
From: Hayes, Miriam (Nicole) <mnhayes@blm.gov>
Sent: Thursday, March 14, 2019 8:45 AM
To: Sean Cottle; coastalplainAR
Subject: Fwd: [EXTERNAL] Comment re DOI-BLM-AK-0000-2018-0002-EIS (Coastal Plain Oil and Gas Leasing EIS)

Follow Up Flag: Follow up
Flag Status: Completed

Nicole Hayes

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----- Forwarded message -----

From: Andrew Ogden <aogden@indra.com>
Date: Wed, Mar 13, 2019 at 7:03 PM
Subject: [EXTERNAL] Comment re DOI-BLM-AK-0000-2018-0002-EIS (Coastal Plain Oil and Gas Leasing EIS)
To: Nicole Hayes <mnhayes@blm.gov>

To: Nicole Hayes, Project Manager, Bureau of Land Management:

This email is being sent to you to voice my opposition to the BLM plan for the leasing of tracts and development of oil and gas extraction within the Arctic National Wildlife Refuge as described in the Coastal Plain Oil and Gas Leasing Draft Environmental Impact Statement released for public comment on December 28, 2018. Aside from the widespread public opposition to this plan, both within Alaska and the United States as a whole, the DEIS is flawed in its content and the process by which it was developed. For the reasons stated below, the DEIS must be withdrawn, revised and resubmitted for public review and comment.

I am providing these comments as a private citizen who has extensively traveled and professionally guided others in the Refuge over a period of years and am familiar with the landscape, the birds and wildlife, and the many people who live in or near the Refuge. I am also providing these comments as a working environmental lawyer with special knowledge of public lands and wildlife law, and the provisions of Alaska National Interest Lands Conservation Act as they apply to the Refuge.

Development of the DEIS and Public Participation

The BLM is undertaking the EIS to implement the DEIS leasing program pursuant to the Tax Act of 2017 (P.L. 115-97), which opened the Coastal Plain/1002 Area to oil and gas exploration and development. Sec. 20001 of that Act requires that the Coastal Plain (the area known as the 1002) be opened to oil and gas leasing with 400,000 acres offered for lease within 4 years, and a second lease sale within 7 years. However, even though Congress authorized four years before the first mandated lease sale, the BLM and the Dept. of Interior are rushing to develop an oil and gas leasing program and hold lease sales within a year of the Tax Act's passage.

The accelerated program raises two concerns. First, it appears that officials within the Department of Interior may have knowingly misled Congress in hearings leading up to the passage of the Tax Act. Specifically, the accelerated leasing program is contrary to the sworn testimony of the interim director of the U.S. Fish and Wildlife Service on Nov. 2, 2017 before the Senate Committee on Energy and Natural Resources that “We would expect that lease sales would occur four to five years from now, with drilling potentially as far out as seven to ten years.” In addition, the interim director assured the Committee “that the process of environmental protection, environmental reviews, environmental analysis doesn’t change one iota” as a result of the process to lease, explore and exploit in the 1002 Area. In short, the BLM has fast-tracked the leasing program for the 1002 Area on a timeline vastly different than represented to members of Congress by officials of the DOI. Further, notwithstanding the assurances given to members of Congress, as described below the fast tracking of the environmental analysis of the program has contributed to a flawed analysis of environmental consequences required under the NEPA, the ESA and other applicable Federal laws.

Second, In addition to the potential intentional misrepresentations of DOI officials to Congress, the BLM has made many efforts to shortcut and suppress the public input on the leasing program described in the DEIS. Conducting an environmental impact statement should be a multi-year, multi-part process that offers the public ample opportunity to provide input. Instead, the BLM is rushing the process and trying to accomplish it all within only a single year – abbreviating comment periods and rushing analyses of the DEIS. The abbreviated timeline for an analysis and comment appears to be the consequence, in part, of Trump Administration policies and acting Secretary Bernhardt’s guidance that arbitrarily required the study contractor to confine the analysis to less than 150 pages and less than one year. While the contractor remains determined to adhere to the 1-year limit, they have far exceeded the page limit.

Scoping for the environmental impact statement ended in June with over 680,000 people speaking up to voice their concerns over drilling in the Refuge. The DEIS published should reflect the concerns brought up during scoping. The current comment period on the DEIS, even as extended from Feb. 11th to March 13th, is only 75 days. Typically a project of this size would proceed with no less than 90 days of public comment, and a letter from five Senators to the DOI requested a minimum of 120 days. Further, the comment period ran in part during the recent shutdown of the Federal government, which inhibited the public’s ability to receive additional information from BLM officials who responded to inquiries that they were “not authorized to work during the shutdown.” At the very least, the public comment period should be extended to account for the several weeks of inability to contact BLM officials. However, even as extended, the abbreviated comment period is likely inadequate under the notice-and-comment procedures and standards set forth in the Administrative Procedures Act.

Given the complexity of the DEIS and the significance of the decisions being considered, there is no reason not to provide a comment period that attempts to harvest all public comments, rather than one which appears to have the intent and effect of suppressing comments.

Purpose, Analysis of Impacts and Alternatives

The DEIS is complex, composed of a main document of approximately 300 pages as allowed for “unusually complex projects”, and a number of substantive appendices and other documents incorporated by reference. Although the review and analysis of the DEIS in its entirety is on-going, several important concerns, flaws and deficiencies are evident.

Purpose. The Tax Act rewrites the purpose of the Arctic National Wildlife Refuge as stated in ANILCA (1980) to include providing “for an oil and gas program on the Coastal Plain.” It should be noted that the purpose of the Refuge was expanded by the Tax Act by adding oil and gas leasing as one of the uses for the Refuge, but did not supplant those pre-existing uses nor prioritize oil and gas development over them. Any development of the 1002 Area must be in harmony with the pre-existing uses, a priority that is not reflected in the action Alternatives in the DEIS.

Alternatives. The BLM considers four alternatives in the DEIS. The no-action alternative (alternative A) considers the Coastal Plain in its current state. Alternatives B and C are the most expansive, offering the entire Coastal Plain for lease, under various lease provisions like no-surface occupancy or timing limitations. Alternative D, which would offer more

than 1 million acres for lease (roughly 66% of the Coastal Plain) with two sub alternatives (D1 and D2) of lease restrictions that are presented as a way to address caribou use during the summer. As expected the BLM states in the DEIS that it will not select the no-action alternative due to the requirements of the Tax Act to hold lease sales on the Coastal Plain. However, it is noteworthy that all the action Alternatives offer much more acreage than the 400,000 acres required by the Tax Act for each lease sale. The excessive lease offerings provided in the action Alternatives clearly exceed the more modest phased approach Congress intended in the Tax Act. Further, like the development of the DEIS, implementation of the lease program is fast-tracked for no apparent reason.

Impacts. The identification and analysis of the impacts of the leasing program described in the DEIS are deficient in fact and law as described below:

- **Noise Pollution.** Having spent considerable time in the 1002 Area, based on my personal experience I can state that the introduction of any new sources of sound, especially the level and intensity that are certain with the development and operation of oil and gas extraction, will significantly pollute and change the environment. This pollution will travel great distances—likely dozens of miles—from the sources which will operate 24/7. The noise pollution will irreparably harm the experience of humans traveling in the area, and the birds, bears, caribou and other wildlife who range within earshot of such operations. The noise pollution cannot be mitigated or reduced to a level that will not permanently alter the environment. This impact is inadequately identified and analyzed in the DEIS.
- **Wilderness and Recreation.** These values, two of the primary purposes for the establishment of the Refuge, Dr. Stuart Smith conducted a GIS analysis of the visual impact of development and finds that, “the visual impacts of coastal plain development would be significant and wide-ranging.” For example, “oil and gas development activity across a vast majority (88%) of the 1002 Area would potentially be visible to people rafting six of its major rivers, even when structures as low as 15m are in place.” Further, from high points within the federally designated Wilderness portion of the refuge, over 99% of the coastal plain and any development thereon will be visible.
- **Environmental Justice.** The Gwich’in people of Alaska and Canada are culturally and spiritually connected to the Porcupine Caribou Herd, which in turn relies on the Coastal Plain for calving and post-calving habitat. The Gwich’in consider the Coastal Plain as sacred, and the place where life begins. It is vital to their human rights and food security. Despite acknowledging that oil and gas can have impacts on caribou, BLM concludes that there will not be an impact on the subsistence resources for the Gwich’in and that the subsistence needs of the Gwich’in do not qualify for an 810 hearing under ANILCA. which is required for development that will substantially affect subsistence. Despite the fact that a significant percent of Gwich’in subsistence comes from the Porcupine Caribou Herd, which the BLM’s own analysis finds leasing will affect, they then find that Gwich’in subsistence use will not be affected. This ignores the traditional knowledge and human rights of the Gwich’in.
- **Water Quality and Scarcity.** One of the specific purposes of the Arctic National Wildlife Refuge as established in ANILCA is to ensure “water quality and necessary water quantity within the refuge” to conserve fish, wildlife and habitats. This DEIS must demonstrate adherence and that the lease sale will not negatively impact water quality and quantity. Water on the Coastal Plain of the Arctic Refuge is particularly scarce. There are few open lakes and rivers compared to the Western Arctic and especially in winter when the surface is frozen there is very little free water available. The BLM does no new analysis of how much water is actually available on the Coastal Plain and therefore does an insufficient job of analyzing impact to that water quantity. The DEIS avoids providing a clear estimate of how much water will be required, but if you piece together the information in the document, the figure is staggering. Center for American Progress did this and found that: The DEIS estimates that drilling each well requires 420,000 to 1.9 million gallons of water. All of the alternatives have at least 17 ‘satellite pads’ and 1 anchor pad. (Volume 2, Table B-5). And the DEIS estimates that 30 wells will be drilled from the average pad (Volume 2, B-17). So at least 540 wells would be drilled, requiring a total of between 227 million and 1 billion gallons of water just to drill the wells. PLUS, every mile of ice road requires 1 million gallons of water (Vol. 2, B-13), each ice pad requires 500,000 gallons of water (B-12), and daily production of 50,000 barrels of oil would require 2 million gallons of water per day. In their comments on the NOI, US Fish and Wildlife Service emphasized concerns about the “cumulative impacts of all stages of oil and gas development” on water: “Water

withdrawals from the streams, rivers and springs could have significant and detrimental implications to the populations and habitats of fish and wildlife.”

- Wildlife. Arctic Refuge is home to some of the most diverse and spectacular wildlife in the arctic. The Refuge's rich pageant of wildlife includes 42 fish species, 37 land mammals, eight marine mammals, and more than 200 migratory and resident bird species. The impact of the leasing and exploitation program will impact many species, especially including the following:
 - Polar Bears. All of the action alternatives would affect large areas of polar bear critical habitat. There are currently just 900 Southern Beaufort Sea polar bears, and the population has declined approximately 50% in the last 30 years (Vol 1, p. 3-125). The use of land in the Coastal Plain for denning and as summer refuge for polar bears in the region has and will continue to increase with the loss of sea ice, pushing more and more polar bears to require the Refuge for survival. Polar bear critical denning habitat constitutes 77% of the program area (Vol 1, p. 3-133) and maternal dens are disproportionately high in high hydrocarbon potential zones (Vol 1, p. 3-134). The DEIS acknowledges that “the potential for injury or mortality could be high when developing new oil and gas projects in polar bear habitat.” (Vol 1, p. 3-142) Nevertheless, there is no estimate of the number of bears that could be killed, injured or displaced by the leasing process or seismic testing.
 - Caribou. The Coastal Plain provides vital calving and post-calving habitat for the Porcupine Caribou Herd (PCH). The Coastal Plain offers nutrient rich forage, protection from predators, and relief from the relentless insects of the Arctic. The PCH use all of the Coastal Plain for various habitat needs during its annual migration. The BLM acknowledges that oil and gas activities will likely disturb and displace caribou, especially sensitive cows and calves. Map 3-21 shows PCH calving and post-calving covering most of the Coastal Plain (Vol. 2, 3-21). BLM estimates that only 49% of the Coastal Plain is sensitive calving grounds for the PCH, but this vastly undercounts the value of the coastal plain to the caribou, who use essentially all of the Coastal Plain during calving and post-calving when they are sensitive to disturbance. The agency fails to adequately address these impacts and to consider the full range of areas that are important to caribou. Anything that moves the herd away from the Coastal Plain has been shown to be detrimental to calf survival (Vol 1, p. 3-114) and in fact would likely halt population growth (Vol 1, p. 3-115). Additionally, other potential calving areas to the east have a higher density of predators and less suitable vegetation. The DEIS offers insufficient mitigation of the impacts to PCH. Even the most restrictive alternative only halts “major construction activities”—but not drilling—for a single month of the year when caribou are calving (Vol 1, 2-13).
 - Birds. On Arctic National Wildlife Refuge, over 201 bird species have been recorded. The Refuge holds a unique position because it sits at the intersection of the four North American flyways, or main migration routes, as well as the East Asian-Australasian Flyway. Millions of birds from every state and continent including off the coast of Antarctica, come to the Refuge to breed, forage, and molt. The DEIS minimizes impacts to birds – allowing loopholes for develop to continue despite impact to birds.
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- Infrastructure and the 2000 ACRE Limitation. The Tax Cuts and Jobs Act of 2017 stipulated a 2000 acre surface development limit on the Coastal Plain. The DEIS interprets that ice roads and pads, elevated pipelines, and gravel mines do NOT count as surface disturbance and, therefore, are not considered in the 2,000 acre limit of surface acres outlined in the PL 115-97 (Vol. 2, Appendix B-9). BLM states that “inclusion of such facilities would make Congress’s clear purpose – establishment of an oil and gas program on the Coastal Plain – impracticable” suggesting that they conducted their analysis in order to draw the desired conclusion (Vol. 2, Appendix B-9). Further, they rationalize excluding gravel mines as being infrastructure that “they supply raw materials for construction of oil and gas facilities but are not themselves oil and gas facilities (Vol. 2, Appendix B-9).” BLM is also only counting 2000 acres “at any given time” (Vol 1, p. 3-221). This means that any land that is “reclaimed” can be deducted from the 2000 acre cap and credited toward more development. This rolling cap interpretation would allow for the entirety of the coastal plain to see the impacts of development over time.
- Oil Spills. The risks of oil spills are dramatically understated in the DEIS. The DEIS minimizes the potential for a spill by stating that “The probability of a spill over 100,000 gallons is low,” because on the North Slope, “only three documented spills have been greater than 100,000 gallons.” (Volume 1, p. 132) According to Center for

American Progress, oil fields on the North Slope have averaged more than 400 oil spills per year, and across Alaska, there were 16 major spills from 2002 to 2016 that released at least 10,000 gallons of oil into the environment. Five of those spills released more than 100,000 gallons.

- Climate Change. The BLM significantly underestimates carbon emissions that would result from drilling the Arctic Refuge, estimating only 56,739 to 378,261 metric tons of annual direct GHG emissions (from extraction, transport, etc) and 0.7 to 5 million metric tons of annual indirect GHG emissions (from combustion and downstream use of the oil) – measured in CO2 equivalent. (Volume 1, Table 3-5 p.78) This is a very misleading set of numbers and is calculated only from the increase from oil demand that the analysis predicts will result from developing the Refuge. It does not account for burning all of the oil they project will be extracted. That number is much larger. CAP estimates that the equivalent to the annual emissions of 16 coal fired power plants would be emitted – roughly 62 million tons. This DEIS completely fails to assess how expanding oil and gas development in the Refuge will further exacerbate climate adaptation and mitigation challenges in an Arctic that is warming at twice the rate of the rest of the country.

This comment has focused on many of the legal issues implicated by the BLM actions and the DEIS. However, at the core of this debate is whether to preserve this completely unique national legacy, which will be forever altered by the activities contemplated by the DEIS. To quote Lowell Sumner, a pioneering National Park Service biologist): "Here still survives one of Planet Earth's own works of art. This one symbolizes freedom: freedom to continue, unhindered and forever if we are willing, the particular story of Planet Earth unfolding here."

Thank you for your consideration of these comments.

Respectfully submitted,

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