

LISA MURKOWSKI
ALASKA

COMMITTEES:
ENERGY AND NATURAL RESOURCES
CHAIRMAN

APPROPRIATIONS
SUBCOMMITTEE ON INTERIOR,
ENVIRONMENT, AND RELATED AGENCIES
CHAIRMAN

HEALTH, EDUCATION, LABOR,
AND PENSIONS

INDIAN AFFAIRS

United States Senate

WASHINGTON, DC 20510-0203
(202) 224-6665
(202) 224-5301 FAX

March 3, 2015

510 L STREET, SUITE 600
ANCHORAGE, AK 99501-1956
(907) 271-3735

101 12TH AVENUE, ROOM 329
FAIRBANKS, AK 99701-6278
(907) 456-0233

800 GLACIER AVENUE, SUITE 101
JUNEAU, AK 99801
(907) 586-7277

805 FRONTAGE ROAD, SUITE 105
KENAI, AK 99611-9104
(907) 283-5808

1900 FIRST AVENUE, SUITE 225
KETCHIKAN, AK 99901-6059
(907) 225-6880

851 EAST WESTPOINT DRIVE, SUITE 307
WASILLA, AK 99654-7142
(907) 376-7665

Bureau of Land Management
Eastern Interior Field Office
Attention: Eastern Interior RMP
1150 University Avenue
Fairbanks, Alaska 99709

Re: Comments on BLM's "Draft Eastern Interior Resource Management Plan
and Environmental Impact Statement"

To Whom it May Concern:

I write to submit my formal comments on the Bureau of Land Management's (BLM) proposed "Eastern Interior Resource Management Plan and Environmental Impact Statement." While BLM's draft plan covers future activities on a total of 6.7 million acres of land under its management, I am limiting my current comments to the agency's plan for management of 2.1 million acres within the Fortymile Mining District Subunit.

After reviewing the 1,267-page document released by BLM, and speaking with a number of Alaskans who stand to be affected by it, I am highly concerned by the agency's proposal to close a significant portion of the Fortymile Subunit to future locatable mineral entry. Under BLM's Preferred Alternative (C), this restriction would be carried out through an "Area of Critical Environmental Concern" (ACEC) designation that has grown to 685,000 acres.

While I do not oppose the continued withdrawal of the 249,000-acre Fortymile Wild and Scenic River Corridor, which was set aside by Congress for protection in the Alaska National Interest Lands Conservation Act (ANILCA), I object to the scope of the mineral entry closure envisioned by BLM in its planned Fortymile ACEC designation. This new designation violates ANILCA and would negatively impact Alaskans, who have already faced repeated resource-related restrictions from the federal government in recent years.

I. BLM's ACEC Designations Would Violate ANILCA

When Congress passed ANILCA in 1980, Alaskans were promised that lands not protected in parks, refuges, and conservation system units would be open for economic development to support an economy in Alaska. Four provisions within ANILCA are particularly relevant to reinforce this point:

Section 101(d), the first of two "no more" wilderness clauses within ANILCA, states that:

“This Act provides sufficient protection for the national interest in the scenic, natural, cultural and environmental values on the public lands in Alaska, and at the same time provides adequate opportunity for satisfaction of the economic and social needs of the State of Alaska and its people; accordingly, the designation and disposition of the public lands in Alaska pursuant to this Act are found to represent a proper balance between the reservation of national conservation system units and those public lands necessary and appropriate for more intensive use and disposition, and thus Congress believes that the need for future legislation designating new conservation system units, new national conservation areas, or new national recreation areas, has been obviated thereby.”

Section 1326(a) of ANILCA expressly states that administrative closures of more than 5,000 acres, including those carried out through the Antiquities Act of 1906, can no longer occur in Alaska unless “Congress passes a joint resolution of approval within one year after notice of such withdrawal has been submitted to Congress.” The very next paragraph, Section 1326(b), states that federal agencies are not even allowed to study lands for conservation system units unless Congress has specifically authorized it.

Another key provision of ANILCA, Section 1010(a), promised that mineral assessments would continue in Alaska: “The Secretary shall, to the full extent of his [or her] authority, assess the oil, gas, and other mineral potential of all public lands in the State of Alaska in order to expand the data base with respect to the mineral potential of such lands.”

While the language of ANILCA is clear, so are the words of its proponents. Former U.S. Representative Morris Udall asserted during a hearing on the bill in 1979 that, “We want to make it abundantly clear that it is our intention that those persons possessing valid existing mineral rights should be permitted access to their claims to exercise those rights.” Similarly, at the signing of ANILCA in December 1980, President Jimmy Carter assured Alaskans that even after it became law, “A hundred percent of the offshore areas and 95 percent of the potentially productive oil and mineral areas will be available for exploration or for drilling.”

The plain language of ANILCA and the public statements of former officials like Representative Udall and President Carter are promises that mineral exploration and development would be allowed on federal lands in Alaska not protected by the Act. Those promises must be upheld by federal land management agencies, including BLM.

II. BLM’s ACEC Designations Would Harm Alaska’s Economy and Budget

In 1983, BLM clearly understood and reflected Congress’ intentions in ANILCA when it crafted the first Fortymile River Management and Development Plan. BLM’s plan allowed all lands outside of the Fortymile Wild and Scenic River corridor to be open for mineral development. This was understandable and appropriate, as the eastern interior region of Alaska is the State’s most prospective for mineral development.

According to BLM’s own Environmental Impact Statement (EIS), the Eastern Interior Planning Area generated over 11.5 million troy ounces of gold through 2007 – and more gold has been

produced since then. The Alaska Department of Natural Resources reports that the eastern area, mostly the Fortymile Subunit, produced 33,323 ounces in 2010 alone from 118 operations that employed 196 full-time equivalent workers. BLM's EIS, utilizing data from 2008, also notes there are 236 separate gold occurrences in the Eastern Interior Planning Area, with 81 separate companies or individuals involved in mining the 10,000 acres of leases on federal and State lands in the Fortymile Subunit.

If the BLM proceeds with its current Preferred Alternative (C) and does not allow mineral exploration and development on the nearly 700,000 acres in its proposed ACEC designation within the Fortymile Subunit, Alaskans will never know the extent of the mineral resource located there and will never be able to benefit from the minerals contained in the area.

As Dick Hammond, President of the Fortymile Mining District, recently wrote to me, "If this ACEC is put into effect we will never know if there is another Red Dog or Pogo-sized mineral deposit in the area. What else might be in the Fortymile for future development? ... If allowed to be implemented this action will absolutely adversely affect the future of the Fortymile Mining District, historically one of the richest mining districts in the United States."

It is truly not in keeping with the commitments made to Alaskans 35 years ago for future development in this area to be so dramatically limited. The proposed closure will prevent any future assessment of minerals, any new mineral entry, and thus represent the very type of land withdrawal barred by Section 1326 of ANILCA without congressional ratification.

This action would also come at a time when the State of Alaska's government is facing a \$3.5 billion budget deficit, and looking at all possibilities to promote new economic growth and new revenues. It would come at a time when unemployment in Alaska is at 6.3 percent, above the national average. It would occur just after the Department of the Interior's actions to limit future oil and gas production in northern Alaska lands and waters, and right as Alaska faces significant regulatory impacts from a number of new, pending, or expected federal rules and regulations.

It is accordingly unacceptable to allow a significant opportunity for increased mineral extraction to be curtailed. That is especially the case since mining taxes and mineral rents and royalties are the State's third-leading source of revenue. Total mining revenues net the State more than twice as much as the State's fisheries business and fishery resource landing taxes combined.

III. The Scope of the Fortymile ACEC Designation is Sweeping

While I understand BLM's interest in protecting the core calving and core post-calving areas for the 39,000-member Fortymile caribou herd, the proposed Fortymile ACEC is quite large and does not appear to be necessary to adequately protect the caribou herd and other wildlife, such as moose and dall sheep, that reside in the area.

The nearly 700,000 acres that BLM seeks to close to future mineral entry in the Fortymile Subunit also appear to be one of the largest – if not the largest – ACEC designations anywhere in the country. For example, just one ACEC listed for the State of Utah exceeds 50,000 acres.

Only two in the State of Montana exceed 50,000 acres. All 67 ACECs in the State of Colorado total less than 520,000 acres – combined.

IV. Additional and Related Issues

The actions being contemplated under the Eastern Interior Resource Management Plan are not occurring in isolation; instead, they are one of several factors affecting the economic vitality and continued well-being of Alaska's placer mining community.

Another issue of significant concern is BLM's placer mining reclamation guidance, as issued in November 2014. These revised regulations are certainly on the minds of Alaska's miners and will compound the impacts of the proposed withdrawal of areas available for locatable mineral entry inside the Fortymile Subunit.

I am aware of considerable correspondence between the BLM's Alaska State Office and miners in the Fortymile District who have expressed their own strong concerns about a host of pending management issues, including limitations on the use of the State's existing bonding pool to cover reclamation liabilities.

I understand BLM's proposed changes to the bond pool are intended to cover only new mining plans of operation, not existing operations. Yet, I strongly encourage BLM to reconsider the limitation that mines cannot remain in the bond pool if they have or will disturb more than 40 acres of ground, because that acreage limit seems arbitrary and too low to allow certain long-time operations to continue at reasonable cost.

I further encourage BLM to consider redefining the mines that may continue to utilize the State bond pool for reclamation liabilities as all mines in the region – not just those on the road system. Many of the mining deposits would appear to be classified as "remote" mines under the November guidance document and that will negatively impact the bulk of mining operations – not just the operations which may have a history of regulatory environmental compliance issues.

I also hope that BLM will revise and improve its guidance document relating to vegetation and reclamation standards, given the hydrology found in the Fortymile Subunit.

Simply put, BLM's standards threaten to make many placer mining prospects uneconomical. I have been told that the cost of meeting the agency's reclamations requirements could be \$150 per linear foot of stream. These requirements appear to require miners to restore fish-bearing habitat within their streams, even if the streams have not housed fish for decades. This goes well beyond a rationale requirement for environmental stewardship. Alaska's placer miners should not be required to improve the conditions at their sites to a level higher than when they arrived, especially given the costs that would be incurred as a result.

V. Conclusion

The Fortymile Mining District is a critical source of minerals and mineral-related revenue for the State of Alaska. It remains highly prospective and provides hundreds of jobs for hard-working

Alaskans. I ask BLM to reconsider the revisions and restrictions proposed in both its pending Eastern Interior Resource Management Plan and its recent mining guidance document, and to meet three specific objectives before taking any final action:

- Eliminate or, at minimum, greatly reduce the size of the ACEC proposed for the Fortymile Subunit, outside of the Fortymile Wild and Scenic River Corridor, in order to make the maximum possible amount of acreage available for mineral entry;
- Provide the miners of the Fortymile District with a true “seat at the table” – as they have repeatedly sought – as regulatory and management issues affecting them are debated and decided within BLM; and
- Work constructively to significantly reduce – not increase – the significant regulatory burden on Alaska’s placer mining community before the start of the 2015 season.

Thank you for consideration of these comments.

Sincerely,



Lisa Murkowski
United States Senator