



DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[PO #4820000251]

BLM Director's Response to the State of Alaska Governor's Appeal of the BLM Alaska State Director's Governor's Consistency Review Determination for the Central Yukon Resource Management Plan and Final Environmental Impact Statement

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of response.

SUMMARY: The Bureau of Land Management (BLM) is publishing this notice of the reasons for the BLM Director's determination to reject the Governor of Alaska's recommendations regarding the Central Yukon Proposed Resource Management Plan (RMP) and Final Environmental Impact Statement (EIS).

ADDRESSES: A copy of the Central Yukon Record of Decision and Approved RMP is available on the BLM Website at: <https://eplanning.blm.gov/eplanning-ui/admin/project/35315/570>.

FOR FURTHER INFORMATION CONTACT: Heather Bernier, Division Chief for Decision Support, Planning, and National Environmental Policy Act; telephone 303-239-3635; address P.O. Box 15129, Lakewood, CO 80215; email hbernier@blm.gov.

Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services for contacting Ms. Bernier. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: On April 26, 2024, the BLM released the Central Yukon Proposed RMP and Final EIS (89 FR 32457). In accordance with the regulations at 43 CFR 1610.3-2(e), the BLM submitted the Central Yukon Proposed RMP/Final EIS to the Governor of Alaska for a 60-day Governor’s Consistency Review in order for the Governor to review the Proposed RMP and identify any inconsistencies with State plans, policies, or programs. On June 25, 2024, the Governor of Alaska submitted a response for the Central Yukon Proposed RMP/Final EIS to the BLM Alaska State Director.

After careful review and consideration of the concerns raised in the Governor's Consistency Review letter, the State Director decided not to adopt the recommendations made by the Governor. On August 13, 2024, the State Director sent a written response to the Governor describing the reasons for which the State Director believes that the Proposed RMP is consistent with State land use plans, policies, and programs to the maximum extent allowed under Federal law.

On September 13, 2024, the Governor of Alaska appealed the State Director’s decision not to accept his recommendations to the BLM Director. In the Governor's appeal letter, the State of Alaska requested the BLM Director to reconsider many of the issues and recommendations raised in the Governor's Consistency Review letter. In reviewing these appeals, the regulations at 43 CFR 1610.3-2(e) state that “[t]he Director shall accept the (consistency) recommendations of the Governor(s) if he/she determines they provide for a reasonable balance between the state’s interest and the national interest.” On November 12, 2024, prior to the State Director’s approval of the Central Yukon Record of Decision and Approved Resource Management Plan, the BLM Director issued a response to the Governor detailing the reasons that the recommendations did not meet this standard. Pursuant to 43 CFR 1610.3-2, the BLM Director’s response to the

Governor providing the basis for the BLM Director's determination on the Governor's appeal is published verbatim below.

“This letter addresses the State of Alaska’s appeal of the response provided by the Bureau of Land Management (BLM) Alaska State Director regarding your consistency review of the Central Yukon Proposed Resource Management Plan (RMP) and Final Environmental Impact Statement (EIS). The Governor’s consistency review is an important part of the BLM land use planning process, and we appreciate the significant time and attention that you and your staff have committed to this effort.

The applicable regulations at 43 CFR 1610.3-2(e) provide you with the opportunity to appeal the State Director’s decision to not accept the recommendations you made in your consistency review letter. These regulations also guide my review of the appeal, in which I must consider whether you have raised actual inconsistencies with State or local plans, policies, and or programs. If inconsistencies are raised, I consider whether your recommendations address the inconsistencies and provide for a reasonable balance between the national interest and the State of Alaska’s interest.

In your appeal of the BLM Alaska State Director’s response to your consistency review, you asserted the following nine issues that the Alaska State Director determined to be outside the scope of the Governor's consistency review:

- That significant conveyances to the State are blocked by BLM’s failure to revoke Public Land Order (PLO) 5150, and subsistence impacts are the justification for this failure, which is in direct violation of Alaska National Interest Lands Conservation Act (ANILCA) section 810(c);
- That failure to lift PLO 5150 and the Alaska Native Claims Settlement Act (ANCSA) section 17(d)(1) withdrawals is a land entitlement issue and is inconsistent with approved State plans;

- That the Proposed RMP does not address the concerns or plans to address those in the Northwest Alaska Transportation Plan (NWATP);
- That the Proposed RMP is inconsistent with Federal statutes that implement the goals of the Alaska Statehood Act and protect the State's resource management responsibilities, including the Alaska Statehood Act, ANCSA, and ANILCA;
- That the North Slope Area Plan (NSAP) did not find any lands requiring management areas of critical environmental concern (ACEC);
- That the RMP fails to meet commitments in the Master Memorandum of Understanding with Alaska Department of Fish and Game;
- That the Proposed RMP is inconsistent with the Alaska Wildlife Action Plan (2015) which identifies sentinel species that were not included in the species identified by BLM in the Proposed RMP/FEIS;
- That guidance to communicate on land use planning and sustainable fish and wildlife populations should be developed in collaboration to achieve State goals and objectives, and;
- That the Proposed plan is inconsistent with the John D Dingell, Jr Conservation Management and Recreation Act (Dingell Act) with regard to hunting and fishing opportunities.

Upon review, I find that these abovementioned issues do not identify an inconsistency with State or local plans, policies, or programs. Therefore, they do not fall within the scope of 43 CFR 1610.3-2(e). Even though the State Director found that these issues were out of scope, he responded to each of them to explain why. Even if they were within the scope of the Governor's Consistency Review, the Proposed RMP was not inconsistent with State plans, policies, or programs. I affirm all the State Director's responses to the abovementioned issues.

The majority of issues identified in your appeal relate to whether the BLM's recommendations to the Secretary regarding ANCSA section 17(d)(1) withdrawals and PLO 5150 frustrate the State's land entitlement under the Statehood Act and whether such recommendation is inconsistent with State plans, particularly the NSAP, the Dalton Highway Master Plan, and the NWATP. While the NSAP and the Dalton Highway Master Plan are discussed in general terms, neither the consistency review nor the appeal identified any provisions of those plans that are inconsistent with the recommendation in the Central Yukon Proposed RMP to retain PLO 5150. The consistency review letter and appeal do provide more detail about the NWATP, but do not explain how the Governor's recommendation provides a reasonable balance between the State's interest and the national interest.

Even if the inconsistencies identified with the NWATP were within the scope of the Governor's consistency review, the Central Yukon Proposed RMP is not inconsistent with that plan. First, the Governor's consistency review letter argued that retention of PLO 5150 is inconsistent with the NWATP because the Central Yukon Proposed RMP would limit the ability of the State to develop good quality road material sources across the planning area. However, as explained in the State Director's Response, PLO 5150 and ANCSA section 17(d)(1) withdrawals do not restrict BLM's ability to grant right-of-way (ROW) or conduct material sales within the planning area.

In response, your appeal letter argues instead that the location of ROW exclusion or avoidance areas would have significant impacts on the State's ability to ensure regional connectivity and that the BLM give attention on the location of ROW exclusion or avoidance areas in relation to State identified areas of potential resource value. The letter, however, does not identify any examples where a ROW exclusion or avoidance area would limit the State's access to "areas of potential resource value" and the NWATP

does not identify any such areas. Therefore, the Governor has not identified any inconsistencies between the NWATP and the Central Yukon Proposed RMP.

Further, as explained in the State Director's response to your appeal, the Proposed RMP/FEIS recommends a partial revocation of the ANCSA section 17(d)(1) withdrawals within the Central Yukon planning area for the limited purpose of allowing Alaska Native Vietnam-era veterans to select allotments under section 1119 of the Dingell Act, but to stay otherwise withdrawn. The Central Yukon planning effort determined that it is in the public interest to continue the protection afforded by the ANCSA section 17(d)(1) withdrawals for the lands within the planning area, particularly with regards to ensuring subsistence access and maintenance of subsistence resources. Revocation of the PLO 5150 corridor and the overlying ANCSA section 17(d)(1) withdrawals would result in loss of access for the rural subsistence users to Federal public lands on both sides of the Dalton Highway.

As described in the Central Yukon Proposed RMP/FEIS, the ANCSA section 17(d)(1) withdrawals and PLO 5150 are still fulfilling the purposes for which each were created. While the BLM understands the importance that the State places on receiving lands within the 5150 corridor, the BLM's recommendations in the Central Yukon planning effort must also consider the need to protect the public interest of the land. Overall, the Proposed RMP/FEIS analysis shows that revocation of the PLO 5150 and ANCSA section 17(d)(1) withdrawals would have significant environmental impacts and impacts to the public interest, and for those reasons the BLM does not recommend revocation of either at this time. The BLM is ready to convey the remaining acres of entitlement as soon as the State requests the conveyance of lands from its selections. Therefore, I affirm the State Director's determination in regard to the revocation of PLO 5150 and the ANCSA section 17(d)(1) withdrawals and do not accept the Governor's

recommendation because it does not provide a reasonable balance between the State's interest and the national interest.

Your appeal identified an issue within the scope of the Governor's Consistency Review where you believed that the Proposed RMP is inconsistent with State land use plans, programs, and policies, to which the State Director also provided an in-depth response. Specifically, you allege that the Central Yukon RMP is inconsistent with the NSAP emphasis on access to lands for fish and game and infrastructure development, and that the State asserts that the proposed backcountry conservation area, extensive recreation management area, special recreation management area assignments conflict with the transportation corridor for the Dalton Highway. It is your recommendation on this specific issue that the BLM should analyze how the plans relate to BLM's management and address the State's access interests. As explained in the State Director's response letter, the BLM did review the NSAP in the Central Yukon RMP planning process, found no inconsistencies, and added a reference to the NSAP in the approved RMP, appendix C, Relationship to BLM Policies, Plans, and Programs.

Under all alternatives, the proposed management decisions would be subject to valid existing rights. Similarly, this planning effort is not intended to provide any evidence bearing on or addressing the validity of any Revised Statute 2477 (RS 2477) assertions and does not adjudicate, analyze, or otherwise determine the validity of claimed ROWs. RS 2477 rights are determined through a separate process outside of the land use planning process. In order to remove any potential confusion on the adjudication status of the claimed RS 2477 routes, the maps no longer label any routes as RS 2477 route. Instead, the maps will simply refer to existing routes as trail or road. The BLM will adjust its management as necessary if the Federal courts adjudicate the existence or scope of any RS 2477 ROWs. Because the BLM did review the NSAP as part of the planning process and concluded that it is not inconsistent with the Central

Yukon Proposed RMP, I have determined that the Governor's recommendation to reopen the analysis to further analyze the interaction between the State and Federal plans does not strike a reasonable balance between the State's interest and the national interest.

The BLM has prepared the Central Yukon Proposed RMP/FEIS in accordance with all applicable Federal laws, regulations, and policies. The BLM did carefully review and consider applicable State, local, and other Federal agency plans, policies, and programs in the development of the Central Yukon Proposed RMP/FEIS. The BLM is consistent, to the extent practicable, with these plans as per the provisions of the Federal Land Policy and Management Act (FLPMA) and the planning regulations at 43 CFR 1610.3-2.

In conclusion, I find that the State Director properly consider all applicable State and local plans, policies, and programs in the Central Yukon planning effort, and when he responded to the Governor's consistency review. I have determined that, for most issues, you either did not raise any inconsistencies or recommendations to resolve any inconsistencies. For the issue in which you did identify an alleged inconsistency and provided a recommendation, I found it did not present a reasonable balance between the State's interest and the national interest.

Based on the foregoing, I find that the recommendations provided in your appeal letter do not meet the standard identified above for granting an appeal in accordance with 43 CFR 1610.3-2(e). Therefore, I affirm the Alaska State Director's response to your finding of inconsistency and respectfully deny your appeal. The reasons outlined above for my decision on your appeal will also be published in the *Federal Register* pursuant to the applicable BLM regulations.

Further, please note that the BLM gave due consideration to the State's concerns raised in the protest letter dated May 28, 2024. For a detailed response to these issues, many of which were raised in your consistency review letter, I refer you to the Director's

Protest Resolution Report which can be found at this link:

(<https://www.blm.gov/programs/planning-and-nepa/public-participation/protest-resolution-reports>).

The BLM and the State of Alaska have a long history of working cooperatively on the development of resource management plans. I appreciate the resources and input that you and your staff have put into the process of developing the Proposed RMP for the Central Yukon planning area. As mentioned, I believe this plan balances responsible development with the protection and conservation of subsistence use, important habitats for fish and wildlife, and other special values. I look forward to our continued coordination as our teams work together to implement this plan. An identical response has been sent to the cosigners of your letter.”

(Authority: 43 CFR 1610.3-2(e))

Nada Wolff Culver,

Principal Deputy Director.

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