

October 28, 2020

**Via electronic mail**

David Bernhardt, Secretary of the Interior  
Department of the Interior  
([doixecsec@ios.doi.gov](mailto:doixecsec@ios.doi.gov))

William Perry Pendley, Deputy Director  
Bureau of Land Management  
([wpendley@blm.gov](mailto:wpendley@blm.gov))

Re: Request to cease revocations of withdrawals  
ANCSA (d)(1) Lands

Dear Secretary Bernhardt and Deputy Director Pendley:

We are writing to convey strong concerns and statements regarding the Bureau of Land Management's (BLM) current recommendations to revoke the existing withdrawals that were put in place under Section 17(d)(1) of the Alaska Native Claims Settlement Act (ANCSA).<sup>[1]</sup> We demand that you immediately cease issuing public land orders to revoke mineral withdrawals. BLM's current recommendations to revoke existing withdrawals do not take into account the effects of climate change on the ground and the resulting heightened effects of opening these lands to mining and oil and gas leasing. We support the entitlement of Alaska Native Vietnam veterans to select allotments, as provided by the Dingell Act, and recognize that BLM and the Department of the Interior will need to ensure those rights are honored. At the same time, BLM must consider how opening these lands to extraction will result in negative impacts to both the natural resources and the subsistence activities and other cultural and recreational uses that depend on them.

ANCSA Section 17(d)(1) provides that "all unreserved public lands in Alaska are hereby withdrawn from all forms of appropriation under the public land laws, including the mining (except locations for metalliferous minerals) and the mineral leasing laws." As part of this review, in considering whether the withdrawals should ultimately be kept in place, the Secretary was also required to assess "whether any portion of these lands should be withdrawn under authority provided for in existing law to ensure that the public interest in these lands is properly protected." The withdrawals affected close to 57 million acres and BLM has recommended that the withdrawals be revoked on more than 50 million acres. The final recommendations are incorporated into existing resource management plans (RMP), including the Bay, Eastern Interior, East Alaska and Kobuk-Seward RMPs, as well as others that are still being prepared, including the Western Interior-Bering Sea and Central Yukon RMPs.

Additionally, BLM has failed to consult with affected Tribes. Subsistence values, which are guaranteed to Alaska Native residents under § 802(1) of the Alaska Native Interest Lands Conservation Act (ANILCA),<sup>[2]</sup> in addition to related cultural values, are put at high risk by BLM's recommendations to revoke ANCSA §17(d)(1) withdrawals and Interior's Public Land

Orders implementing revocations. ANILCA requires BLM to evaluate the impact of federal decision-making on subsistence values and to consult with Tribes before authorizing any actions to ensure subsistence uses are preserved.<sup>[3]</sup> Although these lands are managed by BLM, Tribes have strongly objected to the recommendations to revoke the existing withdrawals, including in a recent letter from Tribes of the Yukon Kuskokwim Delta to BLM and Interior that requested that Tribes receive consultation.<sup>[4]</sup> Alaska Native communities from the Canadian border to the Bering Sea are threatened by opening these lands to oil and gas and mining. These communities are home to federally recognized Tribes and users of traditional land whose subsistence use will be harmed by this proposed oil, gas, and mining development mandate.

These lands contain a wide range of intact ecosystems, from high alpine tundra to the longest, largest river watershed in North America and the nation's largest and most intact coastal estuaries. They support highly productive wild salmon, and sheefish streams and rivers, caribou calving grounds, and nationally and internationally recognized Important Bird Migration Areas. Alaska Native subsistence users depend on the health and productivity of these lands for fish and wildlife, as do recreational hunters including commercial and sport fishermen. Recreational opportunities such as National Wild and Scenic Rivers, hiking routes, and the Iditarod Trail system attract recreationists from around the world.

These lands are also ground zero for the impacts of climate change, experiencing unprecedented warming that is affecting habitat through degradation of permafrost and ground cover, which in turn harms fish and wildlife populations. The changes to local hydrology increase sediment load as stream and riverbank erosion increases, which in turn changes the temperature profiles of aquatic environments. For instance, recent studies illustrate that the loss of Chinook runs in Alaska is associated with increasing temperatures linked to climate change. Wetland hydrology is shifting, causing tributary creeks to dry during drought cycles and displacing freshwater resources such as lakes and ponds. Climate change impacts also make the land and water systems more vulnerable to disturbance from oil and gas or mining activities. Further, the greenhouse gas emissions from these activities will contribute to ongoing climate change. While the BLM acknowledges these impacts to some degree, the decisions in the existing RMPs (most of which were completed more than a decade ago) severely underestimate the changes that have now occurred to existing conditions and avoid quantifying either the emissions that will result from development if the withdrawals are revoked or the benefits if protections are maintained as the current law states. The RMPs still in process have similar flaws.

Without engaging in necessary analysis and consultation, the Department of the Interior (Interior) has begun revoking withdrawals, based on the recommendations in the existing RMPs, by signing Public Land Orders without any further consideration of or even notice to affected Tribes. Through 2018 and 2019, nearly 2 million acres were opened to mining and oil and gas development with the stroke of a pen, and 40 million more acres are currently at risk from similar hasty actions.

BLM is obligated, under the Federal Land Policy and Management Act and National Environmental Policy Act, to maintain a current inventory of the resources in a planning area and to consider the impacts of decisions by looking at an accurate baseline of conditions.<sup>[5]</sup> In addition, BLM is obligated to evaluate the greenhouse gas emissions that will be generated from

the development of lands opened to mining and mineral development, including quantifying the emissions and their social cost.<sup>[6]</sup> Significant new information that is now available requires the agency to update its analysis and its decisions.<sup>[7]</sup> Revoking the existing withdrawals without updating inventory and analyses is irresponsible and inconsistent with these bedrock conservation laws.

It is BLM's and Interior's duty to consult with Tribes, as the lands in question are their ancestral lands and they are the original First Nation stewards, and their cultural and physical survival depends on the health of lands, waters, and wildlife. Executive Order 13175 recognizes that federal agencies have a “unique legal relationship with Indian tribal governments” and directs federal agencies to “establish regular and meaningful consultation and collaboration with tribal officials in the development of Federal policies that have tribal implications.”<sup>[8]</sup> The Executive Order also provides that, “when formulating and implementing policies that have tribal implications,” federal agencies “shall respect Indian tribal self-government and sovereignty, honor tribal treaty and other rights, and strive to meet the responsibilities that arise from the unique legal relationship between the Federal Government and Indian tribal governments.”<sup>[9]</sup> Notably, BLM has its own manual and handbook in place, which were updated to reflect the commitments in this Executive Order.<sup>[10]</sup>

BLM and Interior are also obligated to consult due to the unique relationship between the government of the United States and federally-recognized Tribes, stemming from provisions of the U.S. Constitution, treaties, statutes, court decisions, and executive orders, usually referred to as the Federal Trust Responsibility.<sup>[11]</sup> The Trust Responsibility requires the government to protect the interests of Tribes in a manner that is above and beyond those of the general public.<sup>[12]</sup> Interior and BLM must perform “meaningful consultation” immediately with Alaskan Native officials regarding the revocation of any D-1 land withdrawals, not only because of Executive Order 13175, but also, as the executive order recognizes, because of tribal sovereignty, the government-to-government relationship, and the unique trust obligations of the federal government.

In honor of existing protocols, jurisdictions, and mandates, we require a commitment from BLM and Interior to cease issuance of any further Public Land Orders revoking withdrawals put in place by ANCSA § 17(d)(1). Additionally, BLM and Interior must, in order to act in accordance with existing laws and critical requests, update the analysis of the impacts of potential revocations, consult with affected Alaska Native officials and provide opportunities for public comment. BLM and Interior are well aware of the significant impacts of climate change on these lands and the specific and real concerns of Alaska Native communities. We require that you act responsibly in the face of the applicable law and compelling situation.

Sincerely,

Ronald David  
Vice President on behalf of Joseph Joseph  
President  
Kongiganak Traditional Council

Roberta Murphy  
President  
Chuloonawick Native Village

Tim Bristol  
Executive Director  
SalmonState

Emily Anderson  
Alaska Program Director  
Wild Salmon Center

Carol Hoover  
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Laramie Maxwell  
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Aaron Mintzes  
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Natalie Dawson  
Executive Director  
Audubon Alaska

John Gaedeke  
Chairman  
Brooks Range Council

Pat Gaedeke  
Owner  
Iniakuk Lake Wilderness Lodge

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<sup>[1]</sup> 43 U.S.C. § 1616(d)(1).

<sup>[2]</sup> 16 U.S.C. § 3112(a).

<sup>[3]</sup> 16 U.S.C. § 3120.

<sup>[4]</sup> <https://alaska-native-news.com/trump-administration-shuts-down-kuskokwim-tribes-in-mineral-entry-plan/44425/>

<sup>[5]</sup> See, 40 C.F.R. § 1502.15; *Half Moon Bay Fisherman's Marketing Ass'n v. Carlucci*, 857 F.2d 505, 510 (9th Cir. 1988); 43 U.S.C. § 1711(a).

<sup>[6]</sup> See, *Center for Biological Diversity v. NHTSA*, 538 F.3d 538 F.3d 1172, 1200 (9th Cir. 2008) *Wilderness Workshop v. BLM*, 342 F.Supp.3d 1145, 1154-1156 (D. Colo. 2018).

<sup>[7]</sup> 40 C.F.R. § 1502.9; *see also Friends of the Clearwater v. Dombeck*, 222 F.3d 552, 557 (9th Cir. 2000) (An agency “cannot simply rest on the original document. The agency must be alert to new information that may alter the results of its original environmental analysis . . . .”)

<sup>[8]</sup> Exec. Order No. 13,175, 65 Fed. Reg. 67,249 (Nov. 6, 2000)

<sup>[9]</sup> *Id.*, Section 3(a).

<sup>[10]</sup> BLM Manual 1780 (Tribal Relations) available at:

<https://www.blm.gov/sites/blm.gov/files/uploads/MS%201780.pdf>; Handbook 1780-1 (Improving and Sustaining BLM-Tribal Relations) available at: [https://www.blm.gov/sites/blm.gov/files/uploads/H-1780-1\\_0.pdf](https://www.blm.gov/sites/blm.gov/files/uploads/H-1780-1_0.pdf)

<sup>[11]</sup> *See Generally*, Harold Shepherd, Conflict Comes to Roost! The Bureau of Reclamation and the Federal Trust Responsibility, *Env. Law Vol.* 31, No. 4 (2001).

<sup>[12]</sup> *Id.* at 906-26.