



CoastalPlain_EIS, BLM_AK <blm_ak_coastalplain_eis@blm.gov>

[EXTERNAL] Scoping comment-Coastal plain: NEPA

1 message

Julianne Warren <coyotetrail.net@gmail.com>

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To: blm_ak_coastalplain_EIS@blm.gov

In 1969, Public Law 91-190, also known as the National Environmental Policy Act [NEPA], established a "national policy for the environment." Its purposes are "To declare a national policy which will encourage productive and enjoyable harmony between man and his environment; to promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man; to enrich the understanding of the ecological systems and natural resources important to the Nation; and to establish a Council on Environmental Quality."

This law requires the Federal Government, in cooperation with State and local governments and public and private institutions, to foster harmony between humans and interdependencies of land, waters, air, and other life forms, which are conditions for human health, flourishing societies, and durable economies that will serve present and future generations, including those of the Gwich'in Nation and other Alaska Natives.

NEPA obligates the Federal Government to align laws and other policies to foundational environmental health. It establishes an intergenerational environmental trusteeship. It requires policies that when implemented will assure "for all Americans" surroundings that are "safe, healthful, productive, and aesthetically and culturally pleasing" without undesirable or unintended consequences. It obligates the Federal Government and others to preserve "historic, cultural, and natural aspects of our natural heritage," encouraging "diversity and variety of individual choice" as well as just flourishing of the country's human population. This must encompass Gwich'in and other Alaska Native lifeways.

Section 102 of this Act directs that "the policies, regulations, and public laws of the United States...be interpreted and administered in accordance with this Act." This includes making detailed reports and recommendations based on "a systematic, interdisciplinary approach" with the aim of considering all "environmental amenities and values...along with economic and technical considerations" that any legislation or other Federal Action would affect. This report must include details on the "environmental impact of the proposed action," including likely adverse consequences, alternatives to the proposed action, the relationship between local, short-term uses and long-term and/or irreversible consequences on environmental capacities. This must include consequences to the Porcupine Caribou Herd and entwined Gwich'in subsistence, culture, and spirit as well as that of other Alaska Natives and others who appreciate the many non-commodifiable values of the coastal plain of the Refuge.

The NEPA report information is to be made public. This report must also describe alternatives bearing on any "unresolved conflicts" concerning uses of "resources." Furthermore, this Act obligates any Federal actions to pass the test of international cooperation "in anticipating and preventing a decline in the quality of mankind's world environment." This must include the adamant opposition of the Gwich'in Nation and other Alaska Natives of the North Slope and in Canada. It must also include consideration of how burning drilling for and burning more oil and gas will further intensify global climate change thus being a world concern.

P.L. 115-97 advancing oil and gas drilling in the coastal plain from its construction to its passage and implementation must fulfill NEPA.

According to a quote in a June 1, 2018 article in S&P Global, however, Assistant Interior Secretary for Lands and Minerals does not appear to have complete understanding of the intent of NEPA and the role of its required studies, report, and recommendations—its "Environmental Impact Statements." He says: "The purpose of the EIS is to inform the public and federal agencies on the impacts...In the scoping, we are asking people for advice on what kinds of impacts we should look for." "The draft EIS is expected in early 2019 followed by the final document in late April. We will hold the lease sale when the EIS is completed," he also insisted. The purpose of the NEPA report, or EIS, however, is more than to inform on "impacts we should look for." Why would one report "impacts" of oil and gas drilling that, if found in violation of NEPA's purposes, would only be ignored? NEPA directs not only reporting, but also making recommendations with the goal of promoting environmental health, human flourishing, and mediating conflicts and avoiding harmful and unwanted local to global environmental consequences. Moreover, it must do so with diligent studies that by their nature take time months to years. Balash's both substantial and temporal presumptions evident in Balash's words violate the spirit and letter of NEPA.

That same article also quotes Balash saying: "We will definitely have a lease sale...because it is required by Congress in the Tax and Jobs Act of 2017," he said. "The law said 'we shall' have the sales." He says the first "could come as early as July 2019."

He is referring to Page 183 of the recent Tax Bill H.R. 1—to which P.L. 115-97 was quietly appended—Sec. 20001, Oil and Gas Program with its "Requirement... IN GENERAL.—Subject to subparagraph (B), the Secretary shall conduct not fewer than 2 lease sales area-wide under the oil and gas program under this section by not later than 10 years after the date of enactment of this Act."

Title 40 Protection of Environment of the EPA (detailing regulations needed to implement NEPA), Section 1501.1(e), however, requires the NEPA report or, EIS, to discuss a "range of alternatives" to proposed government actions, in this

case oil and gas drilling activities in the coastal plain. Section 1502.14(d) requires the alternative of "no action." Depending on the situation, this can mean either a current management scheme goes forward unchanged or that a not-yet initiated plan would not go forward. In the case of P.L. 115-97 "no action" would mean the latter, that is, that no oil and gas activities would take place given that they are incompatible with environmental health, cultural rights and flourishing, as well as international concerns outlined in NEPA.

So, how can Balash say with such assurance that leasing "shall" go forward? How can the requirement for leasing in P.L. 115-97 stand as legitimate given the requirements of NEPA? If NEPA process were to recommend "no action"—no drilling activities—then the leasing mandate would become farcical. Who would want to lease land for oil and gas drilling that was not to go forward? On the other hand, P.L. 115-97's leasing requirement, if allowed to stand in the way of the intent and obligations of NEPA, would make that Act and its EIS farcical. That would be a grave wrong.

This scoping process must allow time and attention to the NEPA study and reporting process necessary to carry out the obligations of the Act. This scoping process's EIS must allow and include a no-action alternative. This process must adhere to the letter and spirit of NEPA, as must P.L. 115-97, which is not above it.