <https://www.virtualpublicmeeting.com/cy-rmp-eis-question-and-answer> (“Have withdrawn lands in Alaska been opened in the past? Yes. Some of the ANSCA 17(d)(1) withdrawals were modified in the early 1980s, opening about 10 million acres to mineral leasing and the general mining laws. In October 2018 withdrawals were partially revoked for approximately 230,000 acres in the Goodnews Bay area. In July 2109 withdrawals were partially revoked for approximately 1.3 million acres of public lands in the Fortymile and Bering Glacier areas. These revocations followed recommendations in BLM resource management plans. . . .”).

IV. Conclusion

Doyon continues to be disappointed by BLM's decision to pull back the PLOs and embark upon this entirely new EIS to re-review its earlier recommendations to generally revoke the 17(d)(1) withdrawals. Those recommendations were the product of significant agency review, public comment, and consultation, including substantial engagement and participation by Doyon, over 15 years in the making. It is enormously frustrating to see these decisions pulled back—ironically without any consultation—based only on vague assertions of procedural and legal deficiencies.

This process is a matter of substantial economic and historic and cultural importance to Doyon and its shareholders. It raises important issues relating to the fulfillment of the land entitlement and realization of the economic development opportunities promised to Alaska Natives as fundamental elements of the settlement of aboriginal land claims in ANCSA. It does not reflect policies intended to expedite the fulfillment of Alaska Natives' land entitlement guaranteed under ANCSA now more than 50 years ago.

Having unfortunately decided to embark down this path, BLM must now commit to ensure that its process is objective and transparent. Its review of potential impacts from lifting of the withdrawals must be well-reasoned, based upon realistic RFD scenarios, and reflect relevant restrictions and requirements that could limit the extent and impact of activity on the subject lands.

Doyon appreciates the opportunity to submit these comments and looks forward to hearing from BLM with respect to its request for consultation.

Sincerely,



Sarah E. Obed
Senior Vice President, External Affairs
Doyon, Limited