AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

S. HRG. 114–464

THE IMPLEMENTATION OF THE ALASKA NATIONAL INTEREST LANDS CONSERVATION ACT OF 1980, INCLUDING PERSPECTIVES ON THE ACT'S IMPACTS IN ALASKA AND SUGGESTIONS FOR IMPROVEMENTS TO THE ACT

HEARING

BEFORE THE

COMMITTEE ON ENERGY AND NATURAL RESOURCES UNITED STATES SENATE

ONE HUNDRED FOURTEENTH CONGRESS

FIRST SESSION

DECEMBER 3, 2015

Printed for the use of the
Committee on Energy and Natural Resources

THE IMPLEMENTATION OF THE ALASKA NATIONAL INTEREST LANDS CONSERVATION ACT OF 1980, INCLUDING PERSPECTIVES ON THE ACT'S IMPACTS IN ALASKA AND SUGGESTIONS FOR IMPROVEMENTS TO THE ACT

S. HRG. 114–464

THE IMPLEMENTATION OF THE ALASKA NATIONAL INTEREST LANDS CONSERVATION ACT OF 1980, INCLUDING PERSPECTIVES ON THE ACT'S IMPACTS IN ALASKA AND SUGGESTIONS FOR IMPROVEMENTS TO THE ACT

HEARING

BEFORE THE

COMMITTEE ON ENERGY AND NATURAL RESOURCES UNITED STATES SENATE

ONE HUNDRED FOURTEENTH CONGRESS

FIRST SESSION

DECEMBER 3, 2015

Printed for the use of the
Committee on Energy and Natural Resources

Available via the World Wide Web: http://www.fdsys.gov

U.S. GOVERNMENT PUBLISHING OFFICE

98–964 WASHINGTON : 2017

For sale by the Superintendent of Documents, U.S. Government Publishing Office
Internet: bookstore.gpo.gov Phone: toll free (866) 512–1800; DC area (202) 512–1800
Fax: (202) 512–2104 Mail: Stop IDCC, Washington, DC 20402–0001

COMMITTEE ON ENERGY AND NATURAL RESOURCES

LISA MURKOWSKI, Alaska, *Chairman*

JOHN BARRASSO, Wyoming
JAMES E. RISCH, Idaho
MIKE LEE, Utah
JEFF FLAKE, Arizona
STEVE DAINES, Montana
BILL CASSIDY, Louisiana
CORY GARDNER, Colorado
ROB PORTMAN, Ohio
JOHN HOEVEN, North Dakota
LAMAR ALEXANDER, Tennessee
SHELLEY MOORE CAPITO, West Virginia

MARIA CANTWELL, Washington
RON WYDEN, Oregon
BERNARD SANDERS, Vermont
DEBBIE STABENOW, Michigan
AL FRANKEN, Minnesota
JOE MANCHIN III, West Virginia
MARTIN HEINRICH, New Mexico
MAZIE K. HIRONO, Hawaii
ANGUS S. KING, JR., Maine
ELIZABETH WARREN, Massachusetts

KAREN K. BILLUPS, *Staff Director*
PATRICK J. MCCORMICK III, *Chief Counsel*
CHUCK KLEESCHULTE, *Senior Professional Staff Member*
ANGELA BECKER-DIPPMANN, *Democratic Staff Director*
SAM E. FOWLER, *Democratic Chief Counsel*
DAVID BROOKS, *Democratic General Counsel*

CONTENTS

OPENING STATEMENTS

	Page
Murkowski, Hon. Lisa, Chairman and a U.S. Senator from Alaska	1
Cantwell, Hon. Maria, Ranking Member and a U.S. Senator from Washington	23

WITNESSES

Sullivan, Hon. Dan, a U.S. Senator from Alaska	24
Walker, Hon. Bill, Governor, State of Alaska	27
Coghill, Hon. John, Majority Leader, Alaska State Senate	35
Arno, Rod, Executive Director, Alaska Outdoor Council	52
Brown, Valerie, Legal Director, Trustees for Alaska	60
Kindred, Joshua, Environmental Counsel, Alaska Oil & Gas Association	70
Seidman, Anna, Director of Litigation, Safari Club International	78
Tangen, J.P., Attorney at Law	85

ALPHABETICAL LISTING AND APPENDIX MATERIAL SUBMITTED

Ahtna, Incorporated:	
Letter for the Record	121
Alaska Federation of Natives:	
Statement for the Record	123
Alaska Miners Association:	
Letter for the Record	128
Alaska Professional Hunters Association:	
Letter for the Record	154
Alaska Trappers Association:	
Letter for the Record	160
Alaska Travel Industry Association:	
Letter for the Record	22
Alaskans for Wildlife:	
Statement for the Record	20
Arctic Slope Regional Corporation:	
Letter for the Record	162
Arno, Rod:	
Opening Statement	52
Written Testimony	54
Association of Fish & Wildlife Agencies:	
Letter for the Record	166
Borrell, Steven, P.E.:	
Letter for the Record	170
Brown, Valerie:	
Opening Statement	60
Written Testimony	62
Responses to Questions for the Record	118
Cantwell, Hon. Maria:	
Opening Statement	23
Citizens Alliance Protecting School Lands:	
Statement for the Record	171
Coghill, Hon. John:	
Opening Statement	35
Written Testimony	37
Responses to Questions for the Record	111

Page

Dahlstrom, Kirk:
Explanation of the Need to Inventory all 425,000 Acres of Young-Growth on the Tongass 6
Transition to Young-Growth Harvesting 11-30-09 8
Doyon, Limited:
Statement for the Record 232
Fortymile Mining District:
Letter for the Record 239
Gibert, Sally:
Statement for the Record 11
Heimer, Wayne:
Letter for the Record 241
Kindred, Joshua:
Opening Statement 70
Written Testimony 72
Likins, David:
Letter for the Record 253
Mack, Hon. Henry:
Letter for the Record 255
Murkowski, Hon. Lisa:
Opening Statement 1
National Parks Conservation Association:
Letter for the Record 259
Northwest Explorations Joint Venture:
Statement for the Record 265
Resource Development Council for Alaska, Inc.:
Letter for the Record 411
Safari Club International, Alaska Chapter:
Letter for the Record 419
Seidman, Anna:
Opening Statement 78
Written Testimony 80
Sullivan, Hon. Dan:
Opening Statement 24
Tangen, J.P.:
Opening Statement 85
Written Testimony 88
Supplement for the Record 427
Walker, Hon. Bill:
Opening Statement 27
Written Testimony 29
Map entitled "Alaska State Lands" 34,99
(The) Wilderness Society:
Statement for the Record 430
Wilderness Watch:
Statement for the Record 433
Yarnell, Ronald:
Letter for the Record 17

THE IMPLEMENTATION OF THE ALASKA NATIONAL INTEREST LANDS CONSERVATION ACT OF 1980, INCLUDING PERSPECTIVES ON THE ACT'S IMPACTS IN ALASKA AND SUGGESTIONS FOR IMPROVEMENTS TO THE ACT

THURSDAY, DECEMBER 3, 2015

U.S. SENATE,
COMMITTEE ON ENERGY AND NATURAL RESOURCES,
Washington, DC.

The Committee met, pursuant to notice, at 10:05 a.m. in Room SD–366, Dirksen Senate Office Building, Hon. Lisa Murkowski, Chairman of the Committee, presiding.

OPENING STATEMENT OF HON. LISA MURKOWSKI, U.S. SENATOR FROM ALASKA

The CHAIRMAN. Good morning. The Committee will come to order.

This morning we are conducting an oversight hearing on the Alaska National Interest Lands Conservation Act. We refer to this as ANILCA. This was a law that President Carter signed on December 2, 1980. So we are 35 years and a day into enactment of ANILCA and it is certainly time for a review. That is the purpose of this oversight before the Energy and Natural Resources Committee this morning.

ANILCA set aside 104 million acres of national parks, refuges, monuments and wild and scenic rivers in one state, in my state, the State of Alaska, and modified the use of another nearly 40 million acres of parks and refuges located there. Overall the bill protected an area larger than the State of California and classified more than 57 million acres as wilderness representing, at that point, 61 percent of all formal wilderness in our nation.

The 35th anniversary of ANILCA is an opportunity to examine how the law has and has not worked for Alaskans and really for all Americans. This is also a perfect moment to reassert that the law must be implemented as written not as Federal agencies wish that it was written. That means the Federal Government must honor rural preference, protect subsistence rights, provide Alaskans with access to our lands and allow us to responsibly develop our resources.

For those who are not familiar with the long history of ANILCA, its final form reflects a series of compromises that were largely de-

veloped here in the U.S. Senate. The House of Representatives agreed to them, as did President Carter. That was critical because those compromises provide a measure of balance to ANILCA in the form of declarations, restrictions and exceptions intended to limit the negative effects that this law could have on Alaskans.

For example, the first section of ANILCA asserts that the Act, "provides sufficient protection for the national interest in the scenic, natural, cultural and environmental values on public lands in Alaska." That same section declares that ANILCA represents, and I quote here, "represents a proper balance between the reservation of national conservation system units and those public lands and thus Congress believes that the need for future legislation designating new conservation system units has been obviated thereby." In this section, Section 1326, which we in Alaska refer to as the "no more clause," ANILCA explicitly prohibits the President from ever again using the Antiquities Act to create new monuments in Alaska without Congressional approval. It also sought to limit new land set asides in the state by prohibiting some of the studies that precede them.

Now along with the words that are contained in the act itself within ANILCA, we have the words of those who worked on ANILCA to go by. At the signing ceremony for ANILCA, President Carter observed, and I quote here, "that ANILCA strikes a balance between protecting areas of great beauty and value and allowing development of Alaska's vital oil and gas and mineral and timber resources. A 100 percent of the offshore areas and 95 percent of the potentially productive oil and mineral areas will be available for exploration and drilling. With this bill we are acknowledging that Alaska's wilderness areas are truly this country's crown jewels and that Alaska's resources are treasures of another sort."

That was President Carter's comment at the time of signing ANILCA that 100 percent of the offshore areas and 95 percent of the potentially productive oil and mineral areas will be available for exploration and development. What a promise that was.

When you look at the plain text of ANILCA and the statements made about it by the people who wrote it, you see efforts to seek and maintain balance. ANILCA would not only protect lands and wildlife in Alaska, it would also protect the people who live there.

The Act acknowledged that when it comes to formal wilderness we had done our part. We had contributed our share. At least in my read, it was not intended to close off our best opportunities or threaten our livelihoods. ANILCA has protected Alaska's crown jewels and has aided our tourism industry. But there are other aspects, particularly associated with its implementation, that have proven far more problematic. Take for example these promises that were made to Alaskans. The promise that we would not have to live in a permit society. The promise that we could continue to use the newly created conservation system units for recreation, hunting, fishing and subsistence. The promise that we would be guaranteed access to and across inholdings, and the promise that we could access our timber, our oil, our gas and our mineral resources. Today all of those, all of those promises, have been diminished, if not abandoned.

It is not just that lands and waters for oil and gas development in Alaska have either been withdrawn or regulated to the point where no operator can do business in violation of President's Carters' promise. It is not just that more than 40 million more acres of Alaska have been withdrawn or proposed for protection over the past seven years, including half of our national petroleum reserve and almost all of ANWR, clearly undercutting ANILCA's "no more clause." It is not just that nearly 15 million acres have been removed from the timber base in our national forests contributing to the demise of an industry that once employed thousands in Southeast. It is not just that Alaskans are increasingly denied the ability to access private inholdings in or by passing through conservation system units or that existing traditional rights, such as our ability to hunt and fish on public lands, are being extinguished. It is not just that the series of new land planning efforts that seek to make temporary withdrawals permanent and evade ANILCA with new withdrawals through tools like areas of critical environmental concern. It is not just the access rights promised in Title 11 of ANILCA which have seldom been successfully implemented. It is not just Alaskans, like John Sturgeon, who will go before the U.S. Supreme Court next year, fighting for his right to access traditional hunting grounds after being denied access by the National Park Service.

It is a combination of all of these. It is the cumulative effect. It is the fact that the Federal Government in ways both large and small is trampling on our state sovereignty over state lands and private sovereignty over private lands in Alaska. The Federal Government is changing its interpretations of ANILCA to suit itself with bureaucrats seeking to apply the law as they would have written it, but not as it was agreed to by Congress and as stated by President Carter. As that happens no one in Washington, DC, ever seems to hear the Alaskans who are impacted by the loss of access, rights and opportunities that inevitably follow.

This is a law that is out of balance. It is a law that is out of balance. It is admittedly a very complex law and sometimes with seemingly contradictory directions to Federal agencies. And that, likely, is because ANILCA is the only time that Congress has passed legislation that applies to virtually all Federal lands within a single state's borders.

Now clearly we could spend many days discussing this act. Just the issue of subsistence alone and the management of our fish and game stocks could consume many, many hours. My hope is that this hearing will serve as a starting point. A starting point to make ANILCA work better for Alaskans, even as we protect our national treasures and the subsistence rights of our native peoples.

We had dozens, believe me, we had dozens more witnesses who wanted to speak this morning, but time and space just simply preclude the size of panel that we need to truly depict the impacts of the act in Alaska and across the opportunity. I can promise you that there will be more opportunities to be heard on this.

I am grateful that we have a strong panel of witnesses, many of whom, including our Governor and our state Senator, who have flown thousands of miles, 4,000 miles, to be here.

Governor Walker, Senator Coghill, our whole panel, thank you for being here to share your expertise on ANILCA and for the discussions that will follow. Senator Sullivan has joined the Committee for his comments this morning.

As Alaskans have shown great interest in submitting comments on the law, I have some statements that I will also like to submit for the record. One is a statement from Kirk Dahlstrom of Viking Lumber, Incorporated of Klawock on some of the timber issues. We have a statement from Ms. Sally Gibert, the former Alaska ANILCA Program Coordinator, on ways to improve the operation of the Act. We have comments from Mr. Ron Yarnell and Mr. Jim Kowalsky, both supporting the Act's environmental benefits, and we have a comment from Sarah Leonard of the Alaska Travel Industry Association supporting the Act's impacts on Alaska.

I am told that there is going to be plenty more testimony coming from others including many in Alaska's native community, and we would look forward to receiving them at the time.

[The information referred to follows:]

For the Record submission from Mr. Kirk Dahlstrom of Viking Lumber, Inc.

1. Explanation of the Need to Inventory all 425,000 Acres of Young-Growth on the Tongass
2. Transition to Young-Growth Harvesting 11-30-09

Supplemental explanation of the need to inventory all 425,000 acres of young-growth on the Tongass

The Forest Service knows basically how many acres of young growth were harvested on the Tongass in each ten year period. The agency also has developed growth models for Southeast. These models predict the tree height, diameter and volume for various site classes. However the agency does not know which young growth stands are on which site class, so they have no accurate way to apply the growth models to individual stands or even for groups of stands within a 10-year period.

Further, the existing growth models were developed from sites that were all below 500-feet elevation.

In order to provide reasonably accurate information about the diameter, height and volume of trees by species at various harvest ages, the agency must first insure that the 1984 growth and yield tables are valid for young growth sites up to about 1,500-feet elevation. Next the agency must measure the existing height and age of the trees on each site in order to determine the site classes for all 425,000 acres of young growth.

In order to have a reasonably precise inventory, each field plot should represent no more than about 2.5 acres of timber (note, industry typically measures about 1.0 plot per acre to appraise a timber sale). Half of these plots can be simple tree count plots by species, but tree heights, diameters, species and grades should be measured on at least half of the plots. This will require about 86,000 measure plots and another 86,000 species-count plots. Depending on crew size, this effort will take one to two years to complete.

In order to make a realistic financial analysis or proforma for log export and manufacturing from young-growth timber on the Tongass, it is necessary to analyze all the age classes on a representative mix of site classes so that we know how much young-growth and the characteristics of those trees that will be available in future decades.

We also need to gather information necessary to estimate the potential products that can be sawn from each age-class by site-class, since the trees grow at much different rates on each site-class.

Here is a list of some of the necessary data that should be measured:

1. Knot distribution (amount of volume that is in excess of 16-inches in small end diameter with at least 24-inches of clear cutting between knots; this is the minimum criteria for cutting shop-grade lumber).
2. The amount of sweep outside of the scaling cylinder for each 20-foot log segment.
3. Side slope angle and elevation
4. Site-index (the average age and average height for the trees on each plot can be used to estimate the site index for that plot).
5. Log grades and log sorts for both domestic and export markets
6. The normal diameters, heights and form-classes, basal area etc. that are needed to calculate log grades, sorts and volumes.

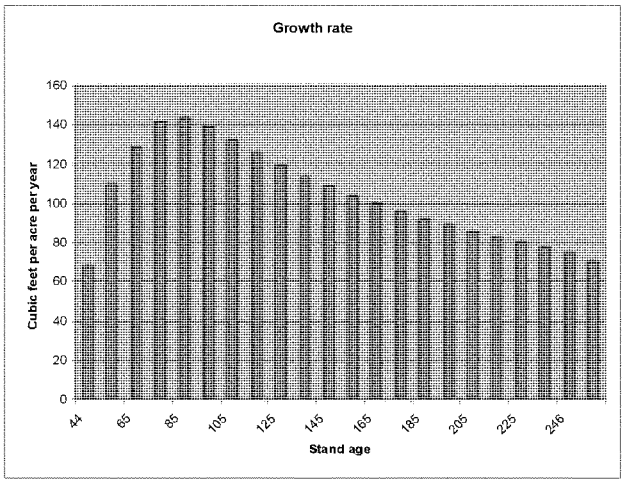
The young growth timber information in items 1-6 above will help determine the potential value of the timber to either a manufacturing facility or the export markets. The value estimate can then be combined with the estimated harvest cost information such as logging system, access road construction estimates and length of haul in order to prepare a financial analysis of the potential profitability of harvesting the trees at various ages.

Transition to Young-growth Harvesting 11-30-09

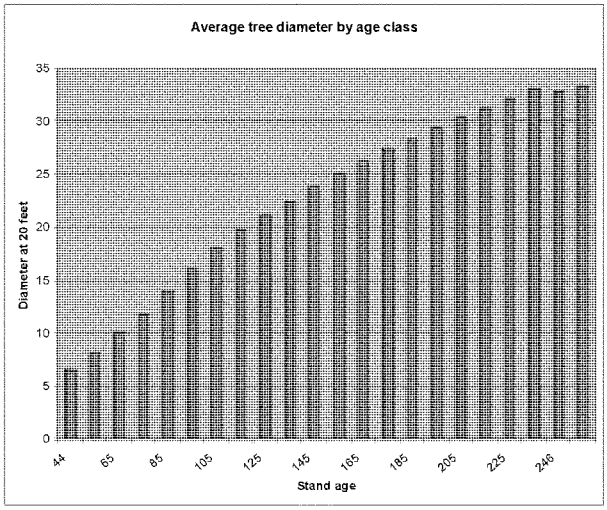
There has been a lot of talk lately about the need for the timber industry in Southeast Alaska to transition to young-growth timber harvesting. This transition concept is being promoted like it is some new idea and that it can be completed quickly. The transition is not a new concept and it will not be complete any time soon. The forestry profession has *always* been about growing young trees and transitioning out of the old-growth timber. Young-growth timber is much more uniform than old-growth, young-growth is essentially defect free and young-growth stands will have double the volume of timber per acre that exists in most old-growth stands.

Early foresters spoke in terms of *sustained yield* and the acreage of timberland needed to sustain manufacturing facilities *in perpetuity*. In 1909 shortly after the Tongass National Forest was established, government foresters completed an initial assessment of the commercial timberland and by the 1930s researchers (RF Taylor - 1934 and Meyer - 1937) had completed the first growth and yield tables which were indexed by site conditions for the Tongass. These yield tables allowed foresters to calculate the harvest age that captures the maximum growth potential for stands of timber on various growing sites.

Trees grow like people, slowly at first, then rapidly for a period of time, then slowly again. The peak growth is referred to as the Culmination of Mean Annual Increment. The Forest Service is obligated by the National Forest Management Act to defer rotational harvest until a stand achieves this culmination. If the trees are harvested too soon the growth potential of the land will not be maximized. Growing the trees beyond the optimum date would result in larger, more valuable trees but again, the maximum growth potential of the land would not be achieved and additional acres would have to be managed for growing and harvesting timber in order to compensate for harvesting the timber at the wrong time.



In addition to optimizing the growth potential of the land, the economic value of the young trees must be considered. 96% of the young-growth available under the current forest plan is less than 50-years old. At age 50 most of the trees in a typical stand of timber are less than eight inches in diameter and their value is much less than the cost of harvesting. In contrast, the same trees will be about sixteen inches in diameter and will be much more valuable at the optimum harvest age of around 100-years.



The Tongass National Forest covers more than 90% of Southeast Alaska and, according to the 1989 Forest Service 'Benchmarks' publication, the commercial timberland on the Tongass that is not set-aside in congressional reserves would sustain an annual harvest level of nearly two billion board feet of saw timber. However, only a small percentage of the forest is needed or scheduled for harvest. In 1966 the maximum allowable harvest level was 825 million board feet, in 1980 the maximum allowable level was dropped to 450 million board feet and in 1997 the level was dropped once again to the current level - about 230 million board feet of saw timber (267 million board feet including utility/pulp logs). It is unlikely that the timber industry will have sufficient economy of scale to be cost competitive at the 230 million board foot harvest level, but for now that is irrelevant because, with the current availability of timber sales at less than 50 million board feet per year, the industry is struggling just to survive.

In a 2004 young-growth management paper (Barbour – 2004) the Forest Service explains that "Under the current plan future harvests from federal land will ensure that the land base available for young-growth management increases in each decade until harvest of young-growth timber replaces old-growth harvests about 50-60 years from now". The authors of that paper are correct; last thing we need right now is a premature transition to harvesting our young-growth timber.

Written testimony from Sally Gibert submitted to the
U.S. Senate Committee on Energy and Natural Resources
regarding implementation of the
Alaska National Interest Lands Conservation Act
December 3, 2015

Introduction

I am submitting written testimony to the Committee from two perspectives: 1) I served as the State of Alaska's ANILCA Program Coordinator for 27 years, and 2) since retiring, I provide ANILCA training offered by the Institute of the North and Department of the Interior University twice per year to agencies and the public. I am deeply committed to improving the quality of ANILCA training for administrators, legislators, and Alaskans.

My first job in Alaska in 1974 was with the Joint Federal-State Land Use Planning Commission for Alaska, set up by Section 17 of the Alaska Native Claims Settlement Act (ANCSA), the same section that directed federal withdrawals and studies leading to ANILCA. I also lived for a few years in the tiny community of McCarthy in the Wrangell-St. Elias region – before and during ANILCA's earliest years – witnessing first hand some of the changes experienced in rural Alaska while surrounded by the largest new national park in the nation. In 1984, I was hired by the Governor's Office as the statewide ANILCA Program Coordinator, where I coordinated the State of Alaska's input on land use management plans, policies, and regulations to implement ANILCA.

Based on this diverse personal history, I have a longstanding empathy for conservation values, the realities of life in rural Alaska, and the resource-driven economic needs of the state as a whole.

The ANILCA Context

ANILCA was an enormous compromise between national conservation interests and the need for Alaskans to be able to use and potentially develop the land and resources on which the newly formed State of Alaska and its large rural resident population depended.

The nature of the compromise was truly unprecedented: vast areas designated primarily for conservation purposes, balanced with allowances and other special provisions to address Alaska's fledgling economy, lack of infrastructure, and rural way of life.

No other state has one federal law that applies to virtually all federal lands within its borders. Congress has never before (or since) taken such a comprehensive look at all federal lands within one state and created an equivalent of ANILCA.

The individual national park and refuge units created by ANILCA are also of an entirely different scale. For example, Wrangell-St. Elias National Park and Preserve, at 13.2 million acres, is the largest national park unit in the nation – six times larger than Yellowstone.

ANILCA's two largest national wildlife refuges in Alaska, both over 19 million acres, are each significantly larger than the State of West Virginia. One of these refuges surrounds more than 40 villages.

More than 20 million acres of combined private and state lands are located within the exterior boundaries of conservation system units in Alaska, and millions more acres can only be accessed by crossing these conservation system units. The private lands include surface and subsurface land conveyed to Alaska Natives under ANCSA.

Recognizing these and other unique circumstances, Congress incorporated a number of unprecedented ANILCA allowances to provide for traditional uses of the land by Alaskans and ensure that the State and Native corporations could use and develop their lands under ANCSA and the Statehood Act for economic sustainability.

At ANILCA's mostly-jubilant signing ceremony 35 years ago, President Carter and other key players made the following statements regarding compromise and balance:

President Carter: *"(ANILCA) strikes a balance between protecting areas of great beauty and value and allowing development of Alaska's vital oil and gas and mineral and timber resources."*

Senator Ted Stevens: *"I do believe there is balance in this bill, because it will fulfill the commitment of the Statehood Act."*

Senator "Scoop" Jackson: *"...it's also a tribute to the best in the art of compromise.... It's not what everyone wanted on either side of the issue, but I believe it will be indeed a lasting monument in striking a balance between development on one hand, and preservation and conservation on the other."*

Representative Mo Udall: *"I'm glad today for the people of Alaska. They can get on with building a great State. They're a great people. And this matter is settled and put to rest, and the development of Alaska can go forward with balance."*

ANILCA today

ANILCA has been good for Alaska in many ways; tourism and outdoor recreation is an increasingly important segment of the Alaska economy, and most Alaskans take pride in knowing that the best of Alaska's natural areas will be protected in perpetuity. A number of small "gateway" communities benefit from the ANILCA-authorized local hire provisions, which allow local residents to share their unique, local knowledge with unit managers and the public. The large conservation system units protect habitat for many species of fish and wildlife, while simultaneously providing opportunities for harvest, including for subsistence. ANILCA also finally resolved the large scale ownership of land in Alaska, allowing federal land transfers to the State and Native corporations to proceed; and ensured the ability of all non-federal landowners to develop and access their lands, both within and outside of the conservation system units.

Yet in the 35 years since passage of ANILCA, incremental actions are changing how ANILCA is implemented, and some of the compromises have been lost. The biggest ANILCA challenge today is that Alaskans and federal land managers located in Alaska and in Washington DC either do not understand or choose to overlook ANILCA and its unique provisions for Alaska.

Thus actions taken by this Committee regarding ANILCA should clarify and refresh the key understandings that led to passage of ANILCA 35 years ago, and examine how the fundamental compromises still apply in today's world. Contrary to myth, ANILCA has been amended numerous times, often with bipartisan support, so amendments are a legitimate tool; but I recommend first considering other means to restore the balance sought by Congress in 1980.

ANILCA Implementation Challenges

Loss of institutional knowledge about ANILCA. Hundreds of representatives of State and Federal agencies, Native corporations, and many non-governmental organizations worked alongside Congressional staff on crafting the final ANILCA legislation in 1980, and participated in the initial implementation. All shared a collective understanding of the Act and the compromises reflected in its passage. Most of those people have passed away, are retired, or will soon be retired. Few people have access to this collective but shrinking wisdom, or know little about the law or the rationale for its individual provisions.

Federal land manager turnover. Federal agencies rotate policy-level managers in and out of Alaska. Federal lands outside Alaska are managed primarily under laws applicable nationwide. Many of ANILCA's management provisions are quite different from corresponding "lower 48" units, creating a steep learning curve for new managers transferred to Alaska. It usually takes several years to figure it out, and just when they start to "get it" they often move on and the next steep learning curve begins.

Rural residents, inholders, and other individual Alaskans also do not understand ANILCA. Alaska residents and Native corporation managers often do not understand their rights under ANILCA. Like federal managers, many younger Alaskans, including those in the news media, also have misconceptions about key ANILCA provisions, such as state management of fish and wildlife, the subsistence priority on federal lands, and the so-called "No More" clause(s). For example, considerable misinformation shrouded public discussion about the President's recommendation last winter to designate the Arctic National Wildlife Refuge coastal plain as Wilderness. In this instance, both opponents and proponents of the President's action often seemed to miss the fact that, under ANILCA, only Congress can decide the fate of the refuge's coastal plain.

National regulations or policies increasingly overlook ANILCA's unique provisions. Agency staff and policy makers in both departments of the Interior and Agriculture sometimes generate national regulations and policies that are blind to, or purposely ignore, ANILCA in significant ways, undoubtedly driven in part by the loss of institutional knowledge over

several federal administrations. Although regulations and policies cannot trump laws, it is time-consuming and expensive for Alaskans to try to influence national agency decisions that conflict with ANILCA. *Some examples*:

> 1996 National Park Service Rulemaking at 36 CFR 1.2(a)(3) (nationwide): Rule extends park rules onto state-owned navigable waterways, even though ANILCA says park and refuge rules do not apply to non-federal lands. The federal Court compounded the problem by expanding NPS authority to nonfederal lands. As this Committee knows, the issue is scheduled to be heard by the US Supreme Court.
>
> The 1997 Refuge Improvement Act: The Act clearly directed that, if conflicts between the Act and ANILCA arise, then ANILCA shall prevail. A series of national refuge policies followed that continue to create ANILCA implementation difficulties today. For example, a 2008 Wilderness Stewardship policy was cooperatively developed with the States and contains a special chapter for Alaska that recognized completion of ANILCA wilderness reviews. Yet a 2010 change made to the national policy without consultation required new wilderness reviews on all refuges in Alaska.

Over the decades, many of us with ANILCA expertise worked hard with the increasingly out-of-touch Washington bureaucracy to figure out solutions in consultation with affected Alaskans, sometimes with lasting mutually satisfactory outcomes. *Some successful examples*:

> In 2004, State of Alaska comments on the nationwide Wilderness Management "Minimum Requirements Decision Guide" led to extensive consultation and coordination ending with production of an "Alaska Supplement," specifically reflective of ANILCA and how it modifies certain management decisions within Wilderness areas in Alaska. The Alaska Supplement was developed over two years by an interagency working group, including affected state agencies, and signed by the Alaska heads of all four federal land managers in 2006. It remains in effect today.
>
> In 2005, the US Forest Service finalized the national "Access and Travel Management Rule" that was highly problematic for Alaska, but was published with this minimalist statement in the Preamble: "*ANILCA is a valid existing right.*" At the time, I thought this approach was woefully inadequate; but it eventually provided sufficient catalyst to open a productive dialogue between Forest Service policy makers in Alaska and the State of Alaska to cooperatively invent a regulatory and policy "patch" that removed the built-in conflict between the national rulemaking and ANILCA.
>
> The 2007 National Park Service Inholder Access Guide was the product of another successful effort in cooperation with the State, Alaska Native corporations, individual private landowners, and other stakeholders. While it was inherently an Alaska-based challenge, Washington leadership let the process work, respecting that the federal managers on the ground in Alaska were best equipped to work it out.

Unfortunately, all four federal land managers in Alaska are currently grappling with a new wave of recent national direction that provides insufficient guidance on ANILCA, or that directly challenges some of ANILCA's unique provisions.

Recommendations

1. Expand ANILCA education opportunities

An expanded and institutionalized program is needed to more systematically inform and educate federal land managers and others in Alaska and Washington, DC about ANILCA on an on-going basis, including ANILCA's historical context and contemporary relevancy. Without a basic understanding of the law and its many interrelated provisions, appropriate implementation decisions will continue to cause unnecessary conflict and expensive litigation.

Three target audiences would benefit by expanded ANILCA knowledge:

- Alaskans, including Native corporations, state and local government leaders
- Federal land managers in Alaska
- Federal land management policy and decision makers in Washington, DC.

New educational tools need to be developed soon with involvement of existing and/or retired federal and state employees and others who collectively possess a working knowledge of ANILCA. For obvious reasons, the sooner this institutional knowledge is tapped, the better.

More web-based resources are needed to facilitate individualized research on the background and history of ANILCA; for example, there is no public source to find out about ANILCA amendments, even though ANILCA has been amended many times. And there is no place to find out about the myriad studies, outcomes and reports called for by ANILCA. Demand is also on the rise for other types of on-line learning opportunities to supplement the Institute of the North ANILCA Training courses and to provide more in-depth information on specific topics. The current bi-annual ANILCA Training is labor-intensive and involves the in-person participation of 15 different presenters to cover the needed expertise, but each class only reaches about 50-55 people.

2. Effective Alaska-based consultation and cooperation

In addition to an increased understanding of ANILCA, there is a growing need for genuine consultation about how to implement ANILCA in a contemporary context. ANILCA is often referred to as "a work in progress," accomplishing much more than drawing boundary lines on maps. ANILCA calls for, and anticipates, hundreds if not thousands of subsequent decisions over time – providing criteria, various public involvement processes, and dozens of references to consultation and cooperation.

While the need for effective day-to-day consultation has actually increased with time, I'm dismayed by the erosion of such consultation, which accelerated over the last few years. I'm not so naïve to think that good communication alone will solve problems; however, I have found it to be a necessary ingredient. The State ANILCA Implementation Program has a long history of participation on planning teams, providing internal reviews, sharing data, and use of other strategies to avoid or resolve issues before they take on a life of their own. I'd like to see federal agencies take better advantage of the State ANILCA team's expertise, even if there isn't full agreement.

To reinforce the value of communication, Congress also included an entire Title (Title XII – "Federal-State Cooperation"), setting up the Alaska Land Use Council to support Congress' vision of face-to-face consultation, coordination, and cooperation among high level federal, state, and Alaska Native representatives. The Council was highly effective in issue resolution in the decade following passage of ANILCA. The Council's staff committee also worked to reach agreement between meetings to reduce the number of issues the Council itself had to deal with, providing an effective incentive for the federal, state, and Native members to work together. Even though the Council formally recommended continuation, Congress, through inaction, allowed the Alaska Land Use Council to sunset after 10 years. All participants intended to continue informal consultation and cooperation, but with changing agency heads over time and no regular face-to-face meetings, the commitment to respect overlapping interests and consider other perspectives through open consultation diminished.

Thus in addition to improved day-to-day federal-state coordination, I also recommend re-establishing the Alaska Land Use Council, or a similar formal mechanism, to facilitate policy level consideration of important ANILCA issues. Putting Alaska's federal, state and Native land managers back in the same room to collectively discuss strategies would help to work out differences without playing jurisdictional trump cards. In my experience, the benefits of such regular face-to-face connections cannot be overstated.

Alaska-based federal managers should be expected and empowered, within broad parameters, to work with state and Native counterparts on appropriate ANILCA solutions in an Alaskan context and with a full and mutual understanding of Congress' intent in passage of ANILCA.

Thank you for the opportunity to comment on the future implementation of ANILCA.

Subject: FW: ANILCA hearings

-----Original Message-----
From: Ronald Yarnell [mailto:arcticron@gmail.com]
Sent: Wednesday, November 25, 2015 8:50 PM
To: Ripchensky, Darla (Energy)
Subject: ANILCA hearings

Senators,

The Alaska National Interest Lands & Conservation Act of 1980 (ANILCA) was one of the greatest conservation bills passed by Congress in the last century.

The passage of the Alaska Statehood Act of 1958 granted Alaska the right to select over 100 million acres of land from the public domain. This was the most generous state land grant in the history of our country. 100 million acres for less than 600,000 people!

Then in 1971 the Alaska Native Claim Settlement Act (ANCSA) settled the Alaska Native claims by giving the native people of Alaska 40 million acres of land and practically a billion dollars. ANCSA re-opened the federal lands to State selection and allowed the Alaska Oil Pipeline to be constructed.

However, over the next ten years Congress argued about the conservation lands withdrawn under sections d-1 and d-2 of the ANCSA, that were afforded temporary protection. It wasn't until President Jimmy Carter declared 60 million acres of National Monuments in Alaska, on the eve of protections expirations, that Congress finally decided to act and passed ANILCA.

ANILCA has been a very just and fair bill. Congress bent over backwards to make the least amount of impact upon Alaskans. There were dozens of hearings all over the state and anyone affected by this bill had the opportunity to be heard. Many modifications were made to the bill that took into consideration Alaskan's unique situations. I know of one case in the Wrangell Mountains where over 600,000 acres were excluded from National Park designation, primarily because one hunting guide took six clients a year hunting there.

ANILCA has done more for the economy of the state of Alaska than any other bill except the bill authorizing the construction of the Alaska Oil Pipeline. In fact, it was precisely because Alaska was being opened to all this development that Congress included the conservation sections d-1 & d-2 in the Alaska Native Claims Settlement Act. This was probably the first time in the history of our country where Congress actually acted to plan conservation along with development.

I know because I was one of hundreds of small companies leading wilderness trips all over the state and my livelihood was being threatened by development. Tourism is the second largest industry in our state. It is larger than mining, timber, fisheries.... everything except oil. Before oil, tourism was Alaska's number one industry. Hundreds of thousands of visitors come to our state to see our bounty of National Parks, National Preserves, National Wildlife Refuges, National Wild & Scenic Rivers & Wilderness Areas. When people think of Alaska they think of Wilderness. ANILCA helped protect this incredible economic asset we have.

Things have changed in this state in the 30 years since passage of ANILCA. The vast majority of Alaskan citizens support our National Parks, Preserves, Refuges and Wilderness Areas. The young people that have grown up since the passage of ANILCA have learned to value these areas. Tens of thousands of business across the state benefit financially from the hundreds of thousands of people visiting these areas.

For the last 30 years Alaskan's themselves have been enjoying these areas. In fact, long before ANILCA passed, Alaskans used these areas and valued them. Resource development threatened these areas. Motor boats, mining, logging, oil & gas exploration and other activities were threatening the lifestyles Alaskan enjoyed. Some people think that all Alaskans were against ANILCA. That is not true. As is usual everywhere, there were many Alaskans that supported these conservation efforts. Today, that support is even greater within our state.

Many more Alaskans are living in urban environments and appreciate the chance to get out in their parks and wildlife refuges just like people elsewhere. Even in our rural areas many people appreciate the emphasis ANILCA placed on local use of the lands and its wildlife. ANILCA did a good job of protecting pre-existing uses in these areas.

However, there are still some people that resent the passage of ANILCA. There may be some legitimate complaints, but these must be weighed with the publics rights in mind, not just to allow exceptions for a few that go against the original intent of ANILCA and against the rights ANILCA was set up to protect.

Probably the most classic example is the Arctic National Wildlife Refuge. For 40 year now the oil industry has been trying to get into this very special area. ANILCA acknowledged the importance of this area from a conservation perspective, but it also authorized for limited exploration in the 1002 area. That exploration was completed & since that time Congress has not passed legislation to open up the Refuge that was supported by the public. The vast majority of Americans support protecting all of the Arctic National Wildlife Refuge as wilderness. They know that the oil industry already has access to practically all of the petroleum bearing lands on the north slope of Alaska. Why would they want to open up this one unique place, of such national significance, to more development.

The areas set aside by ANILCA in 1980 are nationally significant areas, just like Yellowstone, Yosemite and the Grand Canyon. Why would we allow these areas to be opened up when two thirds of the rest of the state is pretty much open to everything?

Another example is the case of the law suit by John Sturgeon against the National Park Service. Pre-existing uses on rivers in the ANILCA were allowed. But that does not mean every new means of travel is going to be allowed up every river in the state. The reason ANILCA was passed was to set aside some places where Alaskans and others can carry on traditional values. The vast majority of Alaska is already open to all kinds of uses. ANILCA was passed to set aside those areas of national significance where we wouldn't allow certain things and certain kinds of development. The whole rest of the state and even the a majority of ANILCA lands are open to a variety of uses. But thank goodness, ANILCA prohibits the use of hovercraft, and other new forms of transportation, on rivers inside Alaskan National Parks & Preserves.

There are few things more Alaskan than being able to paddle down one of our wild rivers in a quite and peaceful manner. Why does Mr Sturgeon feel he has the right to run his hover craft anywhere he wants at the expense of everyone else? This is precisely why ANILCA was passed, to leave some places where people and wildlife can escape these modern-day means of travel. Most Alaskans don't want to turn Alaska into just a larger version of states in the lower forty-eight. They want to protect the special values that make this state such a wonderful place to live and work.

Another case where the state of Alaska wants to alter ANILCA is in the case of predator control. ANILCA protected subsistence rights of native and local residents. The state of Alaska has never been able to pass state legislation that mirrors this federal guarantee written into ANILCA. As a result the feds have taken over the management of subsistence resources on federal lands. For some reason the state of Alaska still seems to think they have the right to conduct predator control on federal lands. Even more outrageous, they seem to think they have the right to conduct predator control on National Park Service administered National Preserves. These are areas that were set aside by ANILCA to protect natural functioning ecosystems.

Things have gotten so bad in Alaska that the state now manages wildlife for the maximum production of huntable species. Obviously this is counter to what ANILCA protects. Why should the state be allowed to conduct predator control on ANILCA lands in general, but specifically on national preserves? Wildlife on federal lands should be managed under naturally functioning ecosystems, not as federal game farms? It is bad enough the state is managing wildlife on the 100 million acres of state lands this way. (That is a third of Alaska!) Why should we give them the right to do this on federal lands, and especially on National Park administered lands?

Mining is another issue. On the 100 million acres of State lands, miners have the right to mine almost anywhere, for a small fee and a small per, ounce royalty. I pay more to guide a small group of paddlers down a river on state land than a miner pays to tear up 40 acres of state land. Mining has a priority over all other uses. Unfortunately, things are even more lax on Federal land, at least those remaining under BLM control. Why would we consider making it easier for miners to have access to ANILCA designated lands? The reason ANILCA was passed was to protect some of Alaska's most precious wild lands from precisely these kinds of activities.

And then there is oil & gas leasing. ANILCA lands were set aside precisely to stop these kinds of activities on at least some of the public domain. Why should we consider opening any of these lands back up to this kind of exploitation? The idea of ANILCA was that we would protect at least a representative example of some of our most valuable public lands. Please don't be fooled by some of our politicians and industry representatives. Alaska is a rich state. Yes, we are having some financial problems right now. And yes, we do need more oil in our pipeline, but there is plenty of oil, outside ANILCA designated lands to supply our needs. Why should we sacrifice our nation's "Crown Jewels" to go on warming an already overheated planet? Why should Americans be asked to sacrifice when Alaskan politicians give giant billion dollar tax breaks to the oil companies? Why should America sacrifice our National areas when Alaskans don't even have an income tax, a state sales tax, and get more federal money back than they pay in federal income taxes?

We Alaskans need to start pulling our own share. We are proud of our independent spirit and yet we feed at the public troff like no other state. We need to quit expecting the federal government to bail us out of our own problems. We need to do a better job of managing our own lands and wildlife, before trying to exploit our national treasures and wildlife.

Some of the people testifying here today, want to remove some of these protections. Protections that ANILCA guaranteed. ANILCA is an amazing piece of legislation. It protected Alaskan's rights to keep doing things they have always done on the land. Industry doesn't like that. They would like to have access to 100% of Alaska. They are not satisfied with having access to the vast majority of Alaska's land. They want access to all of it. Congress was right the first time when they passed ANILCA. Leave the law alone. It protects Alaskan's right as well as the national public's rights. Don't let industry get into these areas that the American public and many Alaskans want to be kept the way there are now.

Thank you for this opportunity to submit my written testimony. I would like it included in the hearing record.

Sincerely, Ron Yarnell

The Impacts of ANILCA (Alaska National Interest Lands Conservation Act of 1980) Upon Alaska and Suggested Improvements

Prepared for The US Senate Energy and Natural Resources Committee, Lisa Murkowski, Chair, submitted by Jim Kowalsky for Alaskans FOR Wildlife,
POBox 10640 Fairbanks, Alaska 99710 <jimkowalsky@yahoo.com>
December 3, 2015

This statement reflects the realities of wildlife and the impacts upon wildlife management ensuing within an ANILCA-Alaska world since enactment by Congress in 1980.

RESULTING FEDERAL MANAGEMENT REPLACING FLAWED STATE MANAGEMNT

Generally wildlife on ANILCA wildlife refuges and national parks is or was to have been primarily the responsibility of the Alaska Board of Game. The ANILCA Title VIII subsistence priority was to have existed in a single federal-state management paradigm with the state's own subsistence priority mirroring the ANILCA priority. However, the state's priority failed in a court test, resulting in a dual subsistence management, state on state lands, federal on federal lands. A system of Federal Subsistence Boards (FSB) then emerged to mirror the state game board's management but on federal lands, confining jurisdiction to matters of rural subsistence "harvest" only, not to managed so-called urban generated sport, trophy and trapping take. The FSB is not a creation of ANILCA, not even mentioned in its legislative history nor as legislative intent; rather, it's a creation crafted when Alaska's state subsistence law failed.

Turning to the Alaska Board of Game's role in managing "harvest"of game on federal ANILCA lands ...primarily parks and refuges... notwithstanding the legal mandates of of ANILCA itself, also the managing agencies are mandated to provide stewardship under such as the National Park Service Organic Act of 1916; National Park Service Management Policies of 2006; Federal Land Policy and Management Act of 1976; National Wildlife Refuge System Administration Act of 1966 and others.

ALASKAN OVER-REACH

Through all of this the Alaska Board of Game (BOG) is to have management authority on ANILCA lands. However the BOG is losing such authority on ANILCA lands through its reckless establishment of exaggerated bag limits and excessively long seasons. We choose to term this BOG mismanagement as "Alaska Over-Reach."

The National Park Service has recently made permanent rules that disallow BOG wildlife "harvest" practices promulgated for park preserves which were unethical to the core. For example , such BOG rules had allowed shooting wolves at dens and in the spring when wolves likely would be having pups, in its national park preserves, using artificial light to take bears, baiting of grizzly bears...these are just several examples of egregious, unethical, even barbaric practices that have been fostered by the Alaska BOG which we find unfortunate in the extreme.

The Alaska (BOG) should not now, not ever, be allowed even near a process that had originally given them authority to regulate, given the extreme and unethical nature of their attempts to manage in ANILCA lands. Should a more balanced board that fairly represents the Alaskan public including the vast majority of non consumptive users ever materialize, then of course, such a future BOG might return to the management table, hopefully in a much changed atmosphere. Ideally one of cooperation and to a combining of federal and state management agency resources and talent; to a supportive constituency, thus erasing the unfortunate state-federal turf wars that characterize this situation.

ALASKANS DID THIS

It is important to understand, that all park and refuge lands, national recreation areas and wild and scenic rivers that were created by ANILCA were proposals from Alaskans, drawn on living room floors and kitchen tables throughout the state. The provisions within the act similarly are the product of Alaskans citizens – myself included - striving to save representative intact ecosystems within it for posterity. Within this massive Alaskan conservation effort, the desire to permanently

preserve unparalleled habitat for Alaska's world famous wildlife legacy was paramount. Within this framework, Alaska ANILCA park preserves, parks, and wildlife refuges were never envisioned as the shooting gallery, which the Alaska BOG unabashedly promotes.

It is also important to note, given the now-botched role of the BOG within ANILCA lands and elsewhere in Alaska, this BOG is made up entirely of hunters and trappers. Between 80 to 85% of Alaskans DO NOT – DO NOT – hunt nor trap. These Alaskans are non-consumptive users of wildlife; they view and photograph, study and enjoy and experience our wildlife legacy as do those of a large tourist visitation, not as hunters or trappers. This vast majority of our Alaskan population are not represented or are actually badly misrepresented by a profoundly ethically challenged, exclusive wildlife management apparatus that has been hijacked by large consumptive wildlife interests such as Safari Clubs International, the NRA, Sportsman for Fish and Wildlife and other consumptive users.

IZEMBECK NATIONAL WILDLIFE REFUGE

Improvements to ANILCA-managed lands must include discussion of the Izembeck National Wildlife Refuge. This refuge has features unique to and critical for especially migrating waterfowl. Virtually the entire—that's ENTIRE—world's population of migrating Pacific Black Brant for example utilize this precise area in migration. A road is proposed right through this very habitat feature of the refuge and championed by madam subcommittee chair with no acknowledgement of the function and purpose this refuge serves. Without a word of the damage the proposed road right through the high value eelgrass would do. This eelgrass is not common in western Alaska and in this case it's rich and nourishing beyond alternative sources. The State of Alaska proposes to exchange other land for this road corridor. Be informed the proposed land exchange has no particular habitat value. Also, maintenance of the threatened habitat in question serves a US obligation of the Migratory Bird Treaty Act.

Without any question, the ANLCA impact on our state has been high value, managing, serving and saving habitat and wildlife values in a world in which humans will overwhelm this planet, its wildlife habitat and its wildlife. The not-so-distant future value of our wildlife legacy and its lands to our state and to the world, its wildlife and its economy, are enormous and often understated. We look for enlightened management and a forward looking public and to Congress that hopefully somehow can get this message straight and absorb and reflect. ANILCA can be Alaska's future.

This concludes our statement to this hearing.
Thank you.

2015–2016
Executive Officers

Chair
Colleen Stephens
Stan Stephens Glacier & Wildlife Adventures

Vice Chair
Dennis McDonnell
Alaska Coach Tours

Treasurer/Finance Chair
Charlie Ball
Holland America/Princess – Alaska

Secretary/Membership Chair
Bonnie Quill
Mat-Su Convention & Visitors Bureau

Government Relations Co-Chairs
Bill Pedlar
Knightly Tours

Julie Saupe
Visit Anchorage

Marketing Chair
Patti Mackey
Ketchikan Visitors Bureau

Tourism Policy & Planning Chair
Deb Hickok
Explore Fairbanks

Past Chair
Scott Habberstad
Alaska Airlines

President & CEO
Sarah Leonard
Alaska Travel Industry Association

Board of Directors

Adam Baldwin
Anchorage Museum
John Binkley
CLIA/Alaska Cruise Association
Brett Carlson
Northern Alaska Tour Company
Kory Eberhardt
A Taste of Alaska Lodge
Gideon Garcia
CIRI Alaska Tourism Corporation
Paul Goodwin
Holland America Line
Peter Grunwaldt
Premier Alaska Tours
Elizabeth Hall
John Hall's Alaska Cruises and Tours
Deb Hansen
Pike's Waterfront Lodge
Kirk Hoessle
Alaska Wildland Adventures
Shanon Hamrick
Kenai Peninsula Tourism Marketing Council
Karen Harris
Alaska Garden Gate B&B and Cottages
Thomas McAleer
Alaska Denali Travel
Tim McDonnell
Temsco Helicopters, Inc.
Dan Oberlatz
Alaska Alpine Adventures, Inc.

ALASKA TRAVEL INDUSTRY ASSOCIATION

November 30, 2015

The Honorable Lisa Murkowski, Chairman
The Honorable Maria Cantwell, Ranking Member
U.S. Senate Committee on Energy and Natural Resources
304 Dirksen Senate Building
Washington, DC 20510

Re: Alaska National Interest Lands Conservation Act

Dear Senator Murkowski and Senator Cantwell:

The Alaska Travel Industry Association (ATIA) is Alaska's leading statewide nonprofit membership organization for the Alaska travel industry with over 700 members. Nearly two million visitors come to Alaska each year contributing over $3.8 billion in economic impact to the State. National Parks and other public lands are important and valuable destinations in many visitors' itineraries. The economic benefits are significant for the tourism businesses that operate in the parks and gateway communities. The Alaska National Interest Lands Conservation Act (**ANILCA**) resulted in the formation of 80 million acres of public lands in Alaska and in coordination with the State of Alaska encourages appropriate tourism that provides visitor services while benefiting local economies.

ATIA recognizes the importance of adequately funding federal public lands in Alaska. Increased funding ensures public lands will become more accessible to visitors, and not less, by ensuring land managers have the tools necessary to provide visitor services such as interpretation, trail maintenance and permit processing.

Thank you for reviewing this important piece of legislation.

Sincerely,

Sarah Leonard
President & CEO

cc: Governor Bill Walker

Alaska Travel Industry Association
610 E. 5th Ave., Suite 200
Anchorage, Alaska 99501
(907) 929-2842 Phone * www.AlaskaTIA.org

The CHAIRMAN. With that I would like to turn to my colleague from Washington, Senator Cantwell.

Thank you for being here this morning.

STATEMENT OF HON. MARIA CANTWELL, U.S. SENATOR FROM WASHINGTON

Senator CANTWELL. Thank you, Madam Chair, and thank you for holding this hearing. Welcome to all the Alaskans who have traveled to be here today.

Yesterday was the 35th anniversary of the date the Alaska National Interest Lands Conservation Act was signed into law, and somewhere in the back of my mind I can still imagine Scoop Jackson and Ted Stevens having conversations, many, many conversations, about this.

The CHAIRMAN. They probably weren't quiet. [Laughter.]

Senator CANTWELL. No.

So it certainly is an appropriate time to review the implementation—and in my view the tremendous success—of ANILCA. While the implementation of this law clearly has tremendous impact on Alaskans, I think it is important to remember that the lands covered by ANILCA are Federal lands and those are lands of national interest, as the title of the law itself states.

According to the state's tourism data, Alaska had roughly 1.7 million summer visitors, nearly double the population of the entire state. That includes visits to many of the iconic places that were protected by ANILCA, including popular National Park Service areas such as Glacier Bay, Lake Clark, and of course, Denali National Park and Preserve, which you were so instrumental in helping to get renamed and which encompasses many of the state's most iconic features.

In addition, I should just note there is a Cantwell, Alaska in Denali.

The CHAIRMAN. Yes. [Laughter.]

Senator CANTWELL. In addition to the popular national parks and national forests areas, ANILCA has protected millions of acres of more remote lands such as the Arctic National Wildlife Refuge. Whether heavily visited or not, these are lands of significant importance to all Americans. They are extremely important from an environmental and cultural standpoint by protecting intact Arctic ecosystems as well as important fish and wildlife habitat and migration routes, which are key for subsistence and other hunting and fishing opportunities.

These lands also provide important economic benefits. The outdoor industry estimates that the outdoor recreation activities in Alaska, much of which take place on Federal land, support over 90,000 direct jobs and generate about $9.5 billion in consumer spending. So much of Alaska's tourism industry is based on visitors from all over the world wanting to visit the national parks and other public lands protected by ANILCA.

I think it is important and is worth noting that many of the ecosystems protected under ANILCA include streams and rivers that are a central part of Alaska's significant commercial fishing activities, which support 20,000 direct jobs and are closely tied to the fishing industry of the State of Washington.

So I know the witness panel will be predominantly representative of those expressing concerns over ANILCA and more specifically with the way the Federal agencies are implementing the law, but I do want to recognize there are always inevitable conflicts between State, Federal, and local interests in managing such large areas. However, much of the criticism today is directed at agency's practices or implementation of the law. So I think it would be appropriate at some time to have the relevant agencies here to provide the Administration's perspective. That would be helpful.

While I expect that much of the hearing will be focused on specific concerns that different parties have on implementation, I would like to close on a broader perspective. On this anniversary of the law's enactment, I think it is important to appreciate the significant vision of the law and to join with millions of Americans who have enjoyed the treasure of this very, very special place.

I hope that we will have a chance to ask some questions, but as I informed the Chair, we have a caucus meeting at 11 o'clock so I will stay as long as I can to hear the witnesses.

Again, welcome to the Alaskans who are here to participate in the hearing.

The CHAIRMAN. Thank you, Senator Cantwell.

We have been joined this morning by my colleague, Senator Sullivan, who has, obviously, a great deal of background within this area having served our state as former Attorney General, as well as Commissioner of Natural Resources. It is a pleasure to invite you before the Committee to put your comments on the record and speak, as an Alaskan, on a very important issue to us.

Senator Sullivan.

STATEMENT OF HON. DAN SULLIVAN, U.S. SENATOR FROM ALASKA

Senator SULLIVAN. Thank you, Madam Chair, Ranking Member Cantwell. I very much appreciate the opportunity to testify this morning. I appreciate, Madam Chair, in particular, your leadership on this issue in terms of the oversight and moving forward on ways to improve ANILCA.

I am also, as you mentioned, honored to be here with so many distinguished fellow Alaskans, Senator Coghill, the Governor, many others, Rod Arno.

I think you will hear a common theme from all of them. I have not looked at their testimony, but I think one common theme is going to be no more means no more.

Madam Chair, you talked about how we've done our part, what ANILCA did in terms of setting aside 106 million acres. I mean, I'd like to add to that in terms of what Alaska presents for the country, 70 percent of National Park Service lands, 80 percent of all wildlife refuge lands, 53 percent of wilderness lands, the number two and number one largest national forests, all are in our state. As you said, we have done our part.

You also mentioned that the "no more clause" is in ANILCA and you mentioned Section 101D, but as you know, Madam Chair, there are other provisions of ANILCA that talk to the "no more clause." Let me provide a couple other examples.

Section 1326 says, "No further studies of the Federal lands in the State of Alaska for the single purpose of considering the establishment of a conservation system unit, national recreation area, national conservation unit or for related or similar purposes shall be conducted unless authorized by a further act of Congress." That is in the law.

Another part of the law, "No further Executive Branch action which withdraws more than 5,000 acres in the aggregate of public lands within the State of Alaska shall be effective without an affirmative vote of Congress." The law is the law. That is the "no more clause." What has happened since? Broken promises after broken promises. As you mentioned that was the key compromise. Year after year radical outside environmental groups and their allies push for more ways to lock up Alaska. And the Obama Administration, in particular, has readily and consistently attempted to eviscerate and ignore ANILCA's "no more clause," as you mentioned, Madam Chair, 40 million acres attempted under this Administration to withdraw.

The President recently announced he was ordering his agencies to manage 12 million acres of ANWR as wilderness. That is not allowed under the law. He also restricted access, as you mentioned, to 50 percent of the National Petroleum Reserve of Alaska, again, not allowed under ANILCA. His wildlands initiative early in the Administration was a blatant attempt to lock up more land in Alaska in violation of ANILCA. As you know there has been regulation after regulation to limit access and ability for Alaskans to practice hunting, trapping, fishing, activities that literally put food on the table of Alaskans.

Likewise our miners continually fight for access to our lands.

And I think it's important to remember, these are our lands. They're not the Department of the Interior's or BLM's. We, the people, own these lands.

Most recently, as you mentioned, a moose hunter from Alaska has had to resort to spending hundreds of thousands of dollars on a lawsuit which will be heard by the U.S. Supreme Court next month to try to force the Federal Government to keep the promise that was made in the plain text of ANILCA.

And we wonder why Congress and the Federal Government have such low approval ratings. When it comes to ANILCA, the Federal Government is a serial cheater.

Everywhere I go in Alaska people come up to me to tell me that the lands that should be theirs under ANILCA are being blocked. I believe that's just wrong. There's a better way the Federal Government and the Executive Branch should keep its word. I know that this Committee will be looking at all recommendations to help make the promise and compromise of ANILCA the opportunity that it should be for all Alaskans.

Thank you, Madam Chair.

The CHAIRMAN. Thank you, Senator Sullivan. Know that this is something that we will continue to work on, and I appreciate your support in that endeavor as well.

I know you have lots going on this morning, so thank you for taking the time this morning.

Now I would like to call up our panel of witnesses. We are going to squeeze you all in at the table, and as you come forward I will go ahead and begin the introductions.

We have been joined this morning by the Governor of the State of Alaska, Governor Bill Walker. Governor Walker has been serving us as Governor of the state since his election last year in 2014.

Why don't you all come forward and be seated?

The Governor was born and raised in Alaska. He was raised down in Valdez. He has worked as a carpenter, as a teamster, and as a laborer on our Trans-Alaska Pipeline. He received his law degree from the University of Puget Sound School of Law and obtained his Bachelor of Science from Lewis and Clark in Oregon. The Governor and I have had opportunities to be working together, not only in his capacity as Governor, but prior to the time that he took over as the CEO of the State of Alaska. I appreciate his leadership in many, many ways.

Governor Walker will be followed by Senator John Coghill. Senator Coghill has been an Alaska State Senator since 2009. He has been the Senate Majority Leader of the Alaska State Senate since January 2013. We both came into the legislature together as members of the State House in 1998. Senator Coghill also served his country in the United States Air Force. He is a true leader, not only for Interior Alaska, but for the state, and I am pleased to have you here as a friend and colleague. So, welcome to you.

Following Senator Coghill, Mr. Rod Arno will present his testimony. Rod is the Executive Director of the Alaska Outdoor Council. This is an organization that is dedicated to the preservation of outdoor pursuits in Alaska, hunting, fishing, trapping and public access and conservation of the habitats upon which these activities depend. He has been a strong leader and a strong voice in so many of these areas. We appreciate your leadership, and we thank you for making the long trek back from home.

Next we have Ms. Valerie Brown, and we welcome her to the Committee. She is the Legal Director for the Trustees of Alaska. This is a nonprofit, public interest, environmental law firm which represents conservation and tribal interests on environmental and natural resources that face our state. It is a pleasure to have you before the Committee, welcome.

Next we have Mr. Joshua Kindred. Josh is the Environmental Counsel for the Alaska Oil and Gas Association which is a nonprofit, trade association representing the majority of oil and gas exploration, production, transportation, refining and marketing activities within the state. He has a big job. We appreciate what he does.

Next we have Ms. Anna Seidman. Anna is the Director of Litigation for Safari Club International (SFI). SFI is a nonprofit organization whose mission includes protecting the freedom to hunt and promoting wildlife conservation worldwide, not just in the State of Alaska, of course. So we welcome you to the Committee.

The final member of our panel is Mr. J.P. Tangen. J.P. is no stranger to Washington, DC, and no stranger to these issues. He is an attorney who has been practicing in the State of Alaska for 35 years. He has long represented the Alaska Mining Industry, but he has also served as the Alaska Regional Solicitor for the Depart-

ment of the Interior. He has also been the Co-Chairman of the Alaska Miners Association Federal Oversight Committee. J.P. is the author of d(2) Part 2, a publication that I have made available to all members of the Committee and would certainly urge their review and consideration. Not that I am trying to sell any books for you, J.P., but it really does lay out so much of the history of this incredibly important act that we are looking to today.

With that, Governor Walker, if we can begin with you?

I know it is difficult, but I am going to try to ask each of you to keep your comments to five minutes. Your full testimony will be included as part of the record. Once all of you have concluded your remarks we will have an opportunity for questions and the follow up answers.

So again, welcome to the Committee. Thank you for being here. Governor Walker.

STATEMENT OF HON. BILL WALKER, GOVERNOR, STATE OF ALASKA

Governor WALKER. Thank you very much for this opportunity, Madam Chair Murkowski, Senator Cantwell, members of the Committee. As the Governor of Alaska I am honored to present today comments about the ANILCA.

I was born in Alaska, as you mentioned. I remember very well the day of statehood. I was seven years old. We were in Delta Junction. We went into the A&W Root Beer stand. It was nobody's birthday, so I knew it was a big deal, something had happened really big. It is about 150 miles as the crow flies from Cantwell, Alaska. So at some point I hope you'll have a chance to visit Cantwell.

You know, the excitement of becoming a state was one that we had a hope of self-sufficiency. It was not unanimous that Alaska came in as a state. Many were concerned that we could not make our way.

We were told you will not have an income. You will not have the kind of infrastructure the other states have. You need to live off the resources.

As part of that, the Statehood Compact was entered into, and the Statehood Compact is unique to Alaska. It says that in Alaska we cannot sell the resources in the ground. We must live off the resources. That was the deal we made.

There's a reversionary clause in the Statehood Compact that says if you do sell the resources in the ground that land reverts back to the Federal Government. So we've been very careful to not sell resources in the ground. So it would be like a business who was having a difficult time, you had a warehouse, you'd sell the warehouse if you couldn't find a tenant or you couldn't get access. We can't do that. We're very unique in that regard we have to live off the land.

So therefore we paid close attention in 1980 when ANILCA was entered into. Two key provisions of ANILCA, and Senator Sullivan has gone through them well, as you have Madam Chair. But one is, was compromise. That was a compromised piece of legislation. It was to bring balance. And the balance, I mean, it couldn't have been clearer than when President Carter talked about 100 percent

access to offshore, 95 percent access to onshore. Today we have one percent access to onshore.

We're trying to survive the downturn and resource, it's very important to our economy. And through a pipeline, I know in this city there's lots of discussion about pipelines. Let me tell you about our pipeline.

I wear a lapel pin of Alaska with a pipe in it. And the only thing wrong with the Trans-Alaska Pipeline is that it is three quarters empty. It's three quarters empty because, largely because, of lack of access to our resources.

You know, the 1002 section of the Coastal Plain of ANWR, the 1002 comes from ANILCA, from the 1002 section. It's a specific exemption that said you can have, there's a process to have access to this particular region because they knew then, they certainly know now, it is a very productive petroleum opportunity for our nation and for our state. It makes up eight percent of ANWR.

With the shift of the oil now, we need access to one half of that, the Western half. That's four percent, four percent of that area that is set aside.

So, you know, when I deal with budget deficits, when I dealt with laying off 600 employees last year, we're looking at significantly more layoffs. I look at not being able to fund certain things we wanted to fund in our great state.

And I look at that oil that is literally within 50 miles of an oil pipeline, an existing oil pipeline, not one that needs to go through any process to be built. It's there. That's very frustrating that we cannot have access to four percent of that area that was specifically set aside to be evaluated for resource development, knowing full well.

Much has happened since the Trans-Alaska Pipeline both in the way of technology advancement and in other development around the world. Methods of extraction are now available that were not available before. The migration of caribou herds are different than they were before. So that needs to be looked at again, and we plan to do that in a very aggressive manner.

One thing I must say is that the makeup of Alaska has changed since we became a state. The Alaska Native Regional Corporations are major, major players in our state in every facet of it and certainly in the business sector. You don't go to the North Slope of Alaska without seeing the incredible accomplishments of those corporations in our state. So they are significantly impacted by ANILCA in every way as well.

We haven't gotten the benefit of the deal. The deal was it was a compromise and it was supposed to be balanced, and it hasn't been. The "no more clause" has not been honored. We have not had the access that we should have had.

So I have my own interpretation of the "no more clause" that I plan to use every day I am in office to make sure Alaska has access to our timber, to our mining and to our oil and gas development.

Thank you very much for this opportunity.

[The prepared statement of Governor Walker follows:]

STATE CAPITOL
P.O. Box 110001
Juneau, AK 99811-0001
907-465-3500
fax: 907-465-3532

Governor Bill Walker
STATE OF ALASKA

550 West Seventh Avenue, Suite 1700
Anchorage, AK 99501
907-269-7450
fax 907-269-7461
www.Gov.Alaska.Gov
Governor@Alaska.Gov

Testimony before the U.S. Senate
Committee on Energy and Natural Resources

The Alaska National Interest Lands Conservation Act

December 3, 2015

Submitted by: Governor Bill Walker, Alaska

Testimony on behalf of:
The State of Alaska

I. Introduction

Alaska is a place of superlatives. We are the largest state in the union; the only Arctic state; the northernmost, westernmost, and easternmost state. We make unique contributions to the nation's interests, and we are proud of those contributions.

I was seven years old when Alaska became a state and achieved our dream of self-governance. The debate about whether the territory of Alaska should be granted entry into the union turned on one question: Could a State of Alaska have a viable, self-sustaining economy?

The answer was yes – through development of our resources. Implicit in the Alaska Statehood Compact is a directive to the State to develop its resources. The Compact prohibits Alaska from selling our subsurface mineral rights. Development rights can be leased, but ownership must stay with the State. The message from Washington, DC, was clear: we were to develop our resources to establish a viable economy and become self-supporting.

Alaska has fulfilled our part of the bargain. We have developed our resources for the maximum benefit of the people, and with great care to protect our environment. We have used our resource income to build roads and schools and to provide services the rest of the country takes for granted, such as running water and electricity. In recent years, we have been less reliant on federal aid than the majority of states.

The Obama Administration has wisely embraced an "all-of-the-above" energy strategy. Renewable energy, energy efficiency, natural gas, and oil are all part of it.

Alaska has a role to play in each of these areas: we are a testbed for renewable energy and microgrid technologies and a leader in energy efficiency technology and application. We are working hard to

develop our vast natural gas reserves. And we are committed to providing the nation with responsibly produced domestic oil.

We have the supply. We have the infrastructure. We have the expertise and the know-how. We need the access. But we now have an 800-mile pipeline that is three-quarters empty, because we cannot get access to our resources.

Responsible development of Alaska's oil is a win-win-win: It reduces our nation's dependence on unstable foreign regimes. It makes use of existing infrastructure to minimize the footprint of new development. It helps Alaska remain independent and self-sufficient, reducing our reliance on federal support.

In recent years, there is growing recognition that some things we thought were free are not necessarily so, such as clean air, fresh water, and the ability to absorb carbon dioxide. These are all things Alaska provides in abundance. For example:

- 66 percent of all National Park land in the nation is in Alaska.
- 86 percent of all Fish and Wildlife Service land is in Alaska.
- The nation's two largest national forests are in Alaska.
- Alaska's glaciers and waters hold an estimated 40 percent of the nation's surface water.
- 63 percent of Alaska is federally owned. Outside of Alaska and 11 western states, the average is 4 percent federal land ownership.

Alaska is making an outsize contribution to our national interests. This contribution should not come at the cost of our people and our future.

The Alaska National Interest Lands Conservation Act (ANILCA) promised a balance between conservation in the national interest and satisfaction of Alaska's economic and social needs. It is time to return to a better balance between the nation's and Alaska's interests.

II. Overview

In 1980, ANILCA added 100 million acres of federal conservation system units (CSUs) within the State by expanding existing units and creating new ones. The 200-plus page Act included numerous provisions intended to balance the nation's conservation interests with the economic and social needs of Alaska. The State has struggled to ensure the balancing provisions in ANILCA are consistently recognized in the multitude of federal land management plans, policies, and regulations that impact vast areas of federal land in the state.

This testimony identifies issues and offers suggestions for ensuring the balance promised in ANILCA is maintained as intended by Congress.

III. Implementation of ANILCA's Balancing Provisions at Risk

The purpose of ANILCA was to establish and maintain a balance between conservation and development of Alaska's lands. To that end, ANILCA protects Alaska's wilderness, scenic, and cultural values; preserves opportunities for rural Alaskans to maintain a subsistence way of life; and provides for some forms of development to meet the economic and social needs of Alaskans. The final Act is often described as "compromise legislation." As such, successful implementation requires effective cooperative federal and state relationships.

One challenge is that nationwide federal regulations and policies are currently being applied in Alaska without regard for ANILCA's balancing provisions, and without adequate consideration of the consultation and cooperation requirements in ANILCA. The result is upsetting the balance between conservation and development that ANILCA sought to establish.
Issues include:

- Federal interpretation of ANILCA's consultation and cooperation provisions has devolved from a meaningful exchange of information and ideas between federal and State agencies to unilateral notification and positional briefings by federal agencies.

- Many federal land managers are unfamiliar with Alaska and ANILCA's unique provisions that modify national management policies and practices.

- Federal agencies are implementing a multitude of new and revised national policies without taking ANILCA or Alaska's unique context into consideration.

- Federal management planning efforts that affect Alaska include:

    - The Arctic National Wildlife Refuge plan revision that resulted in wilderness and wild and scenic river recommendations that block oil and gas exploration and development in the coastal plain, an area explicitly designated under ANILCA for consideration of its oil development;

    - The Gates of the Arctic National Park and Preserve plan amendment that proposes to implement a national policy to manage lands that have wilderness characteristics as if they were designated as wilderness by Congress; and

    - Tongass and Chugach National Forest management plans currently undergoing revision ignore key provisions in ANILCA that prohibit new wilderness and wild and scenic river reviews in Alaska unless authorized by ANILCA or a further act of Congress.

- The Bureau of Land Management is revising three large management plans. These planning areas already include conservation designations under ANILCA. Yet the plans propose large administrative designations and other actions that conflict with ANILCA's provisions for use and access and reduce the availability of multiple use land that was factored into ANILCA's balance.

- ANILCA flowed from the Alaska Native Claims Settlement Act of 1971 and ensured access for traditional activities and subsistence use on federal lands. Over time, increasingly restrictive federal management has undermined this promise.

- Public Land Orders stemming from the Alaska Native Claims Settlement Act of 1971, many of which fulfilled their purpose when ANILCA designated over 100 million acres of conservation system units, remain in place. This further upsets the balance in ANILCA and interferes with the State's ability to complete its land selections under the Statehood Act.

- The federal land management agencies that manage ANILCA lands are each developing national policies that ignore the ANILCA provisions prohibiting new wilderness and wild and scenic river reviews in Alaska unless authorized by the Act or an act of Congress. The agencies are requiring agency-directed reviews and the application of protective measures until Congress takes action on any recommendations, or indefinitely, if no action is taken by Congress. In effect, the agencies are making new wilderness and wild and scenic river designations in Alaska by managing lands as if they had been granted such status.

- Despite ANILCA's assurances that the State's limited infrastructure and the needs of remote isolated communities would be appropriately considered, the Department of the Interior has repeatedly rejected three decades of impassioned but reasoned requests from the residents of King Cove for a one-lane gravel road across the Izembek National Wildlife Refuge to facilitate access to the all-weather airport at Cold Bay for emergency medical evacuations.

V. Improving Implementation of ANILCA

It is essential that the compromise provisions in ANILCA be recognized and considered in federal plans, policies, and regulations. Currently, depending on their experience and longevity in Alaska, federal employees have a mixed understanding of ANILCA, resulting in inconsistent interpretations of the law.

Suggestions for an improved cooperative working relationship include:

- Reinstitute the Alaska Land Use Council (ALUC). The Council was in place for 10 years, from 1980 to 1990. Its purpose was to facilitate cooperation and help resolve problems between the federal and State governments and Alaska Native corporations as ANILCA was

implemented. Bringing back the Council could help to bridge the gaps in State and federal agency efforts to fulfill the responsibilities in ANILCA.

- Provide comprehensive education on ANILCA to federal and State agency employees. The nonprofit Institute of the North provides training to federal and State employees, conservation groups, Native corporations, tribal representatives, and industry members. The program has been approved by the Department of the Interior. We recommend this program or equivalent training become a mainstay or requirement for all federal employees involved in Alaska land management.

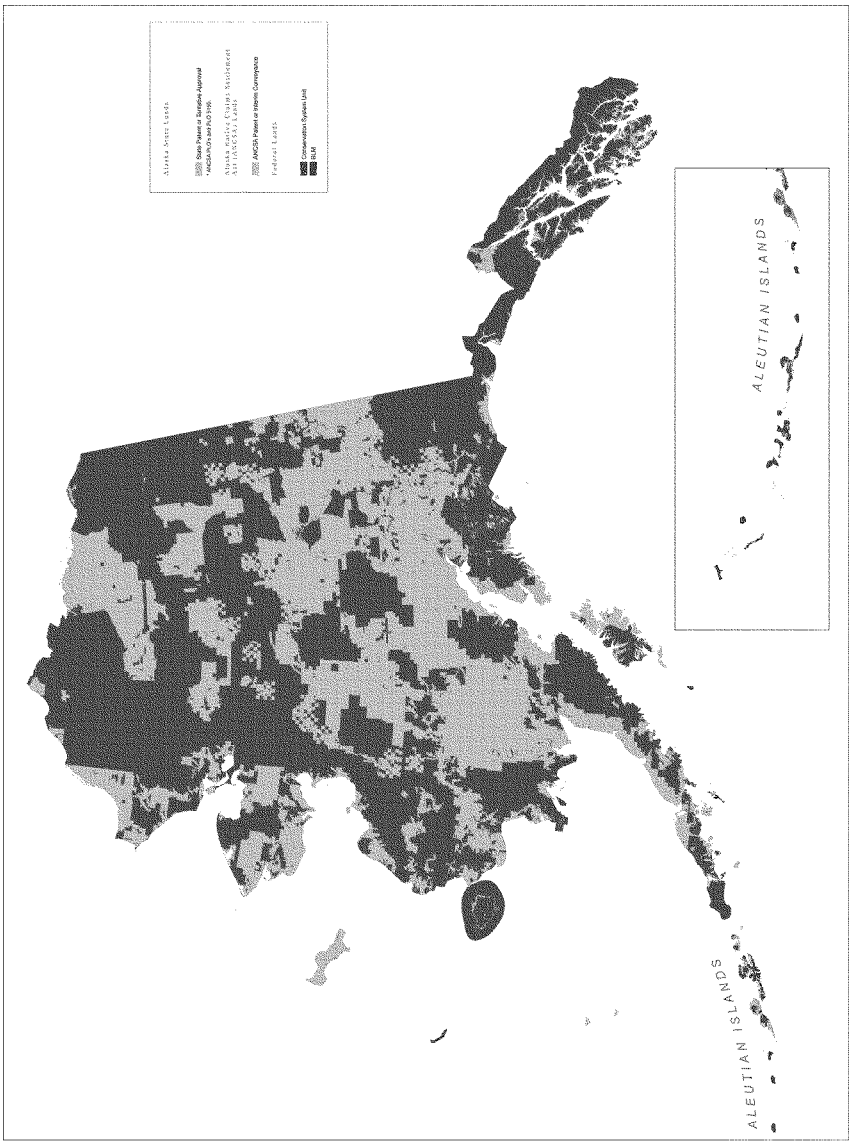
V. Summary

ANILCA promised a balance between conservation in the national interest and Alaska's economic and social needs, including consideration of access to federal onshore land for responsible oil development. Alaska is diligently working to develop its resources as directed by the Alaska Statehood Compact and in the interests of Alaskans and the nation. Failure to fulfill the promise of ANILCA is limiting the State's ability to fulfill its potential.

The federal government manages approximately 28 percent of the total land area of the nation, or more than 635 million acres. In Alaska, approximately 60 percent of the total land area of the state, over 224 million acres of land, is owned by the federal government and managed by four federal land management agencies: the National Park Service, U.S. Fish and Wildlife Service, Bureau of Land Management, and the U.S. Forest Service.

The U.S. Fish and Wildlife Service manages approximately 76 million acres of land in Alaska, which comprises 86 percent of all lands managed by the agency nationwide. The National Park Service manages approximately 52 million acres of land in Alaska, or 66 percent of all lands managed by the agency nationwide. Hence, broad nationwide land management policies disproportionately impact Alaska.

It is therefore essential that the balancing provisions in ANILCA be recognized and considered in federal plans, policies, and regulations, including consideration of the conditions and uses that are unique to Alaska. Educational opportunities and meaningful consultation are also essential elements in ensuring the successful implementation of ANILCA.


Alaska State Lands
State Patent or Surveying Approval
*ANCSA/PLO's and PLO 5199.
Alaska Native Claims Settlement
All (ANCSA) Lands
ANCSA Patent or Interim Conveyance
Federal Lands
Conservation System Unit
BLM
ALEUTIAN ISLANDS
ALEUTIAN ISLANDS

The CHAIRMAN. Thank you, Governor. Again, we appreciate not only you being here today, but being able to lend a historical perspective that I think is important for others to understand.

Another individual who has a great historical perspective is Senator John Coghill. Welcome to Washington, DC.

STATEMENT OF HON. JOHN COGHILL, MAJORITY LEADER, ALASKA STATE SENATE

Mr. COGHILL. Thank you, Senator Murkowski and Senator Cantwell, thank you for being here and Senator Gardner.

It is my pleasure to speak not only as a state senator but I'm also voicing for the Citizens Advisory Commission on Federal Areas. And the testimony that you'll have before you is a compilation of things that we've heard from citizens all across Alaska coming to the Commission.

But for me, born and raised in Alaska, in the territory of Alaska coming into statehood I was nine years old. My dad was part of the Constitutional Convention. And there was great expectation that came from statehood and one of them was the compromise, in Congress here was, that we would be living off our land as the Governor said.

We put together a wonderful constitution that has in it the natural resource article that is unique to American constitutions. We have been good stewards of what we were set out to do, but Congress ratified this constitution saying you can do that.

So, as the Governor said, it's a compact that we made with the Federal Government. But along the way in this compact issue we knew we were going to have to settle some Native Land Claim Settlements, and ANCSA came along shortly after we were a state and it rocked the state.

It was a tough compromise even in Congress here, but we did it and we settled with 40 million acres and many, many other issues that came from the ANCSA agreement.

Out of that came this ANILCA law that we would balance the ability of the state to prove its resources for an economy and take care of the national interest, as Senator Cantwell said.

What it effectively did, and for those of you who don't understand how it impacts us in the state, it literally amended the Statehood Compact. So what we've done now is we've put ourselves in a place where if we can't get the promises given to us under ANILCA, our Statehood Compact becomes null and void or raggedy in such a way that it's not recognizable, as the Governor said. And with these broken agreements that you've heard already in testimony today, here's what the compacts, the guarantees and the agreements that have not been fulfilled mean to us.

It's first very disingenuous to a people who had that great expectation. We had this slogan, north to the future. We were going to build a great state.

We still have the opportunities, we have all the tools, but what's happened here is the erosion of our promises given to us at our statehood and the ensuing documents and ANILCA being this now 35-year old document. It's been disrespectful to the people, but it's been disrespectful to the law as well.

We have had agency people through regulation literally able to, with guidance, change the Statehood Compact. This is just not acceptable. So but it's beyond that. It's a cancer to our economy.

We can't get people to make investments in our economy knowing that the regulations are shifting with political wins. It's not now relating to the law as it should be, and so we're appealing that ANILCA needs to go back and take a look at the law and there are suggestions within the document that I'm giving you that is probably easier to read than hearing my testimony.

But it's also strangling opportunity. We have wonderful resources that were promised us to be part of what the 750,000 people in Alaska can build an economy with. We have villages that are literally inholdings in Federal areas that are strangled from the ability to produce an economy because they can't hunt. They can't fish. The transportation system has not been put together as promised by ANILCA.

We have small communities that are literally dying because they can't move forward. We have people who will not invest in those communities for that very reason. They literally have to not only go through the law, but they have to go through a whole series of litigations in order to make any move, mining especially.

I'll give you one example and my time is short. That Fortymile Mining District, they are literally redefining it and putting it in their conservation unit contrary to the laws. So in my testimony you'll see suggestions that can increase our cooperation, bring us back to the law and suggestions to Congress in helping to get the agencies to honor the law.

[The prepared statement of Mr. Coghill follows:]

TESTIMONY BEFORE THE U.S. SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES
HEARING ON THE ALASKA NATIONAL INTEREST LANDS CONSERVATION ACT

December 3, 2015

Testimony on behalf of the
Citizens' Advisory Commission on Federal Areas

Submitted by Senator John Coghill, Commissioner

I. Introduction

In 1981, the Citizens' Advisory Commission on Federal Areas in Alaska (CACFA; Commission) was established by the Alaska State Legislature to monitor and minimize the impacts to Alaska and Alaskans from implementation of the Alaska National Interest Lands Conservation Act (ANILCA). The Commission continues to provide a forum and a voice to those most intimately impacted by the complex mandates and highly discretionary laws, regulations and policies applicable to over 225 million acres of federal land.

CACFA primarily works with individual Alaskans in navigating these rules and policies to safeguard and preserve their rights and interests. The Commission provides a consistent, diverse and updated memory of public engagement with federal agencies in Alaska since ANILCA. Our 12 commissioners and staff work diligently to address the ongoing need to assist and inform the public of federal actions, to examine and comment on those actions to prevent undue encroachment on public uses and to apply and add to our detailed historical understanding of how ANILCA's many compromises are actually experienced by the public.

ANILCA was conceived through a clause in the 1971 Alaska Native Claims Settlement Act (ANCSA), Section 17(d)(2), which directed the Secretary of the Interior to withdraw up to 80 million acres of existing public lands in Alaska for consideration by Congress as new or expanded National Wildlife Refuges, National Parks, National Forests and/or Wild and Scenic Rivers. What took place between the passage of ANCSA in December 1971 and the passage of ANILCA in December 1980 was truly extraordinary. The consideration of these designations, along with the effect on subsistence uses, resource development, economic growth, transportation and infrastructure, hunting, fishing and trapping, and Alaskan traditions, cultures and lifestyles, was rigorously studied and heavily debated. Various coalitions, stakeholders, industries and interest groups descended on the "d2 debates" to lobby for favored provisions and conservation areas. Congress held extensive field hearings throughout Alaska to take testimony and gain insight into the "Alaska context." The resulting statute was a hard-fought, comprehensive and highly nuanced culmination of these efforts, which fundamentally changed the way the federal government manages its public lands.

Congress began its review of Alaska lands by looking at the roughly 250 million acres of general public lands that had been withdrawn from other uses and carefully considered which of those acres should be set aside as conservation system units and under what terms, balancing the national interest with the economic and social needs of Alaska and its citizens. Even though most of the land classifications used were familiar ones (e.g., parks, refuges, forests, wilderness, wild and scenic rivers), ANILCA made them new again, with management direction intended to be unique to Alaska. And, even though the federal land management agencies had long histories and pre-existing authorities, ANILCA served as an "organic act" for just how these enormous areas would be managed. Specific provisions addressed critical deviations from current laws and management objectives, while more general provisions expressed Congressional intent on how future management would be tempered by this unprecedented balancing act.

Especially considering the enormity of what was accomplished here 35 years ago, and no doubt thanks to the intense studies, negotiations and deliberation which preceded it, ANILCA has truly withstood the test of time. That said, this "great compromise" between the many participants has been greatly compromised in many ways. Capturing 35 years in one written testimony is as impossible a task as it is inadvisable. Thus, what follows here are brief overviews and targeted insights into **four major implementation challenges**, each of which ANILCA sought to avoid:

- the demise of meaningful federal-state cooperation and consultation;
- the undermining and loss of substantive balancing provisions;
- the corruption of Congressional intent through agency and judicial misinterpretations; and,
- the disproportionate impact of increasingly centralized and prohibitive management practices.

II. Building and Maintaining Cooperative Working Relationships

ANILCA oversaw the thorny marriage of multiple competing interests, and Congress recognized early on that, sometimes, meaningful cooperative engagement should be a requirement. Further, due to the sheer size of designations, over thriving communities and interlaced with private, Native and state lands, federal land management would impact Alaska in novel and severe ways. As such, Congress provided for affected user involvement and interagency cooperation as absolutely critical to realizing the true promise of ANILCA.

A number of provisions require federal agencies to work with the State, including in the development of land use plans and through consultation with the Alaska Department of Fish & Game regarding fish and wildlife. Strong direction for coordination is found in Title XII, which established the Alaska Land Use Council, the Federal Coordination Committee, and directed cooperative land management planning in Bristol Bay. Individuals and groups have also benefited from these provisions, as well as from the vigilance and longevity of CACFA, the State's ANILCA Implementation Program and numerous other entities devoted to agency collaboration and public participation, either established by ANILCA or in response to its sweeping effect.

Unfortunately, many cooperative mechanisms have either been dissolved or completely disenfranchised. Less formal arrangements have also become strained recently, as administrative policies and goals fail to account for the unique Alaska context. While Alaska-based federal agency staff are approachable, helpful and invested in sound management, a multitude of considerations, positions, personalities and variables frequently keep us from working together to resolve issues outside of established venues and mandates. The following recommendations aim to promote a return to meaningful cooperation and its inimitable and ample benefits.

Alaska Land Use Council

The concept of a cooperative interagency body was initially recommended by ANCSA's Joint Federal-State Land Use Planning Commission and was included as part of a "consensus" bill following the introduction of H.R. 39. Developed by Alaska Governor Jay Hammond, Representative Don Young and Senator Ted Stevens, the bill created a "lands commission" to foster cooperation and coordination between Alaska's land and resource managers. This concept made it through many Congressional debates and into the final bill as Section 1201, establishing the Alaska Land Use Council (ALUC), its membership and its functions.

The ALUC provided an opportunity for in-person consultation, cooperation and coordination among high-level Alaskan decision-makers contemplating the management of federal lands and public uses. Membership included the heads of six federal agencies, four state agencies and two representatives from the Alaska Native community. The council was co-chaired by a Presidential appointee and either the Governor of Alaska or his delegate.

For ten years, the ALUC sought balanced consideration of ANILCA implementation issues by bringing federal, state and Native leadership to the table to oversee and collaborate on both discrete and broad matters. In 1989, pursuant to ANILCA Section 1201(l), the council submitted a report to Congress recommending the ALUC continue operating with certain changes and improvements, based on experiences during the preceding decade. A survey attached to the 1201(l) report found that over 80% of respondents and organizations were in favor of a cooperative interagency organization that dealt with Alaska land and resource issues. Unfortunately, the report's recommendations were not acted upon by Congress, and the council sunsetted in 1990.

Many of the ALUC's most significant functions are sorely missed and could be central to improving federal-state-public relations in land and resource management in Alaska. Those functions include fostering cooperative and consistent management and planning, improving agency responsiveness to public input and concerns, resolving interagency and interest group conflicts, providing for information exchange and dialogue, maintaining and promoting the unique Alaska context, and furthering economic growth and prosperity through informed and respectful deliberation.

CACFA strongly encourages this Committee to explore reinstatement of the ALUC, or a similarly constituted and empowered entity, taking into consideration the insights and recommendations that were made in the council's 1989 report. The Land Use Advisors Committee was also an important compliment to the ALUC, as the private citizens on that committee regularly gave the career bureaucrats on the council some much needed perspective. CACFA and the committee actually shared a member for most of the time it operated, and several joint meetings were held. We would welcome the opportunity to realize the exceptional benefits of that collaboration once again.

ANILCA Guidance

Congress incorporated significant direction throughout ANILCA to preserve the unique Alaska context in management planning and decision-making on federal lands. Through the simple passage of time, due to staffing turnover and with the increasing abundance, complexity and overlay of national laws, regulations and policies, this direction has been forgotten and/or incrementally disregarded. One has only to compare regulations and land use plans put forth today with those from the 1980s, when meaningful cooperative mechanisms were functioning and the distinction of ANILCA and its special provisions were consistently acknowledged and fresh in everyone's minds.

Before we find ourselves even further removed from a contemporaneous understanding of ANILCA, before even more rules and policies are developed lacking any reference to or accommodation of ANILCA, and before the rest of our most experienced state and federal staff members retire or leave Alaska, we need to recognize and replace what has been lost and provide for the future.

CACFA encourages this Committee to direct federal agency staff and other upper-level Directors and policy makers with responsibilities that affect land management in Alaska to attend comprehensive ANILCA training; Department of the Interior-approved training is currently provided in Alaska by Institute of the North. CACFA further requests the Committee strongly encourage federal agencies to work with the State and the public in crafting regional guidance that implements ANILCA and, at a minimum: incorporates the unique Alaska context that is missing in national policies and regulations; applies statewide and to all federal planning processes; identifies all applicable ANILCA provisions and associated regulations (e.g., closure processes, access authorizations); and, provides consistent interpretations of those provisions for planning purposes and plan implementation.

III. Trending Away From the Balance

ANILCA has survived five federal administrations and 18 sessions of Congress and, while it has been frequently amended, it is largely intact and little the worse for wear. However, its compromise provisions have suffered heavy losses along the way. Most of the guarantees and influence Alaskans started out with have been depreciated or summarily annexed. It would be one thing to say our current situation is simply one full arc of a political pendulum, and that we have but to weather the passing storm to pick up the pieces. Unfortunately, far too many intrusions and unwarranted, unilateral decisions have accumulated over the years and form a barrier to ever fully rebuilding and restoring the balance Congress intended in ANILCA (absent costly, uncertain and time-consuming litigation).

To understand where ANILCA's balance rests today, and to contemplate how it might be restored, it is important to understand its foundational principles and how it came into being. In October 1978, Congress adjourned without passing legislation or extending ANCSA's December deadline for the termination of any undesignated withdrawals. Sensing a need to push the issue along, on November 16, 1978, Secretary of the Interior Cecil Andrus used his then brand-new "emergency withdrawal" authority under Section 204(e) of the Federal Land Policy and Management Act (FLPMA) to withdraw 110,750,000 acres in Alaska from mineral entry and selection for three years. Days later, on December 1, 1978, President Jimmy Carter used his executive authority under Section 2 of the Antiquities Act to set aside 56 million acres into 17 new national monuments. Additional threats to use (and the subsequent1980 use of) FLPMA's authority to withdraw millions of acres for up to twenty years served as an incentive to draw everyone to the table to finalize a bill that would settle Alaska's land management issues once and for all.

Unnerved by this unprecedented "land freeze," and recognizing the importance of a consolidated Alaskan voice, Governor Hammond and the Alaska Legislature worked with a wide array of constituent groups to agree on certain essentials, described as "consensus points", to ensure our needs were met. The Alaska Federation of Natives and ANCSA Corporations joined the State in developing and then promoting these consensus points during the final negotiations with Congress.

All of the consensus points were addressed with the passage of ANILCA, yet all have since experienced varying degrees of erosion. Some are just barely recognizable, most have been interpreted away and none are given deference anymore. The following subsections offer just a few examples of how these concessions are sidelined or disregarded.

THE SEVEN "CONSENSUS POINTS"

Based on Legislative Resolve #2 from the 1979 Alaska State Legislature

1) Revoke all 1978 monuments and executive withdrawals
2) Grant and satisfy full land entitlements to the State and Native Corporations
3) Guarantee access across federal lands to state and private lands
4) State management of fish and game on all lands
5) Conservation boundaries should exclude economically important natural resources
6) Continue traditional land uses on all lands
7) Preclude any administrative additions or expansions of conservation units

Land Use Withdrawals

The 1970s-era Public Land Orders (PLOs) that withdrew lands in order to implement ANCSA and ANILCA are still in place, despite having fulfilled their purpose, and have significantly interfered with the State's ability to complete its land selections, as guaranteed in the Alaska Statehood Act. These so-called "17(d)(1) withdrawals" are enormous in scope, covering almost 160 million acres of federal lands in Alaska, and frequently have several layers of withdrawals over the same acre of land. Certain concessions have allowed withdrawn lands to be selected by the State and ANCSA Corporations, but the lands cannot be conveyed until the withdrawals are lifted, during which time multiple public uses of the land are also prohibited according to the extent of the applicable PLO(s).

The Bureau of Land Management (BLM) addressed this complex issue in a 2006 report to Congress, tellingly required by Section 207 of the Alaska Land Transfer Acceleration Act of 2004. The statute required the BLM to report to Congress on which of these withdrawals should be lifted. In its report, the BLM referred to the withdrawals as "*an unnecessary encumbrance*" and recommended lifting 95% of them as "*consistent with the protection of the public's interest*." Withdrawals on just over 6.7 million acres were recommended for retention only "*until another withdrawal is put into place*."

To put an even finer point on the need to lift 17(d)(1) withdrawals, recent federal agency planning efforts have attempted to retain and "repurpose" these withdrawals. Management plans seeking to limit public uses for ambiguous conservation purposes are using the outdated withdrawals to do so, circumventing Congress' prohibition on administrative withdrawals in ANILCA, negating Congress' intent provided through Section 207 of the Alaska Land Transfer Acceleration Act and further frustrating the ability of the State to receive its lands and the public's ability to use them.

For example, most 17(d)(1) withdrawals prohibit mineral entry, to prevent encumbrances on the land during selection, conveyance and/or designation. If a draft land use plan wants to limit mineral entry, which is primarily being done to protect wilderness character or sensitive habitats, an existing 17(d)(1) withdrawal is used to implement that requirement. In actuality, a *new* withdrawal would need to be imposed, because the use is only coincidentally withdrawn under the outdated 17(d)(1) withdrawal. A withdrawal and its intended purpose are not severable, meaning a new withdrawal is required when an area is closed to entry for a different purpose. In accordance with Section 1326(a) of ANILCA, new withdrawals of a certain size must be presented to Congress for approval.

CACFA recommends this Committee request the Secretary of the Interior to implement the 2006 report's recommendation to lift these comprehensive and obsolete 17(d)(1) withdrawals. Previous federal resource management plans have reviewed and recommended lifting them, and the Alaska State Legislature passed a resolution in 2015 formally making the same recommendation. To our knowledge, the Secretary has taken no action on these recommendations. The BLM Alaska State Office should be directed to work through the national office and the BLM Director to complete the process of lifting these withdrawals consistent with Congressional intent for federal land management in Alaska and to facilitate the final and long overdue resolution of the State's land entitlements.

Administrative Designations

Consistent with the seventh Consensus Points (preclude administrative additions or expansions of conservation units), which was a direct reaction to the sweeping Executive withdrawals in 1978, ANILCA required a Congressional decision in addition to the administrative decision that a large scale withdrawal is warranted in Alaska, or that conservation system units, including wilderness areas and wild and scenic rivers, should be expanded or established.

Section 101(d) provides an overall intent statement, noting Congress believed it had thought through the conservation versus development balance comprehensively and had arrived at a fair solution regarding the disposition of federal lands in Alaska which would not need to be revisited. Congress further clarified in Section 1326(a) that any Executive Branch action which withdraws more than 5000 acres in Alaska would require notification to both Houses of Congress before any such withdrawal would become effective, and that the withdrawal terminates unless Congress passes a joint resolution of approval within one year of that notification.

Additionally, Section 1317 provided a one-time authorization for the U.S. Fish and Wildlife Service (FWS) and the National Park Service (NPS) to conduct wilderness reviews under the Wilderness Act. Those reviews were done in the 1980s during development of the first management plans for refuges and parks in Alaska. No action was taken on the recommendations that stemmed from these reviews. Even so, studied and recommended lands are still being managed by these agencies to protect

wilderness character and, despite intentional prohibitions in Sections 1317 and 1326(b), the agencies continue to evaluate and recommend additional areas for potential designation as wilderness.

Only in Section 1320 was one agency, the BLM, allowed to identify areas in Alaska suitable for designation as wilderness, and to make recommendations "from time to time." Section 1320 also specifically exempted any application of FLPMA Section 603, including the direction to manage recommended lands to the "non-impairment" standard while awaiting Congressional action. This means, should the BLM go through the study and recommendation process, there would be no discernable impact or changes to land management while Congress debated the merits.

However, while no Secretary of the Interior since 1980 has chosen to exercise its Section 1320 wilderness study authority in Alaska, the BLM has instead been studying lands for "wilderness character" and effectively managing them to a "non-impairment" standard, refusing to acknowledge the very purpose of Section 1320 and its sidebars. As described earlier, this and other conservation-oriented management objectives are frequently facilitated through the "repurposing" of 17(d)(1) withdrawals, resulting in a patchwork of *de facto* designations that can be managed even more restrictively than conservation system units established by ANILCA.

The self-administered authority federal agencies have assumed to make decisions regarding expanded and additional designations has significantly upset the careful balance Congress created in ANILCA and results in untenable embargos on planning for public land use and economic investments in Alaska. The following examples highlight two relatively recent and creative work-arounds which undermine Congress' intent to both reserve designation decisions for itself and to govern the process associated with making wilderness recommendations.

BLM Areas of Critical Environmental Concern

Through designation of Areas of Critical Environmental Concern (ACEC), a BLM management tool established under FLPMA, public use, access and resource development in Alaska can be curtailed, prohibited or held hostage through application of agency policy, developed and maintained without a public process, Congressional oversight or any means of accountability. Thanks in large part to the repurposing of obsolete 17(d)(1) withdrawals, ACECs can easily be managed more restrictively than conservation system units established under ANILCA, including wilderness. If Congress refused to grant any agency the authority to establish conservation system units, witnessing agencies claim an authority to establish *even more restrictive* designations is as incredible as it is frustrating.

Moreover, CACFA believes the use of ACECs in Alaska is also operating well beyond Congressional intent in FLPMA. The application of policy-based, wholly internal designation criteria has been highly subjective and scantily justified, particularly in light of the resulting decreased availability of enormous areas of public lands and the BLM's mandate to manage lands for multiple and non-conflicting uses. The criteria used to designate ACECs make no provision to incorporate or demand sound science or a detailed and thorough explanation of need. This unilateral and overly employed approach to land use designation ignores the ecological, social and legal context in Alaska, and is strongly reminiscent of the "land freezes" which prompted Congress to require significant restraint.

Further, most if not all user limitations proposed in ACECs could be addressed through BLM's existing management tools and frameworks; therefore, the BLM frequently fails to credibly assert any "*harmful effects*" requiring "*special management attention*" in its proposals, both of which are required under the ACEC policy. For example, significant capacity to mitigate concerns is housed in BLM's permitting and leasing authorities. Exploration and development can be managed through terms, conditions and stipulations in a permit or lease or any of a number of standing requirements, including operations plan approvals, reclamation and bonding.

CACFA acknowledges some user limitations *do* require designation, but such management prescriptions should accompany at least some targeted management necessity, and be limited by it. BLM policy provides that the "*size of a proposed ACEC shall be as necessary to protect . . . the important and relevant values within the context of the set of management prescriptions for public lands in the vicinity.*" Thus, if designation is *necessary* to protect resource values or provide for certain activities, the ACEC should be limited to the areas where those values are present or to the places where and times in which those activities occur. Yet, ACECs in Alaska can be hundreds of thousands to over a million acres in size, frozen in place through a designation process lacking any meaningful consideration of scale or scope.

BLM Lands with Wilderness Character

While the identification of areas suitable for wilderness designation is consistent with ANILCA Section 1320, this option has never been exercised, largely in deference to the protracted and sensitive negotiations involving all interest groups which led to a balanced amount of designated wilderness in Alaska. CACFA would like to see this entirely warranted forbearance continue. Alaskans lived through the tumult and controversy of ANILCA and should not have to relive that experience and uncertainty with every resource management process. And yet, such a scenario would be preferable to what has been taking place the last few years.

In 2010, then-Secretary Salazar issued Secretarial Order 3310, directing the BLM to identify and designate "Wild Lands." Congress subsequently passed a Continuing Resolution prohibiting the BLM from spending funds to implement the order. Rather than rescinding the order, however, the agency just revised its implementing manuals to identify and protect "lands with wilderness character" instead of designating "Wild Lands." Since then, planning processes have been used to identify these areas, which has included up to 99% of BLM-managed lands in each planning area.

Because these lands are not designated wilderness, none of ANILCA's numerous provisions which would apply in wilderness (e.g., access provisions, cabins, temporary structures, the transportation and utility system process) are being honored. Conversely, restrictive Wilderness Act-style provisions (e.g., prohibitions on roads, structures, commercial uses, mineral entry) are proposed. No general or case-by-case analysis is performed to reasonably evaluate whether detrimental impacts to wilderness character will manifest if a use is authorized or allowed to continue. These blanket prohibitions on uses and infrastructure, simply owing to the decision to manage for wilderness character, is inconsistent with the BLM's mandate to provide for multiple use and sustained yield on the federal public lands. More than that, it contaminates the balance ANILCA created for Alaska.

CACFA acknowledges the goal of identifying and providing for the adequate protection of wilderness values in BLM planning documents. That said, where a planning process finds 99% of the planning area possesses wilderness character, this should be an indication current management is more than adequate. CACFA requests the Committee direct the BLM to exempt Alaska from its "lands with wilderness character" policy (and any other policy with a different name but a similar intent) or prevent funding implementation in Alaska, in order to defend and restore the protections and balance Congress provided in ANILCA.

Access, Traditions and Opportunities

The State's third consensus point requested guarantees for access to the millions of acres of state and private lands interwoven with federal lands throughout the state. The fifth and sixth consensus points sought to preserve economic opportunities in resource-rich areas and to ensure continuation of Alaska's diverse culture and traditions, which are intimately connected to the land. Each consensus point represented a major concern associated with the enormous, unprecedented size of potential conservation system units being designated in inhabited, culturally significant and economically valuable areas, as well as the largely prohibitive management regimes employed by the intended

federal land managers. To address these concerns in ANILCA, Congress included multiple access provisions, granting the strongest access guarantees and protections to landowners within or effectively surrounded by conservation system units.

ANILCA was designed to ensure that transportation and utility infrastructure projects would not be thwarted or frustrated simply because they must cross federal conservation lands. Title XI recognized Alaska's transportation and utility network as largely undeveloped and established a process through which federal agencies must coordinate the review of Alaskan infrastructure projects that needed to cross federal land. Section 1110(a) specifically provides for both motorized and non-motorized access on federal land for traditional activities and for travel to and from villages and homesites. Section 1110(b) guaranteed adequate and feasible access for economic and other purposes to both surface and subsurface inholdings. Section 1111 grants the State and private property owners' access to their lands for purposes of survey, geophysical, exploratory, or other temporary uses. Since ANILCA's passage, however, each provision has been increasingly compromised and ignored.

For example, subsistence access under Section 811 and general access under Section 1110(a) are being unduly restricted in furtherance of national policies that preemptively protect unit values, including wilderness, soundscapes and scenery. The historical interpretation of Section 1110(a) is that the use must be allowed until there is actual or likely potential for resource damage. Internal policy and guidance have been creating expansive values and nebulous degradation standards which render Congressionally-guaranteed protections under these sections meaningless. Federal agencies are also increasingly micromanaging commercially guided uses (another Congressionally-protected use) as an alternative means to limit general public access outside the confines of ANILCA, such as severely limiting public access by air taxis.

The Title XI infrastructure development process is also being fundamentally mismanaged by federal agencies. Since regulations implementing Title XI require preferences for applicant-selected routes, agencies have been requiring proponents to modify projects during the pre-application phase, or even strong-arming them into forgoing the process altogether, denying them ANILCA protections and their appeal rights under the law. Title XI also established statutory time periods for review processes, which are rarely, if ever, followed. Unsubstantiated barriers to the process are visited on those seeking resource development opportunities, energy transmission, telecommunications upgrades, monitoring stations, hardened trails and even small driveways. This mismanagement means rural villages with real infrastructure needs – such as Angoon, which needs a new airport and is not on the road system – are faced with insurmountable bureaucratic roadblocks.

National regulations and policies frequently fail to make even the most cursory mention of the hard-won, critical access provisions in ANILCA. Even regulations which initially recognized these provisions are being arbitrarily amended to exclude them. For example, the NPS recently proposed changes to existing regulations to make them apply to "*all operators conducting non-federal oil or gas operations on lands or waters within an NPS unit, regardless of the ownership or jurisdictional status of those lands or waters.*" The proposed rule includes a procedure for bringing previously exempt (i.e., Alaskan) operations into compliance. We understand the FWS plans to similarly amend its regulations regarding non-federal oil and gas development within wildlife refuges, which could easily and instantaneously destroy the economic value of many state and private inholdings, including lands granted to Alaska Natives under ANCSA.

At a bare minimum, Alaska sought from Congress, and obtained in ANILCA, the right to connect communities by road, air and sea; but, any capacity to provide for this infrastructure has been blocked by unapologetic indifference infused into federal agency regulations, policies, practices and culture. Forced inflexibility and bottlenecking further hinders our ability to invite economic investment, to explore and develop our resources and provide for a sustainable future. At this time, it is hard to see what guarantees, if any, Alaskans managed to secure in 1980 to accommodate and provide for our nascent infrastructure, resource economy, lifestyles, livelihoods and overwhelming access needs.

State Management of Fish and Game

Full realization of this fourth consensus point (state management of fish and game on all lands) has been an ongoing challenge with mixed success and failure, but is currently experiencing significant setbacks. Early on, under ANILCA's special provisions for state management and inclusion as a true partner in federal decision-making processes, many successes were realized. Primarily facilitated by decades of operation under a comprehensive Memorandum of Understanding, close communication and cooperation was the rule. It is currently the rare exception.

In ANILCA, Congress required consultation with the Alaska Department of Fish and Game on fish and game matters; however, compliance with this mandate has become entirely superficial. The increasing trend by federal land managers has been to "notify" or provide "positional briefings" to state managers in lieu of meaningful dialogue or efforts to resolve differences. Essentially, a box gets checked to ensure that the letter of the law is met, but not the intent. For instance, the State has been granted no sufficient opportunities to influence or participate in recent and pending federal regulations targeting the methods and means of take in Alaska. These value-based regulations will severely undercut the State's ability to manage fish and wildlife in Alaska, as well as eliminate long-standing opportunities for public participation, destabilize viable subsistence opportunities, and cause disastrous and unsalvageable damage to our presently healthy wildlife populations, biological diversity of species and the security and welfare of Alaska residents who rely on wild foods.

One of these regulations packages was finalized by the NPS in October (effective January 1, 2016) to prohibit certain state-authorized hunting and trapping practices on national preserves and will require the management of wildlife for undefined natural ecological processes that may leave little or no harvestable surplus for humans, including purportedly exempt federally qualified subsistence users. Some hunting practices now prohibited were in place for decades without objection by the NPS, while others were adopted in the past decade at the request of subsistence users to reasonably recognize traditional practices. These now-prohibited state regulations were developed consistent with the evolving and scientific nature of regulated hunting, necessary to respond to new knowledge, technologies, interests and wildlife population research by the states. Wildlife in Alaska is maintained by the State under the sustained yield principle enshrined in the Alaska Constitution, a concept that has successfully rebuilt many of the significantly degraded fish and wildlife populations the State was finally able to manage through statehood.

In addition, the NPS eliminated certain hearings in areas affected by proposed regulations – a requirement under ANILCA – in favor of simply holding meetings near the affected park unit in certain situations. Given the vast size of parks in Alaska, this has the very real likelihood of significantly disenfranchising those with the most at stake to serve some administrative convenience far from the impacted area. The regulations also codify the NPS's interpretation of "consultation" with the State, which will now mean simply advising the State of its decisions prior to or just after taking any action. The FWS is preparing to adopt similar rules and is expected to publish its notice of rulemaking in the coming weeks.

Most notably, when considering how far the NPS has deviated from ANILCA's direction for open coordination and cooperation, these regulations will now allow individual park superintendents to simply publish a notice online each year preempting any state wildlife laws and regulations they feel are inconsistent with broad park policies and values. This notice will not be subject to public comment, meetings or rulemaking, and the listed state regulations will be *retroactively* prohibited and can be extended indefinitely, raising significant due process concerns.

Through these rulemaking efforts, both the NPS and the FWS are unilaterally codifying troubling internal policy directives regarding how fish and wildlife populations are to be managed. The agencies will now require that fish and wildlife be managed for undefined "natural ecological

processes" (parklands) and to "maintain natural functioning ecosystems" (refuges). Basic application of either of these edicts would require eliminating all human interference, including for hunting, fishing, conservation and science. Assurances have been provided that this is not the intent, but it opens a barn door for polarizing anti-consumptive use groups to litigate and force implementation to the most extreme ends of these concepts. CACFA has little doubt this litigation will occur, and soon, nullifying the remaining vestiges of these hard-won compromises and guarantees in ANILCA.

The states are responsible for the conservation and sustainability of fish, wildlife and water having entered the union on equal footing. That responsibility can only be diminished by specific acts of Congress, such as in the Migratory Bird Treaty Act, Marine Mammal Protection Act, and Bald Eagle Protection Act. ANILCA only diminishes Alaska's authority by authorizing federal regulation of harvests for subsistence by rural residents on federal land. Congress specifically stated ANILCA does not diminish the State's ongoing conservation and harvest programs for subsistence and other purposes, except where Congress prohibited it. In contrast, federal agencies are attempting to overrule state programs and harvest authorities based on recent agency interpretations of policy and values, neither of which can trump the law or the will of Congress. These rulemakings should be stopped immediately.

CACFA recommends this Committee engage in meaningful oversight of the systematic elimination of state management authorities regarding fish and wildlife, an established and long-respected province of the many states. This is not just an Alaskan issue but one that will affect all states where hunting is currently allowed in refuges and parklands. For Alaska, in particular, CACFA recommends specific language be incorporated in pending appropriation legislation to prohibit any funds from being used to implement, administer or enforce the final regulations on Hunting and Trapping on National Preserves in Alaska (80 FED. REG. 64325, October 23, 2015) or to finalize the pending proposed regulations on Non-Subsistence Take of Wildlife and Public Participation and Closure Procedures on National Wildlife Refuges in Alaska. CACFA views this as an essential action needed to halt the unlawful preemption of the states' authority to manage fish and wildlife within their borders.

IV. Entrenched and Pernicious Interpretations of Statutory Text

While it is frustrating to encounter and be forced to repeatedly challenge inaccurate and harmful agency interpretations of federal law, it is near impossible once those interpretations are remotely sanctioned by highly deferential judicial review. The following sections explore two recent examples of disputes where two of ANILCA's most cherished "no more" clauses were effectively nullified by the courts. Since agencies must adhere to binding judgements, even when prior interpretations are later understood to be erroneous, a legislative fix is the simplest and possibly the only remedy. And since both judgements below are based on a single word or phrase, the legislative fix itself might also be a simple matter of clarification.

Section 103(c): Solely Applicable

In 1997, the NPS revised its national regulations to ignore ANILCA Section 103(c), which states that non-federal land is not part of any conservation system unit established by ANILCA and that associated management regulations do not apply to state and private inholdings (including state-owned navigable waters). From 1980 through 1996, the agency had respected ANILCA's prohibition against applying "*regulations applicable solely to public lands within such units*" to state and private lands (NB: ANILCA Section 102 defines "public lands" as federally owned lands). The NPS's reversal was predicated almost entirely on the word "*solely*," arguing that national regulations apply nationwide, not "*solely*" to the lands within a particular conservation system unit.

Eight years ago, citing the amended regulations, NPS officials threatened an Alaskan hunter, John Sturgeon, with a criminal citation for operating his personal hovercraft on state-owned lands within Yukon-Charley Rivers National Preserve. Not long after that, the NPS required the Alaska Department of Fish and Game to obtain a research permit to conduct salmon research on state-owned

lands within Katmai National Preserve. Under its unilaterally established and self-administered regulatory authority, the NPS can oversee, limit and even refuse access to state and private lands by those with a right to be there, including state regulators, private citizens and licensees, throughout the U.S. In Alaska, this includes the ability to prohibit access to and use of millions of acres of lands conveyed to Alaska Natives under ANCSA, a settlement of lands intended to allow Alaska's Native people to provide for their economic future. Not surprisingly, most if not all ANCSA Corporations have been amici curiae in John Sturgeon's ongoing legal challenge targeting this assumed authority.

To be fair, each of these actions was arguably required by the amended regulations, and many other actions *not* taken may also have been required, simply because the NPS had interpreted Section 103(c) into non-existence. And, since Section 103(c) applies to all conservation system units in Alaska, the NPS's interpretation could be extended to national wildlife refuges, national forest monuments, wild and scenic rivers and all other units.

John Sturgeon's case is currently before the U.S. Supreme Court. Should lower court decisions be upheld, a true parade of absurdities is inevitable. Federal agencies could be legally required to enforce all national regulations on all state and private lands within the external boundaries of the conservation system units they manage, and the many protections ANILCA put into place for activities and uses within conservation system units may not apply. As an extreme but possible example, if some national implementation of the Wilderness Act prohibits anything motorized in designated wilderness, the people who live in designated wilderness areas in Alaska would have to park their snowmachine *in the wilderness area* because it could not be used on their private property.

In 1959, Congress gave all Alaskans millions of acres and a promise – that we could use those lands in a sovereign capacity to support our economy and maintain our honored traditions and livelihoods. As our territorial delegate, Bob Bartlett, put it: "*No area can make proper headway unless it has a land base.*" 104 CONG. REC. 9514. Ironically, statehood was also prompted in large part by the remote and generally uninformed territorial management of Alaska's resources, particularly when servicing a national agenda at our irrecoverable expense.

Then, in 1971, Congress gave Native Alaskans millions of acres and a promise – that they could exercise some recognizable dominion on at least a small portion of the lands they had cared for and lived on for generations. Since territorial days, Congress had endeavored to protect Native use and occupancy, but ANCSA was the follow-through for clear title that had been promised as far back as the Alaska Organic Act of 1884.

And finally, in 1980, Congress gave all Americans millions of acres of parklands and gave Alaskans a promise – that, even though parks and preserves would be managed pursuant to System-wide and unit-specific rules, this management authority could not be used on state and private lands. That is what Section 103(c) means; it says non-federally owned lands are not part of the park. This was the savings clause for all the promises that went before (e.g., continuity of the "Alaskan lifestyle," the sovereign rights of the State to manage its lands and resources, including submerged lands and fish and game) and was meant to be the leverage we might need to safeguard our property interests, as well as our social and economic future, once we were surrounded by massive conservation areas.

To negate everything provided at statehood and through ANCSA and ANILCA based on the presence of a single word is beyond the pale. The transformative domino effect in completely upending how we all understood Section 103(c) to apply has not fully revealed itself yet, but mass confusion is a certainty, as it has informed the way uses have been permitted, regulations have been worded, projects have been authorized, etc., for 35 years. Since the proper application of Section 103(c) is so patently obvious to us, we never imagined it would be necessary to ask this, but, should resolution of the Sturgeon case fail to provide a remedy, CACFA asks the Committee to consider clarifying the original intent to exclude non-federally owned lands from conservation system unit boundaries.

Section 1326(b): Single Purpose Study

In March 2001, one of many debates regarding planning and roadless areas in the Tongass National Forest culminated in a brief, unpublished order on a pre-trial motion that included a terse, tacked-on finding regarding one of many statutory claims which, somehow, completely obliterated one of ANILCA's cherished promises: that the rigorous debates of the 1970s were over, and that Congress' careful balance between the national interest in conservation and Alaska's social and economic needs should not be lightly disturbed. The unanticipated loss of this foundational premise had such obscure beginnings that agencies taking advantage of it rarely even cite to the opinion (and those that do, without exception, cite to its companion case instead).

The case was Alaska Forest Ass'n v. U.S. Dep't of Agriculture, No. J99-013 CV (D.C. Alaska March 30, 2001) and one of the legal provisions at issue was ANILCA Section 1326(b), which states that

> *[n]o further studies of Federal lands in the State of Alaska for the single purpose of considering the establishment of a conservation system unit . . . or for related or similar purposes shall be conducted unless authorized by this Act or further Act of Congress.*

Plaintiffs argued that the U.S. Forest Service's study and recommendation of wild and scenic rivers in the Tongass Land Management Plan revision "*violates this 'no more' clause*." The district court summarily rejected this argument, finding that, because the Service had performed the river study for the purpose of revising a general land management plan, it had not done so for "*the single purpose*" of considering the establishment of a conservation system unit.

There was no discussion of, for example, an earlier 9th Circuit decision which found that: "*As a compromise between logging and environmental interests, the Alaska Lands Act was to be the final word on what land in Alaska was to remain wilderness and what land was to be open to further development.*" City of Tenakee Springs v. Block, 778 F.2d 1402, 1405 (9th Cir. 1985). There was no discussion of what the court's finding would mean in the context of the statute, or even as a matter of common sense. All any agency need do to side-step Section 1326(b) is include one other thing in its study, or simply incorporate its study into another study, management plan or decision document, which is exactly what has happened, most recently in the Arctic National Wildlife Refuge.

As with Section 103(c), federal land managers have begun routinely ignoring Section 1326(b), a key provision to relieve Alaskans from the specter of additional designations by agency fiat. This is done most commonly by conducting wilderness and wild and scenic river reviews in conjunction with updating large-scale management plans. And, as with Section 103(c), this reversal is justified based on one small part of the original provision: the phrase "*single purpose*." Agencies claim that, because the studies are conducted in conjunction with management plan revisions, they are not conducted "*for the single purpose*" of establishing a new conservation system unit. Additionally, and even more harmful to Alaskan interests, areas and rivers reviewed and/or recommended for designation are protectively managed until Congress takes action, or indefinitely if Congress does not act. Some lands in the U.S. have had this type of *de facto* designation over them for decades.

As just one example, in accordance with the 1993 Settlement Agreement for American Rivers v. Lujan, the BLM has been conducting agency-identified (not Congressionally-directed) wild and scenic river reviews in all of its land use plans in Alaska. Even the recent planning effort for the National Petroleum Reserve included a review, which was not required by the settlement. The number of rivers involved is astonishing. For example, the currently ongoing plan for the Bering Sea-Western Interior area evaluated 255 waterways and found 22 of them met the criteria for eligibility.

Notwithstanding certain obtuse judicial orders, CACFA believes these and other similar reviews are patently illegal. Wild and scenic rivers and wilderness areas are conservation system units, and Section 1326(b) prohibits studies which consider the establishment of conservation system units

unless authorized by ANILCA or another Act of Congress. Since the reviews authorized by ANILCA have already been completed, unless Congress has authorized these reviews, they all fall entirely within this prohibition. The consideration of new conservation system units *is their purpose*.

Federal agencies have also interpreted Section 5(d)(1) of the Wild and Scenic Rivers Act as providing the authority to conduct "agency-identified" reviews, but Section 1326(b) requires Congressional authorization. Even worse, internal agency policies ensure that any rivers which are merely *studied* for potential recommendation *are protected indefinitely*. For instance, BLM policy directs staff to manage and protect both eligible (merely studied) and suitable (meet criteria for recommended designation) rivers. Compare this to the Wild and Scenic River Act itself, which only provides direction to protect "*Congressionally-directed*" rivers, and only while Congress deliberates on agency recommendations. Even if Section 1326(b) can be interpreted away, there is no statutory provision authorizing interim protection to all studied rivers, especially not "agency-identified" study rivers.

CACFA recommends this Committee consider clarifying the original intent to prohibit further reviews for the establishment of conservation system units in Alaska, which may include an explicit exemption from Section 5(d)(1) of the Wild and Scenic Rivers Act and the defunding or preemption of any attempt to either study lands and waters in Alaska for designation, in any context, or to manage areas based on suitability or eligibility without specific authorization from Congress.

V. Public Use Management and Processes

A large number of ANILCA's compromise guarantees provided for "reasonable regulations" by the respective land manager (typically the Secretary of the Interior). Many of those provisions were implemented through rulemaking in the 1980s, with the benefit of multiple cooperative mechanisms, like the Alaska Land Use Council, and also an informed and contemporaneous understanding of the Congressional intent in ANILCA. Some regulations were never developed, including implementation of subsistence access provisions on BLM-administered lands and Title XI access provisions in areas managed by the U.S. Department of Agriculture, though the majority of management actions and land use plans still took those provisions into account.

Recently, however, those regulations have been either amended, to the detriment of both the public and Congressional intent, misinterpreted or flatly ignored in federal management actions, or effectively overridden by internal (and frequently national) policies and directives. Two relatively insidious trends have been to amend or ignore the "public participation" aspects in these regulations, to make it easier to unilaterally manage uses without accountability, and the omission or substantive revision of these regulations through implementing policies and planning documents. Specific examples are numerous and convoluted, so the following sections focus on two systemic contributors to this arcane affront on the compromises and guarantees Congress intended in enacting ANILCA.

The Age of Policy

Statutory authorizations for federal agencies intentionally include broad value statements to establish an all-encompassing agency mission and inspire a foundational management ethic. Unfortunately, this vague statutory language, and related language in implementing regulations, has been effectively co-opted into strict, highly detailed, thoroughly unaccountable internal policy documents that result in verifiable legal and procedural consequences to the regulated public.

Some policies are not even shared with the public, let alone given anything close to a public review opportunity. Some are implemented while still in "draft" form. A good recent example would be the BLM's "Planning 2.0" policy, which is both being implemented prior to finalization *and* has not been shared with the public. Some are not implemented at all; usually older policies where the public is told the instructions are "discretionary." Sometimes that can be a good thing and other times not, like when the FWS abandoned its policy against wilderness reviews during the Arctic Refuge plan revision, inexplicably and without notice, based on an internal 2010 memorandum. Most shocking,

though, are policies so far removed from the original statutory language that it is laughable to call them a natural outgrowth, let alone a justifiable "implementation."

Even noncontroversial provisions in ANILCA have been marginalized through regional and national policies. For example, Congress provided for Alaska refuges to be "open until closed," the reverse of refuges in other states where all uses must be authorized and can be limited at-will. Closing a refuge to public uses in Alaska has a strict public process, generally involving notice and a public hearing. This provision is profoundly important, particularly considering the sheer size of Alaska refuges and long histories of traditional uses, but has created serious tensions with national policies in the past – most notably the Compatibility Policy (603 FW 2), which included unique direction for Alaska and under which managers have generally sided with ANILCA where no direction was specified.

That said, most national policies make no provisions for ANILCA, including ones that implicate its many and varied requirements. For example, the FWS has adopted closure plans in the event of a government shutdown, including one in September of this year. In verbal conversations with the Alaska Department of Fish & Game, the FWS said all hunting would remain open; however, the national plan would close every refuge in Alaska to all hunting except federally qualified subsistence hunters and certain waterfowl harvests. The FWS justifies this action by asserting that any closure would be on an emergency basis and thus would not be subject to legal requirements for notice and a hearing; however, this supposed "emergency" *has a plan*. ANILCA is particularly clear that, if they are going to rely on a plan, that plan should be adopted through the regulatory process.

CACFA is seriously concerned about the persistence of this approach to managing shutdowns. This brash defiance of ANILCA provisions has serious consequences for Alaskans. In addition to the impacts on guides, assistant guides, air taxi operators, transporters, and their clients, rural residents suffer by loss of employment and the use of lawfully donated meat to feed their families. Residents in communities near or within refuges are subjected to even more uncertainty – under what circumstances would they even be allowed to leave? These are things national, single-focus, one-size-fits-all directives frequently fail to take into account, circumventing the very special provisions and compromises in ANILCA which must be enforced before agreeing to live among these massive conservation units becomes the worst mistake Alaskans ever made.

Landscape-Level Planning

The whole concept of a "landscape-level" approach to land management is fairly recent, taking shape primarily through guidance and memoranda issued by the current administration. Essentially, land use planning, policies and decision-making are to take into account regional concerns and ecosystems without regard for ownership. Since it appears largely intended to address management issues prompted by climate change, and because of our diverse land ownership mosaic and large, contiguous blocks of federal land, particular focus has been placed on Alaska in implementing this approach. Unfortunately, the associated directives and policies are not coming from Alaska, and lack even a rudimentary understanding of ANILCA or the unique Alaska context. ANILCA and its implementing regulations do not contemplate or provide for "landscape-level" management, and vice versa. This leaves Alaskans, and regional federal agency staff, in a difficult position.

Dividing the state into large, landscape-level planning areas means one plan could conceivably govern the management of an area equal in size to several states. This provides agencies with the capacity to apply national policies to the largest possible area, and to influence the management of non-federal lands. Further, developing meaningful comments on these highly complex plans is an enormous undertaking for the State and the public, who may only be directly impacted by one discrete area. During the initial implementation of ANILCA's planning provisions in the 1980s, areas had individual, targeted plans with significant local stakeholder engagement. That dynamic is gone.

Even though some "step-down" plans are scheduled for individual areas and public uses, those plans will still be servient to the larger plans. Alaskans who have their lives and livelihoods intimately impacted by one or many of these areas must review and comment on thousands of pages of planning documents, along with everyone else, trying to capture everything and hoping to be heard. Promising them a step-down plan with local focus is meaningless with these larger plans calling the shots.

While CACFA remains vigilant in reviewing and commenting on these massive and multi-faceted land use plans, it is next to impossible to capably track all the interpretations of laws and evolution of policies being brought to bear in their creation and effect. While the "landscape-level" approach could conceivably translate into efficiencies, cooperation and responsible, comprehensive resource management, its present roll-out does not inspire much confidence in that result. Potential safeguards, however, could be realized through the collaborative development of regional ANILCA guidance, suggested above. This could help to incorporate a common and consistent framework for implementing ANILCA in a landscape-level framework, which could resolve a number of issues.

VI. Summary

CACFA truly appreciates that the Committee is considering the many challenges associated with the implementation of ANILCA, as well as the possibility of amendments to the law to address those challenges. As you can see, from this small sampling, it is quite an undertaking. The intent of our testimony today, however, is to simply highlight the need for a return to the compromise, not an attempt to see it revisited. ANILCA was a carefully crafted, heavily debated, and intensely deliberate sorting of various needs and interests, impossible to repeat and delicate to disturb. Everybody walked away with something and no one walked away with everything.

Luckily, Alaska is big enough for everything – for parks, for refuges, for mining, for oil and gas, for hunting, for sanctuary, for cities, for solitude, for embracing the past, for dreaming of the future. We have a knowledgeable and passionate population that sees the big picture, knows things others have long forgotten, befriends their ideological opposites, and wakes up every day to wondrous beauty and bounty. No laboratory of democracy is so rich with liberties, diversity, compromise and interconnectedness, to each other and the land, on both of which we dearly depend.

ANILCA may be a federal law but it has completely transformed the lives of Alaskans, many of whom greatly rely on and invest in its protection of their interests, pursuits and livelihoods. Attacks on the "compromise" can be cyclical and transient, bending with the wants, needs and ideations of the Presidential administration and the composition of Congress. But ANILCA was intended to be our solid touchstone, and finding our interests and futures dependent on political frameworks is exhausting, unsustainable and persists to our mutual detriment. Things have strayed so far from the statute that made it through the "d2 debates," and it will be a huge challenge to find our way back. But we can, particularly by remembering and trusting in what we came together to accomplish on December 2, 1980. Thank you for this opportunity to testify and for your consideration.

The CHAIRMAN. Senator Coghill, thank you. I appreciate that you have outlined in your written testimony so many of these suggestions. We will have an opportunity to pursue those during questions, so thank you.

Mr. Arno, welcome to the Committee.

STATEMENT OF ROD ARNO, EXECUTIVE DIRECTOR, ALASKA OUTDOOR COUNCIL

Mr. ARNO. Thank you, Madam Chairman, Senator Cantwell, Senator Gardner, I'm honored to address you on the 35th anniversary of the signing of ANILCA.

I'm testifying today on behalf of the Alaska Outdoor Council. The Alaska Outdoor Council thanks the Senator from Alaska for the invitation to speak to the Committee on how ANILCA has affected our 10,000 members and many other outdoor folks who hunt, trap, fish and recreate on public lands in Alaska.

The Alaska Outdoor Council is a 55-year old, statewide, conservation organization in the true sense of the word. Our membership personally participate in hunting, trapping and fishing on Alaska's public lands.

Alaska is unique in the world. I know that from experience from being a wilderness guide for 40 years in Alaska as well as a world traveler. Alaska owes its uniqueness to a variety of reasons, mainly its geographic location.

Alaska is at the apex of the Pacific Tectonic Plate drifting north at four centimeters a year overriding the North American plate. The result of that is the highest vertical mountain in the world, now named Denali. The tectonic action is responsible for making Alaska resource rich, both underground with oil, gas and mineral deposits and on the surface with wildlife habitats and majestic views.

Alaska's geographic location is also responsible partly for the low density of human population. Long, dark winters, weather extremes, habitats rich in plant life including mosquitoes, all of which has kept Alaska less developed in most of the world land mass. For its size Alaska has a very small population of less than 750,000 people. The number of trappers, hunters and anglers has not increased in Alaska over the last 35 years since the passage of ANILCA.

No doubt about it, the passage of ANILCA was a great compromise between relatives of Alaska's first immigrants from Asia, the continent, and subsequent waves of immigrants from both east and west who live in Alaska today. With Alaska becoming under the control of the U.S. Government, the burden of determining who got the land fell upon the U.S. Congress.

As far as the state-owned lands, it's not like the State of Alaska has intentions of clear cutting all the timber or extracting all the mineral resources on the 102 million acres given at its statehood. Alaska has already created over eight state parks out of the land conveyed it by Congress. At nearly 1.6 million acres the Wood River-Tikchik State Park is the largest state park in the United States. The State of Alaska has already put a half a million acres in wilderness from its land.

What's not intact is the people of Alaska. For those of us who have chosen to make a wild food harvest part of our way of life, we are in conflict with each other over a dwindling harvestable surplus of game on Federal lands. This conflict is exacerbated by the Federal land managers' relentless efforts to restrict motorized access on and across 60 percent of Alaska through Federal rulemaking.

While most of the Federal conservation lands created by ANILCA have for their purpose to provide for subsistence uses, the Department of the Interior's land managers continue to allow harvest levels of game to decline because their mandates don't include active game management. Less game, less harvestable surplus equals more conflict among Alaskans who want to provide themselves and family with a wild food harvest. This is not what we Alaskans believe the intent of the compromise that created ANILCA was to be.

The U.S. Department of the Interior needs direction to allow Alaska's fish and game managers to manage on a sustainable basis to meet subsistence uses. Congress should amend ANILCA to make it clear Department of the Interior mandates do not supersede Alaska's ability to manage its fish and game.

Once harvestable surplus declines, Title VIII of ANILCA implemented by the Federal Subsistence Board causes all non-Federally qualified resident subsistence users of Alaska and all nonresidents to lose their equal access to publicly-owned resources. The Department of the Interior has recently adopted rules that divide Alaskans based solely on their place of residency and no other criteria.

The U.S. Constitution 14th Amendment equal protection law does not allow that type of rulemaking. In no place else in the nation has Congress passed laws where new immigrants to the country don't share the same rights and privileges to public resources just because of where they chose to live. Alaska recommends that Title VIII of ANILCA with rule priority public resources be reviewed to determine its constitutionality.

Thank you for your time and consideration of how the Department of the Interior implementation of ANILCA is negatively affecting the wellbeing of Alaskan citizenry.

[The prepared statement of Mr. Arno follows:]

Alaska Outdoor Council
Alaska Fish & Wildlife Conservation Fund
310 K Street, Suite 200
Anchorage, Alaska 99501
Phone: (907) 264-6645 Fax: (888) 932-3353
e-mail: aoc@alaskaoutdoorcouncil.com
web: www.alaskaoutdoorcouncil.org

Board of Directors

President
Bill Iverson
Soldotna

Southcentral
1st Vice Pres.
Gary Stevens
Chugiak

Interior
2nd Vice Pres.
Karen Gordon
Fairbanks

Southeast
3rd Vice Pres.
Ron Somerville
Juneau

Treasurer
Todd Clark
Anchorage

Secretary
Mel Grove
Big Lake

At Large
Rob Mathews
Delta Junction

Fund Trustee
Warren Olsen
Anchorage

Executive Director
Rod Arno
Palmer

November 28, 2015

Darla Ripchensky, Chief Clerk
U. S. Senate Committee on Energy and Natural Resources
304 Dirksen Senate Office Building
Washington, DC 20510

RE: Hearing on the Alaska National Interest Lands Conservation Act of 1980

Dear Senator Murkowski and Committee members:

The Alaska Outdoor Council (AOC) respectfully appreciates the opportunity to provide comment before the Committee on Energy and Natural Resources on the impacts and future of the implementation of the Alaska National Interest Lands Conservation Act of 1980 (ANILCA) on Alaska and its citizenry. AOC is a statewide non-profit conservation organization that has actively participated in the regulatory process of fish and game management since before statehood. AOC represents over 10,000 Alaskans who hunt, trap, fish, and recreate on public lands and waters throughout Alaska.

AOC offers the following perspectives on ANILCA's impacts in Alaska over the last 35 years.

Congressional history of ANILCA

By the 1960s Congress had recognized Alaska's intact landscape ecosystems were "a special category" unlike anything remaining in the rest of the United States. Armed with that understanding Congress took action by passing The Alaska Native Claims Settlement Act of 1971 (ANCSA), Section 17d(2) of which directs the Secretary of the U.S. Department of the Interior (DOI) to withdraw up to 80 million acres of land for conservation purposes. Alaska's vast intact wilderness habitat provided Congress with the opportunity to select lands rich in natural resources with only minimal disturbance by human development for potential congressional designation as National Parks, Wildlife Refuges, Wild and Scenic Rivers, or National Forests.

Under the authority of the Alaska National Interest Lands Conservation Act of 1980 (ANILCA), nine years after the passage of ANCSA, Congress took action to set aside over a 100 million acres of relatively undeveloped national interest lands as Conservation System Units (CSUs). Today Alaska contains 65% of all the National Park Service lands in the entire nation, 48% of all U.S. Fish & Wildlife Service Refuges (USFWS), and 31% of all Bureau of Land Management lands. These are not "postage-stamp size" enclaves like those east of the Mississippi River. These are landscape-scale ecosystems.

Congress chose to include Title VIII - Subsistence Management and Use Findings in ANILCA on the recommendation from the 1971 Conference Committee on ANCSA which had offered its opinion that state and federal governments should take action necessary to insure that Alaska Natives' subsistence uses should continue. **Congress made no commitment in ANCSA to protect subsistence uses on federal lands.**

Federal subsistence priority to public resources

Congress' decision to adopt legislation in Title VIII of ANILCA, Section 802 giving a priority to public resources on federal lands based on an individual's address has led to 35 years of conflict among Alaska's citizenry.

PUBLIC LAW 96–487—DEC. 2, 1980
POLICY

"*SEC. 802. It is hereby declared to be the policy of Congress that—*

1) *consistent with sound management principles, and the conservation of healthy populations of fish and wildlife, the utilization of the public lands in Alaska is to cause the least adverse impact possible on* ***rural residents*** *who depend upon subsistence uses of the resources of such lands, consistent with management of fish and wildlife in accordance with recognized scientific principles and the purposes for each unit established, designated, or expanded by or pursuant to titles II through VII of this Act, the purpose of this title is to provide the opportunity for rural residents engaged in a subsistence way of life to do so;*

2) *non-wasteful subsistence uses of fish and wildlife and other renewable resources shall be the* ***priority consumptive uses of all such resources on the public lands of Alaska*** *when it is necessary to restrict taking in order to assure the continued viability of a fish or wildlife population or the continuation of subsistence uses of such population, the taking of such population for non-wasteful subsistence uses shall be given preference on the public lands over other consumptive uses;"* (emphasis mine)

The implementation of Title VIII - Subsistence Management and Use Findings in ANILCA by the DOI has resulted in years of litigation and tens of millions of dollars in expense to the federal government. And after 25 years no party of subsistence users are the least bit satisfied by the process or the outcome (See Alaska Federation of Natives, Native American Rights Fund, State of Alaska, and AOC comments on *DOI Comprehensive Review of Native Alaskan Subsistence Policy and Programs 2009*). The agreed-upon compromise Congress passed in ANILCA in 1980 has clearly been hijacked by national preservation organizations and Native rights activists for their own self-interests over that of the common good of Alaskans.

- Today there is no crisis of Alaska Native access to a wildfood harvest. Both State and Federal laws give priorities to subsistence use in Alaska. The State of Alaska manages for sustained yield (see Alaska State Constitution Article 8, Section 4) and on appropriate state lands for increased harvest (see Alaska Statute 16.05.255 e-g and k 1-5). According to the US Fish and Wildlife Service, rural residents harvest an average of 375 lbs/person/year (Juneau Empire 12/14/09) a figure that has

fluctuated very little since subsistence harvest reporting begin. An article in the Alaska Magazine in June 2009 states, "Today's Native population gets at least 50% of its food from stores."

- Changes in Title VIII and/or subsistence regulations will not change the levels of subsistence uses by Alaska Natives (or other rural residents) or reduce the risk to "..... health and well being and ancient way of life." Continuing changes in individual choices of lifestyle will dictate these risks.

- Alaska's subsistence law (see Alaska Statute 16.05.258(4)(B)(i)) is based primarily on the customary and direct dependence on the fish stock or game population by the subsistence user for human consumption as a **mainstay of livelihood**. Unlike Title VIII of ANILCA, the Alaska State subsistence law is not based on a criterion of residency, which has led to divisiveness among Alaskan residents over the last 35 years.

Federal Management of public resources on federal lands - fish and game

With the passage of ANILCA, Congress made subsistence uses of fish and game the highest priority use on federal lands in Alaska which comprise 59% of the state. Yet for the last 25 years federal land managers have dodged this mandate by using any applicable law, regulation, or policy possible to not provide abundant harvestable surpluses of wildfood for harvest. "Healthy" (and for NPS lands also "natural", ANILCA 815.1) fish and game populations are management criteria mandated by ANILCA 802.1, rather than sustainable abundance for harvest.

Supported by national preservation groups' litigation, DOI land managers have blocked state predator/prey management programs to reverse declining caribou populations, Alaska Board of Game regulations to harvest abundant predator populations responsible for holding prey (human food) species at low population levels, and salmon enhancement projects on federal lands.

The result of declining numbers of harvestable surplus on federal lands, after the federal takeover of subsistence management in 1990, has led to reduced opportunity for non-federally qualified subsistence users, which in turn has led to increasing hostility between urban and rural Alaskan residents. Also, declining harvestable surplus means non-resident hunters and/or anglers who contribute to Alaska's economic development loose opportunity.

On October 23, 2015 in *The Federal Register, The Daily Journal of the United States Government*, reported on the National Park Service (NPS) - Final rule on Alaska; Hunting and Trapping in National Preserves. RIN 1024-AE21, Amendments to 36 CFR Part 13.
On page 8 the report states:

"This rule does not limit the taking of wildlife for Title VIII subsistence uses under the federal subsistence regulations."

In actuality, reduced harvestable surplus on National Park Preserve lands does limit the taking of wildlife by federally qualified subsistence users (as well as others). Non-federally-qualified subsistence hunters, hunting under State of Alaska regulations on National Park Service lands, take harvestable surpluses of species of predators. That in turn allows for the continuation of "healthy" populations of both prey and predator species on National Park Service lands.

The NPS goes on to report that their mandate under the NPS Organic Act of 1916 requires them to comply with NPS Management Polices 2006, 4.4.3 which do not allow manipulating natural systems and processes to increase numbers of harvested species.

And because of that, NPS believes the NPS Organic Act of 1916 trumps ANILCA SEC. 1314;

PUBLIC LAW 96–487—DEC. 2, 1980
TAKING OF FISH AND WILDLIFE

SEC. 1314. (a) Nothing in this Act is intended to enlarge or diminish the responsibility and authority of the State of Alaska for management of fish and wildlife on the public lands except as may be provided in title VIII of this Act, or to amend the Alaska constitution.

1) *Except as specifically provided otherwise by this Act, nothing in this Act is intended to enlarge or diminish the responsibility and authority of the Secretary over the management of the public lands.*

2) *The taking of fish and wildlife in all conservation system units, and in national conservation areas, national recreation areas, and national forests, shall be carried out in accordance with the provisions of this Act and other applicable State and Federal law. Those areas designated as national parks or national park system monuments in the State shall be closed to the taking of fish and wildlife, except that—*

    a. *notwithstanding any other provision of this Act, the Secretary shall administer those units of the National Park System, and those additions to existing units, established by this Act and which permit subsistence uses, to provide an opportunity for the continuance of such uses by local rural residents; and*
    b. *fishing shall be permitted by the Secretary in accordance with the provisions of this Act and other applicable State and Federal law.*

The Final Rule went into effect November 23, 2015. The Alaska Outdoor Council and other Alaskans would like to know if it was the intent of Congress to allow federal land managers to takeover wildlife management when DOI determines the State of Alaska is not in compliance with NPS policies.

Access to and across federal public lands and private inholdings within CSUs

Clearly the framers of ANILCA were aware of the fact that by creating CSUs that encompassed entire landscape ecosystems with little to no developed transportation infrastructure, that special access provisions would need to be incorporated in the law to allow subsistence use and development of state and private lands. That's proven by the inclusion of Sections 1110, 1323, and 811 in ANILCA.

National preservationist organizations are fully aware of the fact that federal lands must remain roadless in order to qualify for wilderness designation under the Wilderness Act of 1964 (16 U.S.C. 1131-1136, 78 Stat. 890) -- Public Law 88-577. ANILCA established seven National Wilderness Preservation System areas in Alaska comprising 18,560,000 acres. And 90% of all USFWS-designed wilderness and 75% of all NPS-designed wilderness in the nation is located in Alaska.

Reducing public access opportunities to federal lands has been the trend for all federal land-managing agencies since the passage of ANILCA.

- Currently the NPS and the USFWS manage all their lands designated as eligible for inclusion by an act of Congress into the National Wilderness Preservation System as if they already had Congressional approval.

- NPS has banned hovercraft use on State navigable waters, restricted aircraft access, closed established motorized trail use to non-locals, and restricted federally-qualified rural residents to specific trails while hunting - all through their rulemaking process.

- BLM has closed numerous pre-ANILCA motorized trails and now is recommending the creation of Areas of Critical Environmental Concern (ACEC) in their Resource Management Plans for the Alaska Eastern Interior in areas with established trails. ACEC are areas where BLM has determined special management is necessary to prevent irreparable damage to important historic, cultural, or scenic values, fish and wildlife resources, or other natural systems. BLM attempted to designate areas of Alaska as "Wild Lands" in order to restrict motorized access.

- The US Fish and Wildlife Service continues to reduce aircraft access on Refuge lands long after any concerns for migrating waterfowl had been resolved, and they have also restricted boat access due to perceived user conflict.

- The US Forest Service has closed lands to motorized access by non-federally qualified rural residents when there have been no documented conservation concerns, and they continue to deconstruct stream crossings on established roads over anadromous waters.

Alaska Outdoor Council Recommendations and Position

1) Eliminate the "rural" priority and replace it with "in areas where customary and traditional subsistence uses comprise the principal element of the economy." The rural priority is inconsistent with the common use and equal access mandates of the Alaska Constitution as determined in 1989 by the Alaska Supreme Court in McDowell v. State. Justice Moore summed it up as follows: "This is an equal protection case, and an easy one at that." AOC does not believe Title VIII of ANILCA is consistent with the equal protection provisions of the U.S. Constitution.

2) Clearly define "federal land" as described in ANILCA, Sections 102(2) and 103(c) as not including navigable waters of the State of Alaska. ANILCA clearly states that "federal lands" or "public lands" do not and cannot include lands (or waters) granted to the state or other entities. Alaska's navigable waters and submerged lands were granted in the Alaska Statehood Act in conformity with the 1953 Federal Submerged Lands Act and the "Equal Footing Doctrine." Nowhere in ANILCA is the "Reserved Waters Doctrine" mentioned, yet subsequently federal courts have referred to it as "implicit" in establishing special federal areas without referencing its statutory foundation. "Ambush" would better describe the "Reserved Waters Doctrine" than "implicit." The 9th Circuit Court of Appeals "muddied the waters" in the Katie John case by ruling that federal agencies in Alaska had reserved water rights on

conservation system units, then stated "We recognize that our holding may be inherently unsatisfactory," and "The issue raised by the parties cries for a legislative, not judicial, solution." After vowing to take the case to the U.S. Supreme Court in his obligation as Governor, then-Governor Knowles dismissed the appeal when threatened with political retribution by Alaska Native groups. The Alaska Legislature refused to capitulate to federal rules, and Congress did nothing to clear up the muddied waters.

3) Amend ANILCA to explicitly recognize the State of Alaska's authority to manage fish and wildlife on ALL Alaskan lands and waters. Section 1314(a) and (b) make clear that the State of Alaska retains the authority and responsibility to manage fish and wildlife, while the Secretary of Interior retains the authority to manage habitat and to ensure that the rural subsistence priority is provided for. The Secretary is not given authority to manage fish and wildlife. Congress, in the Alaska Statehood Act granted the State of Alaska the authority to manage its own fish and game resources. Despite this, the Interior and Agriculture Departments' agencies have proceeded to set up very costly administrative processes to manage fish and game on federal public lands and conservation system units. This abduction of the state's authority to manage its own fish and game resources duplicates the management and administrative efforts of the State and adds the burden of unnecessary regulations to Alaskans. These actions disadvantage all resources users.

4) Withhold funding that would allow NPS to implement the amendments to 36 CFR Part 13 in the Nov. 23, 2015 NPS Final rule on Alaska; Hunting and Trapping in National Preserves. RIN 1024-AE21 until Congress has had an opportunity to review its effects on compliance with the mandates in ANILCA.

Sincerely,

Rod Arno
Executive Director
Alaska Outdoor Council

Bill Iverson
President
Alaska Outdoor Council

The CHAIRMAN. Thank you, Mr. Arno.
Ms. Brown, welcome.

STATEMENT OF VALERIE BROWN, LEGAL DIRECTOR, TRUSTEES FOR ALASKA

Ms. BROWN. Good morning, Chairman Murkowski, Ranking Member Cantwell, Senator Gardner. I'm Valerie Brown, Legal Director for Trustees for Alaska, a nonprofit public interest law firm in Anchorage, Alaska. I appreciate the opportunity to address you today on an issue that is important to me and to Alaska and to everyone in the country.

The Alaska National Interest Lands Conservation Act is sometimes called the most important piece of conservation legislation in the 20th century. I realize that view is not shared by some Alaskans, including some people here today, but I believe that it's true and I'm pleased to speak to its many benefits just 1 day after the 35th anniversary of its adoption.

There are many other groups of Alaskans, as Senator Murkowski noted, that benefit from Alaska that aren't here today, subsistence users, fishermen, recreational based tourism are just a few. And I'm sure that they look forward to participating in future hearings on ANILCA oversight as well.

When I moved to Alaska in 1988 ANILCA was just seven years old. There had been many years of political wrangling leading up to its adoption. By the time I arrived in Alaska though some people were starting to change their mind about that.

For example, in 1975 in the midst of the controversy over one of the earlier versions of ANILCA, the City Council of Seward passed a resolution opposing the creation of Kenai Fjords National Park. But just five years after ANILCA was passed Seward had seen so much economic growth and diversification it rescinded its resolution and it's now the gateway to Kenai National Park, excuse me, Kenai Fjords National Park and it reaps incredible economic benefits from that.

In total ANILCA took 104 million acres of Federal land and dedicated them to specific conservation purposes with mandates for long-term protection of geographic features, cultural traditions and ecological processes of the nationally owned lands. They include Denali National Park which, despite its remote location and the expense of getting there, is the third most visited park in the entire National Park System.

In many places ANILCA allows some commercial use such as timber, fishing, guiding and other tourism-related activities. And it guarantees a subsistence use priority for rural Alaskans as well as for other traditional uses and for private land inholders. But ANILCA left an important land management decision unmade in the Coastal Plain of the Arctic Refuge. Congress recognized that the area was vital to the Porcupine Caribou herd, polar bears and more than 250 other species that rely on it. ANILCA did not decide the permanent land management for the coastal plain. Thirty-five years later that decision remains unmade.

Yesterday the Senate Arctic Refuge Wilderness bill was introduced with a total of 34 senators signing on expressing historic support for wilderness designation for the coastal plain of the Arc-

tic Refuge, and we believe Congress should act to pass that bill. Designation of the coastal plain as wilderness is long overdue.

I've been to the coastal plain and it's an incredible place. I support the Gwich'in people who call the coastal plain the sacred place where life begins. In addition to jeopardizing the biological heart of the Arctic National Wildlife Refuge drilling in the coastal plain won't solve Alaska's economic problems which stem from the fact Alaska is too dependent on oil development. Sacrificing our most iconic and important public lands for oil takes us in the wrong direction.

This hearing is happening at the same time world leaders are gathered in Paris at the U.N. conference on climate change. The issue of climate change is even more important for Alaskans because we suffer affects from climate change at twice the rate of the rest of the nation. We are warming faster, our coastlines are eroding and our permafrost is melting.

We cannot drill our way to a solution for climate change and more drilling will not protect our state from its impacts. It will do the opposite. The areas protected by ANILCA help us deal with the impacts of climate change by providing a living laboratory to study and find solutions to offset the impacts of climate change while giving wildlife and communities the opportunities to adapt.

Today, one day after ANILCA's 35th Anniversary, we should celebrate Congress' forethought in making conservation a priority on those 104 million acres in Alaska's national lands. These lands provide the basis for sustainable economic practices and they protect traditional subsistence uses and they are a national heritage which benefit all Americans but also all Alaskans.

Thank you for inviting me today, and I look forward to answering your questions.

[The prepared statement of Ms. Brown follows:]

Statement of Valerie Brown
Legal Director, Trustees for Alaska
Senate Energy & Natural Resource Committee
Hearing to receive testimony on implementation of the Alaska National Interest Lands Conservation Act of 1980, including perspectives on the Act's impacts in Alaska and suggestions for improvements to the Act.
December 3, 2015

Chairman Murkowski, Ranking Member Cantwell, and members of the Committee:

Thank you for the opportunity to address the importance of the Alaska National Interest Lands Conservation Act ("ANILCA") of 1980, today, 35 years after its passage. Trustees for Alaska is a non-profit public interest environmental law firm. We represent conservation and tribal interests on environmental and natural resource issues facing Alaskans. Trustees for Alaska has a long history of involvement in protecting the national conservation goals of ANILCA on behalf of Alaskans, Alaska Natives, and national conservation interests.

My comments primarily address ANILCA's central purpose — conservation — and highlight some specific examples and remaining challenges. I also briefly address the other important components of ANILCA — ensuring the continuation of subsistence rights for Alaska's rural residents and the access provisions that balance the need to ensure conservation with the continuing use of the public lands and the rights of landowners.

The Alaska National Interest Lands Conservation Act

Considering it "one of the most important pieces of conservation legislation ever passed," President Jimmy Carter signed ANILCA into law on December 2, 1980.[1] ANILCA's passage was the culmination of decades of legislative and advocacy efforts to protect and safeguard Alaska's exceptional ecological and natural resources for the national public interest and to protect them for subsistence use by Alaska Natives. It is an exceptional piece of legislation in what it accomplished on a landscape scale, and it continues to contribute to the vibrant and ecologically rich Alaska of today.

History of ANILCA's Passage[2]

While ANILCA was passed in 1980, the momentum behind protecting lands in Alaska for the national public interest began well before Alaska was admitted as the 49th state. Alaska's rich natural resources have long attracted outside interests seeking to export Alaska's oil, fish, timber, and minerals. Logging in southeast, oil development in the Bering River area and on the Kenai Peninsula, commercial fishing in inland and marine waters, and mining of Alaska's mineral resources were all taking place long before Alaska became a state. But beginning in 1892 with the creation of Afognak Island as a forest reserve and fish culture station, efforts have been underway to balance the use and protection of Alaska's resources. Alaska's two National Forests — the Tongass and the Chugach — as well as three gems of the National Park system —

[1] Alaska National Interest Lands Conservation Act: Remarks on Signing H.R. 39 into Law, Dec. 2, 1980, 16 WEEKLY COMP. PRES. DOCS. 2755 (Dec. 8, 1980).

[2] This section was drafted with reference to: The Wilderness Society, Alaska National Interest Lands Conservation Act Citizens' Guide 6–19 (July 2001).

Glacier Bay, Katmai, and Denali — were all created in recognition of their outstanding values and need for protection in the years before statehood. The efforts to protect Alaska's exceptional national areas through the decades have enjoyed bipartisan support, from Teddy Roosevelt, to Woodrow Wilson, to Franklin Roosevelt, to Dwight Eisenhower.

When Alaska became a state in 1959, the United States gave Alaska the right to select 105 million acres of unreserved federal lands. This amount was five times the amount awarded to any other state, and Alaska chose well. For example, Prudhoe Bay and the central North Slope was one of the areas that the State selected. It was the discovery of oil on State land at Prudhoe Bay in 1968 that most changed the course of Alaska's economic history. In order to deliver North Slope oil to market a pipeline to an ice-free tidewater port was needed. Such a pipeline would have to cross land that was claimed by, among others, Alaska Natives who vigorously and successfully asserted their right to settle their land claims before the construction of a pipeline.

That effort led to passage of the Alaska Native Claims Settlement Act ("ANCSA") in 1971. Through ANCSA, Congress provided 44 million acres of land and nearly $1 billion to newly-created regional and village corporations, and also extinguished title to aboriginal lands in Alaska. At the same time, ANCSA failed to resolve the rights of Alaska Natives to continued access to and use of subsistence resources, deferring resolution of those issues to a later time. Conservation of some federal lands also remained unresolved by ANCSA, but Congress authorized the Secretary of the Interior to withdraw up to 80 million acres to study for possible designation as, or additions to, national parks, national refuges, national forests, wild and scenic rivers, and the wilderness preservation system. Those withdrawals were not permanent; they required subsequent action to ensure permanent protection. It was these two issues left unresolved by ANCSA — protection for subsistence and conservation of public lands — that laid the foundation for ANILCA.

Legislation that would carry out ANCSA's unfinished business of setting aside public lands in Alaska for conservation was first introduced in 1977. That bill did not pass and the clock on the ANCSA land withdrawals ticked toward expiration, meaning that millions of acres of national public lands might be selected by other interests and would not be available for inclusion in conservation systems.

After Congress' failure to act on a conservation bill and the nearing expiration of the ANCSA withdrawals, President Carter and Secretary of the Interior Cecil Andrus used executive authority to withdraw more than 150 million acres. These executive actions kick-started the final legislative push to protect our national public lands and pass ANILCA. After various bills were introduced and amendments made, numerous committee hearings held, and extensive negotiations, ANILCA was passed by Congress and signed by President Carter on December 2, 1980, just over 35 years ago today.

ANILCA was exceptionally forward-thinking in what it accomplished. It made long-term decisions about conservation and subsistence that continue to benefit Alaska, Alaska Natives, and the nation today. For example, the conservation benefits of ANILCA have translated into strong economic benefits for Alaskans and Alaska communities. Outdoor recreation alone generates $9.5 billion dollars of spending in Alaska, supporting 92,000 *direct* jobs and providing

$711 million in state and local tax revenue annually.[3] More than a million out-of-state visitors flock to Southeast Alaska each year supporting 10,200 jobs that contribution another $1 billion to the regional economy.[4] In 2014, Denali National Park hosted over 530,000 visitors, who spent over $5 million in communities near the park, supporting nearly 7,000 area jobs, and generating a total economic benefit to the local economy of nearly $7.5 million.[5] In 2011, more than 570,000 people visited the Kenai National Wildlife Refuge, generating more than $113 million in economic benefit for the area.[6] In 2010, BLM lands in Alaska contributed over 1,000 jobs, received over 600,000 visitors, and generated over $28 million from recreational use.[7] Alaskan residents spent as much $247.8 million each year in local communities as a result of their use of Alaska's two National Forests, the Chugach and Tongass.[8] In 2012, guided hunters spent a total of $51 million on hunting packages and another $3.5 million on associated services while in Alaska.[9] Almost half of the guiding revenue was earned hunting on federal land.[10] ANILCA lands also support the healthy ecosystems that are necessary to sustain fishing year after year. A 2001 study estimates that Alaska's commercial fishing industry supplies 20,000 direct jobs and supports an additional 14,000 indirect jobs.[11]

ANILCA's Conservation Mandate

In ANILCA, Congress sought to preserve for future generations certain lands and waters in the State of Alaska that had nationally significant values, including areas important for wildlife, subsistence, wilderness, recreation, scientific, scenic, and historic reasons. Land conservation in the national interest was the focus.[12] In total, Congress protected over 104 million acres of federal land in 13 national parks, 16 national wildlife refuges, 2 conservations areas, 2 national forests, and 26 wild and scenic rivers.[13] Fifty-seven million acres were also designated as Wilderness, the highest level of protection afforded our public lands.[14]

---

[3] Outdoor Industry Association, The Outdoor Recreation Economy: Take it Outside for Alaska Jobs and a Strong Economy (2013), available at: https://outdoorindustry.org/images/ore_reports/AK-alaska-outdoorrecreationeconomy-oia.pdf.

[4] McDowell Group, *Economic Impact of Visitors to Southeast Alaska 2010-11*, prepared for Alaska Wilderness League 1 (Aug 2012) http://www.alaskaprohunter.org/Economic_Impacts_of_Guided_Hunting_Final.pdf (last visited Nov. 29, 2015)

[5] Denali Visitors Provide Economic Benefits to Alaska and Local Area Economies, Denali National Park and Preserve Alaska, National Park Serv., http://www.nps.gov/dena/learn/news/econ-benefits.htm (last visited Nov. 28, 2015) ; *see also* Denali, National Park's Economic Impacts, Headwaters Economics (June 2015), http://headwaterseconomics.org/dataviz/national-park-service-units (last visited Nov. 30, 2015).

[6] National Wildlife Refuges Provide Significant Local Economic Impact, U.S. Fish & Wildlife Serv., Region 7-Alaska (Nov. 6, 2013), available at: http://www.fws.gov/alaska/external/newsroom/pdf/13-25.pdf.

[7] About BLM-Alaska, U.S. Department of the Interior, Bureau of Land Management, http://www.blm.gov/ak/st/en/info/about_blm.html (last visited Nov. 28, 2015).

[8] Spencer Phillips et al., Greater Than Zero: Toward the Total Economic Value of Alaska's National Forest Wildlands 5–6 (2008), *available at* https://partners.tws.org/wildscience/Publications1/Greater%20than%20Zero.pdf (describing timber sales in the Tongass and Chugach forests). The estimated annual harvest value of salmon supported by these two forests is $ 99.7 million (in 2008 dollars). *Id.*

[9] The McDowell Group, The Economic Impacts of Guided Hunting in Alaska 1 (February 2014)

[10] *Id.* at 9.

[11] Steve Colt, Inst. of Social & Econ. Research, What's the Economic Importance of Alaska's Healthy Ecosystems? 2 (2001), *available at h*ttp://www.iser.uaa.alaska.edu/Publications/formal/rsummary/rs61.pdf.

[12] ANILCA § 101(a), 16 U.S.C. § 3101(a).

[13] ANILCA Titles II, III, IV, V, VI.

[14] ANILCA Title VII.

With respect to our National Park system alone, ANILCA provided significant contributions. For example, Gates of the Arctic National Park is America's premier Wilderness National Park. Wrangell-St. Elias National Park and Preserve is our nation's largest National Park. And Denali and Glacier Bay National Parks not only protect exceptional ecosystems, they also host millions of visitors each year, allowing Alaskans, Americans, and people from around the globe to experience the values that ANILCA sought to protect.

Given ANILCA's central conservation purpose, I provide here some examples of the valued public lands that have been protected by ANILCA, starting with the Arctic National Wildlife Refuge ("Arctic Refuge"). As the U.S Department of the Interior states, the Arctic Refuge "supports the greatest variety of plant and animal life of any Park or Refuge in the circumpolar arctic."[15] It hosts a huge range of wildlife species, including 42 species of fish, 37 species of land mammals, 8 species of marine mammals, and over 200 different species of migratory and resident birds.[16] The plentiful wildlife on the coastal plain has led some to call it America's Serengeti.[17] Fulfilling its mandate to further study the values of the Arctic Refuge's coastal plain, the U.S. Fish and Wildlife Service concluded in 1987 that the coastal plain of the Arctic Refuge is the "most biologically productive part of the Arctic Refuge for wildlife and is the center for wildlife activity."[18]

Perhaps the most celebrated of the coastal plain's wildlife are the caribou of the Porcupine Herd. The Porcupine Caribou Herd is named for the Porcupine River, which the herd crosses on its annual migration from wintering grounds in the United States and Canada south of the Brooks Range to its summer grounds on the coastal plain of the Arctic Refuge 400 miles away.[19] Some individual caribou travel as much as 3,000 miles in making this round-trip migration, making it the largest migration of any land mammal in the world. The Arctic Refuge also provides vital habitat for Alaska's declining population of polar bears.[20] The Arctic Refuge has the highest density of polar bear dens on Alaska's Coast — approximately 43% of the land dens — making it the most important onshore denning habitat in America's Arctic.[21] The Arctic Refuge is increasing in importance for the survival of polar bears as climate change impacts the availability of sea ice.[22]

---

[15] U.S. Fish & Wildlife Serv., Arctic National Wildlife Refuge: Wildlife & Habitat, http://www.fws.gov/refuge/arctic/wildlife_habitat.html (last visited Nov. 24, 2015).

[16] U.S. Fish & Wildlife Serv., Arctic National Wildlife Refuge, Wildlife & Habitat, http://www.fws.gov/refuge/arctic/wildlife_habitat.html (last visited Nov. 24, 2015).

[17] *See, e.g.*, The Wilderness Society, About Wilderness Under Siege, http://wilderness.org/article/about-wilderness-under-siege (last visited Nov. 24, 2015).

[18] U.S. Dep't of the Interior, Arctic National Wildlife Refuge, Alaska, Coastal Plain Resource Assessment, Report and Recommendation to Congress and Final Legislative Environmental Impact Statement 46 (1987) [hereinafter FLEIS].

[19] *See* 1 U.S. FISH & WILDLIFE SERV., ARCTIC NATIONAL WILDLIFE REFUGE: REVISED COMPREHENSIVE CONSERVATION PLAN: FINAL ENVIRONMENTAL IMPACT STATEMENT 4-99, 4-101 (2015) [hereinafter Arctic Refuge CCP]; Caribou in the Arctic Refuge, http://arcticcircle.uconn.edu/ANWR/anwrcaribou.html (last visited November 11, 2105); Alaska Dep't of Fish & Game, Alaska Caribou Herds, http://www.adfg.alaska.gov/static/species/speciesinfo/caribou/images/caribou_herds.jpg (last visited Nov. 24, 2015).

[20] Polar Bear Population Map, IUCN Species Survival Commission, Polar Bear Survival Group, http://pbsg.npolar.no/en/status/population-map.html (last visited Nov. 29, 2015)

[21] Amstrup, S. C. and C. Gardner. 1994. Polar bear maternity denning in the Beaufort Sea. Journal of Wildlife Management 58:1-10.

[22] Endangered and Threatened Wildlife and Plants; Determination of Threatened Status for the Polar Bear

Though primarily marine mammal hunters, the Inupiat people of the Arctic — especially those in Kaktovik which is on the northern border of the Refuge — also use resources from the Arctic Refuge, including caribou and other mammals and birds.[23] Living in villages along the migratory path of the Porcupine caribou herd, the Gwich'in people of northeastern Alaska and northwestern Canada rely physically, culturally, and spiritually on the Porcupine Caribou Herd, and have for thousands of years. Gwich'in leader Sarah James has said, "The Gwich'in are caribou people .... Our whole way of life as a people is tied to the Porcupine caribou. It is in our language, and our songs and stories."[24] Because of their deep reliance on the Porcupine Caribou Herd, the Gwich'in consider the coastal plain the "Sacred Place Where Life Begins."[25]

Another area protected by ANILCA was the Izembek National Wildlife Refuge ("Izembek Refuge"), which is an internationally recognized wetland and world class habitat for migratory birds, marine life, and mammals. Located on the tip of the Alaska Peninsula, this important ecosystem supports some of America's most iconic wildlife. Characterized by a narrow isthmus of rolling tundra filled with pot-hole lakes and surrounded by sheltered wetlands, lagoons and shallow bays, this ecologically diverse refuge contains unique and undisturbed habitats, including the world's largest eelgrass beds. The ecological values of Izembek were recognized long before ANILCA's passage.[26] In 1980, with ANILCA's passage, the Izembek Range was redesignated as the Izembek National Wildlife Refuge ("Izembek Refuge") and the majority of the Izembek Refuge was designated as Wilderness.[27] The Wilderness lands within Izembek provide sanctuary to an array of wildlife, including brown bears, wolves and caribou which rely on the Izembek isthmus between Izembek Lagoon and Kinzarof Lagoon as an essential travel corridor. The Izembek isthmus links the Alaska Peninsula National Wildlife Refuge and the Unimak Island Wilderness Area of the Alaska Maritime National Wildlife

---

(Ursus maritimus) Throughout Its Range; Final Rule, 73 Fed. Reg. 28,212-01, 28,213, 28,257–8 (May 15, 2008).

[23] *See* NAT'L RESEARCH COUNCIL, CUMULATIVE ENVIRONMENTAL EFFECTS OF OIL AND GAS ACTIVITIES ON ALASKA'S NORTH SLOPE 19, 22 (2003) [hereinafter NRC REPORT]; H.R. 39, *Arctic Coastal Plain Domestic Energy Security Act of 2003; and H.R. 770, Morris K. Udall Arctic Wilderness Act: Legislative Field Hearing Before the H. Comm. on Res.*, 108th Cong., 1st Sess. 10–14 (Apr. 5, 2003) (testimony of Robert Thompson), *available at* http://bulk.resource.org/gpo.gov/hearings/108h/86329.pdf; Robert Thompson, Opinion: ANWR: Huntiug in wilderness, not an oil field, Alaska Dispatch News (Feb. 18, 2015), http://www.adn.com/article/20150218/anwr-hunting-wilderness-not-oil-field (last visited Nov. 28, 2015).

[24] Gwich'in Steering Comm. et al., *A Moral Choice for the United States: The Human Rights Implications for the Gwich'in of Drilling in the Arctic National Wildlife Refuge* (2005), *available at* http://www.gwichinsteeringcommittee.org/GSChumanrightsreport.pdf; *see also Arctic National Wildlife Refuge, Alaska: Hearing Before the S. Comm. on Energy & Natural Res.*, 100th Cong. 313 (1987) (Tanana Chiefs Conference, Inc., Resolution No. 87-65) (noting that Arctic Village, Venetie, and Old Crow "are extremely dependent upon the population and distribution of the Porcupine Caribou herd as a matter of economics, nutrition, and cultural heritage").

[25] Gwich'in Steering Comm. et al., *supra*, at 18.

[26] Press Release, U.S. Dep't of the Interior, Secretary Seaton Creates Izembek National Wildlife Range in Alaska (Dec. 7, 1960) (noting that initial efforts to protect the area began in the 1940s and noting that the Izembek National Wildlife Range was established as a "refuge, breeding ground, and management area for all forms of wildlife" because of the area's importance for waterfowl, brown bear, and caribou and "contain[s] the most important concentration point for waterfowl in Alaska"); Public Land Order 2216, Establishing the Izembek National Wildlife Range (Dec. 6, 1960.) (establishing the Izembek National Wildlife Range).

[27] ANILCA §§ 303(3), 702(6).

Refuge. Maintaining the integrity of these Wilderness lands in perpetuity is vital to protecting the values of the Izembek Refuge that ANILCA sought to protect.

Completing ANILCA's Conservation Vision

The benefits of ANILCA are evident today as we look around our state. From the mountain vistas of Denali National Park, to the calving glaciers of Glacier Bay and Kenai Fjords National Parks, to the vibrant coastal plain of the Arctic National Wildlife Refuge, and the natural systems and Alaska Native people that conservation areas sustain. ANILCA's benefits surround all Alaskans and continue to enrich and benefit not only Alaskans, but all Americans, and will do so into the future.

While ANILCA was expansive in its accomplishments, some issues were left unresolved. One of those issues is Wilderness for lands in the Arctic National Wildlife Refuge. Recently, the U.S. Fish and Wildlife Service updated the Comprehensive Conservation Plan for the Arctic Refuge.[28] During the public comment period, nearly 1 million comments were submitted supporting Wilderness for the Arctic Refuge. As a result of that effort, the U.S. Fish and Wildlife Service, the U.S. Department of the Interior, and the President all made historic recommendations that called on Congress to designate nearly all non-Wilderness portions of the Arctic Refuge as Wilderness. In doing so, the President stated that "This area is one of the most beautiful, undisturbed places in the world. It is a national treasure and should be permanently protected through legislation for future generations."[29] Congress should act on the President's recommendation and designate those non-wilderness lands as Wilderness. By designating the Coastal Plain as Wilderness, Congress would also eliminate the threat of oil and gas drilling to the Refuge and permanently protect its irreplaceable landscape for generations to come.

Threats to ANILCA's Integrity

Unfortunately, the threats to ANILCA's integrity began almost as soon as it was passed. From land exchanges, to recommendations to open the entire Coastal Plain of the Arctic National Wildlife Refuge to oil and gas development, to weak regulations and agency directives for its implementation, attempts to weaken ANILCA's protections have been frequent. But because of the constant involvement of dedicated Alaskans, including Alaska Natives and conservationists within the state, and strong opposition from across the nation, many of these threats have been defeated or pushed back.

One current threat to ANILCA's integrity is the challenge to the National Park Service's authority to regulate activities on navigable waters in National Parks and Preserves. After more than a decade of litigation, federal authority to guarantee subsistence fishing access on navigable waters in ANILCA's conservation system units was settled by a 2013 court decision.[30] Despite that precedent, the U.S. Supreme Court recently granted John Sturgeon's petition for certiorari on this issue. If the Court were to rule broadly that ANILCA divested the National Park Service,

[28] *See* Arctic Refuge CCP at S-27; Letter from the President — Arctic National Wildlife Refuge Proposed Designations (Apr. 3, 2015), https://www.whitehouse.gov/the-press-office/2015/04/03/letter-president-arctic-national-wildlife-refuge-proposed-designations (last visited Nov. 24, 2015).

[29] Letter from the President — Arctic National Wildlife Refuge Proposed Designations (Apr. 3, 2015), https://www.whitehouse.gov/the-press-office/2015/04/03/letter-president-arctic-national-wildlife-refuge-proposed-designations (last visited Nov. 24, 2015).

[30] *John v. United States*, 720 F.3d 1214 (9th Cir. 2013).

and by extension other federal land managers, of the ability to manage navigable waters within Conservation System Units ("CSUs") (including National Wildlife Refuges, Wild and Scenic Rivers, and National Conservation Areas in addition to National Parks and Preserves), then those federal agencies would lose the ability to effectively implement the purposes of ANILCA's conservation system units — those purposes include protections for subsistence uses, fish habitat, water quality and quantity, and International treaty rights. In the Yukon Charley Rivers National Preserve, the National Park Service would be unable to protect the specific ecological and cultural values of the Yukon and Charley Rivers that the Preserve was created to protect.

In addition, Congress created a priority for subsistence uses of fish and wildlife in Title VIII because it found subsistence uses to be essential to "Native physical, economic, traditional, and cultural existence and to non-Native physical, economic, traditional, and social existence."[31] If the Court were to rule broadly that ANILCA divested the National Park Service of authority, then by extension, the Secretary of Interior would lose her authority to regulate and protect the subsistence priority on federal lands and waters.

ANILCA already provides for reasonable access to and development of non-federal lands within conservation system units. Congress should thus vigilantly defend the current management approach to navigable waters.

ANILCA's Access Provisions — Balancing Use and the Interests of Other Land Owners

In Title XI of ANILCA, Congress ensured that reasonable access would be provided to and over federal public land. People engaged in traditional activities such as hunting, fishing, and berry picking may access public lands by snowmachine, motorboat, airplane and nonmotorized means (such as dogsleds).[32] ANILCA also guarantees a permanent right of access to private or state land inholdings, including subsurface rights.[33] And anyone holding a valid mining right or other valid occupancy right surrounded by public lands is guaranteed access for economic and other purposes. Access is also granted for travel to and from villages and homesites.[34] Finally, ANILCA grants a temporary right of access to the State or private land owner to conduct survey, geophysical, exploratory or other temporary uses.[35]

Climate Change

While climate change was not a driving force behind ANILCA's passage, ANILCA's benefits in the face of climate change cannot go unremarked. Alaska is experiencing the impacts of climate change at a higher rate than anywhere else in the nation. The state's average temperature has risen 4 degrees Fahrenheit in the last 50 years, permafrost is melting, and significant portions of the coast are eroding into the sea. ANILCA's protected ecosystems provide scientists the unrivaled ability to study, understand, and suggest ways to offset the impacts of climate change, and wildlife and communities critical opportunities to adapt to it. The value of protecting large, intact ecosystems as ANILCA becomes increasingly important every year.

---

[31] 16 U.S.C. § 3111.
[32] 16 U.S.C. § 3170.
[33] *Id.* § 3170(b).
[34] *Id.*
[35] 16 U.S.C. § 3171.

Conclusion

ANILCA truly was monumental in what it accomplished. It was the culmination of extensive work by conservation, Alaska Native, state, and federal interests. While some work remains to be done, in large part it has accomplished its central goal of protecting national public interest lands on a landscape scale. Through ANILCA, Congress also helped protect access of Alaskans to subsistence resources, and the interests of a young State in access to its unprecedented wealth in state-owned lands and resources. While there remain areas where Congress should act to complete ANILCA's vision and areas where Congress can act to protect and enhance ANICLA's goals, the central vision and purpose of ANILCA remains strong today. It has safeguarded some of the nation's most cherished public lands for the benefit future generations. Congress should continue to reject weakening amendments to ANILCA.

When it comes to ANILCA's impact on climate, Congress also proved prescient. The combustion of fossil fuels leads to climate change, which is having devastating effects on the world and within Alaska. To deny that is to deny science and reality. Oil is also a finite resource. For these two reasons Alaska must transition to a more diverse and sustainable model for the future. Failing to do so places future generations of Alaskans at even greater environmental and economic risk.

ANILCA has ensured that we also have sustainable environmental resources that are the envy of the world and which will continue to be an important foundation for jobs and the economy of Alaska. This is a legacy both to be proud of and to advance into the future.

Thank you for the opportunity to address you today.

The CHAIRMAN. Thank you, Ms. Brown.
Mr. Kindred, welcome to the Committee.

STATEMENT OF JOSHUA KINDRED, ENVIRONMENTAL COUNSEL, ALASKA OIL & GAS ASSOCIATION

Mr. KINDRED. Thank you, Madam Chair, Ranking Member Cantwell, Senator Gardner. I appreciate the opportunity to address the Committee today regarding the implementation of ANILCA and the role that is has played on oil and gas development in Alaska.

In reality oil and gas operations in Alaska are somewhat academically and practically removed from traditional ANILCA issues. However, that is simply because ANILCA issues affecting industry often resolve for better or worse absent private sector involvement. Nevertheless ANILCA has over the past 35 years effectively dictated the scope of natural resources development in Alaska.

It is vital to understand that ANILCA represented substantial congressional and ideological compromise acknowledging that considerable conservation withdrawals could not be achieved without also accommodating the interests of the State of Alaska and Alaska natives.

As for the formal objective, ANILCA effectively doubled the size of the nation's national park and refuge systems and tripled the amount of land designated as wilderness. And although issues remain on the periphery, this must be considered a great success from an environmental standpoint.

However, as the other primary goal of ANILCA 35 years later, the optimism of those who drafted ANILCA is starkly contrasted by numerous examples of the subsequent erosion of Congress' vision of collaborative, unique and balanced legislation.

Now it is impossible to discuss ANILCA's proposed endeavor of protecting the economic and social needs of the State of Alaska and its people without discussing oil and gas development. Historically proceeds from oil and gas development provided millions of dollars to the State of Alaska, representing nearly 90 percent of the state's unrestricted general revenue. ANILCA does play a substantial role in the industry in Alaska, if for no other reason, it dictates those lands available for exploration and subsequent development.

Of course it would be imprudent to discuss the interplay of ANILCA in oil and gas development without mentioning Section 1002 which mandated the coastal portion of the Arctic National Wildland Refuge be studied and provided for a potential path to oil and gas exploration and development. In 1987 following detailed and comprehensive studies, the Department of the Interior recommended opening the area for oil and gas exploration and development. And to date, decades later, even absent congressional action, there's little room to debate the extraordinary resource potential of ANWR's coastal plain which USGS estimates to contain over ten billion barrels of recoverable oil.

Regardless of ANWR's potential and politically charged status it highlights the manner in which ANILCA discourages greater oil and gas exploration and development in Alaska. For if the Federal Government is not willing to sanction oil and gas operations in arenas congressionally envisioned for development where the resource

potential is known, what incentive does Alaskan industry have to broaden their search to areas of unknown resource potential?

Another aspect of ANILCA that serves to undermine resource development pertains to Title 11 in the oil and gas context the key examples that pertain to proposals to transit, sorry, transport North Slope natural gas to market. The Alaska Pipeline Project, or APP, a joint undertaking of Exxon Mobil and Trans Canada, that would have resulted in a natural gas pipeline from the North Slope through Canada to Midwest refineries and markets, concluded that it could neither navigate the procedural requirements of ANILCA Title 11 nor successfully accomplish a land exchange. The APP is no longer a viable project and plans for transporting North Slope gas have shifted to the Alaska LNG project which is a proposal supported by Exxon Mobil, ConocoPhillips, BP and the State of Alaska.

Alaska LNG is also struggling to envision a successful path through ANILCA Title 11 because a small seven mile portion of the most direct pipeline around will follow the park's highway as it traverses Denali National Park.

It is difficult to succinctly summarize the problems posed by ANILCA Title 11 for complex projects such as Alaska LNG. Generally stated Title 11 establishes an inflexible and likely impractical process for obtaining Federal permits for complex projects such as APP and Alaska LNG. Title 11 establishes tight deadlines and mandates simultaneous application, environmental review and permitting decisions in a manner that cannot be rationalized for a complex project proceeding through a phased design and financial approval process.

A second set of issues that Title 11 mandates and additional substantive requirements that fundamentally alter the authority of any involved Federal agency to condition or disapprove a proposed project. Under Title 11 each involved Federal agency must make detailed findings regarding, among other things, economic feasibility, alternative routes, social economic subsistence and environmental impacts and public values. The result being that if merely one agency disapproves an application for the project, the project is deemed disapproved in its entirety. These provisions render the process unduly, unpredictable and risky.

None the less, these misgivings and issues, while crucial, do not represent an indictment of ANILCA. Rather they serve to highlight that the design flexibility inherent to ANILCA has failed to come to fruition. In that vein and as it relates to natural resources development in Alaska I would advocate the Federal agencies embrace the collaborative design found in ANILCA. We must strive to capture the balance originally envisioned by the drafters and not forget the broad concessions to development articulated in its provisions.

Thank you.

[The prepared statement of Mr. Kindred follows:]

Joshua M. Kindred, Environmental Counsel, Alaska Oil & Gas Association

Chairman Murkowski, Ranking Member Cantwell and Members of the Committee, I am Joshua Kindred, Environmental Counsel for the Alaska Oil and Gas Association. The Alaska Oil and Gas Association (AOGA) is a professional trade association whose mission is to foster the long-term viability of the oil and gas industry for the benefit of all Alaskans. We represent the majority of companies that are exploring, developing, producing, refining, or marketing oil and gas on the North Slope, in the Cook Inlet, and in the offshore areas of Alaska.

AOGA appreciates the opportunity to address the Committee regarding the implementation of ANILCA and the role that it has played on oil and gas development in Alaska. In reality, oil and gas operations in Alaska are academically and practically removed from traditional ANILCA issues. However, that is simply because the ANILCA issues affecting industry are often resolved, for better or worse, absent private sector involvement. Nevertheless, ANILCA has over the past thirty-five years effectively dictated the scope of natural resources development in Alaska.

In order to properly address ANILCA's role on Alaska's natural resource development, one must understand both the impetus for the legislation and the compromise that it ultimately represented. I will spare this committee a lengthy history dissertation, but the context of ANILCA's implementation is necessary to fully evaluate its ongoing role in Alaska.

The Alaska Native Claims Settlement Act, or ANCSA, represented the federal government's first attempt at resolving Alaska Native aboriginal rights. Ultimately, ANCSA served to extinguish aboriginal land rights in Alaska through the grant of 44 million acres of lands and over $950 million in compensation to Alaska Natives. To accomplish this goal, ANCSA created an arrangement by which Native Corporations could identify lands for subsequent conveyance. This was by no means a simple or linear process, but for our purposes today, it is important to note that almost a half-century has passed and still ANCSA lands have yet to be fully conveyed. Nevertheless, the enactment of ANILCA became necessary in response to a series of executive withdrawals of federal lands in Alaska for parks, refuges, and

wilderness purposes, far in excess of what was originally contemplated in the compromise that gave rise to ANSCA, which will be a consistent theme in my testimony. The most notable of these withdrawals occurred on December 1, 1978, when President Carter designated 56 million acres as national monuments. By 1980, the executive branch had withdrawn over 100 million acres of federal land. In response, Congress enacted legislation aimed at regulating Alaska lands under a comprehensive and permanent program.

During the congressional discourse giving rise to ANILCA, a wide spectrum of Alaskan stakeholders articulated Alaska's needs and concerns. Namely, Alaskans sought to revoke all 1978 monuments and executive withdrawals, receive full Statehood and ANCSA land entitlements, exclude economically important natural resources from conservation areas, guarantee that traditional land uses continue on all lands, and preclude administrative expansion of conservation units. Alaskan interests were represented in the House debates, as Congress attempted to achieve the proper balance between development and conservation, which highlights an important point: ANILCA was not simply legislation aimed at advancing conservation and preservation.

As President Carter stated upon ANILCA's ratification: "It strikes a balance between protecting areas of great beauty and value and allowing development of Alaska's vital oil and gas and mineral and timber resources." Representative Udall echoed that sentiment, affirming that ANILCA allowed for "the development of Alaska [to] go forward with balance." At the signing of the bill, Senator Stevens concluded: "Over half of the Federal lands that will remain under control of the Department of Interior will be in Alaska after the passage of this bill. Over half of the hydrocarbon resources of the United States are in Alaska's lands. We know that the time will come when those resources will be demanded by other Americans."

ANILCA represented substantial congressional and ideological compromise, acknowledging that considerable conservation withdrawals could not be achieved without accommodating the interests of the State of Alaska and Alaska Natives. As to the former objective, ANILCA effectively doubled the size of the nation's national park and refuge systems and tripled the amount of land designated as wilderness. And although issues remain on the periphery, this must be considered a great success from an environmental perspective.

However, as to one of the other primary goals of ANILCA, thirty-five years later, the optimism of those who drafted ANILCA is starkly contrasted by numerous examples of the subsequent erosion of Congress' vision of collaborative, unique, and balanced legislation.

This is neither a new or novel assessment of ANILCA. Roughly twenty years ago, the State of Alaska's ANILCA team provided a report detailing the "deteriorating relationship between the State and Department of Interior. That report concluded that the federal agencies were increasingly failing to coordinate with Alaska and ignoring the state's comments as decisions were being made at higher levels in Washington, D.C without a full understanding of ANILCA provisions, its intended cooperation and consultation, and lacking the Alaska context. And today, an ongoing divergence from the ANILCA's carefully considered compromises over the subsequent decades has resulted in ever-increasing conflicts with federal agency decisions and diminished involvement by the public, Native corporations, and state in federal decisions affecting public uses and adjacent landowners. This illustrates federal agencies' poor understanding of ANILCA and its consultation requirements, particularly given that federal agencies increasingly choose to take actions unilaterally. Simply stated, federal agencies are not engaged in genuine consultation with Alaskans and state agencies, and it should be noted that merely giving notice does not constitute consultation. Federal regional leadership will often alter significant policy interpretations affecting management of federal lands without notice and increasingly defer such decisions to the political leadership in the agencies' national offices, which, of course, fails to provide opportunity for the appropriate consultation envisioned by ANILCA.

Nonetheless, these misgivings and issues, while crucial, do not represent an indictment of ANILCA. Rather, they serve to highlight that the designed flexibility inherent to ANILCA has failed to come to fruition. In that vein, and as it relates to natural resource development in Alaska, I would advocate that federal agencies embrace the collaborative design found in ANILCA. We must all strive to capture the balance originally envisioned by the drafters of ANILCA, and not forget the broad concessions to development articulated in its provisions. To better understand ANILCA's true endeavor, one need look no further than the Act's "statement of purpose":

> This Act provides sufficient protection for the national interest in the scenic, natural, cultural and environmental value 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.

It is impossible to discuss the "economic and social needs of the State of Alaska and its people", without discussing oil and gas development. Currently, proceeds from oil and gas development provide the State of Alaska with billions in annual revenue, representing nearly 90% of the State's unrestricted general revenue. ANILCA does play a substantial role on the industry in Alaska, if, for no other reason, it dictates those lands available for exploration and subsequent development. Of course, it would be imprudent to discuss the interplay of ANILCA and oil and gas development without mentioning Section 1002, which mandated the Coastal portion of the Arctic National Wildlife Refuge be studied, and provided for a potential path to oil and gas exploration and development. In 1987, following detailed and comprehensive studies, the Department of Interior recommended opening the area for oil and gas exploration and development. And today, decades later, even absent Congressional action, there is little room to debate the extraordinarily resource potential of ANWR's Coastal Plain, which USGS estimates to contain over 10 billion barrels of recoverable oil. Regardless of ANWR's potential and politically-charged status, it highlights the manner in which ANILCA discourages greater oil and gas exploration and development in Alaska. For, if the federal government is not willing to sanction oil and gas operations in arenas congressionally envisioned for development where the resource potential is known, what incentive does Alaskan industry have to broaden their search to areas of unknown resource potential?

Another aspect of ANILCA that serves to undermine resource development pertains to Title XI. In the oil and gas context, the key examples pertain to proposals to transport North Slope natural gas to market. The Alaska Pipeline Project (APP), a joint undertaking of Exxon Mobil and TransCanada, that would have resulted in a natural gas pipeline from the North Slope into Canada, connecting to existing pipeline infrastructure to transport the gas to Midwest refineries and markets, concluded that it could neither navigate the procedural requirements of ANILCA

Title XI where a portion of the pipeline traversed a national wildlife refuge nor successfully accomplish a land exchange. The APP is no longer a viable project, and plans for transporting North Slope natural gas have shifted to the Alaska LNG Project, which is a proposal supported by ExxonMobil, ConocoPhillips, BP and the State of Alaska. Alaska LNG is also struggling to envision a successful path through ANILCA Title XI because a small 7-mile portion of the most direct pipeline route would follow the Parks Highway as it traverses Denali National Park.

It is difficult to succinctly summarize the problems posed by ANILCA Title XI for complex projects, such as Alaska LNG. Generally stated, Title XI establishes an inflexible and likely impracticable process for obtaining federal permits for complex projects such as the APP and Alaska LNG. Title XI establishes tight deadlines and mandates simultaneous application, environmental review and permitting decisions in a manner that cannot be rationalized for a complex project proceeding through a phased design and financial approval process. A second significant issue is that Title XI mandates additional substantive requirements that fundamentally alter the authority of any involved federal agency to condition or disapprove a proposed project. Under Title XI, each involved federal agency must make detailed findings regarding, among other things, economic feasibility, alternative routes, social, economic, subsistence and environmental impacts, and public values. The result being that if merely one agency disapproves an application for the project, the project is deemed disapproved in its entirety. These provisions render the process unduly unpredictable and risky.

In regards to mineral exploration and production, the Red Dog mine represents an example of how Title XI failed Alaska. NANA and Cominco (now Teck) decided, after careful consideration, that neither Title XI of ANILCA nor the existing land exchange provisions of ANCSA and ANILCA could be effectively navigated. As a result, the relevant parties chose to pursue congressional approval for a land exchange agreement between the Secretary of the Interior and NANA, which Congress subsequently approved. See Act of Sept. 25, 1985, Pub. L. No. 99-96, 99 Stat. 460 (adding ANCSA § 34, 43 U.S.C. § 1629).

However, despite these numerous issues, there are also examples of ANILCA operating in a manner that corresponds with the Congress's initial intent:

ANILCA § 906, which clarified the ability of the State to select and receive its land entitlements, notwithstanding many historic and continuing withdrawals of land in Alaska, and clarified that a "tentative approval" under section 6(g) of the

Statehood Act is the legal equivalent of a patent without benefit of a formal survey.

ANILCA § 901 (as amended in Aug. 1988), which provided for conveyance, by operation of law, of any remaining federal interest in lands under meanderable waters to the adjoining upland owners, and for not counting such acres against the entitlements of the State and Native corporations.

ANILCA § 907 (as amended and supplemented in Feb. 1988), which enacted automatic land bank protections for Native corporation lands, until they are sold, leased, or developed.

Title XIV of ANILCA allowed for the approval of numerous negotiated ANCSA conveyances and land exchanges

ANILCA § 1431, which has been particularly important for oil and gas exploration and development in the Colville Delta and eastern NPR-A.

Together, we can design a prudent path forward that recognizes the dual needs of Alaskans.

The CHAIRMAN. Thank you, Mr. Kindred.
Ms. Seidman, welcome.

STATEMENT OF ANNA SEIDMAN, DIRECTOR OF LITIGATION, SAFARI CLUB INTERNATIONAL

Ms. SEIDMAN. Thank you, Chairman Murkowski.

I testify today on behalf of Safari Club International, the most influential hunting organization in this country. Safari Club International has over 48,000 members and 177 chapters throughout the world, two of which are in Alaska. Safari Club members are passionate hunters and conservationists who live in Alaska or travel to Alaska for the purpose of enjoying the state's world class hunting opportunities. They hunt for both subsistence and non-subsistence purposes and all are affected by ANILCA.

Sixteen and a half years ago I joined Safari Club to pursue a lawsuit that Safari Club had filed to challenge the Federal Subsistence Board's Administration of ANILCA. Parenthetically, it was that ANILCA lawsuit that later led Safari Club to establish a multi attorney litigation department that has pursued myriad lawsuits to protect hunting and sustainable use management throughout the world.

As a result of Safari Club's ANILCA lawsuit, the Federal Government acknowledged its obligation to fairly balance the regional advisory councils with representation from both subsistence and non-subsistence interests. Today, just as we did back in 1999, Safari Club understands that ANILCA's purpose is to provide a balance between the needs of the user groups who must share Alaska's resources. Congress tasked the administrators of ANILCA to conserve those resources to make sure that ANILCA's hunters have wildlife to hunt and to fulfill subsistence and non-subsistence needs on Federal lands in accordance with sound management and recognize scientific principles of fish and wildlife conservation.

Congress did not intend for the Federal agencies to operate as though they alone had responsibility or authority to make decisions about how to conserve and manage ANILCA, sorry, Alaska's wildlife resources. Congress directed the Federal administrators of ANILCA to cooperate with state agencies among others.

Recently the National Park Service and the U.S. Fish and Wildlife Service have chosen to ignore congressional intent and have each invoked ANILCA as the basis of decisions to interfere with Alaska State wildlife management and to deprive Alaska's subsistence and non-subsistence hunters of hunting opportunities.

The National Park Service finalized regulations on October 23, 2015 that prohibit hunting methods for wolves, bears and coyotes that are often practiced by subsistence hunters. The regulations demonstrate that the Park Service intends to be the final judge of what are and what are not ethically appropriate methods of hunting regardless of whether the State of Alaska deems such methods legal. Instead of cooperating with the State of Alaska in addressing this difference of opinion, the National Park Service handed out edicts and then moved ahead with regulatory prohibitions based on Park Service's assessment of what constitutes appropriate hunting in Alaska.

The U.S. Fish and Wildlife Service is about to take similar action. The agency has announced plans to utilize natural diversity to manage wildlife on national wildlife refuge lands in Alaska instead of recognizing ANILCA's goal of providing wildlife resources for the needs of Alaska's hunting public, the Fish and Wildlife Service intends to apply a hands off approach to wildlife management. Rejecting the State of Alaska's needs to balance its predator and prey populations the Fish and Wildlife Service prefers to allow growing predator populations to decimate the very prey populations upon which Alaska's hunters depend.

The service chooses to completely ignore the words of Senator Ted Stevens, one of ANILCA's key drafters, who explained that natural diversity was not intended to prevent the service from acting for the benefit of the use of wildlife populations by man as part of the balanced management program mandated by ANILCA. Like the National Park Service, the Fish and Wildlife Service has ignored its obligation to cooperate with the State of Alaska and instead is adopting rules that contradict and undermine state regulations and statutory wildlife management mandates.

For these reasons on the occasion of ANILCA's anniversary Safari Club asks this Committee to remember the original intent of ANILCA's drafters to remind Federal agency administrators of their ANILCA duties to manage wildlife resources for the benefit of Alaska's hunters and to make certain that resource management decisions are made in cooperation with the state agency that is responsible for statewide conservation and management of wildlife. Only through an approach that maintains a balance between providing for the needs of the hunting communities and ensuring long term survival of all of Alaska's wildlife resources can ANILCA's obligations be fulfilled.

Thank you very much.

[The prepared statement of Ms. Seidman follows:]

Anna M. Seidman
Director of Litigation
Safari Club International

Chairman Murkowski, Senator Cantwell, and members of the Committee:

My name is Anna Seidman and I am Director of Litigation for Safari Club International. I am particularly honored to have the opportunity to testify today before this Committee. I speak today on behalf of the most influential hunting organization in this country. Safari Club International is a nonprofit organization with offices in Tucson, Arizona and Washington, D.C. Our missions include protecting the freedom to hunt and promoting wildlife conservation worldwide.

Safari Club International's Interest in ANILCA

Safari Club has over 48,000 members and 177 chapters throughout the world. We have two Alaska-based chapters, the Alaska Chapter and the Alaska Kenai Peninsula Chapter. Both are extremely active in promoting and protecting hunting and wildlife conservation in Alaska. Safari Club has members who live in Alaska and others who travel to Alaska for the purpose of enjoying the state's world-class hunting opportunities. These members hunt for many purposes, both subsistence and non-subsistence, and all of these members are affected by the Alaska National Interest Lands Conservation Act or ANILCA. They are passionate hunters and conservationists. Together they, and we who advocate for them, want to make sure that hunting and the wildlife resources that provide those hunting opportunities in Alaska remain available now and long into the future.

It is quite fitting that I represent Safari Club today because it was ANILCA that brought me to Safari Club and turned me into a wildlife and hunting litigation attorney. ANILCA also was responsible for the development of Safari Club's litigation advocacy department. Sixteen and a half years ago, I joined Safari Club solely for the purpose of litigating a lawsuit that Safari Club had filed in federal court to challenge the Federal Subsistence Board's administration of ANILCA. Our lawsuit did not challenge the law itself. It challenged the way that the federal agencies were administering ANILCA.

In 1999, Safari Club challenged, among other things, the lack of representation from non-subsistence interests on the Regional Advisory Councils that advised the Federal Subsistence Board in regard to determinations pertaining to priority access to wildlife resources on federal lands in Alaska. As a result of our lawsuit, the federal government acknowledged its obligation to fairly balance the Regional

Advisory Councils with representation from both subsistence and non-subsistence interests. That one case led Safari Club to hire a litigation attorney and to participate in many lawsuits involving hunting, importation, wildlife conservation, land management, and resource planning. Today, Safari Club is home to a litigation department with several attorneys who dedicate their time exclusively to advocating for hunting and sustainable use conservation throughout the world.

ANILCA'S Purpose.

Just as we did back in 1999, Safari Club today understands that ANILCA's purpose is to provide a balance between the needs of the user groups who must share Alaska's resources. Congress designed ANILCA to provide access to wildlife resources for Alaska's subsistence communities but to make sure that non-subsistence users maintained their access in all situations where sufficient wildlife resources are available. Congress tasked the administrators of ANILCA to conserve those resources to make sure that Alaska's hunters have wildlife to hunt. ANILCA directed the Secretaries of the Department of the Interior and the Department of Agriculture to manage resources to fulfill the needs of the communities that depend upon these resources as well as "to provide for the maintenance of sound populations of, and habitat for, wildlife species of inestimable value to the citizens of Alaska and the Nation," 16 U.S.C. § 3101. Congress directed these federal managers to fulfill subsistence and non-subsistence needs on federal lands in accordance with sound management and recognized scientific principles of fish and wildlife conservation. 16 U.S.C. § 3112.

The drafters of ANILCA did not give federal managers exclusive authority in administering ANILCA. Instead, Congress explained that to protect "the continued viability of all wild renewable resources in Alaska," those administrators were obligated to "cooperate with adjacent landowners and land managers, including Native Corporations, appropriate State and Federal agencies, and other nations." 16 U.S.C. § 3112. In other words, Congress did not intend for the federal agencies to operate as though they alone had the responsibility or authority to make decisions about how to conserve and manage Alaska's wildlife resources. Congress tasked the Secretaries with the duty to collaborate with the state of Alaska, among others.

Recent Actions by Federal Agencies Contravening ANILCA.

Recently, two of the federal government agencies that are tasked with administering ANILCA have taken actions that abandon the intent of Congress concerning ANILCA's protection of hunting opportunities. Specifically, the National Park Service and the U.S. Fish and Wildlife Service have each invoked ANILCA as the basis of decisions to deprive Alaska's residents, both subsistence and non-subsistence hunters, of hunting opportunities. Both of these agencies have taken or intend to take positions that interfere with Alaska state management of wildlife that supports hunting opportunities. The National Park Service and the U.S. Fish and Wildlife Service are reinterpreting ANILCA to require a "hands-off" approach to wildlife management even if that approach would lead to the complete disappearance of huntable populations of wildlife.

National Park Service

The National Park Service finalized regulations on October 23, 2015 that prohibit several forms of hunting on National Preserves in Alaska. These regulations unabashedly target "sport" or non-subsistence hunters, yet the rules actually prohibit methods that are often practiced by subsistence hunters in the hunting of wolves, bears and coyotes. These regulations send the message that the National Park Service is uncomfortable with certain methods of take and that the Park Service intends to be the final judge of what are and what are not "ethically appropriate" methods of hunting. Despite the State of Alaska's determination that those types of hunting are legal and appropriate within the state, the National Park Service wants to impose its contrary, and emotionally–based, value system on legally mandated hunting on National Preserve lands in Alaska.

In this action, the Park Service is taking rather lightly ANILCA's requirement that federal agencies "cooperate" with Alaska state wildlife managers. The National Park Service seems to interpret compliance to require only that the Park Service demand that the Alaska Board of Game adopt the Park Service's prohibitions. If the Board of Game refuses, the Park Service then promulgates regulations that contradict Alaska State hunting rules and that undermine Alaska statutory obligations to provide hunting opportunities to its citizens. Instead of cooperating with the State of Alaska in addressing this difference of opinion on hunting methods, the National Park Service handed out edicts and then moved ahead with regulatory prohibitions based on the National Park Service's opinions of what constitutes appropriate hunting in Alaska.

For all hunters, the way that the National Park Service is imposing its personnel's value judgments about what constitutes appropriate hunting methods is a concern that doesn't restrict itself to Alaska. This subjective and emotionally based approach to what constitutes appropriate methods of hunting could extend to hunting authorized on National Park Service lands throughout the U.S.

The October 23rd regulations are not the only example of the National Park Service's attempt to take action that overrides State authority to regulate hunting activities in Alaska. Safari Club member John Sturgeon has a case before the U.S. Supreme Court that challenges the National Park Service's effort to exercise its authority to restrict the use of non-federal waters and lands located within National Park Service boundaries. The National Park Service prohibited Mr. Sturgeon from operating his personal hovercraft on a river running through a National Preserve, despite the fact that the navigable water at issue is state owned and that the state permits hovercraft use on state owned waterways. Safari Club has filed an amicus brief in support of Sturgeon's arguments and oral argument is scheduled for January 20th of next year.

The U.S. Fish and Wildlife Service

Similarly, the U.S. Fish and Wildlife Service has announced plans to revise its regulations for wildlife management and hunting in Alaska. The Fish and Wildlife Service wants to codify the concept of so-called "natural diversity" to manage wildlife resources on National Wildlife Refuge lands in Alaska. Like the Park Service, the Fish and Wildlife Service intends to ignore the intent of ANILCA's drafters. Instead of recognizing the goal of providing wildlife resources for the needs of Alaska's hunting public, the Fish and Wildlife Service intends to apply a "hands-off" approach to wildlife management. The Fish and Wildlife Service refuses to recognize the State of Alaska's need to balance Alaska's predator and prey populations. Instead, the FWS prefers to allow growing predator populations to decimate the very prey populations upon which hunters depend for both subsistence and non-subsistence hunting opportunities. In adopting this approach, Fish and Wildlife Service leadership ignores the specific definition for "natural diversity" provided by Senator Stevens, one of the key drafters of ANILCA's complicated and balanced approach to wildlife management on federal lands in Alaska:

> The term is not intended to, in any way, restrict the authority of the Fish and Wildlife Service to manipulate habitat for the benefit of fish

> or wildlife populations within a refuge ***or for the benefit of the use of such populations by man as part of the balanced management program mandated by the Alaska National Interest Lands Conservation Act and other applicable law***. The term also is not intended to preclude predator control on refuge lands in appropriate instances.

(emphasis added) Congressional Record, Dec. 1, 1980, S-15132.

Like their National Park Service colleagues, the Fish and Wildlife Service considers its duty to "cooperate" with Alaska State wildlife management officials to be satisfied by the delivery of edicts and the adoption of regulations that contradict and undermine Alaska State regulations and statutory wildlife management mandates. The Fish and Wildlife Service is expected to publish a proposed version of those regulations in the next few months, and you can be sure that Safari Club and many others will be vigorously opposing them.

Call for Action

In conclusion, on the occasion of ANILCA's anniversary, Safari Club asks this Committee to:

- remember the original intent of ANILCA's drafters;
- remind federal agency administrators of their ANILCA duties to manage wildlife resources for the benefit of Alaska's hunters; and
- make certain that resource management decisions are made in cooperation with the State agency that is responsible for state-wide conservation and management of wildlife, including the wildlife that are found on federal lands.

Only through an approach that maintains a balance between providing for the needs of the hunting communities and ensuring long term survival of all of Alaska's wildlife resources, both predators and prey, can ANILCA's obligations be fulfilled.

Thank you for this opportunity to provide this testimony.

The CHAIRMAN. Thank you.

Finally, we will hear from Mr. J.P. Tangen, welcome to the Committee.

STATEMENT OF J.P. TANGEN, ATTORNEY AT LAW

Mr. TANGEN. Thank you, Madam Chairman. I'm honored to address you on this, the 35th anniversary of the signing of ANILCA. My name is J.P. Tangen. I'm an attorney in active practice in the State of Alaska.

I was first drawn to Alaska in 1975 in no small part because of the pending determination that up to but not to exceed 80 million acres of unreserved public lands in Alaska should be withdrawn for addition to or creation as units of the National Park Forest Wildlife Refuge and Wild and Scenic Rivers system. To a young attorney advisor working for the Department of Commerce here in DC, 80 million acres of land sounded like an awful lot of land. Accordingly I relocated to Alaska and have fought in the trenches up there ever since.

My primary vocation over the past four decades has been on behalf of the mining industry although I did serve as Alaska's Regional Solicitor for the Department of the Interior in the early 1990's. I've also served for many years as Co-Chairman of the Alaska Miners Association Federal Oversight Committee. And on that committee, in that capacity, I've participated in the analysis and comments on literally hundreds of initiatives from Federal land managing agencies that would unilaterally burden or preclude development of Federal, on Federal land, in Alaska in direct violation of the clear language of ANILCA.

In the year 2000 I had the privilege of participating in the publication of a collection of essays entitled, "d(2), Part 2, A Report to the People of Alaska on the Land Promises Made in ANILCA, 20 years later." I recommend the book to you for your bedtime reading and anybody here, for that bedtime reading. It's relatively short, easily digested.

Among the articles included in d(2), Part 2 is the testimony that Steve Borell, then Executive Director of the Alaska Miners Association delivered before this very Committee on August 10, 1999. It can be seen by a review of his testimony that there have been, there were many open wounds on the table 20 years after the passage of ANILCA. And everything Mr. Borell said then remains true today.

But the egregious misconduct of the U.S. Forest Service, Bureau of Land Management, the Park Service, the Fish and Wildlife Service has been a compounding of the ensuing 15 years.

I was asked to offer testimony at this time on ANILCA including perspectives on the Act's impacts and suggestions for improvements to the Act. I'll attempt to do so in the most positive way possible.

When discussing ANILCA the primary concern of many Alaskans, certainly those in the resource development industry, is that ANILCA was held out to be a great compromise with two cornerstone guarantees. First that there would never be any more withdrawals of public land from the economic and social needs of the State of Alaska and its people, that language is in Section 101 of

the Act. And second that under Section 1110 in exchange for restrictive burdens on what turned out to be well over 100 million acres of land, Federal, in Alaska, there would be adequate and feasible access for economic and other purposes to the concerned land.

There are many other promises contained in ANILCA, as Senator Ted Stevens observed in his preface to d(2), Part 2, during the 20 years after passage Alaskans have witnessed many disappointments and continue to do so.

Pursuant to mandate I will list some of the problems that have emerged over the past 15 years and are ongoing to this day and then I'll propose some suggested remedies with the hope that this bitter battle can be brought to a conclusion before resource development on Federal land in Alaska is totally destroyed.

The resource development of the National Park Service has employed a variety of tools to ensure that valid existing rights to developmental resources in NPS units in Alaska are never developed. In the case of Orange Hill, for instance, an extremely valuable copper deposit in the Wrangell-St. Elias National Monument comprising of patented land was deprived of access by the Park Service on one hand, on the other because it had no authorized access the owners were denied adequate compensation for it.

Despite two—the owners literally went through the Administrative process twice, to Congress twice and to the courts twice seeking redress and finally they gave up.

Don't assume that because of this specific inholding is referred to an isolated incident however. Comparable sagas occurred in other areas of the Wrangell-St. Elias National Monument, Denali National Park, Glacier Bay, Cape Krusenstern and Bering Land Bridge, for instance. The methodology used by the Park Service is predictable.

First a permit must be required. Then an environmental impact statement must be prepared for which the applicant is often asked to pay. The permit is denied and the applicant is told it can never get a permit, no matter what he says, and should sell the property to the Park Service. The Park Service approves. The appraisal is conducted which disregards any value for the resource. The applicant turns to the courts where an unsympathetic Federal judge is arbitrarily constrained by APA procedures. At the instance of the Department of Justice, attorneys with an agenda rule against the applicant and the applicant is reduced to appealing to the Ninth Circuit which never saw a resource development project it didn't want to scuttle. And this dance has various mutations, but the result is always the same.

A similar exercise occurs with regard to access. The National Forest Service, for instance, has the right and obligation to permit logging roads through the Chugach National and Tongass National forests. And although referred to as logging roads they also are used by miners, hunters and local communities, many of which are dependent upon logging and other resource development projects to support their very infrastructure. Both the national forests are known to be replete with marketable timber and mineral resources. However, as a result of the stridence of the Forest Service and the APA's insistence that the agencies are the best arbiters of their own mandates, the ability of Alaskans to use the forests for re-

source development is vitiated. It's not to suggest the NPS is any better with regard to access. Witness the Hale v. NPS case or the Sturgeon case or Fish and Wildlife Refuges service is sympathetic, witness the King Cove road problem.

The BLM, in its unique way, has determined to create gigantic areas of critical environmental concern that have all the earmarks of barring restrictions to land use and access across public lands even though there's no particular justification for doing so other than their planning process. The BLM most recently dedicated teams of people with apparently unlimited resources to prepare reports that run to the thousands of pages to gut the purpose and language of ANILCA. The expense of analyzing and opposing these works is astronomical and ironically doing so is a total waste of time because of the critical comments fall on deaf ears and the agency does what it pleases without fear of reprisal.

In summary, although blocking access across development of Federal lands was thought to be clearly precluded by ANILCA, these preclusions have been ignored or are actively resisted by the land managing agencies.

I'm well over my time. I'm sorry, I apologize for that.

I've listed a dozen recommendations with regard to actions that the Senate should take. This Committee has a vested interest for 35 years, for 40 years, this Committee has had a vested interest in ensuring that Alaska was being treated fairly by this.

I'm happy to answer any questions, but the bottom line is after 35 years it's time that something happened to protect the interest of the Alaska people.

Thank you, Madam Chairman.

[The prepared statement of Mr. Tangen follows:]

Testimony of
J. P. Tangen, Attorney at Law
Before the Energy and Natural Resources Committee
Of the United States Senate
December 3, 2015

Madam Chairman, Members of the Committee, I am honored to address you on this 35th Anniversary of the signing of the Alaska National Interests Lands Act of 1980. My name is J. P. Tangen. I am an attorney in active practice in the State of Alaska. I was first drawn to Alaska in 1975, in no small part because of the pending determination that "up to, but not to exceed, eighty million acres of unreserved public lands in the State of Alaska ... [should be withdrawn] for addition to or creation as units of the National Park, Forest, Wildlife Refuge, and Wild and Scenic Rivers Systems..." To a young attorney-advisor with the Department of Commerce here in DC, 80 million acres of land seemed like an awful lot of land.

Accordingly, I relocated to Alaska and have fought in the trenches ever since. My primary vocation over the decades has been on behalf of the mining industry, although I did serve as Alaska Regional Solicitor for the Department of the Interior in the 1990's. I have served for many years as co-chairman of the Alaska Miners Association's Federal Oversight Committee, and in that capacity have participated in the analysis and comments on hundreds of initiatives from federal agencies that would unilaterally burden or preclude development on federal land in Alaska in direct violation of the clear language in ANILCA.

In 2000, I had the privilege of participating in the publication of a collection of essays entitled d(2), Part 2, A Report to the People of Alaska on the Land Promises Made in ANILCA, 20 Years later .... I commend that book to you for your bedtime reading; it is relatively short and can easily be digested in an hour or so.

Among the articles included in d(2), Part 2 is the testimony of Steve Borell, then Executive Director of the Alaska Miners Association, before this very Committee on August 10, 1999. It can be seen by his testimony that there were many open wounds on the table after 20 years of experience under ANILCA. Everything Mr. Borell said then remains true to this day, but the egregious misconduct of the USFS, the BLM, the NPS and the FWS has been compounding over the ensuing 15 years.

I was asked to offer testimony at this time on ANILCA, including perspectives on the Act's impacts in Alaska and suggestions for improvements to the Act. I shall attempt to do so in the most positive way possible.

When discussing ANILCA, the primary concern of many Alaskans, certainly those in the resource development industries, is that ANILCA was held out to be a great compromise, with two cornerstone guarantees: first, that there would never be any more withdrawals of public land from "the economic and social needs of the State of Alaska and its people." That language is in section 101 of the Act. Second, that under section 1110, in exchange for restrictive burdens on what turned out to be well over 100,000,000 acres of federal land in Alaska, there would be "adequate and feasible access for economic and other purposes to the concerned land."

There are many other promises contained in ANILCA. As Senator Ted Stevens observed in his Preface to d(2), Part 2, during the twenty years after passage Alaskans had witnessed many disappointments and continued to do so.

Pursuant to mandate, I will list some of the problems that have emerged over the past 15 years and are ongoing to this day; then I will propose suggested remedies, with the hope that this bitter battle can be brought to a conclusion before resource development on federal land in Alaska is totally destroyed.

IMPACTS OF ANILCA

1. Resource Development is blocked on Federal Lands in Alaska by USFS, BLM, NPS and FWS.

a. The National Park Service has employed a variety of tools to ensure that valid existing rights to develop mineral resources within NPS units in Alaska are never developed. In the case of Orange Hill, for instance, an extremely valuable copper deposit, comprising patented land, was deprived of access by the Park Service, on the one hand; and, on the other, because it had no authorized access, the owners were denied adequate compensation.

b. The owners literally went through the administrative process twice, to Congress twice and to the courts twice seeking redress. Finally they gave up.

c. Do not assume, however, that because a specific in-holding is referred to it is an isolated event. Comparable sagas occurred in other areas of the Wrangell-St. Elias National Park, Denali National Park, Glacier Bay National Park, Cape Krusenstern National Monument and Bering Land Bridge National Reserve.

d. The methodology used by the NPS is very predictable.

i. First a permit must be applied for. That often requires an Environmental Impact Statement for which, among other things, requires the applicant to pay;

ii. Then, the permit is denied and the applicant is told that he can never get a permit no matter what he says and that he should sell the property to the NPS;

iii. Then an NPS-approved appraisal is conducted which disregards any value for the resource that cannot be developed under NPS rules;

iv. Then the applicant turns to the courts, where unsympathetic federal judges, arbitrarily constrained by the Administrative Procedures Act (hereafter "APA") and at the instance of Department of Justice attorneys with an agenda, rule against the applicant;

v. Then the applicant is reduced to appealing to the Ninth Circuit which never saw a resource development project it didn't want to scuttle.

e. This dance has various mutations, but the end result is always the same.

2. Access Across Federal Lands in Alaska is blocked by USFS, BLM, NPS and FWS.

a. A similar exercise occurs with regard to access.

b. The National Forest Service has the right and obligation to permit logging roads throughout the Chugach and Tongass National Forests.

c. Although referred to as logging roads, they also are used by miners, hunters, and local communities, many of which are dependent upon logging and other resource development projects to support their very infrastructure.

d. Both National Forests are known to be replete with marketable timber and mineral resources; however, as the result of the stridence of the USFS and the APA's insistence that the agencies are the best arbiters of their own mandates, the ability of Alaskans to use the forests for resource development is vitiated.

e. This is not to suggest that the NPS is any better with regard to access, witness the Hale v. NPS case and the Sturgeon case; or that the Fish and Wildlife Service is sympathetic, witness the King Cove Road problem.

f. The BLM, in its unique way, has determined to create gigantic "Areas of Critical Environmental Concern" that have all the earmarks of barred restrictions on land use and access across public lands, even though there is no particular justification for doing so other than their "planning process."

g. The BLM most recently has dedicated teams of people with apparently unlimited resources to prepare reports that run to the thousands of pages to gut the purpose and language of ANILCA. The expense of analyzing and opposing these works is astronomical and, ironically, doing so is a total waste of time, because critical comments fall on deaf ears, and the agency does what it pleases without fear of reprisal.

SUMMARY

Although blocking access across and development on federal lands was thought to be clearly precluded by ANILCA, these preclusions have been ignored or actively resisted by the land managing agencies.

RECOMMENDATIONS

Congress should prepare legislation that makes it clear:

1. That ANILCA is an action-forcing statute that is binding on the federal land managing agencies in Alaska and under the direct supervision of the inspectors general of the respective agencies;

2. That implementation of FLPMA and other agency organic acts are deemed to have been amended by ANILCA and are to be interpreted consistently with the legislative intent of ANILCA, facilitating access across and resource development on federal lands in Alaska managed by the USFS, the BLM, the NPS and the FWS;

3. That notwithstanding the APA, the federal courts are directed to exercise plenary authority over the land managing agencies and to consider applications for review of decisions that deny private citizens access through and across Conservation System Units (often called "CSUs") created or enlarged by ANILCA *de novo* and upon request;

4. That all waters, rivers, streams and lakes in Alaska are hereby deemed navigable and subject to the exclusive jurisdiction of the State of Alaska, unless the affected land managing agency can prove by a preponderance of the evidence in federal district court that a specific reach or impoundment is not navigable;

5. That all existing logging roads and all historic RS 2477 rights-of-way already identified by statute by the State of Alaska across federal public lands in Alaska are hereby deemed granted, including alternative routes dictated by weather and topographic conditions, and including a 50-foot-from-the-centerline width and such borrow pits of sufficient proximity and size as may be required by the builder to ensure economic maintenance;

6. That permits, environmental impact statements and all other studies and documentation required by an agency shall be paid for exclusively by the lead agency out of appropriated funds;

7. That applications and amendments to applications for access or development activities on inholdings shall be deemed approved unless denied for cause within one year after having been initially filed;

8. That all Public Land Orders issued under the authority, in whole or in part, of ANCSA or ANILCA or related to ANCSA or ANILCA are revoked effective one year after the passage of this legislation unless renewed by reference to other authority;

9. That wetlands within CSUs and Wilderness Areas in Alaska be deemed sufficient to fully satisfy the Clean Water Act's mitigation requirements in lieu of replacement or monetary compensation for any resource development projects regardless of federal, state, local, or private ownership.

10. That the Alaska Land Use Council as described in ANILCA Title XII is re-established and charged with the responsibility of ensuring that the promises of ANILCA are kept;

11. That the Quiet Title Act shall not apply to the transfer to the State of public lands in Alaska; and

12. That the Mining in the Parks Act shall not apply to CSUs in Alaska.

I very much appreciate the opportunity to present these few points and look forward to supplementing these comments for the record.

Thank you.

The CHAIRMAN. Thank you, Mr. Tangen.

Again, I appreciate the written testimony where you have outlined that. Let's hope that in the questions here we have an opportunity to lay some of those on the table.

I would like to start with you, Governor Walker, from kind of the 30,000 foot perspective. You, I think, have articulated well what it is that your administration and certainly the congressional delegation here supports in terms of our opportunities to access just a tiny, tiny portion of ANWR, that area that has been set aside recognizing its extraordinary potential.

You talk about compromise in a measure. Alaskans' willingness to say, okay, here is an area that has been designated for its energy potential, for its oil and gas potential, but all we are seeking to access is four percent. Yet when you think about the areas that Alaska has available for oil exploration and opportunity, some 86 percent of what we have or what we understand to have regarding our oil, is placed off limits if this Administration's policies are finalized here. We have seen some of those and many of them were talked about here today.

It has been suggested that perhaps Alaska is too dependent on oil. You have outlined a little bit of the situation that we are currently in as a state with a pipeline that is less than a third full, that as Governor you are dealing with a budget that is not just having impact on Alaskans today. But if we do not invest in our young people through education, if we do not invest in our infrastructure for today, what future do we have tomorrow?

I would like for you to respond to the suggestion. It is not just from the one comment that we have heard today. There are many who believe that Alaska should be that special place where we just keep it in the ground. When I say "keep it in the ground," I am not referring to just the oil there. We know that there are those who believe very strongly that "keep it in the ground" means that that tree that came from the Tongass National Forest, no trees should be harvested in the forest, none of our mining resources whether our gold or copper or zinc or whatever, coal, should be harvested.

As the Governor of the State of Alaska how do you respond to those who would suggest that our state is too beholden to oil, that we need to rely on something other than our natural resources?

Governor WALKER. Thank you, Senator Murkowski, for that question.

You know, I get that question a fair amount. My response is this. We are a resource state. We're the most resource rich state in the nation. That was the deal when we became a state that we'd be able to responsibly develop those resources, all of the resources, not any particular one.

Yes, we'd love to have a widely diversified economy in Alaska and we will, but to do that we need to get our cost of energy down. That's what the AK LNG project and our natural gas project developed our gas to the world market that's going to help that.

Yes we have a robust tourism market in Alaska. That's wonderful. We can't live off of any particular one of those. We need a blend of those.

One of the biggest challenges in all exports in Alaska isn't if you're going to find oil or if you're going to find gas, it's if you can get a permit.

Governor Dalrymple in North Dakota talked about the permitting process. He's frustrated. It takes almost a month to get a permit there. Governor Fallin in Oklahoma talked about the number of days that it takes to get a permit there, and Governor Abbott in Texas talked about the number of days it takes.

It takes us over six years to get a permit, and you don't know if you're going to get it during that entire process. So that's what's different in Alaska.

In Wyoming, which is about the same size as the North Slope area, they have drilled 16,000 wells. We have drilled less than 600 wells in Alaska, and yet we're the most prolific oil/petroleum basin in the world yet 600 wells versus 16,000 is permits, the access.

I just can't let this opportunity go by without making some comment about the Izembek Road. We can't have access between communities. I know you are a champion of that, and I applaud you for that. And I thank you for your leadership on that. But we can't connect our communities with a road for health and safety purposes and people are being helicoptered out during the most inclement weather conditions you can imagine. There's something wrong with the system that we cannot connect a community by road because we're being stopped by the Federal process.

You know, I'm a very strong states' rights person. And it's time that we stand up and take control of our own destiny, of our own future and I am one of the blessings of being a nonpartisan independent is that I answer to 730,000 Alaskans as you do. I have a job to do, and we're going to get it done in spite of some of the push back we may get from the Federal Government.

The CHAIRMAN. One more question, just specific to oil and perhaps to oil and gas, including Mr. Kindred here.

What happens to the State of Alaska, Governor Walker, if we are not able to continue operation of the Trans-Alaska Pipeline?

Governor WALKER. Well, it does generate about 90 percent of our revenue, or it did before the drop in the price of oil, so about 70 percent of our revenue would go away in the State of Alaska. And that would, you know, sitting next to some of the most prolific oil areas in the state, it would be absolutely devastating and it would be unprecedented.

It would be unprecedented as a country that any state would have that kind of a financial impact to us, not because of lack of resources but lack of access to resources. Everybody in Alaska is an environmentalist at some point or we wouldn't live there. It's the most beautiful state, as you well know.

We don't want to do it to the detriment of the environment. But there's also an economic climate that we need to be mindful of that our rural Alaska areas, they have every right to education, every right to have a flush toilet and electricity. And we can't do that without developing our resources.

So what it would do to answer specifically your question? It would shut down Alaska. It would turn Alaska into something that we have not seen since prior to statehood. And what a shame that would be because of lack, not a lack of resource, but lack of access

to the resource. That's unacceptable, and that will not happen during this Administration.

The CHAIRMAN. Well, I thank you for your leadership on that.

Not more than a couple months ago, we had an opportunity to weigh in on a measure that would effectively lift sanctions on Iran to allow Iran to put their oil out on the world market. Yet we will deny it from U.S. soil from Alaska. It just seems incredible to even think about that.

I wanted to ask you a question, Mr. Kindred, because you raised the issue. You spoke directly to the issue with regards to Title 11 and how within Denali Park because we have been working to try to ensure that when we have an opportunity to move our gas that we do not have limitations in terms of access. So we moved through this Committee, through this Congress, a provision that would allow for a natural gas pipeline to cross through a segment of Denali.

You have indicated that this process is "inflexible and impractical," I think were your words. Is this fixable? Dealing with the Section 11?

Mr. KINDRED. I think it is fixable but it's difficult.

The CHAIRMAN. Title 11?

Mr. KINDRED. To—because it's not an indictment of the intent. Part of the problem is that when it comes to Federal agencies, as Governor Walker highlighted, the response time is less than ideal. And when you talk about multiplying the number of agencies that you have to get approval from, you know, there's a great deal of angst for developers in Alaska when they know that they have to rely on a Federal agency to grant a permit.

I think part of the problem is academically it makes a lot of sense that you have this, sort of, one stop shop where you can get the approval you need from the litany of agencies. But part of the problem is that it creates temporal issues. It's hard to do it on the right timeline.

But I think it's people are also pessimistic about the fact that, you know, getting one agency's approval is difficult enough at times. And expecting a wide spectrum of agencies to all approve within a fairly short timeframe I think what you'll see is that companies aren't even going to take that path. They're not even going to try. They're going to try to figure out a different way to do it.

I think that's the lesson in and of itself is that if there's supposed to be an inherent flexibility and there's supposed to be an avenue for companies to take and they're choosing to try any other method. I think that, in and of itself, is an indictment of the process.

As far as how to fix it, I think there are people who are far more intelligent than myself who can give some insight. But I think part of the problem is it's not necessarily the Federal regulators in Alaska. It's the fact that it's people 4,000 miles away who are ultimately making the decision that may be ideological in nature as opposed to practical. We are losing, day by day, year by year, faith in the fact that reasonable and prudent answers will come.

We've seen it time and time again in oil and gas operations. And I think there's just, for lack of a better term, a lack of faith that there will be fidelity of process. And so it's not, you know, to re-

peat, I don't think it's that it was ill intended. It's just I don't think it can work in practice.

The CHAIRMAN. Well, it seems to take us back to that promise that we would not be turned into this, "permit society." That was something that Senator Stevens was concerned about. Based on what I hear when I am talking to folks back home, we turned into that permit society some time ago. I think it was you, Senator Coghill, that used the term, that opportunities are being strangled because of this.

Let me ask, and I will throw it out to several of you because as I spoke in my comments, and I think I heard many of you refer repeatedly that ANILCA was this compromise and that the balance that was sought through this compromise has been lost. It has been eroded, and my perception of it has been that it has been eroded because the agencies are seeking to define it as they wish rather than as it was written.

As we think about how you move from original Congressional intent to where we are some 35 years later, I think, as we look to how we can address the fixes, it is important to understand how we came to where we are right now.

Just this year, again, we all know that the Fish and Wildlife has proposed another 12 million acres of wilderness there in ANWR, and the agencies are arguing. I will probably direct this to you, Senator Coghill, that their Organic Acts and FLPMA, the Federal Land Planning Management Act, allow them to make these recommendations, that it is not contrary to ANILCA here but that we have the ability within the agencies to basically provide for these interpretations and allow for such recommendations to be made.

Mr. Tangen, given the history that you have with ANILCA, I am interested in your views as well.

We talk a lot about administrative creep, regulatory creep and overreach. Is that what we are dealing with here or is it more pernicious? It's a great word, pernicious.

Go ahead, John.

Mr. COGHILL. Senator, thank you very much.

The Organic Acts go back quite a ways. We had the Alaska Organic Act and then the Federal Land Policy and Management Act (of 1976), FLPMA, but ANILCA was meant to specify some very specific land uses and guarantees to the state which were not outlined in FLPMA. In fact they were very general.

So I think the answer to that question is in the balancing of the interest you found a huge interest in the conservation of the lands and the preservation of lands which many people in Alaska were okay with. It's just that they didn't want their livelihood taken away.

So on the one hand you have people who, through the d(2) lands discussion all the way up through the passage of ANILCA, we're looking at okay, conservation, preservation. We understand the beauty that we live in. As a matter of fact many of us in Alaska have done very well both at the state level and at the local level.

But we have to look at the land in Alaska as productive land and land for conservation. So we want to conserve our forests, for example, but we don't mind harvesting them. But the preservation wilderness designations within say, Tongass, have continually crept in

and taken over guarantees that were even allowed under the Tongass National Forest ruling.

So I think ANILCA was very, very specific where FLPMA was very, very general. It was meant to overrule and specify in many places.

So, some of the things that I think Alaska felt that we got left out on was when we put together in the ANILCA Act that there would be a Land Use Council where Alaskans would be able to sit at the table. The tethering kind of got loose in there, and we probably would have been able to have that discussion about the difference between what's going on with the Federal Land Policy Management Act and ANILCA there.

But as Mr. Tangen brought up, we had a hard time getting that discussion even with the Land Council. But since the Land Council has been sunsetted, I think we have lost the ability to even sit at the table with agencies and remind them of the ANILCA promises.

The CHAIRMAN. But it is your belief, is it not, that were we to reinstate the Alaska Land Use Council that that would be a forum for us to engage? I think, Governor, you had stated that as well.

Senator COGHILL. I think that's one of the answers.

Senator, I do believe that's one of the answers that's going to help tie us back to the law.

The CHAIRMAN. Okay.

Mr. Tangen.

Mr. TANGEN. Yes.

Senator, I think that I obviously agree with, you know, Senator Coghill's comments. As an attorney you'll appreciate the fact that as a general proposition of law a later and more specific law it governs an older and more general law. And so, therefore, each of the Organic Acts of the various land managing agencies must be read through the filter of the language in ANILCA. And I think that it is not a significant burden on the agencies for them to certify Federal register notices, for instance, that they, the actions the agency is about to take complies with the "no more clause" and the equal—in the access provisions of ANILCA.

I think that the main, you know, one of the main problems that we have and again I think tailgating a little bit on what Senator Coghill said, is that the Forest Service has no more foresters in it. They're land—they're planners. The BLM has no more mineral exports or land managers in it. They're planners.

And those planners have literally unlimited resources to spend all their days compiling huge documents which cannot be reasonably analyzed, especially by the private sector where we have other things to do. And even if their documents are analyzed and they're criticized, etcetera, we're in a situation in which they are, our comments, fall on deaf ears and the documents proceed to gather dust on the shelf. We have literally no major opportunity to redirect the way that the land managing agencies are fulfilling their perceived responsibilities.

Of course, I agree very much the Land Use Council ought to be revitalized. I think that it's an incredibly critically important function to have people at that level who are communicating directly with regard to what the law requires concerning our state.

The CHAIRMAN. We can suggest that this is regulatory creep or perhaps it is just a failure to understand the law, but ANILCA is unique to Alaska. You have a lot of decisions that are made here, 4,000 miles away.

You have new people that are coming into an agency that not only do not know Alaska, but they do not know the laws applicable and they do not understand ANILCA. We have lost some of that institutional knowledge.

When you were here as solicitor many years ago a lot of people understood what was going on because it was current, and we have ANILCA sensitivity training that goes on within the agencies. The question is if we were to ensure that there is greater understanding of the law do we gain the respect? I think it was you, Senator Coghill, that said that basically Alaska and ANILCA is being disrespected. Is it disrespect because they do not know? We have just had too much separation of time. Or is it knowing disregard of the law?

Governor.

Governor WALKER. Senator Murkowski, I afraid some know it very well and they may—they're acting, but they are acting as though it either didn't exist or it exists for a different purpose. I'd like to think it's innocent error on some peoples part in the agencies, but I don't think that's the case.

The further you get away from the statements that President Carter made at the signing, the more that it's been, sort of, that has been dimmed in the, over time, unfortunately. And people don't go back and look at what the original intent, the original discussion was and the deal.

You know, a good friend of mine, former Attorney General Charlie Cole, always says, here's the deal. And the deal was that we would get, it was a balance. It truly was a balance.

We got something out of that legislation, and that was the intent, that was the clear intent. But we have not gotten the deal, and so I think there are those that ignore it for whatever reason that they want to.

The concern I have is with 62 percent of Alaska lands controlled by the Federal ownership, 66 percent of our park land, the nation's parks are in Alaska. When a national law is passed it impacts us just unfortunately because of the sheer volume of our land that is Federally regulated, Federally owned.

So ANILCA was to, sort of, set us aside, to say here's a different view on Alaska for a number of reasons. Number one is because of the Statehood Compact. Number two, we aren't supposed to live off our resources.

So we are—it was created to do a set aside so we have, sort of, a different deal. We haven't gotten that. And so those have come in, some of them come in, and said, openly, how can we get more? How can we ignore that "no more clause" and how can we get more in the way of set asides? And that wasn't what the deal was.

So I don't think it's for lack of knowledge. I think that it's some have plenty of knowledge of how the law is supposed to work but it's interpreted to their own particular mission and that has not been healthy for the economy of Alaska.

The CHAIRMAN. Let me ask you about the state land selections. In your testimony you mention the lingering impacts of the 160 million acres that are under the public land orders that were put in place after 1971 with regards to Alaska Native Claims Settlement Act. Now that all those selections have been made are the land orders that are still out there are they preventing or limiting the state now from making final selections, in your view?

Governor WALKER. They are, Senator, they are. It's causing some problems. There's some issues associated with surveys and processes of surveys that are working their way through the companion regulatory processes of the State of Alaska as well as on the Federal side.

That's something that we'd like to accelerate to get the rest of the land or what the—at least that part of the deal, a discussion about the potential land exchanges. So there's a number of things that are ongoing on that regard.

The CHAIRMAN. Okay.

Senator Coghill.

Senator COGHILL. Thank you, Madam Chair.

One of the issues on withdrawals is the 17(d) lands that now should be withdrawn. In fact BLM actually recommended to Congress some years ago that they be vacated. But based on those lands still being held and not withdrawn, now we have some of these newer issues like the administrative withdrawals that are so contrary to Section 13 of ANILCA.

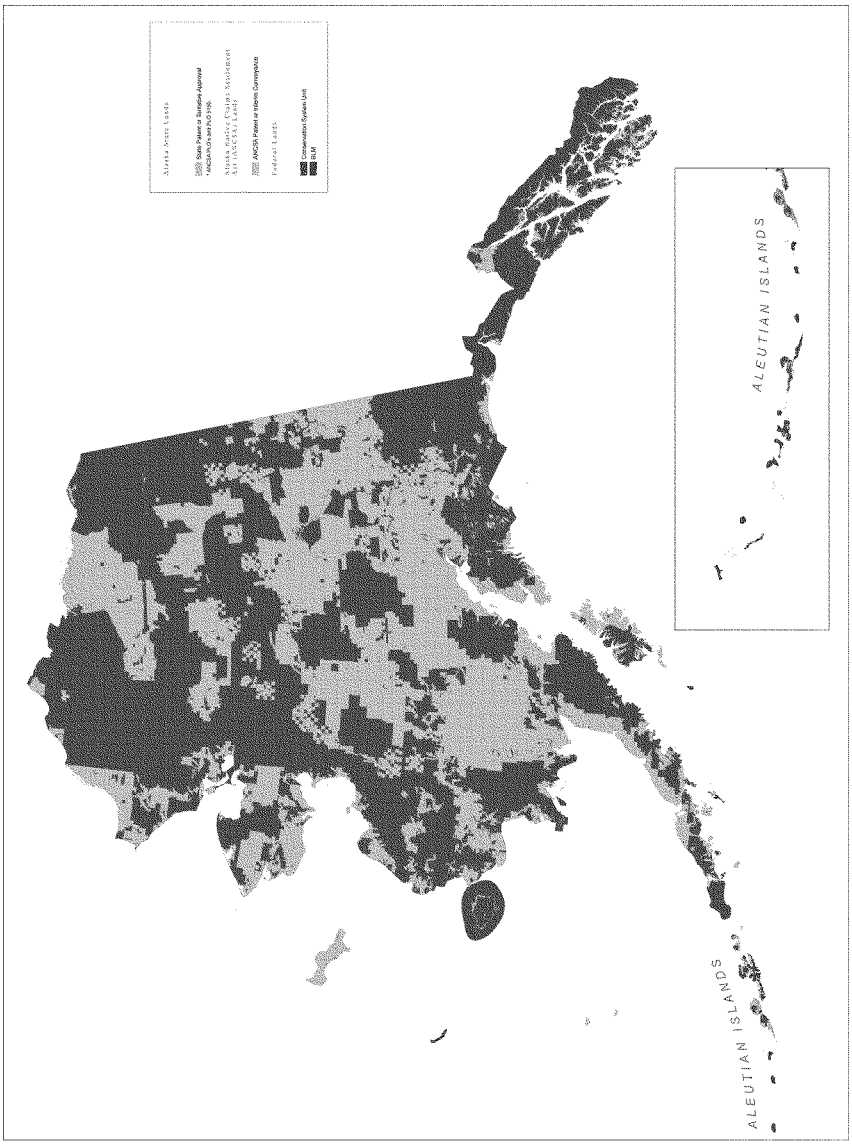
So yes, I think we have to get those things settled so that clear title can be given to the state, the Native Corporations. Those things have to be settled. So I think the public landowners that are under the 17(d) rule should go away. I think Congress should act. That would be one of the recommendations that you'll see coming from the Citizens Advisory Commission.

The CHAIRMAN. Good.

Well I appreciate that because it is something that, again, if we can't get these fully and finally resolved.

I note the map that you have behind you, Governor, that indicates those lands that are held by the Federal Government and those that are state or native lands.

[The information referred to follows:]


Alaska State Lands
State Patent or Surveying Approval
*ANCSA/PLO's and PLO 5199
Alaska Native Claims Settlement
All (ANCSA) Lands
ANCSA Patent or Interim Conveyance
Federal Lands
Conservation System Unit
BLM
ALEUTIAN ISLANDS
ALEUTIAN ISLANDS

And you think about that checkerboard that we deal with as a state. When we talk about access, whether it is access for the people of King Cove to an all-weather airport for public health and safety issues, a ten mile, one lane, gravel, non-commercial use road does not seem like too much to ask for. But again, Senator Coghill, you mentioned the miners in Fortymile and the issues that they have with accessing their areas for purposes of pretty small mining activity.

Senator COGHILL. Right.

The CHAIRMAN. Some mom and pop operators out there that literally are choked off from any access to the resources. Yes?

Senator COGHILL. And on that point there's a redefinition and redesignation happening while people have made financial and lifelong investments.

First of all——

The CHAIRMAN. Are areas of critical environmental concern (ACEC).

Senator COGHILL. Yes, areas of critical, yes.

The CHAIRMAN. What is that, an ACEC?

Senator COGHILL. Yes.

That is a new designation that falls under some of these land use issues. In fact, one of the recommendations you're going to see coming from the Citizens Advisory Commission on Federal Areas is that those be stopped. They're contrary to the law. They're being used by the agencies to treat areas of critical concern with the idea of looking at wilderness characteristics. It's another withdrawal, and it violates the "no more clause" so significantly that it's blatant.

So as the Governor said, these are not areas where there's a mistake, but it's actually purposefully driven. However, if we did do the Alaska Land Use Council or some ANILCA training it would at least have to bring them out into the light because this thing is done, as Mr. Tangen said, with reams and reams of paper that no person who carries on a normal life can answer.

In fact I was listening to one of the members viewing the testimony today who was actually a nonprofit agency that helps people interpret in the local areas what this means to them. And it's just—it gets that frustrating.

But to those miners in the Fortymile area, they're actually being redesignated out of existence. It's just wrong.

The CHAIRMAN. We will have an opportunity to bring before the Committee, as Senator Cantwell has suggested, some folks from within the agencies. I have talked to them about what exactly does an ACEC mean, and I am told, oh, no, no, no, this is not a withdrawal.

Well if it walks like a duck and quacks like a duck, it is a duck. I think we need to have this conversation in terms of you just cannot change the name to say that this is not a withdrawal for purposes of access and a significant issue for us.

I want to turn a little bit to the issue of fish and game and some of the differences, I think, in philosophy that we are dealing with between the state and certainly the current Federal game management officials at Park Service and Fish and Wildlife.

Mr. Arno, you have clearly spoken to this in your testimony, and Ms. Seidman, you certainly referenced it in yours as well. It is as if we have a Federal side that is saying what we are doing when we are managing our fish and wildlife it is to protect a species versus the state's perspective or view that what we are doing is we are managing for abundance and opportunity. You have got some clashes that we are certainly seeing in play right now.

You mentioned, Mr. Arno, the Park Service's new policy that went into effect just a couple weeks ago designed to prevent any manipulation of natural systems that will lead to less wildlife for all users whether they are sport hunters, fishermen, subsistence hunters and fishermen. It seems that this divergence of views or this just different philosophy about the management of fish and game on these lands is just moving further and further apart.

Your comments to that, both Mr. Arno and Ms. Seidman.

Mr. ARNO. Thank you, Senator.

It's a difference between conservation and preservation. That conservationist, in a true form, are people who participated in extracting a renewable resource for a food source.

Preservationists are just set aside and it's more to address the atonement of a nation that marched across the continent here and, you know, did not leave full ecosystems that have active predator/prey management to provide that food source.

That, you know, when we sat through the d(2) hearings and we listened to that the state would still be able to manage fish and game, the resource, for conservation, it was still that they would because the state has in its constitution that Congress accepted the sustained yield clause, that you would only harvest enough of that was a harvestable surplus so you would still have abundant populations of both fish and game.

And that, you know, trying—it has always amazed me that preservationists who want to stop the opportunity of managing that fish and game for abundance don't realize that here we are. Here's a renewable resource that's solar powered.

I mean, you know, look at our moose. They're eating willows that grow every year and rivers come through wash it out and they grow again. And so we've got 550 pounds of meat off of a moose that doesn't have any hormones in it or hasn't been in a feed lot. And it's just a matter of being able to harvest that resource on a renewable basis, sustained yield.

And to try to get people who have spent now generations of their lives in urban areas and they look at hunting just as the sport of it or that you're, you know, just collecting a trophy to put on the wall. It's—that's a hard perception to try to get across to people, particularly east of the Mississippi where you've only got like four percent of the National Park lands.

So that's something in education that we tried to get out to the public.

The CHAIRMAN. Ms. Seidman, can you speak to the impact that these new Federal regulations would have on fish and game for all users within the state?

Ms. SEIDMAN. Well, one of the things that I think we've, the Safari Club, has highlighted in our comments on the National Park Service regulations and we'll comment when we address the Fish

and Wildlife Service changes when they are proposed, is that the Federal agencies appear to be trying to manage wildlife on their lands as though there are walls around their lands, as though they are isolated from the remainder of Alaska, as though you could manage a population on one area of land that travels back and forth from state lands to Federal lands.

And what the, you know, what the Federal agencies are refusing to recognize is that the state has the responsibility to manage the wildlife regardless of where that wildlife is whether it's on state lands or Federal lands. It's all one population, and it's all supposed to be managed for the benefit of Alaska's users. So that would be Alaska residents, both subsistence and non-subsistence and also those who visit Alaska who are taking advantage of the opportunities.

These Federal changes, these new mechanisms or methods for managing wildlife are going to have a huge impact. They may not immediately have an impact, but they're going to have a huge impact. The National Park Service regulations. The Park Service is heading into territory where they now are going to be making decisions about what is appropriate in terms of take of wildlife, of fish and wildlife. They dodge it, as best they can in their comments on their regulation, but it comes out in little places and where they want to dictate what qualifies as non-subsistence hunting. What's appropriate for non-subsistence hunting? And the regulations actually give the Superintendents of the individual park areas that are affected, the ability to make decisions as time goes on without going through a full regulatory process, but just say, you know, we're going to make a list later of what is or is not appropriate on Federal lands.

For Fish and Wildlife Service lands it's much greater. The Fish and Wildlife Service is going to attempt to manage refuge lands in accordance with natural diversity principles. They've already been doing this. They did this with respect to a caribou population in a relatively isolated area, but they essentially told the state agency that the agency couldn't come in and remove seven wolves that were decimating a caribou population. They basically said we'll arrest you if you come in and do what you were, you know, do management to protect that prey population.

The approach that the Fish and Wildlife Service wants to take is that if a predator population is going to do away with a prey population, that's natural and that's perfectly okay. That will have a huge impact on both subsistence and un-subsistence users and it's directly in conflict with ANILCA and what was intended for ANILCA by its drafters.

The CHAIRMAN. I think it is important to recognize that when we are talking about these regulations, whether it is coming from Park Service or Fish and Wildlife, that while they may be saying we are impacting what is on Federal lands, it also has impact on those fish and game stocks and species that are on state land, that are on private land, that are on native land. Again this clash that we are seeing and the erosion or the threat to the ability to the state as manager, I think is a very real concern that we are dealing with right now.

I do not want you to get off the hook here, Ms. Brown. Don't think that we are ignoring you. I have just got so many things that I want to try to get out on the record here today that we are just simply not going to have sufficient time. Let me ask one question though to you about some of the comments that you have made.

You have indicated that the integrity of ANILCA, and I do not know if that is the right word but I will use it anyway, that the integrity of ANILCA was threatened almost as soon as it was passed. You and I will agree or disagree on some of the issues, certainly as they relate to accessing oil resources within the ANWR. I know that you have got concerns about the impact of what we have in front of us in the Sturgeon case on navigable waters.

Given the narrow scope of certainly the brief within the Sturgeon case, where I would find it totally unexpected for any court decision to have any impact, say, on the subsistence protections of—that are covered under Title VIII. Do you have any other concerns about ANILCA's ability to protect Alaska's treasured places, as President Carter said?

What I think you have heard everybody else on the panel say today is that the protections that were in place, that were put in place, that were part of this compromise, that were part of this balance have been eroded because it has tipped in favor of that preservation as opposed to being able to access those resources. Your comment?

Ms. BROWN. Well, I disagree that the protections have been eroded, and I think there's some misinformation about exactly how some of the provisions in ANILCA work.

I think a couple of good examples of that are the Park Service regulations you were just talking about. I know the comprehensive plan that the Fish and Wildlife Service has done for the Arctic has been a particular point of contention for you.

And I think it's important to realize that ANILCA set up a process that provided for the Fish and Wildlife Service to do active review of wilderness values in all of the refuges in Alaska in that Section 304 of ANILCA and it made recommendations, excuse me, in that comprehensive conservation plan. And those recommendations are just that, for actual wilderness designation that has to go back to Congress. And what I hear here is people saying the process of the studies that ANILCA directed and the processes that it set up for the Federal agencies to manage their lands are a violation of promises that were made. But those, the land management decisions that the Federal agencies are implementing are specifically called for in various sections of ANILCA.

The National Park Service, for example, was expressly told in Section 201 to follow its other governing laws as well as the provisions of ANILCA.

And in the case of the predator control regulations those are in direct response to a growing, active predator suppression program by the State of Alaska. And it is in direct conflict with ANILCA and the Park Service Organic Acts. Management dictates for predators.

The things that the regulations in National Park Service regulations ban are not all wildlife management decisions by the state. There's a long standing agreement that the state is managing wild-

life on Federal lands where it's compatible. And as we know, it's not always compatible.

We've had decades of litigation and debate over how to deal with the subsistence problem. And here on National Park Service lands with the recent growing, aggressive state predator suppression program, the Park Service went multiple times to the Department of Fish and Game and the Board of Game and said, these particular practices, killing of wolves in dens, baiting grizzly bears, taking sows with cubs, these things are antithetical to how we manage wildlife on park lands. Can we do something about it? Can we amend state regulations? Can we try to make our mandates work together?

And that happened, some version of that happened over 60 times by my count before the National Park Service started implementing temporary regulations every year. And this year they finally adopted final ones. But that's been a long time brewing, but they're not acting in conflict with ANILCA or denying access for hunters or violating any other of the many provisions of ANILCA that are designed to allow access and continued hunting. They're very focused on violations of Park Service——

The CHAIRMAN. I think that is another area where we would certainly separate and disagree on in terms of how the Federal agencies have worked with the state agencies. It has literally, in my view, been a railroad over our state agencies which is unfortunate as far as management of and recognition that it is only through Congressional direction that that wilderness designation can be made. We understand that, but we also know that what happens is it becomes wilderness, basically a de facto wilderness through the management then that comes about.

We talked earlier about how you kind of creep forward and next thing you know you are in effective wilderness status where you cannot move. You are strangled, to use Senator Coghill's term. So I think this is one of the things that we are trying, as Alaskans, to really get out there on the record that when the legislation that was agreed to, mightily debated, and agreed to. The legislative history is so clear on its face that "no more" means "no more." Not only no more designations, but no more studies to determine whether or not we should be doing more.

As we look to where we are now 35 years later, I think, it is a miserable trail of continued broken promises to a state that has more opportunities than most any place that I can think in terms of what it is that we have but our ability to get to it, to utilize it, is just held back at every turn.

We've been going now for almost two hours. What I would like to hear, very quickly, from each of you is we are going to have an opportunity for much more input on ANILCA, on the promises made to our state by the Federal Government and ways that we can get back into balance.

If each of you could provide two key priorities, two things that you think could help us address how we return to a level of balance, I would like to hear them. I am going to limit you to just two, but you will have an opportunity to weigh in for more and most of you have provided in your written testimony a whole series of them. So I am going to have you pick between your favorites and

offer up two of the suggestions that you think that we should be turning to from the perspective here in Washington, DC to help address the promises made to Alaska.

Governor Walker.

Governor WALKER. Thank you, Senator Murkowski.

I come from local government. I believe local government is the purest form of government because it's closest to the people. I think the further away from the people decisions are made the more challenging those decisions become.

I would love to see, I know we've had, contingents come to Alaska from Washington, from Congress, to view our beautiful state. I would welcome that again.

So that's one thing would be to have them come to Alaska to show them our opportunities in Alaska, why we would be the eighth largest, most energy rich nation in the world if we were a nation rather than a state. So that would be one thing.

Secondly, I think that the agencies—Congress makes the laws, the agencies apply regulations and carry them out. We need to have a relationship with the agencies such that they truly understand the impact of what they're doing——

So I'd like to add that to the—have the agencies come up, not just during the, when the silvers are running and Seward or Valdez or when the Copper River Reds are in Cordova, but during the winter. During the winter when our rural areas are trying to meet their energy needs and see a side of Alaska that we deal with that isn't during the particular height of a tourist season.

So I'd like there to be some way that they could see the other part of Alaska. We don't get a lot of Congressional delegation too, I know, because of the timing. But I'd like them to see, sort of, the rest of the story, as Paul Harvey would say.

The CHAIRMAN. Well, know that in February, in Bethel, we are looking to have a field hearing out there looking at some of the energy issues that we face in the state. I am hopeful to be able to entice several of our colleagues for an Alaska winter tour.

And on your first point about getting lawmakers up and understanding Alaska, as you know there was legislation, the ANWR Wilderness legislation, that was introduced yesterday. A colleague of mine who happens to hail from the East Coast back here has been to Alaska before, and he has been out to the ANWR area. He asked to meet with me, and we met for close to an hour where he could just ask questions about trying to understand a little bit more of Alaska's economy.

I have been here in the Senate now for almost 13 years, and I have to tell you, I was really quite struck by the fact that a colleague before he signed onto legislation that related to one person's state, one person's state, that he came and asked for perhaps a more thorough review. The good news is that he has not signed on to that legislation yet.

Senator Coghill, your suggestions?

Senator COGHILL. Thank you, Senator.

ANILCA is Alaska specific. Our constitution certainly was authorized by Congress so there's a partnership, and if we don't do something to make that partnership work better I think we have failed both the Federal and national interest and Alaska's interest.

And so I think the Land Use Council has to go in, either reconstituted or reinstated, in whatever way I think Congress can help us tie us together because since it is so Alaska specific the impacts are great. Since it's a national interest we need to understand those national interests.

I think Alaska's heart, as said here previously, has been conservation minded but production oriented. And I think those are both well taken. And I think we've been good trustees on both accounts.

We probably have some of the best records for developing areas in, kind of, the green field operations in the world. So we have a lot to be really pleased about.

The other thing is I think Congress should go back and lift the 17(d) withdrawals. Take the advice from BLM because that will start clearing up title. And when you come to land issues, if you have title questions, then you can't move forward.

So those two issues probably would be key in my mind.

The CHAIRMAN. Okay, great. Thank you.

Mr. Arno.

Mr. ARNO. Yes.

One of the first things that the Outdoor Council would like to see would be defining who has the authority and where that as far as the Submerged Land Act and as far as access to navigable waters because of the large size of Alaska and the conservation system units that those waterways were the transportation corridors just for commerce. And that how many times we've litigated and tried to get litigation settled to determine that where each land manager has the authority. Clearing that up would be extremely important.

The second would be back to: nothing in ANILCA diminishes the state's authority to manage fish and game. That one, you know, it, the controversy between preservation and conservation is going to remain until the state can go ahead and manage the resource as the constitution, State Constitution, allowed them to.

The CHAIRMAN. Thank you.

We have not talked much about the Sturgeon case but I think we, as Alaskans, recognize the significance of this case before the Supreme Court coming up this next year and what that is going to mean in terms of more clear definitions regarding who has that authority.

Ms. Brown, your recommendations?

Ms. BROWN. Thank you again for the invitation today. I really appreciate it.

I think maybe the most important thing that can come out of this is recognizing that not all lands can be managed the same way. Alaska owns as much land as the entire mass of California, Washington and Oregon combined. We need to use the conservation opportunities that are given to us by ANILCA to address the climate change threat and to help Alaska move to a sustainable energy economy.

Thank you.

The CHAIRMAN. Good, thank you.

Mr. Kindred?

Mr. KINDRED. Thank you, Madam Chair.

Not to speak in platitudes but I think, you know, the common things we see when we deal with Federal agencies are a lack of accountability and a lack of transparency. And what I mean by that is often times when we are dealt a decision that is patently unfair and oftentimes patently illegal we have to engage in years of litigation to get a remedy. And even that remedy, in and of itself, isn't particularly satisfying.

And I often think about the litigation I'm involved in and at the end of the day there really isn't any accountability. There's no skin in the game for these Federal agencies even if six years later as the Ninth Circuit rules in our favor they just go back and they do something that's slightly different and we begin again. I don't know exactly the mechanism or the medium by which we can hold these Federal agencies to be more accountable, but I think if there was a manner that was short of litigation but that had some concrete remedy, I think that would be beneficial.

And the other is transparency in the sense that there are so many layers of Federal regulations now and so many different laws that apply that it's often difficult to engage in a discourse with a Federal agency and get a true answer as to what they're doing, when they're going to do it and that creates a great deal of uncertainty. And from the members that I represent, you know, uncertainty is toxic. And so if there was more transparency we'd have a better understanding of why Federal agencies were doing it and who to speak to and had some mechanism to have that conversation that would also be beneficial.

The CHAIRMAN. Thank you. That is important.

Ms. Seidman.

Ms. SEIDMAN. Thank you, Madam Chairman.

I would look for clarification that state managers are and I say, at least so at least on an equal level with their Federal counterparts when it comes to wildlife management decisions that affect both Federal and State lands and users and all users.

And the second one would be to make sure that the Federal managers adhere to ANILCA's requirements for management of wildlife that concerns all wildlife in balance. And that would include a balancing between predator and prey species.

Thanks.

The CHAIRMAN. Thank you.

Mr. Tangen?

Mr. TANGEN. Yes, Madam Chairman.

If you're going to reduce it down to two points there are only two points here actually. First of all is "no more" and second of all is access. And so with regard to "no more," we have to find a way to ensure that the land managing agencies in Alaska understand and are committed to and held accountable to the precepts in the statute that there will be no more lands studied for, contemplated, advanced and anything else for the restricted access and uses.

To be perfectly clear I am not particularly concerned about the existing conservation system units. I think that what we're concerned about is the public domain lands and the Forest Service lands which are now being thrown into the bucket. If, in fact, there's concerns with regard to how the Park Service manages it, those lands were already tied up, so to speak.

But I think that the second point, the second bookend in regard to this is access. And access comes in a variety of flavors, obviously. There's R.S. 2477 rights-of-way. There's submerged lands, etcetera, navigable waters.

I would ask that Congress pass language similar to what it has in ANILCA concerned tentatively approved lands for statehood selections that says that all navigable, all waters in Alaska, no matter how small the puddle is, are navigable unless the Department of the Interior can establish otherwise. Okay? And so therefore the lands are presumed navigable and the burden of proof is on the Federal Government to prove otherwise.

In the same sense the R.S. 2477 when it was repealed in FLPMA, specifically acknowledged the fact that pre-existing rights of way would be continued to be acknowledged. And I think that what we need to do is we need to say that the State of Alaska, as directed, identified a series of R.S. 2477 rights of way and those R.S. 2477 rights of way, by statute, ought to be recognized as existing access corridors in the State of Alaska.

And to put a little bit of ribbon around it, they need to have a 50 foot from the center line right of way. They need to have borrow pits that are within what the people who want to develop those rights of way have—would consider reasonable access.

So on those two bookends, no more and access, I think that we can solve all the problems that a lot of us have with ANILCA right now.

The CHAIRMAN. Thank you, Mr. Tangen.

I thank each of you. I appreciate the time that you have given, the fact that you have all come from very far away to be here to represent so many different interests. As I mentioned I still have a boatload of questions that I would like to get out on the record whether it is how we can work to have ANILCA working for us again.

How we can do better for our small mining operators that seem to be just struggling daily trying to understand this Byzantine process that we put in front of them. How we work to really find that balance. How we make sure that our sportsmen and women, as well as our subsistence hunters and those who are fishermen, that there is, there is access because we have managed well. We have managed in that sustainable way that is set forth in our own constitution.

We have just scratched the surface, I believe, and know that there will be more to come on this.

As I mentioned in my opening comments we have received written testimony from other groups that want to be included as part of the record. Anyone who wants to submit testimony, we will have this Committee record open until Wednesday, December 16th. If any of you would like to supplement what you have provided in writing or here to us today, know that that will be welcomed as well.

This is an issue that, for us as a state, is critical. I think it is critical to our economic future, and I think it is critical for our identity as Alaskans.

We, as a state, came into this union with a promise that it would be our lands that would sustain us. We were told you are never

going to have enough people to have that viable tax base to count on, so we expect you to be independent. We expect you to utilize your resources. And I think that is the wish and desire of Alaskans and to access those resources in an environmentally responsible way, a sustainable way and one that makes us, as Alaskans, proud.

I mentioned to a colleague just the other day that I will judge my success as a parent knowing that my sons will want to come back to Alaska as a place that they call home but they are able to come back to it as a place where there are strong economic opportunities for them and the love of the land that we have as Alaskans is able to be maintained, not only for me and my husband and our boys, but for generations of Alaskans to come.

And for those who want to see Alaska before I die, we want it to be that beautiful promise to them as well. And that is our commitment to them.

I believe each of you believe that we can access our resources, that we can keep that promise and do so in a way that is not contradictory. Sometimes the challenge that we have back here is allowing the rest of the people, who do not know Alaskans, to understand that we too care about our environment, that we too care about development of our resources. We are charged with a great responsibility and we take it up willingly, and we are proud of the job that we do.

So thank you for the jobs that you do in representing so many, and thank you for taking the time to be here to establish this record for us.

We have a lot of work ahead of us, but thank you for beginning the conversation.

And with that, the Committee stands adjourned.

[Whereupon, at 12:11 p.m. the hearing was adjourned.]

APPENDIX MATERIAL SUBMITTED

U.S. Senate Committee on Energy and Natural Resources
December 3, 2015 Hearing: ANILCA
Answers to Questions for the Record Submitted to Senator John Coghill

Question 1: I was particularly interested in your and the Commission's written discussion on how BLM has used new land designations to effectively place far more land into protected status in Alaska, protecting the land more fully in many ways than would be the case if lands had been placed in wilderness in Alaska given the expressed permission for cabins, and for motorized accessing Alaska's wilderness areas. You talk about BLM repurposing the Public Land Order withdrawals of the 1970s, since Congress specifically prevented a 2010 Wild Lands policy from going into effect, by overlaying the lands covered by PLO's with new designations: "Areas of Critical Environmental Concern," areas of "wilderness character," and by creating "new landscape-level planning processes" to protect far more lands than ANILCA ever allowed. Can you or the Commission explain specifically how ANILCA's no more clause of Section 1326, or the more general clause in Section 101(d), or any other provision in the Act or because of congressional intent, should block BLM from using its general land planning processes required by the Federal Land Management Planning Act (FLMPA) to regulate its lands in the state?

Answer: The Commission would not argue in favor of prohibiting the BLM from using the land planning processes outlined in FLPMA, only to employ them in Alaska consistent with the letter and intent of ANILCA. As described in the testimony, both the Wild Lands policy and the inventory of lands with "wilderness character" bypass specific direction in ANILCA §1320. Also as noted, the repurposing of obsolete withdrawals is an end-run around the prohibition on withdrawing lands in ANILCA §1326(a) without Congressional approval. All prohibitive administrative designations also exist without the ANILCA provisions purposefully intended for prohibitive designations, like guaranteed access to inholdings or for traditional activities and travel to and from villages or homesites.[1]

What follows is an arrant generalization to illustrate the point. Imagine Congress was weighing two types of land in drafting ANILCA: federal public lands managed for multiple uses and conservation system units (CSU). To create CSUs, Congress took many existing management designations like parks, refuges, forests, wild and scenic rivers and wilderness and, considering the "Alaska context" (including relative size, traditional uses, existing communities, nascent infrastructure, etc.), enhanced and tailored the capacity for public use and development in those designations in Alaska. In this balancing act, the remaining public lands and the BLM's multiple use mandate provided a constant. By using land use plans to dramatically limit the capacity for public use and responsible development on *those* lands, the BLM has administratively shifted the balance Congress struck in ANILCA.

Further, even under FLPMA, authorizations for prohibitive administrative designations have criteria and sidebars which should not be unilaterally expanded to the point of insignificance. Alaska possesses an overwhelming abundance of significant and highly valued natural resources, which is what made the "d2 debates" on what to designate as a CSU both easy and challenging. The first version of H.R. 39 proposed 145 million acres of designated wilderness! Since FLPMA and implementing regulations and policies provide standards for prohibitive administrative designations that almost any acre in Alaska could satisfy, some other reductive metric must be employed in managing lands where everything is "special."

[1] The Title XI access provisions described here only apply to conservation system units, national recreation areas, national conservation areas, or those public lands designated as wilderness study.

More importantly, everything ANILCA represents – particularly but not exclusively the "no more" clauses – requires some manner of self-control in using this broad discretion to limit public use in Alaska. Areas of Critical Environmental Concern (ACEC) provide a useful example of where a grievously expansive interpretation of a FLPMA authorization is patently inappropriate given the "Alaska context" recognized by Congress in ANILCA.

ACEC designation is a meaningful tool where "*special management attention is required.*"[2] Criteria for designation require "*relevant*" and "*important*" resources or values which prompt the limitation of activities otherwise allowed under a land use plan.[3] Other available management tools (e.g., permit stipulations, trail designations) must be insufficient, as designation is not warranted where the activities being limited "*could not result in harmful effects to the important and relevant resource values*[.]"[4] However, the BLM's application of these criteria and liberal restrictions on public use in Alaska are highly subjective, overly inclusive and scantily justified, especially considering the millions of acres being set aside absent any consideration of access and public use guarantees provided for lands designated under ANILCA.

The first criterion of "*relevance*" requires presence of "*a significant historic, cultural, or scenic value; a fish or wildlife resource or other natural system or process; or natural hazard.*"[5] As noted above, the vast majority of federal public lands in Alaska possess one or more of these characteristics, and this criterion only requires something be present. There is scope for discretionary limits, however, as BLM policy uses specific adjectives like "*rare*," "*essential*" and "*endangered, sensitive or threatened.*"[6] These adjectives only describe examples of "*relevant*" resources, but they are illustrative of an inherent singularity which should also be present.

The second criterion of "*importance*" requires the "*value, resource, system, process or hazard*" identified under "*relevance*" to have "*substantial significance and values*," generally meaning "*more than local significance and special worth, consequence, meaning, distinctiveness, or cause for concern.*"[7] On its face, this criterion also fails to offer a sufficient distinction for areas in Alaska that could and would not merit designation as an ACEC. Yet, the "*importance*" criterion also has scope for discretionary limits in BLM policy, which describes qualifying areas as "*fragile, sensitive, rare, irreplaceable, exemplary, unique, endangered, threatened, or vulnerable to adverse change.*"[8]

Even without ANILCA, where each proposed designation ranges from hundreds of thousands to millions of acres, the calculus here must be given some context, meaningful sidebars, relative scale and considerable justification, otherwise designations are simply dividing up planning areas according to common landscape specifics. With ANILCA, however, what would be a matter of simply requiring more common sense in discretionary decision-making becomes a mandate.

---

[2] FLPMA §103(a); 43 C.F.R. §1601.0-5(a)
[3] 43 C.F.R. §1610.7-2(a); BLM Manual 1613.12
[4] BLM Manual 1613.2.22(B)(1)
[5] 43 C.F.R. §1610.7-2(a)(1)
[6] BLM Manual 1613.1.11(A)
[7] 43 C.F.R. §1610.7-2(a)(2)
[8] BLM Manual 1613.1.11(B)

The essence of a "no more" clause – whether in §101 or §1326 – is that the ecological, social and legal context of Alaska requires significant restraint in taking land uses off the table on our federal public lands. ANILCA provided a balance between the social and economic needs of Alaska and its citizens and protection for the national interest in the scenic, natural, cultural and environmental values on the public lands. Crafting this balance required unique guarantees to land users and fundamental limitations on the use of executive withdrawals. The current overly expansive use of administrative designation through landscape-level land use planning, including millions of acres of ACECs, undermines both.

Question 2: During the hearing a number of witnesses argued that Section 1326 – the "no more clause" – paired with Section 1317 specifically setting up a one-time period for the National Park Service and U.S. Fish and Wildlife Service to propose new wilderness designations in Alaska parks and refuges, should prevent the agencies from placing more acreage in parks and refuges into protected status. Another witness at the hearing, however, argued that new land protections were proper for consideration because Section 203 requires the Secretary to administer the "lands, waters and interests… pursuant to the Act of August 25, 1916" (the National Park Service Organic Act), while Section 304 (a) specifically requires that wildlife refuges also be governed in accordance with the laws governing units of the National Wildlife Refuge System. Could you or the Commission explain in greater detail why you believe ANILCA's other provisions should pre[v]ent such wilderness and conservation protection set asides in parks and refuges? Is there a conflict in the statute that requires congressional clarification?

Answer: First, the Commission finds no conflict in ANILCA providing for the application of other federal laws to Alaska parks and refuges where appropriate. The conflict arises primarily from agenda-based attempts to manipulate general intent language to undo very specific direction. For example, ANILCA §203 indeed references the 1916 NPS Organic Act, but does so in combination with "*applicable provisions of this Act* [ANILCA]." If Congress intended the general 1916 Organic Act to override the specific provisions ANILCA, this express direction would not have been included.

Likewise, Section 304(a) appropriately references general administrative provisions for the wildlife refuges, then goes on to add pages of special provisions. When Congress subsequently passed the National Wildlife Refuge System Improvement Act in 1997, which consolidated and updated the general direction for wildlife refuges, it concluded with this definitive clause in Section 9(b): "*If any conflict arises between any provision of this Act and any provision of the Alaska National Interest Lands Conservation Act, then the provision in the Alaska National Interest Lands Conservation Act shall prevail.*" Congress plainly meant for the provisions that specifically apply to Alaska to carry forward, even while the general provisions were overhauled.

Secondly, with respect to Section 1317 wilderness reviews, clearly Congress intended that all lands within the National Park System and the National Wildlife Refuge System not already designated as wilderness be reviewed for suitability and possible recommendations. The initial park and refuge wilderness reviews and agency-level proposed wilderness recommendations were well within the scope of Section 1317, even if a little late according to the prescribed schedule. The question then arises whether this was to be a one-time-only process.

While there is no "Section 1317(d)" that outright prohibits subsequent wilderness reviews, the fact that §1317(a) and (b) provide specific timelines from the date of the Act would seem to make such a prohibition unnecessary. Also, note the corresponding wilderness review provision applicable to the BLM in Section 1320, which authorizes the Secretary of the Interior to make wilderness recommendations "*from time to time*" at his or her discretion, and without deadlines. Looking at these two provisions side-by-side further supports the view that ANILCA §1317 was intended as a one-time exercise.

There is a small complication, however: the agency-level proposed wilderness recommendations were finalized at the department level, but neither the Secretary nor the President carried them forward as required. Does that mean the Secretary and the President can effectively submit recommendations 27 or more years late, or even go back and completely revisit the entire wilderness review process, as was recently done with the wilderness recommendations for the Arctic National Wildlife Refuge? The Commission would argue that failure to complete the required process in the 1980s does not grant the Administration unrestricted license to conduct park and refuge wilderness reviews and advance wilderness recommendations anytime. Some Congressional clarification on this point would be helpful.

Question 3: Several witnesses in their testimony concerning hunting and fishing regulatory issues, said that the Park Service and Fish and Wildlife Service, in proposing new wildlife management regulations, are violating the act because Sections 1313 and 1314 say that the act does not enlarge or diminish state authority to manage wildlife, and Title 8 of the act specifically requires consultation with Alaska when federal agencies manage for subsistence purposes. The Commission's testimony specifically talks about the growing lack of consultation – it becoming only a "check the box" exercise. Can you or the Commission elaborate on what it believes the law requires federal agencies to do to properly consult with Alaska and private and Native land owners in crafting and implementing wildlife management policies in Alaska, both for sport and commercial hunting and fishing and for subsistence hunting and fishing?

Answer: The concept of coordination, consultation and cooperation is infused into ANILCA. As passed, the Act directly required consultation with the State of Alaska and Native land owners multiple times, and even more consultation requirements have been added through subsequent amendments. In ANILCA §1201(h), Congress also directed the Alaska Land Use Council to recommend "*ways to improve coordination and consultation between* [federal and state] *governments in wildlife management, transportation planning, wilderness review, and other governmental activities which appear to require regional or statewide coordination.*" Congress further encouraged federal members of the Council, including the Regional Directors of the NPS and USFWS, to "*enter into cooperative agreements with Federal agencies, with State and local agencies, and with Native Corporations providing for mutual consultation, review, and coordination of resource management plans and programs*[.]"[9]

[9] ANILCA §1201(j)(1)

Despite its prevalence and emphasis, "*consultation*" is not defined in ANILCA. The Commission does not believe this is an impediment to its effectiveness, however, as it allows for the purpose and process of consultation to be uniquely defined by the parties involved. In other words, ANILCA is necessarily comprehensive to accommodate diverse specialization respecting individual authorities, interests and expertise on an issue-by-issue basis.

"*Consultation*" is typically defined by the participants through a mutually agreed-upon process that meets the specific needs of each party. For example, with direction to consult on a particular matter, the parties would mutually identify the issues each may encounter, establish triggers for contacting each other, identify points of contact and processes for contact with timelines for responses and information exchanges. Processes must recognize that staff change over time and lines of communication must be attached to positions and not individual personnel. Some deference can also be incorporated where one of the parties possesses special expertise or primary management authority. While cumbersome to develop, the consultation process can lead to recognizable lines of communication between participants that maximizes efficient and sound decision-making and avoids surprises and acrimony.

Beyond complying with the process, the content and extent of the participants' exchange under the process can be a factor in determining whether there was meaningful "consultation" as opposed to perfunctory "notification." For instance, if one party provides limited or no credible information supporting a particular decision, the other part(ies) cannot reasonably "consult" on how their respective mandates and authorities may be impacted by that decision, or provide feedback to inform or influence that decision. Recent restrictions on methods and means of wildlife harvest in National Preserves provide a keen example of how the purpose of consultation can be negated by construing the terms of an established process to avoid information sharing.

Under ANILCA §1313, the Secretary of the Interior "*may designate zones where and periods when no hunting... may be permitted for reasons of public safety, administration, floral and faunal protection, or public use and enjoyment. Except in emergencies, any regulations prescribing such restrictions relating to hunting, fishing, or trapping shall be put into effect only after consultation with the appropriate State agency having responsibility over hunting, fishing, and trapping activities.*" Absent an emergency, Congress required consultation with the Alaska Department of Fish & Game and specified the "*reasons*" to support regulatory closure.

The NPS has interpreted this section to mean it may also enact a closure "*if those activities cause impacts or impairment or are otherwise contrary to the NPS legal, regulatory, or policy framework.*"[10] By bringing in other all other laws and adding "*policy framework*," this extension of ANILCA's limited authorization provides the basis for unilateral preemption without specific "*regulations*" and indeterminately tied to the "*reasons*" outlined in §1313. The NPS relied on inherent vagueness in its enabling act to develop sweeping management policies, and amended its regulations to preempt any state harvest regulation it determines to be "*contrary*" to those policies, all of which effectively invented the opportunity to close areas to hunting and trapping at-will.

[10] This language has been a component of numerous background documents issued to coincide with the NPS Alaska Region annual compendium, noting when closure was appropriate under the previous version of 36 CFR §13.40(e).

Throughout this evolution, the requirement for consultation with the State remains intact; however, the manner and content of that consultation appears altered, and the Commission is not aware of any corresponding amendments to the established consultation process. As to manner, the recently amended regulations at 36 C.F.R. Part 13 *automatically* preempt certain future state harvest authorizations, subject to a discretionary determination, meaning there is no consultation with the State prior to restriction.[11] The State was not even afforded an opportunity to review either the proposed or final regulatory amendments prior to publication in the *Federal Register*, meaning it was "consulted" at the same time as the general public.

As to content, it is difficult to tell at this point which "*reason*" under ANILCA §1313 or other federal law is being brought to bear in any given closure, so that at least must be shared, but this has not been the case. The NPS tends to rely mostly on broad value statements and speculation that unacceptable impacts or impairment could occur. Preemptive actions do not specify a cause and effect relationship between state regulations and possible impairment to park resources or values, and generally lack scientific rationale or data (e.g., current/expected harvest numbers, current/expected visitor use, etc.) to demonstrate the potential for that impairment. These would be things any agency, Native Corporation or individual would need to "consult" on the NPS' determination, otherwise each party is simply being told while the NPS checks a box.

To avoid this, appropriate participants must be brought together to identify the consultation process and content which best works to address the issues and satisfy each party's needs while mutually providing for respective authorities and mandates. Some opportunity for elevation may also be necessary, since compliance with the consultation process is apparently subject to fluid interpretations. Some parties may also need to be coaxed from their corners to ensure the intent of consultation is well represented in the defined process.

Question 4: Let me ask you or the Commission to expand on your comments about agencies redefining the law and then counting on highly deferential judicial review to uphold their views. For example, Alaska moose hunter John Sturgeon has a case before the Supreme Court concerning whether the Park Service can prevent motorized access on state waters that run through parks. It is a case that up to now has turned on a single word in Section 103 (c) of ANILCA and whether agencies can limit activities on federal lands if their regulations cover all parks, not just ***"solely"*** Alaska parks. Another example of this is from 2008 when the Park Service required the Alaska Department of Fish and Game to obtain a research permit simply to conduct salmon research on state-owned lands in Katmai National Preserve. Unless the Supreme Court rules in the State's favor next year, is there any other solution, except congressional clarification of the meaning of ANILCA, to prevent such textual problems from continuing to arise?

---

[11] *See* 80 Fed. Reg. 64325, 64343-44 (Oct. 23, 2015). The amended NPS regulation now located at 36 C.F.R. §13.42 notes State of Alaska actions, laws or regulations "*with the intent or potential to alter or manipulate natural predator-prey dynamics and associated natural ecological processes, in order to increase harvest of ungulates by humans*" are "*not adopted*" and automatically "*prohibited*" in park areas. Notice of exactly which state harvest authorizations this applies to will be provided at least annually. This provision operates entirely independently from the amended regulations requiring consultation with the State when restricting the take of fish or wildlife.

Answer: Alaskans are intimately familiar with and highly frustrated by the mystifying breakdown in checks and balances that finds John Sturgeon at the U.S. Supreme Court. As described in the testimony, ANILCA §103(c) is the cornerstone that makes the edifice of laws and promises in Alaska work, and the Commission has never believed its structure to be so vulnerable to leveling. There are other ways it could have been stated, but the wording is not ambiguous and the legislative history is on point. To see the State's and John Sturgeon's defense of it fail, in two English-speaking courts, is staggering. If the pending appeal fails, the deference pendulum has simply swung too far for even elementary judicial oversight and there is no meaningful, neutral mechanism for the enforcement of Congressional direction.

Understanding that, the only other solution that springs to mind would be systematic litigation avoidance until the pendulum swings back. This is not really a solution, but it could manage the symptoms until a cure is found. The simplest way to accomplish this is through open, respectful, balanced and informed communication between sovereigns. Considering present opportunities for mutual dialogue of this nature, Alaskans may need some assistance with that.

Opportunities for this level of communication may need to be mandated, or at least overseen. Continuing to conduct committee hearings and require justification for federal actions could import essential accountability and introspection. Resuscitating the cooperative aspirations of ANILCA Title XII by bringing back the Alaska Land Use Council and Federal Coordination Committee could help bring all parties to the table through a proven, results-oriented process.

The capacity for substantive dialogue may require considerable effort and guidance. Ensuring the availability of ample funding for ANILCA training and curriculum development would simultaneously enhance the credibility and the creativity level of cooperative problem-solving. Directing and funding the development of ANILCA guidance for each federal land management agency, in close collaboration with the State of Alaska's ANILCA Implementation Program, would yield inestimable and far-reaching benefits. To the extent this can be successfully accomplished, it will permeate multiple planning and administrative decision-making processes and save future managers from having to reinvent the wheel where understandings are in place. This "template" technique was used successfully during the first round of land management plans in the 1980s and beyond, and saved considerable time and effort by all involved parties.

Duly empowering the State may also be necessary. Requiring the State assent to or ratify federal land use plans could reinforce basic aspects of federalism and stimulate dialogue and buy-in at multiple stages. Irretrievable devolution of federal public lands and/or management authorities to the states could also restore some balance, and possibly even result in overall economic stabilization and growth. The Commission has created the nine-member Alaska State Lands Advisory Group to study and make recommendations on this very concept. The group's efforts will culminate in a report issued in early summer 2017.

Whatever the Court decides with respect to ANILCA §103(c), and wherever the deference pendulum lands afterward, the ability to communicate and work together will spare us similar frustrations in the future. In fact, litigation avoidance should be our default and not our refuge. These and other steps will help us work together to pave the road Congress mapped in 1980.

Responses to Questions for the Record Submitted to Ms. Valerie Brown
Legal Director, Trustees for Alaska
U.S. Senate Energy & Natural Resource Committee
December 3, 2015: Hearing to receive testimony on implementation of the Alaska National Interest Lands Conservation Act of 1980, including perspectives on the Act's impacts in Alaska and suggestions for improvements to the Act.

Chairman Murkowski, Ranking Member Cantwell, and members of the Committee:

Thank you again for the opportunity to address the Committee regarding the importance of the Alaska National Interest Lands Conservation Act ("ANILCA") of 1980 at the December 3, 2015 hearing. Below are my responses to the questions for the record from Chairman Murkowski.

Question 1: Travel in Alaska is uniquely difficult. There are places one cannot get to, other than by plane, unless you travel through parks and conservation system units. There are still 20 million acres of private and state land inholdings inside the ANILCA CSUs. ANILCA intended, as clearly stated in Title 11, to permit traditional access across CSUs and to inholdings. However, many Alaskans feel the current access provisions are not working as intended, either because of growing restrictions on access or because of the cost of planning, permitting or utilizing allowed access means. In the view of the Trustees for Alaska, are there any current problems with public access to, within and through CSUs? Are there any changes in policy or law that your organization would support on the issue of access to ANILCA protected lands?

Response: ANILCA includes multiple provisions addressing access.[1] Airplane, motorboat, and snowmachine access continue to be the norm in most conservation system units, as provided by ANILCA.[2] But importantly, ANILCA also expressly mandates that access could be subject to "reasonable regulations" "to protect the natural and other values" of the conservation system unit.[3] Based on these provisions, in drafting Title XI, Congress thus envisioned that not all means of access would necessarily be allowed at all times, in all areas.

Many general statements were made during the hearing about problems with access to inholdings, though very few actual examples have been provided. One example, cited repeatedly, has to do with the enforcement of a 1983 hovercraft ban in National Park units. Hovercrafts were banned because of their potential to cause damage to aquatic and terrestrial habitats beyond those caused by motorboats. This example is not an indication that Title XI access has failed, or that there are growing restrictions. It is instead an example of Title XI functioning as envisioned — allowing access generally, while placing a reasonable restriction to protect the natural values of the area. The hunter who now challenges the right to use a hovercraft in National Park units may still hunt and can use a motorized boat to do so.[4] He just cannot use a hovercraft.[5]

---

[1] *See, e.g.*, ANILCA §§ 1109, 1110, 1111, 16 U.S.C. §§ 3169, 3170, 3171.
[2] ANILCA § 1110(a), 16 U.S.C. § 3170(a).
[3] ANILCA § 1110(a), (b), 16 U.S.C. § 3170(a), (b).
[4] ANILCA § 1110(a), 16 U.S.C. § 3170(a).
[5] 36 C.F.R. § 2.17(e).

The other access issue that was raised during the hearing — a road from King Cove to Cold Bay through the Wilderness of Izembek National Wildlife Refuge — is not a failure of Title XI. It stems from the many decades of debate over whether designated Wilderness in Izembek National Wildlife Refuge should be traded to facilitate a road between the two communities. We recognize that there is disagreement on this issue. Congress explicitly left that decision to the Secretary of the Interior. After completing the extensive public review process required by Congress, the Secretary determined not to proceed with the land exchange and road, and committed to continuing to work with the community of King Cove to find a solution to their transportation needs. Instead of being an example of a failure of Title XI, that process fully complied with the Omnibus Public Lands Management Act of 2009. These examples do not require any change policy or law to ensure access under Title XI.

In the face of increasing use and technological advances, regulation of motorized access in some CSUs however, has been insufficient, resulting in significant impacts to wildlife habitat and other resources ANILCA sought to protect. Management agencies should be encouraged to better address motorized access impacts through planning and regulatory changes.

Question 2: In testimony the Alaska Travel Industry Association sent to the Committee, they suggest that ANILCA "problems" could be solved by more "adequately funding" federal land managers and public recreation programs in the state. What is your view on this issue? Are federal funding levels a valid concern considering federal enforcement of ANILCA?

Response: Like the Alaska Travel Industry Association, I believe that adequately funding federal land managers and public recreation programs is very important and should be a priority. An express purpose of ANILCA was to establish a system of conservation lands for recreation.[6] Congress stated that its intent was to preserve lands for, among other things, "recreational opportunities including but not limited to hiking, canoeing, fishing, and sport hunting . . . ."[7] Many of the conservation units established or enlarged by ANILCA have recreation as a specific purpose.[8]

As I explained in my written testimony, the conservation benefits of ANILCA have translated into strong economic benefits for Alaskans and Alaska communities. A 2001 Institute of Social and Economic Research study found that tourism has continued to grow each year since statehood, and was the sole private sector in Alaska that had done so.[9] Outdoor recreation alone generates $9.5 billion dollars of spending in Alaska, supporting 92,000 *direct* jobs and providing $711 million in state and local tax revenue annually.[10] More than a million out-of-state visitors flock to Southeast Alaska each year supporting 10,200 jobs that contribution another $1

[6] ANILCA § 101(a), 16 U.S.C. § 3101(a).

[7] ANILCA § 101(b), 16 U.S.C. § 3101(b).

[8] *See, e.g.*, ANILCA § 303(4) (including opportunities for fish and wildlife-oriented recreation as a purpose of the Kenai National Wildlife Refuge).

[9] Steve Colt, Inst. of Social & Econ. Research, What's the Economic Importance of Alaska's Healthy Ecosystems? 2 (2001), *available at* http://www.iser.uaa.alaska.edu/Publications/formal/rsummary/rs61.pdf. This is generally true since 2001 as well, with the exception of 2008–2009.

[10] Outdoor Industry Association, The Outdoor Recreation Economy: Take it Outside for Alaska Jobs and a Strong Economy (2013), available at: https://outdoorindustry.org/images/ore_reports/AK-alaska-outdoorrecreationeconomy-oia.pdf.

billion to the regional economy.[11] In 2014, Denali National Park hosted over 530,000 visitors, who spent over $5 million in communities near the park, supporting nearly 7,000 area jobs, and generating a total economic benefit to the local economy of nearly $7.5 million.[12] In 2011, more than 570,000 people visited the Kenai National Wildlife Refuge, generating more than $113 million in economic benefit for the area.[13] In 2010, BLM lands in Alaska contributed over 1,000 jobs, received over 600,000 visitors, and generated over $28 million from recreational use.[14] Alaskan residents spent as much $247.8 million each year in local communities as a result of their use of Alaska's two National Forests, the Chugach and Tongass.[15] In 2012, guided hunters spent a total of $51 million on hunting packages and another $3.5 million on associated services while in Alaska.[16] Almost half of the guiding revenue was earned hunting on federal land.[17] ANILCA lands also support the healthy ecosystems that are necessary to sustain fishing year after year. A 2001 study estimates that Alaska's commercial fishing industry supplies 20,000 direct jobs and supports an additional 14,000 indirect jobs.[18]

Funding agency recreation programs, trails, and facilities is vital to ensuring that the local, regional, and state economies that benefit from recreation-based tourism are sustainable. One of the priority issues identified by the Governor's recent Transition Team was the need to "focus on alternative revenues, including assets, in budget solutions." For both economic and conservation reasons, Alaska can and should bridge to a more diverse and thus stable economic foundation. Sustainable, recreation-based tourism on ANILCA lands is one avenue to do that. Funding programs and federal land management agencies is a critical component of a strong conservation-focused recreation economy, as Congress envisioned in ANILCA.

---

[11] McDowell Group, *Economic Impact of Visitors to Southeast Alaska 2010-11*, prepared for Alaska Wilderness League 1 (Aug 2012) http://www.alaskaprohunter.org/Economic_Impacts_of_Guided_Hunting_Final.pdf (last visited Nov. 29, 2015)

[12] Denali Visitors Provide Economic Benefits to Alaska and Local Area Economies, Denali National Park and Preserve Alaska, National Park Serv., http://www.nps.gov/dena/learn/news/econ-benefits.htm (last visited Nov. 28, 2015) ; *see also* Denali, National Park's Economic Impacts, Headwaters Economics (June 2015), http://headwaterseconomics.org/dataviz/national-park-service-units (last visited Nov. 30, 2015).

[13] National Wildlife Refuges Provide Significant Local Economic Impact, U.S. Fish & Wildlife Serv., Region 7-Alaska (Nov. 6, 2013), available at: http://www.fws.gov/alaska/external/newsroom/pdf/13-25.pdf.

[14] About BLM-Alaska, U.S. Department of the Interior, Bureau of Land Management, http://www.blm.gov/ak/st/en/info/about_blm.html (last visited Nov. 28, 2015).

[15] Spencer Phillips et al., Greater Than Zero: Toward the Total Economic Value of Alaska's National Forest Wildlands 5–6 (2008), *available at* https://partners.tws.org/wildscience/Publications1/Greater%20than%20Zero.pdf (describing timber sales in the Tongass and Chugach forests). The estimated annual harvest value of salmon supported by these two forests is $ 99.7 million (in 2008 dollars). *Id.*

[16] The McDowell Group, The Economic Impacts of Guided Hunting in Alaska 1 (February 2014)

[17] *Id.* at 9.

[18] Steve Colt, Inst. of Social & Econ. Research, What's the Economic Importance of Alaska's Healthy Ecosystems? 2 (2001), *available at* http://www.iser.uaa.alaska.edu/Publications/formal/rsummary/rs61.pdf.

Corporate Headquarters
PO Box 649
Glennallen, Alaska 99588
Office: (907) 822-3476
Fax: (907) 822-3495

Ahtna, Incorporated

Anchorage Offic
110 W 38th Avenue, Suite 10
Anchorage, Alaska 9950
Office: (907) 868-825
Fax: (907) 868-828

Our Culture Unites Us; Our Land Sustains Us; Our People Are Prosperous

December 16, 2015

Senator Lisa Murkowski
United State Senate
709 Hart SOB
Washington, DC 20510

Dear Senator Murkowski,

I greatly appreciated your statement of the need to protect subsistence rights in your opening remarks in the December 3, 2015 oversight hearing on the implementation of ANILCA. It is especially so, since the actual legislative lineage of ANILCA is section 17(d)(2) of the Alaska Native Claims Settlement Act.

Alaska Native subsistence has not been protected in the way that was promised by Congress in 1971. Congress clearly understood the need to protect Alaska Natives' customary and traditional hunting and fishing rights when it passed ANCSA. The United States Senate commissioned the Federal Field Committee to study Alaska Native land use, cultures and economies. That resulted in the seminal study, Alaska Natives and the Land, which provided a central rationale for the congressional mandate to convey lands back to the Alaska Native people to develop healthy economies, protect Alaska Native customary and traditional hunting and fishing rights and cultures. In 1971, Congress concluded that the Secretary of Interior could protect Alaska Native customary and traditional hunting and fishing rights with the Secretary's existing powers. By 1980, it was clear that this was not the case. ANILCA was the vehicle to protect those rights. The ANILCA plan to protect Alaska Native subsistence rights has ended up in the worst of all worlds, with a lack of defined protection of Alaska Native customary and tradition hunting and fishing rights. Instead, it has become a labyrinth of bureaucracy and litigation with the State and private parties. The implementation of ANILCA subsistence rights continues to absorb the very limited resources of the Alaska Native people it was supposed to protect.

Corporate Headquarters
PO Box 649
Glennallen, Alaska 99588
Office: (907) 822-3476
Fax: (907) 822-3495

Ahtna, Incorporated

Anchorage Office
110 W 38th Avenue, Suite 10
Anchorage, Alaska 9950
Office: (907) 868-825
Fax: (907) 868-828

Our Culture Unites Us; Our Land Sustains Us; Our People Are Prosperous

It is as clear as it was in 1980 that the promise of Alaska Native customary and traditional hunting and fishing rights are not being protected and ANILCA has failed to do this. Today marks over 35 years of constant litigation to seek protection of Alaska Native rights. We believe that if this continued for 35 more years Alaska Natives would only be marginally closer to protecting Alaska Native customary and traditional hunting and fishing rights. Therefore, we believe that it is time for a legislative redesign. Ahtna has suggested an approach that would assure that those rights are solidly protected in respect to the lands that were conveyed to the ANCSA corporations in1971. We also believe that we have a way in which the State of Alaska could achieve a greater wildlife management of federal lands than was contemplated under ANILCA, with the collaboration of both Alaska Native people and the federal government.

I understand that you intend to have further oversight hearings in Alaska. I request that Ahtna be placed on the witness list for those hearings.

Thank you for taking the initiative to reassess ANILCA. It is the right time. I look forward to hearing from you.

Sincerely,

Michelle Anderson

Michelle Anderson
President

Written Testimony of
Julie Kitka, President, Alaska Federation of Natives
To the Senate Energy and Natural Resources Committee
For the December 3, 2015 Committee Hearing on the implementation of the Alaska National Interest Lands Conservation Act of 1980, including perspectives on the Act's impacts in Alaska and suggestions for improvements to the Act.
January 12, 2016

The Alaska Federation of Natives (AFN) submits this written testimony to the record for the December 3, 2015 Committee Hearing on the implementation of the Alaska National Interest Lands Conservation Act of 1980, including perspectives on the Act's impacts in Alaska and suggestions for improvements to the Act.

The Alaska Federation of Natives is the largest statewide Native organization in Alaska. Our membership includes 185 federally recognized tribes, 153 village corporations, 12 regional corporations, and 12 regional nonprofit and tribal consortiums that compact and contract to run federal and state programs. Formed fifty years ago, AFN continues to be the principal forum and voice of Alaska Natives in dealing with critical issues of public policy and government.

History

In the 1960s, the Alaska Federation of Natives and Alaska Native leaders sought a fair and just settlement of land rights and protection of our critical way of life as traditional hunting and fishing people.. We sought federal protections for hunting and fishing rights as part of a settlement of Alaska Native aboriginal land claims. Instead, Section 4(b) of the Alaska Native Claims Settlement Act of 1971, also known as ANCSA[1], extinguished those rights.

In report language, Congress stated that they expected the State of Alaska and the Secretary of the Interior "to take any action necessary to protect the subsistence needs of Alaska Natives."[2] Over time, neither the Secretary of the Interior nor the State of Alaska fulfilled that expectation. Consequently, Congress enacted Title VIII of the Alaska National Interest Lands Conservation Act, or ANILCA[3], in 1980. ANILCA's Title VIII was a balanced approach and envisioned State implementation of the federal priority on all lands and waters in Alaska through state law, which complied with federal standards. Again, AFN and Alaska Native leaders sought explicit protections for "Native" hunting and fishing rights, but the State objected.

ANILCA was crafted to provide a subsistence priority for "rural residents." To comply with this law, the State of Alaska enacted state laws that conformed to federal requirements to manage subsistence on state and federal lands in Alaska.

---

[1] 43 U.S.C. 1603(b).
[2] S. REP. NO. 92-581, at 37 (1971) (Conf. Rep.).
[3] Codified as amended in sections of 16 U.S.C., 43 U.S.C., and 48 U.S.C.

That system operated for less than a decade before the Alaska Supreme Court ruled that the State Constitution precluded State participation in the program. In 1989, the Alaska Supreme Court held in *McDowell v. State*[4] that the Alaska Constitution's equal access clauses, which guarantee that all Alaskans have equal access to fish and wildlife, preclude the State from implementing a rural subsistence priority consistent with ANILCA.

After the 1989 *McDowell* decision, the entire Alaska Congressional delegation, the Governor and leaders in the Alaska Legislature, together with Alaska Native leaders and community leaders attempted to amend the state constitution to enable the State to reassume responsibility for managing subsistence hunting and fishing on federal lands. The Alaska Legislature – through 20 regular sessions and six special sessions – was not able to accomplish this goal. We came close – within one vote of the 2/3 requirements of both the Alaska Senate and the Alaska House of Representatives, to allow Alaskan voters to vote on a solution. Efforts to amend the state constitution collapsed after nearly a decade of concentrated efforts. The direction of State law moved away from critical protections and now generally prioritizes subsistence uses of fish and game but provides no preference for rural or Alaska Native residents. Essentially the State legislature gave up the right to manage federal public lands and allowed the federal agencies to assume a greater role per ANILCA.

The federal system put in place was a temporary system, hopeful that the State would work to resume management. This temporary system has now been in place over twenty years. Numerous efforts to improve the system occurred – administratively, and through clarification due to litigation. Currently the federal government manages subsistence on federal lands, as well as "reserved waters" which run adjacent to or through federal lands in Alaska. The State of Alaska has jurisdiction over state and private lands.

This dual federal and state management system, as can be expected, is highly complex and confusing, and is not a satisfactory way to management migratory fish and animals, let alone nimble enough to address the changing needs and aspirations of the Alaska Native people.

After more than 20 years of dual management, it has become clear that the State is not inclined to regain subsistence management authority on federal lands and waters. Moreover, state subsistence laws have effectively been gutted—large areas of the state have been classified as "non-subsistence use areas" where subsistence users receive no priority, and, where there is a priority, "all Alaskans" have been declared eligible. This change is completely inconsistent with ANILCA's rural preference; the purpose, intent, and "letter of the law" in both ANCSA and ANILCA are not being met.

Pursuant to ANCSA, in exchange for abrogating Native claims, title to 44 million acres of land plus $962.5 million were distributed to 12 regional and more than 200 village Alaska Native Corporations. The Native Corporations were charged with managing the land for the benefit of their shareholders who, at the time of the settlement, were all Alaska Natives. Because private land in Alaska is governed by state law, Alaska Native subsistence users are not assured of hunting and fishing protection even on their own land.

[4] 785 P.2d 1 (Alaska 1989).

Subsistence is not a mere lifestyle choice. For most Alaska Native families, it is a core means of making a living. Based on ancient traditions passed down from generation to generation, subsistence is key to Alaska's rural economy.

We hope this Committee will recognize that ANCSA and ANILCA failed to provide the long-term protections for Native subsistence needs that Congress intended, and take the actions necessary to provide those protections.

Federal Overreach

ANILCA is an extension of ANCSA and central to the historic, constitutional trust relationship between Alaska tribes and the federal government. It is hardly "federal overreach," from the statewide Native community's perspective. "Federal overreach" is often coded language for anti-Native sentiment. It is used by certain urban, non-Native hunters, ranchers, and big business interests to fight Native tribes over land and resources in many western states.

In Alaska that sentiment is inherent in the fight over the rural subsistence preference on federal lands and waters. Often in the guise of state's rights, the anti-federal activism ignores the consequence of what will happen to ANILCA protection for rural, mostly Native, subsistence families if the federal government cedes management of the waters to Alaska state control, which does not provide for a rural subsistence preference.

The events unfolding this month at the Malhuer National Wildlife Refuge in southeastern Oregon underline the anti-Native undertone of anti-government activism. A group of armed activists and militiamen protesting the prosecution of two ranchers occupied an administrative building in the refuge. They spoke the same coded language as has been heard in Alaska for decades. Group leader Ammon Bundy said, "(We take) a hard stand against this overreach, this taking of the people's land and resources," and that the situation in the refuge was "a symptom of a very huge, egregious problem" that he described as a battle over land and resources between the federal government and "the American people."[5]

Left out of the public discourse in this standoff is the fact that the wildlife refuge is within the Burns Paiute Tribe's ancestral lands.[6] In 1868, the tribe signed a treaty with the federal government that requires the government to protect Natives' safety. According to the tribe, the federal government promised to prosecute 'any crime or injury perpetrated by any white man upon the Indians.' Tribal members say the tribe never ceded its rights to the land and works with the U.S. Bureau of Land Management to preserve archaeological sites.[7]

Alaska Native families, particularly those in rural areas whose food security is based primarily on subsistence hunting, fishing and gathering, rely on the ANILCA protections in the current, albeit imperfect, duel management system. The success of a belligerent movement that seeks to

[5] NY Times, *Wildlife Refuge Occupied in Protest of Oregon Ranchers' Prison Terms*, by Liam Stack. Jan. 2, 2016.
[6] NPR, "The Two Way" news story, Jan. 6, 2016
[7] The Oregonian, *Burns Paiute Tribe: Militants need to get off 'our land,'* by Ian Kullgren Jan. 6, 2016.

seize and sell off our publicly owned lands and end federal resource management would be disastrous to Native peoples.

Self-Determination

Alaska Natives have been exercising self-determination for decades and we want to continue building on that. Since the Indian Self-Determination and Education Assistance Act of 1975, (ISDEAA)[8] we have negotiated contracts and compacts to manage health care, social services, education, housing, roads, and tribal operations such as enrollment in Alaska.

The Act allows tribes themselves to assume administrative responsibility for federally funded programs designed for their benefit, primarily services which are administrated by the Bureau of Indian Affairs and by the Indian Health Service. This means that the tribes can negotiate contracts and compacts directly with the federal government to run their own programs and deliver their own services rather than the federal government doing it for them.

These kinds of arrangements serve the needs of all involved. The federal and state governments get to focus on the big picture and their administrative duties. Alaska Natives get culturally sensitive services administered by our own people and a chance to exercise their management skills.

Co-Management

As one way to end the perception of federal overreach, Alaska Natives are advocating for co-management of Alaska's fish and game resources. As it relates to the management of fish and game in Alaska, co-management is an arrangement where responsibility for resource management is shared between the government and user groups. This model puts local users, most often Alaska Natives, in a power sharing position rather than that of an advisor or commentator.

Co-management is not a demand for a tribal veto power over federal or state policies. Rather, it is a departure from paternalism in decisions that affect tribal rights and resources. Successful co-management incorporates, in a constructive manner, the policy and technical expertise of each party in a mutual, participatory framework.[9]

Co-management of fish and wildlife resources with Native American and Alaska Native groups is not a new concept. Since 1994, the National Marine Fisheries Service (NMFS and the U.S. Fish and Wildlife Service (USFWS) have entered into more than a dozen co-management agreements in Alaska. The State of Alaska participates in several of these co-management structures with the federal government and Alaska Native groups, such as the Alaska Migratory Bird Co-Management Council and the Alaska Beluga Whale Committee.

---

[8] 25 U.S.C. §§450 et seq.

[9] Edmund C. Goodman, *Protecting Habitat for Off-Reservation Tribal Hunting and Fishing Rights: Tribal Comanagement as a Reserved Right*, 30 Envtl. L. 279 (2000).

There are four categories of management functions in a co-management model – research, regulation, allocation and enforcement[10] – and Alaska Native groups in current co-management arrangements conduct work in all four of these areas successfully. Local users are able to augment scientific research with traditional ecological knowledge, greatly enhancing our understanding of and ability to successfully manage resources.

Despite the long, successful history of some of these projects, co-management occurs in isolated instances around the state and are often species-specific. We would like to build on the success of these co-management projects and maximize self-determination by expanding and creating more co-management projects.

Conclusion

We ask that this Committee commit to work with the Alaska Native community to formulate legislation that will restore and protect Native hunting and fishing rights in Alaska, and provide a co-equal role for Alaska Natives in the management of fish, wildlife and other renewable resources that we rely upon for our economic and cultural existence.

Our goal in advocating for co-management projects is to have a meaningful seat at the management table where fish and game are concerned. Our traditional knowledge and modern science are proving invaluable in managing these resources in other situations.

We ask Congress to fulfill the federal government's trust responsibility to Alaska's Native peoples with respect to subsistence culture and economy. Finally, we urge the Committee to conduct field hearings in rural Alaska and learn what is going on and critically needed.

Quyana, Thank you.

[10] Eric Smith, *Some Thoughts on Comanagement*, 14 Hastings W.-N.W.J. Envtl. L. & Pol'y 763, 767-68 (2008).

ALASKA MINERS
ASSOCIATION

121 W. Fireweed Suite 120 | Anchorage, Alaska | 99503 | 907.563.9229 | alaskaminers.org

January 15, 2016

Senator Lisa Murkowski, Chairman
Senate Committee on Energy and Natural Resources
304 Dirksen Senate Office Building
Washington DC 20510

Re: AMA LETTER TO CONGRESSIONAL DELEGATION REQUESTING DEFINITION OF THE WORD "WITHDRAWAL" IN § 1326

Dear Senator Murkowski:

Alaskans interested in resource development wonder why the "no more" clause does not protect us from ongoing and increasing federal land grabs. The agencies in Alaska are going around the "no more" clause by withholding land from development through land use designations within a land plan and then rolling over that land use designation/de facto withdrawal from land plan to land plan - always expanding, never decreasing. Examples are "Old Growth Reserves" (OGRs) on the Tongass National Forest and Areas of Critical Environmental Concern (ACECs) on Bureau of Land Management (BLM) land.

The Alaska Miners' Association (AMA) seeks a definition of the word "withdrawal" as that word is used in§ 1326(a) of the Alaska National Interest Land Conservation Act (ANILCA). The AMA requests that this letter be placed in the Senate Energy Committee's hearing record on ANILCA which was held on December 3, 2015.

AMA is a non-profit membership organization established in 1939 to represent the mining industry throughout Alaska. The AMA has a diverse membership composed of more than 1,800 members that come from seven statewide branches: Anchorage, Denali, Fairbanks, Juneau, Kenai, Ketchikan/Prince of Wales, and Nome. Our members include individual prospectors, geologists, engineers, vendors, suction dredge miners, small family mines, junior mining companies, and major mining companies. AMA members look for and produce gold, silver, platinum, molybdenum, lead, zinc, copper, coal, limestone, sand and gravel, crushed stone, armor rock, and other materials.

DISCUSSION

By Section 1326(a), ANILCA Congress specifically limited the executive branch's authority to withdraw public lands in Alaska:

a. First, Congress found:

This Act provides sufficient protection for the national interest in the scenic, natural, cultural and **environmental (***emphasis added***)** 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. (ANILCA § 101(d); 16 U.S.C. § 3101(d)). (Emphasis added.)

b. Congress then directed:

(a) No new executive branch action which withdraws more than five thousand acres, in the aggregate, of public lands within the State of Alaska shall be effective except by compliance with this subsection. To the extent authorized by existing law, the President or the Secretary may withdraw public lands in the State of Alaska exceeding five thousand acres in the aggregate, which withdrawal shall not become effective until notice is provided in the Federal Register and to both Houses of Congress. Such withdrawal shall terminate unless Congress passes a joint resolution of approval within one year after the notice of withdrawal has been submitted to Congress.

(b) No further studies of Federal lands in the State of Alaska for the single purpose of considering the establishment of a conservation system unit, national recreation area, national conservation area, or for related or similar purpose shall be conducted unless authorized by this Act or further Act of Congress. ANILCA § 1326; 16 U.S.C. § 3213.

While the Congressional intent is clear, executive agencies have used various devices to circumvent ANILCA § 1326. They have been able to do so because there is no ANILCA definition of "withdrawal." For example the U.S. District Court for the District of Columbia decided in the attached case of *Southeast Conference v. Vilsack,* 684 F.2d 135 (D.D.C. 2010) that because there was no ANILCA definition of "withdrawal" it would use the definition of "withdrawal" set out in § 204(e) of the Federal Land Management Policy Act of 1976 (FLPMA) and related case law:

[A] withdrawal exempts covered land from the operation of laws that otherwise authorize the transfer of federal lands to the private domain for private use. (Attached Slip Opinion at page 13).

Based on this definition, the Court determined that 1.22 million acres of "Old Growth Reserves" set aside by the 2008 Amended Tongass Land Management Plan were not withdrawals but:

are merely examples of the Forest Service's statutory responsibility under the National Forest Management Act to "provide for multiple use and sustained yield products and services of units of the National Forest System." 16 U.S.C. § 1604(e). They neither exempt lands from the operation of public land laws, nor suspend the operation of those laws in certain lands. Land-use designations simply have no effect on laws that authorize transfer of federal lands to the private domain .... (Attached Slip Opinion at page 14).

In the same way ACECs on BLM land would be considered land-use designations under FLPMA and not subject to the "no more" clause. This is a gigantic loophole which the agencies can use to set aside as much land in Alaska as they wish notwithstanding the "no more" clause.

AMA proposes to close the loophole by adding the following definition of "withdrawal" to ANILCA:

Section 1326 of ANILCA is amended by adding a new subparagraph (c) to read: Consistent with the Congressional intent expressed in Section 101 (d) and notwithstanding 16 U.S.C. 1702(j), for the purposes of Section 1326 (a) the terms "withdraw," "withdraws" and "withdrawal" shall mean any agency action or inaction that has the effect of designating public land in Alaska as: a Wilderness Study Area; a Wild and Scenic River; an Endangered Species Act habitat area; or any land use

ALASKA MINERS ASSOCIATION

designation, made pursuant to the Federal Land Policy Management Act or the National Forest Management Act or any other planning statute, that has the effect of prohibiting or limiting resource uses allowed before the day of passage of this Amendment or impeding access to or inhibiting the development of: renewable energy projects (including hydropower), mining (including exploration), oil and gas (including exploration), or timber harvest.

This definition would cause the "no more" clause of ANILCA to actually work as a "no more" clause. AMA looks forward to discussing this with you.

Yours truly,

Deantha Crockett
Executive Director

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

SOUTHEAST CONFERENCE, et al., **Plaintiffs,** **v.** **THOMAS VILSACK, Secretary, United States Department of Agriculture, et al.,** **Defendants.**	**Civil Action No. 08-1598 (JDB)**

MEMORANDUM OPINION

In 2008, the United States Forest Service approved the 2008 Tongass National Forest Land and Resource Management Plan Amendment ("2008 TLMP Amendment" or "Plan"). The Plan established the Forest Service's goals and objectives for the management of the Tongass National Forest in Alaska, which include promoting the ecological, social, and economic values derived from the Tongass. Plaintiffs -- several Alaskan cities and regional, non-profit corporations -- disagree with the Forest Service's vision for the Tongass, particularly as it addresses the timber harvest. Accordingly, they challenge several components of the 2008 TLMP Amendment, positing that it improperly reduces the amount of land available in the Tongass for the timber harvest. Before the Court are the parties' cross-motions for summary judgment, on which the Court heard oral argument on January 14, 2010. Upon consideration of the applicable law, the parties' several memoranda, and the entire record herein, and for the reasons stated below, the Court will grant defendants' motion and deny plaintiffs' motion.[1]

[1] Although plaintiffs name several different individuals and entities as defendants, the Court will refer only to the Forest Service because it promulgated the 2008 TLMP Amendment.

I.

Located in Southeast Alaska, the 16.8 million acre Tongass National Forest is the nation's largest national forest. "Most of the area of the Tongass is wild and undeveloped." Administrative Record, 2008 TLMP Amendment Final Environmental Impact Statement ("2008 TLMP Amendment FEIS"), 1-3. In spite of -- or perhaps because of -- this feral environment, "[t]he economies of Southeast Alaska's communities rely on the Tongass National Forest to provide natural resources for uses such as fishing, timber harvesting, recreating, tourism, mining, and subsistence." Id. Hence, "[m]aintaining the abundant natural resources of the Forest, while providing opportunities for their use, is a major concern of Southeast Alaska residents." Id. The Forest Service manages the Tongass with these issues in mind.

A.

The National Forest Management Act of 1976, 16 U.S.C. § 1600 et seq., requires the Forest Service to "develop, maintain, and, as appropriate, revise land and resource management plans for units of the National Forest systems." 16 U.S.C. § 1604(a). In doing so, the Forest Service must "balance competing demands on national forests, including timber harvesting, recreational use, and environmental preservation." Lands Council v. Powell, 395 F.3d 1019, 1025 n.2 (9th Cir. 2005); see also 16 U.S.C. § 528 (national forests "administered for outdoor recreation, range, timber, watershed, and wildlife and fish purposes"). Indeed, "[u]nlike other types of federal conservation statutes, the law regulating the use of national forests embraces the concepts of 'multiple use' and 'sustained yield of products and services.'" Lands Council, 395 F.3d at 1025 n.2 (quoting 16 U.S.C. § 1607). As part of its management of national forests, the Forest Service must "revise[] from time to time [its forest plans] when the Secretary [of

Agriculture] finds conditions in a unit have significantly changed, but at least every fifteen years." 16 U.S.C. § 1604(f)(5).

In addition to the statutory scheme governing national forests generally, several other statutes specifically regulate the Tongass. First, the Alaska National Interest Lands Conservation Act ("ANILCA"), Pub. L. No. 96-487, 94 Stat. 2371 (Dec. 2, 1980), created numerous new federal properties in Alaska in order to maintain a "proper balance between the reservation of" land for conservation and the disposition of "those public lands necessary and appropriate for more intensive use." 16 U.S.C. § 3101(d). Because Congress believed that ANILCA properly balanced these outcomes, it concluded that "the need for future legislation . . . has been obviated" by the statute. Id. Congress therefore prohibited "future executive branch action which withdraws more than five thousand acres, in the aggregate, of public lands within the State of Alaska[, unless] notice is provided in the Federal Register and to both Houses of Congress." Id. § 3213(a). The Forest Service must terminate any such withdrawal "unless Congress passes a joint resolution of approval within one year after the notice of such withdrawal has been submitted to Congress." Id.

Second, the Tongass Timber Reform Act ("TTRA"), Pub. L. No. 101-626, 104 Stat. 4426 (Nov. 28, 1990), "imposed additional planning requirements for the Tongass." Natural Res. Def. Council v. United States Forest Serv., 421 F.3d 797, 801 (9th Cir. 2005). "Among these requirements, Congress imposed a unique duty on the Forest Service to consider the 'market demand' for timber" when creating a forest plan for the Tongass. Id. This duty requires the Secretary of Agriculture,

> to the extent consistent with providing for the multiple use and sustained yield of

> all renewable forest resources, [to] seek to provide a supply of timber from the Tongass National Forest which (1) meets the annual market demand for timber from such forest and (2) meets the market demand from such forest for each planning cycle.

16 U.S.C. § 539d(a). Although the statute's language is merely "hortatory," it nevertheless requires the "Forest Service . . . [to] at least consider market demand and seek to meet market demand." Natural Res. Def. Council, 421 F.3d at 809. The TTRA envisions "not an inflexible harvest level, but a balancing of the market, the law, and other uses including preservation." Alaska Wilderness Recreation & Tourism Ass'n v. Morrison, 67 F.3d 723, 731 (9th Cir. 1995).

B.

The Forest Service promulgated and approved the 2008 TLMP Amendment to fulfill its statutory responsibilities for the Tongass. In the Plan, as in the four previous Tongass forest plans, the Forest Service sought to meet its obligation to "provide for multiple use and sustained yield of the products and services obtained from the National Forest System." Administrative Record, 2008 TLMP Amendment Record of Decision ("2008 TLMP Amendment ROD"), 2 (internal quotation marks omitted). In other words, the 2008 TLMP Amendment balanced "the many competing uses to which land can be put." Id. Of particular concern to plaintiffs here is how the Forest Service balanced the needs of the timber industry with the other uses of the Tongass. Accordingly, the Court will focus on those components of the 2008 TLMP Amendment that are relevant to that issue.

The 2008 TLMP Amendment sets forth the Forest Service's vision for how the 16.8 million acres of the Tongass will be managed. To do so, the Forest Service uses land management planning, which "may be compared to city, county, or borough zoning. Just as areas

in a community are zoned as commercial, industrial, or residential, the forest is also zoned to allow, or not allow, various uses and activities." 2008 TLMP Amendment FEIS at 2-1. Forest plan "zoning" is accomplished by employing land use designations, which "specify ways of managing an area of land and the resources it contains." Id. For example, land may be designated to protect certain resources, such as old growth wildlife habitats, or it may be designated to permit the harvest of resources, such as timber or minerals. See id. In addition, lands may be designated to permit a combination of activities on the land, "such as providing for scenic quality in combination with timber harvesting." Id. As relevant here, in the 2008 TLMP Amendment the Forest Service designated 1.22 million acres of the Tongass as "old growth reserves," with the result that timber harvesting is prohibited on these lands. See 2008 TLMP Amendment ROD at 5. The Forest Service also has designated approximately 2.3 million acres of the Tongass for timber production, of which 663,000 acres are available for the timber harvest while the 2008 TLMP Amendment remains in effect. See id. at 5-6.

The 2008 TLMP Amendment also includes the Forest Service's projection of market demand for timber from the Tongass. A Tongass forest plan must include a projection of market demand for timber so the Forest Service can fulfill its statutory obligation under the TTRA to seek to meet market demand. To reach a projection of demand, and to assess whether the Plan would supply enough timber to satisfy that demand, the Forest Service primarily relied on a forecast of market demand prepared by the Pacific Northwest Research Station. See 2008 TLMP Amendment ROD at 31-35 (discussing Allen M. Brackley, et al., Timber Products Output and Timber Harvests in Alaska: Projections for 2005-2025 (2006)). The study "project[ed] the demand for timber from the Tongass, [which was] derived from the demand in Pacific Rim

markets for the end products manufactured from that timber." Id. at 31. It gave four different scenarios of timber demand -- limited lumber, expanded lumber, medium integrated, and high integrated -- projecting a range of future average demand for Tongass timber. See id. The scenarios represent a spectrum of market demand, with "limited lumber" projecting the lowest levels of market demand and "high integrated" projecting the highest levels of market demand. Id. Under the scenario deemed most likely -- "expanded lumber" -- market demand is projected to range from 61.9 million board feet in 2007 to 187.1 million board feet in 2022, the end of the planning cycle for the 2008 TLMP Amendment. See id. at 33. The Forest Service adopted the expanded lumber scenario as the measure of market demand in its Tongass forest plan. See id. at 35.[2]

Based on the demand scenario it adopted, the Forest Service approved a Tongass forest plan that set the allowable sale quantity of timber for the next ten years at 2.67 billion board feet, or an average of 267 million board feet annually. See id. The allowable sale quantity "represents the upper decadal limit on the amount of timber that may be offered for sale from suitable timberland in the Tongass National Forest as part of the regularly scheduled timber sale program." Nat. Res. Def. Council, 421 F.3d at 802 n.10 (internal quotation marks omitted). The Forest Service determined that an allowable sale quantity of 267 million board feet annually not only would satisfy projected market demand, but also would ensure that the Forest Service could

[2] Plaintiffs do not challenge the Forest Service's reliance on the Pacific Northwest Research Station's report, or the Forest Service's selection of the expanded lumber scenario as the correct projection of market demand.

meet unforeseen or changing market conditions.[3]

One such changing market condition the Forest Service considered was the development of an integrated timber industry. It concluded that the 2008 TLMP Amendment should be flexible enough to provide sufficient timber to create an "integrated timber industry" in Southeast Alaska. See 2008 TLMP Amendment ROD at 35. An integrated industry "is one that includes processing facilities and markets for all types of logs from timber harvest operations conducted in the area, and for byproducts such as chips that result from processing those logs into lumber or other products." Id. Although such an industry does not currently exist in Southeast Alaska, the Forest Service "consider[ed] it important to provide an opportunity for the timber industry to become more integrated." Id. at 36. Relying on the Pacific Northwest Research Station's study, the Forest Service concluded that "a reliable annual supply of at least 200 million board feet of economic timber would be needed from the Tongass to meet the objective of providing an opportunity for the reestablishment of an integrated industry." Id. at 37. An allowable sale quantity of timber of 267 million board feet annually permitted this opportunity. See id. ("none of the alternatives with an [allowable sale quantity] lower than the amended Forest Plan's meet [the] criterion" of providing enough timber to supply a potentially integrated industry).

Finally, to guide the timber harvest in the Tongass and to protect environmentally sensitive areas, the Forest Service implemented what it termed the Timber Sale Program Adaptive Management Strategy. See id. at 64 ("The Strategy is an extra step the Forest Service is

---

[3] Plaintiffs do not challenge the Forest Service's selection of 2.67 billion board feet as the allowable sale quantity over the next decade, or the conclusion that 267 million board feet annually is sufficient to both meet projected market demand and provide enough timber to meet changing market conditions.

taking to respond to recommendations from many parties that we avoid timber harvest and road construction in areas of the Tongass that are perceived as being more environmentally sensitive . . . . "). Under the Strategy, the "timber harvest will be allowed in three phases as a means of limiting timber harvest and associated road construction activities to lower quality roadless areas until the level of timber harvest warrants allowing such activities in higher quality roadless areas." Id. at 8. The parts of the forest available to the timber harvest under the 2008 TLMP Amendment are divided into four separate areas: roaded, lower value roadless areas, moderate value roadless areas, and higher value roadless areas. Id. Based on these divisions, timber harvest and associated road construction is allowed in these areas in three phases, which come into effect if necessary to meet market demand. Id. at 65-66. Phase one includes roaded areas and most of the lower value roadless areas; phase two includes phase one lands and most of the moderate value roadless areas; and phase three includes the entire land base suitable for the timber harvest. Id. The Timber Sale Adaptive Management Strategy limits the timber harvest to phase one areas until timber harvest levels reach at least 100 million board feet per year for two consecutive years. Id. at 65. If that threshold is met, phase two lands become available for the timber harvest. Id. at 66. If the harvest levels reach at least 150 million board feet per year for two consecutive years, phase three lands become available for the timber harvest. Id.

C.

Plaintiffs bring suit under the Administrative Procedure Act, seeking declaratory and injunctive relief on the grounds that the 2008 TLMP Amendment violates ANILCA and the TTRA. In their complaint, plaintiffs challenge three components of the Plan. First, they contend that the "old growth reserves" land use designation, which in their view withdraws more than

5,000 acres from the timber harvest, violates ANILCA's provision prohibiting such executive branch withdrawals. See Compl. at p. 23. They opine that because the Forest Service neither sent notice of the designations to both houses of Congress nor obtained a joint congressional resolution authorizing the designations, the "old growth reserves" designations are illegal under ANILCA.

Second, plaintiffs argue that the Timber Sale Adaptive Management Strategy "withdraws so much of the commercial forest land base as to effectively destroy the Forest Service's ability to exercise its discretion to meet market demand for an integrated timber industry." Compl. ¶ 4. In other words, plaintiffs posit that the Strategy "ha[s] rendered it improbable that Defendants could" fulfill their obligation under the TTRA to seek "to meet market demand for an integrated timber industry." Compl. ¶ 51.

Third, plaintiffs suggest that the 2008 TLMP Amendment imposes "non-statutory" constraints on the Forest Service's "mandatory obligation under TTRA to seek to meet market demand." Pls.' Mem. in Supp. of Mot. for Partial Summ. J. ("Pls.' Mem.") [Docket Entry 16], at 38. That is, plaintiffs insist that certain elements of the Plan, including the Timber Sale Adaptive Management Strategy, limit the Forest Service's ability to seek to meet the market demand for an integrated timber industry. See Pls.' Reply in Supp. of Mot. for Partial Summ. J. ("Pls.' Reply") [Docket Entry 18], at 40, 41.[4]

[4] In their complaint, plaintiffs also argue that the 2008 TLMP Amendment has "effectively repealed . . . [the National Forest Management Act]." Compl. ¶ 51. But in response to the Court's question regarding what claims plaintiffs were asserting in this action, plaintiffs' counsel did not include the claim based on the National Forest Management Act. Moreover, the single statement that the 2008 TLMP Amendment "effectively repealed" the National Forest Management Act is insufficient to state a claim, especially where plaintiffs have not even identified the provisions of the Act at issue.

II.

Under Fed. R. Civ. P. 56(c), summary judgment is appropriate when the pleadings and the evidence demonstrate that "there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." In a case involving review of a final agency action under the Administrative Procedure Act, 5 U.S.C. § 706, however, the standard set forth in Rule 56(c) does not apply because of the limited role of a court in reviewing the administrative record. See Prof'l Drivers Council v. Bur. of Motor Carrier Safety, 706 F.2d 1216, 1229 (D.C. Cir. 1983); Sierra Club v. Mainella, 459 F. Supp. 2d 76, 89-90 (D.D.C. 2006). The agency resolves factual issues in a manner that is supported by the administrative record. Summary judgment is then the mechanism for deciding whether as a matter of law the agency action is supported by the administrative record and is otherwise consistent with the APA standard of review. See Citizens to Preserve Overton Park, Inc. v. Volpe, 401 U.S. 402, 415 (1971); Sw. Merchandising Corp. v. Nat. Labor Relations Bd., 53 F.3d 1334, 1341 (D.C. Cir. 1995); Richard v. Immigration & Naturalization Serv., 554 F.2d 1173, 1177 & n.28 (D.C. Cir. 1977).

A court must "hold unlawful and set aside agency action, findings, and conclusions" that are "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law," 5 U.S.C. § 706(2)(A), in excess of statutory authority, id. § 706(2)(C), or "without observance of procedures required by law," id. § 706(2)(D). The scope of review, however, is narrow. See Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co., 463 U.S. 29, 43 (1983). It presumes the agency's action is valid. See Volpe, 401 U.S. at 415. And the "court is not to substitute its judgment for that of the agency." State Farm, 463 U.S. at 43. Moreover,

where an agency "is evaluating scientific data within its technical expertise," the Court must give the agency "an extreme degree of deference." Am. Farm Bureau Fed'n v. Envtl. Prot. Agency, 559 F.3d 512, 519 (D.C. Cir. 2009) (internal quotation marks omitted); see also Am. Radio Relay League, Inc. v. Fed. Commc'n Comm'n, 524 F.3d 227, 233 (D.C. Cir. 2008) ("Where a 'highly technical question' is involved, 'courts necessarily must show considerable deference to an agency's expertise.'" (quoting MCI Cellular Tel. Co. v. Fed. Commc'n Comm'n, 738 F.2d 1322, 1333 (D.C. Cir. 1984))). But the court must be satisfied that the agency has "'examine[d] the relevant data and articulate[d] a satisfactory explanation for its action including a rational connection between the facts found and the choice made.'" Alpharma, Inc. v. Leavitt, 460 F.3d 1, 6 (D.C. Cir. 2006) (quoting State Farm, 463 U.S. at 43).

III.

Plaintiffs contend that the "old growth reserves" land use designation in the 2008 TLMP Amendment violates 16 U.S.C. § 3213(a), ANILCA's provision prohibiting executive branch withdrawals. According to plaintiffs, the "old growth reserves" designation has the effect of closing the designated land to the timber harvest. See Pls.' Mem. at 20; Pls.' Reply at 2. And because this land is closed to the timber harvest, plaintiffs posit that the "old growth reserves" designation "withdraws" land within the meaning of 16 U.S.C. § 3213(a). Hence, in plaintiffs' view, the "old growth reserves" designation can be upheld only if the Forest Service notifies Congress and seeks a joint resolution approving the designation. The Forest Service has not done so, and therefore plaintiffs contend that the 2008 TLMP Amendment is not "in accordance with law." Pls.' Mem. at 25.

Although plaintiffs' argument rests on the assumption that the statutory definition of a withdrawal encompasses land use designations, plaintiffs never define the term "withdrawal." Nor, to be fair, does ANILCA. In the absence of a definition of the term in ANILCA, the Court must look to how other, related statutes define withdrawal, see, e.g., Arlington Cent. School Dist. Bd. of Educ. v. Murphy, 548 U.S. 291, 300-03 (2006); Pierce v. Underwood, 487 U.S. 552, 564-65 (1988), as well as to the context in which the term is used in the statute at issue, see, e.g., Gustafson v. Alloyd Co., 513 U.S. 561, 569 (1995); United Savings Ass'n of Texas v. Timbers of Inwood Forest Assocs., 484 U.S. 365, 371 (1988).

One such related statute is the Federal Land Policy and Management Act, which, like ANILCA, governs the management of certain federal lands. Under that statute, a withdrawal is statutorily defined as a "withholding [of] an area of Federal land from settlement, sale, location, or entry, under some or all of the general land laws, for the purpose of limiting activities under those laws in order to maintain other public values in the area or reserving the area for a particular public purpose or program." 43 U.S.C. § 1702(j). Interpreting that provision, the D.C. Circuit described a withdrawal as an action that "exempts the covered land from the operation of public land laws." New Mexico v. Watkins, 969 F.2d 1122, 1124 (D.C. Cir. 1992); see also Sagebrush Rebellion, Inc. v. Hodel, 790 F.2d 760, 761 n.1 (9th Cir. 1986) ("A withdrawal withholds an area of federal land from sale, lease or use under the general land laws . . . in order to preserve a public value in the area or for a public purpose."). Public, or general, land laws "authorize the transfer of federal lands to the private domain." Sagebrush Rebellion, 790 F.2d at 761 n.1. Putting the definitions together, then, a withdrawal exempts covered land from the

operation of laws that otherwise authorize the transfer of federal lands to the private domain for private use.

This definition accords with the way several other provisions of ANILCA use the term withdrawal. For example, in a provision discussing ANILCA's effect on withdrawals of land made prior to ANILCA's passage, Congress stated that withdrawn lands "shall not be deemed available for selection, appropriation, or disposition." 16 U.S.C. § 3209(a). The phrase "selection, appropriation, or disposition" echoes the phrase "settlement, sale, location, or entry" used in the Federal Land Policy and Management Act's definition of withdrawal. Furthermore, in an ANILCA provision regarding mineral leasing rights, Congress found that certain lands "are . . . withdrawn from all forms of appropriation or disposal under public land laws." 16 U.S.C. § 410hh-5. This construction mirrors the D.C. Circuit's description that a withdrawal under the Federal Land Policy and Management Act "exempts the covered land from the operation of public land laws." Watkins, 969 F.2d at 1124.[5] The statutory evidence, then, supports the application of the Federal Land Policy and Management Act's definition of withdrawal to ANILCA.[6]

---

[5] The Federal Land Policy and Management Act's definition of withdrawal also reflects the general use of the term in public land jurisprudence: "A withdrawal makes land unavailable for certain kinds of private appropriation under the public land laws." So. Utah Wilderness Alliance v. Bureau of Land Mgmt., 425 F.3d 735, 784 (10th Cir. 2005) (citing Charles F. Wheatley, Jr., II Study of Withdrawals and Reservations of Public Domain Lands A-1 (1969)). "Just as Congress . . . can pass laws opening the public lands to private settlement, so also it can remove the public lands from the operation of those same laws. That is what a withdrawal does." Id.

[6] It is reasonable to believe that Congress wrote ANICLA with the Federal Land Policy and Management Act's definition of withdrawal in mind given that Congress passed the Federal Land Policy and Management Act just four years before ANILCA. Compare Federal Land Policy and Management Act, Pub. L. No. 94-579, 90 Stat. 2743 (Oct. 21, 1976), with ANILCA,

Because other provisions of ANILCA reflect the definition of withdrawal set forth in the Federal Land Policy and Management Act, the Court is persuaded that the term withdrawal in 16 U.S.C. § 3213(a) should be given that definition as well. See United Savings Ass'n of Texas, 484 U.S. at 371 ("A provision that may seem ambiguous in isolation is often clarified by the remainder of the statutory scheme . . . ."). Accordingly, for "old growth reserve" land use designations to be withdrawals, they must "exempt[] the covered land from the operation of public land laws." Watkins, 969 F.2d at 1124. But plaintiffs make no allegations that the designations here have the effect of suspending any public lands laws. Nor could they.

Land use designations -- which are part of nearly every forest plan[7] -- are merely examples of the Forest Service's statutory responsibility under the National Forest Management Act to "provide for multiple use and sustained yield of the products and services of units of the National Forest System." 16 U.S.C. § 1604(e). They neither exempt lands from the operation of public land laws, nor suspend the operation of those laws on certain lands. Land use designations simply have no effect on laws that authorize the transfer of federal lands to the private domain -- and plaintiffs have not pointed this Court to any authority suggesting otherwise. Indeed, the only court to consider plaintiffs' contention that land use designations are withdrawals summarily rejected it. See Seattle Audubon Society v. Lyons, 871 F. Supp. 1291, 1315 (W.D. Wash. 1994). Considering a challenge under the Federal Land Policy and Management Act, the Lyons court held that employing land use designations was "merely an

---

Pub. L. No. 96-487, 94 Stat. 2371 (Dec. 2, 1980).

[7] See, e.g., Lands Council, 395 F.3d at 1033 (discussing land use designations); Morrison, 67 F.3d at 726 (same).

exercise of the Secretary's multiple-use planning responsibilities," and thus could not be a withdrawal. Id. So too here.

The Forest Service's responsibility under the National Forest Management Act to plan for multiple uses necessarily means that not all lands are available for all purposes. See, e.g., 16 U.S.C. § 1604(g)(3)(E) (Forest Service must ensure that timber will be harvested from National Forest System lands only where, for example, "(i) soil, slope, or other watershed conditions will not be irreversibly damaged"); id. § 1604(k) ("In developing land management plans pursuant to this subchapter, the Secretary shall identify lands within the management area which are not suited for timber production, considering physical, economic, and other pertinent factors to the extent feasible . . . ."). To accept plaintiffs' argument that land use designations are withdrawals would be to assume that Congress implicitly repealed this "multiple use" approach, arrogating power to promulgate forest plans. The Court finds no reason to read ANILCA so broadly when its plain language and context support a more measured construction. That construction, the Court notes, accords with the fact that "Congress has given no indication as to the weight to be assigned each value and it must be assumed that the decision as to the proper mix of uses within any particular area is left to the sound discretion and expertise of the Forest Service." Sierra Club v. Hardin, 325 F. Supp. 99, 123 (D. Alaska 1971); accord Mountain States Legal Found. v. Glickman, 922 F. Supp. 628, 634 (D.D.C. 1995) ("District courts have also held that the Forest Service has wide discretion to weigh and decide the proper uses within any area of the National Forests."), aff'd, 92 F.3d 1228 (D.C. Cir. 1996). Accordingly, the land use designations of "old

growth reserves" in the 2008 TLMP Amendment are not withdrawals under 16 U.S.C. § 3213(a).[8]

Nevertheless, plaintiffs suggest that the Court need not be guided only by the statutory definition of withdrawal. Instead, according to plaintiffs, the "realities of the situation" should inform the Court's analysis -- and because the "old growth reserves" are closed to the timber harvest, they must, as a practical matter, be withdrawals under 16 U.S.C. § 3213(a). For this argument, plaintiffs rely on Mountain States Legal Found. v. Andrus, 499 F. Supp. 383 (D. Wyo. 1980). At issue there was whether the Secretary of the Interior's failure to act on applications for mineral leases that had been pending before him for several years was a withdrawal under the Federal Land Policy and Management Act. See Mountain States, 499 F. Supp at 393, 396. The court concluded that the Secretary's delay in acting on the lease applications precluded plaintiffs from ever perfecting a potential property right under federal law. See id. at 397. The delay had the effect of preventing plaintiffs from exercising their right to seek mineral leases on federal land under the public land laws. See id. In the court's view, "the realities of the situation" meant that delay was tantamount to a prohibition of private action on certain federal land. See id.

The Mountain States decision cannot bear the weight plaintiffs assign to it. To begin with, the Ninth Circuit rejected the decision's reasoning as unpersuasive. See Bob Marshall Alliance v. Hodel, 852 F.2d 1223, 1230-31 (9th Cir. 1988) ("Mountain States is not binding on

[8] Plaintiffs also suggest that areas of the Tongass identified as Timber Sale Adaptive Management Strategy phase two and phase three lands are withdrawals under 16 U.S.C. § 3213(a). Compl. ¶ 57; see also Pls.' Reply at 15. But these lands are not closed even to the timber harvest -- the Timber Sale Adaptive Management Strategy merely indicates at what point these lands may be harvested. And, in any event, the Strategy, as with the "old growth reserves," does not purport to suspend any public land laws. Plaintiffs do not contend otherwise.

us and we do not find its reasoning persuasive."). Plaintiffs suggest that this Court should nevertheless follow Mountain States and imbue the statutory definition of withdrawal with a practical component. This Court does not read the case so broadly. Mountain States merely applied the Federal Land Policy and Management Act's definition of withdrawal -- the Secretary's delay was a withdrawal because it had the effect of suspending the operation of public land laws that granted private individuals the right to apply for mineral leases on public lands. Id. at 396-97. It spoke of the "realities of the situation" only because there was no executive branch action that affirmatively suspended the public land laws. The court did not, therefore, create an alternative, more practical definition of withdrawal. Accordingly, Mountain States is inapposite to plaintiffs' ANILCA challenge.

IV.

Plaintiffs next assert that the 2008 TLMP Amendment violates the TTRA because the Timber Sale Adaptive Management Strategy "withdraws so much of the commercial forest land base as to effectively destroy the Forest Service's ability to exercise its discretion to meet market demand for an integrated timber industry." Compl. ¶ 4 (emphasis added). That is, plaintiffs believe that the Strategy "ha[s] rendered it improbable that Defendants could" fulfill their obligation under the TTRA to seek "to meet market demand for an integrated timber industry." Compl. ¶ 51. This challenge, however, proceeds from the erroneous premise that the TTRA obligates the Forest Service to seek to meet the market demand for an integrated timber industry. In fact, the TTRA only instructs the Forest Service to "seek to provide a supply of timber from the Tongass National Forest which (1) meets the annual market demand for timber from such forest and (2) meets the market demand from such forest for each planning cycle." 16 U.S.C. §

539d(a); see also Natural Res. Def. Council, 421 F.3d at 809 (Forest Service attempted to meet market demand by "using its own economists' projections of the annual and plan-cycle market demand for Tongass timber"). The TTRA says nothing at all about an integrated timber industry.

The Forest Service has discretion to make predictions of market demand. Accordingly, the Forest Service could project market demand based on the needs of an integrated timber industry. In that case, the TTRA might indeed oblige the Forest Service to seek to meet market demand for an integrated timber industry. But in the 2008 TLMP Amendment, the Forest Service chose a projection of market demand that was not based on an integrated timber industry -- which in fact does not currently exist in the Tongass. See 2008 TLMP Amendment ROD at 31-35. It explicitly rejected two projections that were based on an integrated timber industry, and explained why it was doing so. See id. Therefore, the Forest Service is not obligated under the TTRA to seek to meet the market demand of an integrated timber industry in the 2008 TLMP Amendment.

Nevertheless, plaintiffs repeatedly, and consistently, contend that the 2008 TLMP Amendment and its Timber Sale Adaptive Management Strategy prevent the Forest Service from seeking to meet market demand for an integrated timber industry. See, e.g., Compl. ¶ 3 (the 2008 TLMP Amendment "effectively eliminat[es] the Forest Service's ability to exercise its discretion to meet annual and cyclical market demand . . . by providing three years volume of economic timber under contract to an integrated timber industry"); Compl. ¶ 4 (the Timber Sale Adaptive Management Strategy "withdraws so much of the commercial forest land base as to effectively destroy the Forest Service's ability to exercise its discretion to meet market demand for an integrated timber industry"); Compl. ¶ 49 ("Because the Defendants have never properly

evaluated or determined the volume of timber and the [allowable sale quanity] to provide three years of economic timber under contract to an integrated industry, it follows that [the Strategy] is . . . arbitrary and capricious . . . ."); Compl. ¶ 51 (the 2008 TLMP Amendment "ha[s] rendered it improbable that Defendants could exercise their discretion to provide sufficient economic timber to meet market demand for an integrated timber industry").[9] Maybe so, but plaintiffs' claim simply misses the mark.

Plaintiffs' challenge seeks to hold the Forest Service to a standard it is not required to fulfill. Whether or not the Timber Sale Adaptive Management Strategy will prevent the Forest Service from seeking to meet the market demand of an integrated timber industry is an irrelevant question. Plaintiffs could have alleged that the Strategy prevents the Forest Service from seeking to meet its actual projection of market demand. But they did not. And the Court will not rewrite plaintiffs' complaint and briefs to assert the proper claim. Plaintiffs' contention that the Timber Sale Adaptive Management Strategy violates the TTRA therefore fails at the outset.

---

[9] In their litigation papers, plaintiffs similarly, and consistently, contend that the 2008 TLMP Amendment prevents the Forest Service from seeking to meet market demand for an integrated timber industry. See, e.g., Pls.' Mem. at 29 ("[T]he Forest Service will not be able to seek to meet market demand, which it has identified as an annual minimum of 200 [million board feet] to reestablish an integrated industry."); id. at 30 ("Thus, [the Timber Sale Adaptive Management Strategy] will always be stuck in Phase 1 at 100 [million board feet], notwithstanding the 2008 TLMP Amendment's recognition that a minimum of 200 [million board feet] per year is needed to seek to meet the market demand for an integrated industry."); id. at 33 (the Timber Sale Adaptive Management Strategy provides "only half of the volume the Regional Forester has determined is needed to seek to meet market demand for an integrated industry"); id. at 34 (the Timber Sale Adaptive Management Strategy is flawed because the 2008 TLMP Amendment "acknowledges that the industry needs a minimum of 200 [million board feet] per year to reestablish a fully integrated industry"); id. at 44-45 (the Forest Service cannot "supply the volume of timber that they have identified is needed to meet market demand for an integrated timber industry").

To be sure, in a supplemental memorandum filed at the Court's request, plaintiffs do suggest that the 2008 TLMP Amendment and its Timber Sale Adaptive Management Strategy preclude the Forest Service from meeting its own projection of market demand. See Pls.' Responses to the Court's January 21, 2010 Questions ("Pls.' Resp.") [Docket Entry 30], at 9-10. This single allegation, however, is insufficient to rescue plaintiffs' claims under the TTRA. First, as discussed above, their complaint is devoid of any assertion that the Timber Sale Adaptive Management Strategy prevents the Forest Service from seeking to meet its actual projection of market demand. Plaintiffs' post hoc answer in a supplemental brief does not change how they have consistently litigated this case.

Second, even assuming plaintiffs properly presented a challenge to the Forest Service's projection of market demand, they have not provided sufficient evidence to overcome the "extreme degree of deference" given to an agency's evaluation of "scientific data within its technical expertise." Am. Farm Bureau Fed'n, 559 F.3d at 519. The Forest Service concluded that the 2008 TLMP Amendment and its Timber Sale Adaptive Management Strategy, "allows the projected level of long-term demand to be met." 2008 TLMP Amendment ROD at 35. Plaintiffs, however, suggest that "[t]he failure to provide a sufficient volume of economic timber in the 2008 [TLMP Amendment's] 5 year timber sale schedule" renders the Forest Service unable to meet its own projection of market demand. Pls.' Resp. at 10. And they further contend that there is an insufficient amount of timber that either is available for sale or has been sold but not yet harvested to permit the Forest Service to meet its projection of market demand. See id. at 9.

But plaintiffs' argument ignores the fact that "[t]he Forest Service employs a 'pipeline' approach to timber sale planning to provide a stable timber sale program and a continuous flow

of timber to regional processors." 2008 TLMP Amendment FEIS at 3-334. That is, the Forest Service seeks to meet market demand through a mix of timber available for sale, timber sold but not yet harvested, and timber that is being planned for sale. See id. On the basis of this pipeline, the Forest Service concluded that the 2008 TLMP Amendment would permit it to meet its actual projections of market demand. See 2008 TLMP Amendment ROD at 35.

Although the Court recognizes that the Forest Service and plaintiffs disagree on this point, the Court cannot say that the Forest Service's conclusion is incorrect. Plaintiffs have not provided the necessary evidence to overcome "'the considerable deference to an agency's expertise'" where "a 'highly technical question' is involved." Am. Radio Relay League, Inc., 524 F.3d at 233 (quoting MCI Cellular Tel. Co., 738 F.2d at 1333). They have not, for example, shown that the Forest Service will not be able to meet market demand for each year the 2008 TLMP Amendment is in effect. In fact, they concede that even without any further timber sales, there is enough timber in the "pipeline" to meet market demand through 2012. See Pls.' Resp. at 9. Furthermore, plaintiffs' position does not take into account timber sales conducted under the Timber Sale Adaptive Management Strategy, which will likely increase the amount of timber in the pipeline. See Defs.' Responses to the Court's January 21, 2010 Questions [Docket Entry 31], at 2. The Court simply cannot conclude, in the absence of any evidence marshaled by plaintiffs, that the 2008 TLMP Amendment will not meet the Forest Service's projection of market demand.

Nor can plaintiffs save their cause by pointing to the fact that in the 2008 TLMP Amendment the Forest Service recognized the importance of "provid[ing] an opportunity for the timber industry to become more integrated." 2008 TLMP Amendment ROD at 36. In the Plan, the Forest Service concluded that the 2008 TLMP Amendment should be flexible enough to

provide sufficient timber to create an integrated industry. See id. at 36-37. Relying on the Pacific Northwest Research Station's study, the Forest Service found that "a reliable annual supply of at least 200 million board feet of economic timber would be needed from the Tongass to meet the objective of providing an opportunity for the reestablishment of an integrated industry." Id. at 37. It therefore set the allowable sale quantity of timber at 267 million board feet annually to provide that opportunity. This decision merely builds flexibility into the 2008 TLMP Amendment such that the forest plan could, in the Forest Service's expert view, potentially meet the market demand associated with any integrated industry that develops. It does not, however, alter the Forest Service's projections of market demand. And therefore it has no effect on the Forest Service's obligation under the TTRA to seek to meet the actual market demand projection.

V.

Finally, plaintiffs also suggest that the 2008 TLMP Amendment imposes "non-statutory" constraints on the Forest Service's seek-to-meet obligation -- limitations, plaintiffs opine, that preclude the Forest Service from fulfilling its obligations under the TTRA. As the Court discussed in Part IV, however, plaintiffs do not contend in their complaint or in their briefing that the 2008 TLMP Amendment will preclude the Forest Service from seeking to meet its actual projection of market demand. Hence, they present no allegation or argument that the "non-statutory" constraints specifically limit the Forest Service's ability to seek to meet market demand. Rather, plaintiffs specifically cast their "non-statutory" constraints argument, as they do their challenge to the Timber Sale Adaptive Management Strategy, in terms of the market

demand for an integrated timber industry. See, e.g., Pls.' Reply at 36, 40, 41. Plaintiffs' "non-statutory" constraints argument therefore also fails at the threshold.[10]

VI.

For the foregoing reasons, defendants' motion for summary judgment will be granted, and plaintiffs' motion for summary judgment will be denied. A separate order has been issued on this date.

/s/
JOHN D. BATES
United States District Judge

Dated: February 17, 2010

[10] Plaintiffs would fare no better even if the Court reached the merits of their challenge. Although plaintiffs' assert in their supplemental response that the 2008 TLMP Amendment and its Timber Sale Adaptive Management Strategy preclude the Forest Service from seeking to meet its actual projection of market demand, see Pls.' Resp. at 9-10, the Court has already concluded that the response does not provide sufficient evidence to overcome the "considerable deference" given to agency evaluations of "scientific data within its technical expertise," see Am. Farm Bureau, 559 F.3d at 512; see also Part IV, supra. That conclusion applies with equal force to plaintiffs' "non-statutory" constraints argument.

Birch Horton Bittner & Cherot
a professional corporation

James H. Lister
William P. Horn
Zach D. Olson
Respond to D.C. Office
T. 202.569.5800 F. 202.659.1027
jlister@dc.bhb.com; whorn@dc.bhb.com

December 28, 2015

The Honorable Lisa Murkowski
709 Hart Senate Building
Washington, D.C. 20510

The Honorable Maria Cantwell
511 Hart Senate Office Building
Washington, D.C. 20510

Re: **Written Testimony of Alaska Professional Hunters Association for December 3, 2015 Hearing to Receive Testimony on Implementation of the Alaska National Interest Lands Conservation Act of 1980**

Dear Senators Murkowski and Cantwell:

The Alaska Professional Hunters Association ("APHA") respectfully submits this written testimony through its undersigned attorneys. This letter is also signed by John Stacey, APHA's Director of Government Relations.

The APHA appreciates you holding a hearing to examine the implementation of the Alaska National Interest Lands Conservation Act[1] ("ANILCA") on its 35th anniversary. The law struck a careful balance between protecting the "national interest" in the lands of Alaska while providing "adequate opportunity for satisfaction of the economic and social needs of the State of Alaska and its people."[2] In many ways the law has lived up to its stated purpose of protecting "recreational opportunities" including "sport hunting"[3] and has allowed many opportunities for the APHA and its clients.

The APHA was founded in 1971 and now represents more than 127 registered and master hunting guides. 90 percent of Alaska's active guides are Alaskan residents. APHA members are among the world's most experienced hunting guides. They provide hunters from around the world with safe and enjoyable opportunities to hunt in the wilds of Alaska. A recent study estimated that in 2012, 1,620 people were directly employed in Alaskan guiding activity, earning $21 million in direct wages and guide income and generating a total of $78 million in economic activity. That includes $25 million in economic activity in rural communities surrounding the large conservation

[1] Public Law 96-487 (1980).
[2] ANILCA § 101(d).
[3] ANILCA § 101(b).

units created by ANILCA. As you review the implementation of ANILCA, we would like to share some of our concerns and propose some solutions.

Temporary Campsites

ANILCA § 1316 was intended to insure that hunters would be able to establish appropriate campsites. The section said that "On **all** public lands where the taking of fish and wildlife is permitted" the Department of Interior will allow "existing uses" and "future establishment" of "temporary campsites, tent platforms, shelters" and similar facilities, subject only to "reasonable regulation." The House and Senate reports accompanying ANILCA made clear that this section was intended to protect the livelihood of hunting guides. Section 1316 goes on to allow guides to leave temporary campsites in place from season to season.

Unfortunately, the Department of Interior has begun to ignore this clear legislative command. As one example, a 2011 "Invitation for Proposals to Conduct Commercial Big Game Guide Services Within Areas of the Arctic National Wildlife Refuge ("ANWR")"[4] forbade base camps in most of the significant river valleys in ANWR. That is problematic, because those river valleys are the only suitable locations with durable surfaces to support aircraft necessary to supply a base camp. This has forced guides to make do with camps not suited to their needs. This limitation should not have been put in place. The presence of the restriction suggests that ANWR officials are not properly recognizing rights granted by ANILCA. No finding has been made that continued use of the river valleys would fall within any of the narrow exceptions to Section 1316.[5]

Access for Traditional Activities and to Inholdings

ANILCA § 1110 applies "notwithstanding" any "other law" as it explicitly protects access by snowmachines, motorboats, and airplanes on the refuges for traditional activities (such as hunting) and access to inholdings. As such, access to the land is "open until closed" by reasonable regulations and the federal government must provide notice and hearing before closing access. These regulations were litigated by Trustees for Alaska and upheld by the Court.

Unfortunately, when awarding concessions the Department often tips the scales to those willing to fly less, boat less, or snowmachine less. The federal regulators seem to forget that these forms of access are mandated and guaranteed. The Department contravenes ANILCA by extorting the guides to give up these rights via the permit competition process. Way back in 1977, Congressional leaders traveled to Fairbanks, Alaska for a hearing on this matter and promised the then President of APHA Ken Fanning that what became ANILCA would include

[4] Issued Aug. 1, 2011, revised Sept. 26, 2011.

[5] The U.S. Fish and Wildlife Service has not even started the type of administrative proceeding necessary to override the normal right to place temporary campsites in ANWR. ANILCA § 1316(b) says that "the Secretary may determine, after adequate notice, that the establishment and use of such new facilities or equipment would constitute a significant expansion of existing facilities or uses which would be detrimental to the purposes for which the affected conservation system unit was established, including the wilderness character of any wilderness area within such unit, and may thereupon deny such proposed use or establishment."

access guarantees to facilitate continued guided fishing and hunting on set-aside lands. It is frustrating that Congress made good on that promise, but the federal bureaucracy now ignores that command.

Unnecessary Harm From Federal Shutdowns

In recent years, the U.S. Fish and Wildlife Service has taken the unfortunate position that a federal government shutdown must stop outdoor activity on federal lands in Alaska, even though such lands encompass such a vast portion of the state. We believe this is both unnecessary and out of step with ANILCA's requirement that lands stay "open until closed." Federal lands in Alaska are intended to provide, in part, for the economic needs of the Alaskan people and ANILCA § 203 says "hunting shall be permitted in areas designated as national preserves." APHA guides have a limited number of opportunities to serve customers each season, and each hunt is typically planned months or years in advance. These hunts are performed in the wilderness, often without ever coming in contact with a federal government employee.

In late 2013, the federal government's spending authority lapsed and the U.S. Fish and Wildlife Service declared that "all units of the National Wildlife Refuge System nationwide are closed to public visitation and use."[6] The State of Alaska sued to be able to conduct routine research and management activities and APHA intervened to ensure its members could utilize their guiding permits that are vital to their income. We argued that under ANILCA § 1110(a) and its implementing regulations,[7] closing refuges or cancelling hunting permits required a level of public participation that the Department of Interior failed to undertake. Ultimately, the lawsuit was dismissed as moot when the shutdown ended. That is unfortunate because in the latest U.S. Fish and Wildlife Service shutdown plans, the agency still claims that, in the absence of appropriations, it must close refuge areas with few exceptions.[8]

We were not able to protect ourselves in court, because the shutdown ended before the case could be heard. Accordingly, we ask you to take steps to ensure access to federal land when the federal government has not provided a justification for denying access. One approach we recommend is S. 146, legislation introduced by Sen. Jeff Flake (R-AZ). His bill would allow states to fund the continued operation of federal land units during a shutdown, should they choose to do so.

Another option is to provide that a lapse of appropriations would not prevent access by guides and other professionals holding permits to lead activities on federal lands. Part of the permit-awarding process is determining that the guide or other professional has the skill set necessary to safely lead the public on activities in remote areas. A federal government funding

[6] *See State of Alaska and Alaska Professional Hunters Association v. Sally Jewell*, No. 4:13-CV-00034-SLG, 2014 WL 3778590 (D. Alaska July 29, 2014).
[7] 50 C.F.R. § 36.11(h), 36.41(h) and 36.42(c).
[8] U.S. FISH AND WILDLIFE SERVICE CONTINGENCY PLAN FOR OPERATIONS IN THE EVENT OF A LAPSE IN APPROPRIATIONS (September 2015), available at: https://www.doi.gov/sites/doi.opengov.ibmcloud.com/files/FWS%20Contingency%20Plan%20Sept%202015%209_25_15.pdf.

lapse would not hamper that skill set. Please keep in mind that federal law enforcement and safety employees continue to work during federal government shutdowns as they are classified as "emergency" personnel.

Federalizing Hunting Regulations on Preserves and Refuges

Unfortunately, the Department has repeatedly departed from ANILCA in wildlife management. The State of Alaska should have primacy regarding the management of resident fish and wildlife, including the promulgation of hunting related regulations, as provided for in the Alaska Statehood Act and ANILCA. The 1958 Alaska Statehood Act[9] provided the state authority over "the administration, management, and conservation" of the "fish and wildlife resources of Alaska." ANILCA § 1314 underscores that this State authority was neither enlarged nor diminished by ANILCA. Moreover, Section 1313 specifies that "sport hunting ... shall be allowed in a national preserve under applicable State and Federal law and regulation."

Both the National Park Service and Fish and Wildlife Service have shown a complete disregard for this state primacy. The National Park Service acted through Compendia beginning in 2010 to close park units in Alaska to state-authorized hunts.[10] Similarly, the Fish and Wildlife Service closed hunting authorized by the state for the past three years on Kenai Refuge and published draft regulations giving themselves unilateral authority to determine what hunts to close in the future.[11] According to the Fish and Wildlife Service website[12], the agency is considering changes to the closure criteria and procedures that may conflict with state hunting regulations on all refuges using its own determination of "natural diversity". The two agencies' pursuit of these three sets of regulations directly interfere in the State of Alaska's abilities to fulfill its constitutional responsibility to assure the conservation and sustainability of fish and wildlife within its boundaries.

A Potential Solution - Revive the Alaska Land Use Council

ANILCA § 1201 created an Alaska Land Use Council to help facilitate joint state-federal management. The Council had two co-chairs, each a high-level appointee. One was appointed by the U.S. President and one was appointed by the State of Alaska. The Council also included Regional Directors from six federal agencies, commissioners of four state agencies, and two Native representatives. Members met quarterly and were aided by a Staff Committee that represented them in monthly meetings to cooperate in resolution of issues related to ANILCA implementation. In addition, the Council had a Citizens' Advisory Commission on Federal Areas composed of citizens that independently reviewed federal management plans, policies, and regulations and made recommendations.

[9] Public Law 85-508 (1958) (see § 6(e)).
[10] Hunting and Trapping on National Preserves in Alaska, 80 Fed. Reg. 64325, October 23, 2015.
[11] Refuge-Specific Regulations; Public Use: Kenai National Wildlife Refuge, 80 Fed. Reg. 29277, May 21, 2015.
[12] http://www.fws.gov/alaska/nwr/ak_nwr_pr.htm.

The Council was widely deemed a success, helping keep Alaskans informed on federal management activities and driving consensus on federal land management plans, regulations, and policies. The Council's recommendations were not binding. Instead, the law encouraged consensus by requiring that if a federal agency not accept a recommendation then "such agency, within thirty days of receipt of the recommendation, shall inform the Council, in writing, of its reason for such action." Unfortunately, the Alaska Land Use Council expired after 10 years. The State of Alaska has continued to fund the Citizens' Advisory Commission on Federal Areas, however.

We urge Congress to adopt legislation to establish a true partnership with a revived Alaska Land Use Council. In our mind, the existing Commission shows the State of Alaska has a willingness to commit resources to this effort. The missing components are a mechanism to: (1) require the federal government to participate, and (2) require the federal government to respond to recommendations from the revived Alaska Land Use Council. The legislation should retain flexibility to allow the state to decide to keep its existing Commission or to fold it into the revived Alaska Land Use Council. Because the State would coordinate and provide the minimal funding needed, the Commission should consist of a majority of state appointees. An additional step could be limiting court deference to federal agencies who disregard Council recommendations, with the result that the federal courts can take a fresh look at proper interpretation of ANILCA with respect to issues on which federal land managers have chosen to reject Council recommendations.

Below, we have proposed some draft legislative text that we believe would be valuable for anyone that enjoys the outdoors in Alaska:

Proposed Language for An "ANILCA Improvement Act"

Section 1 - Consultation: The State of Alaska may create an Alaska Land Use Council to facilitate collaborative land management over the federal lands designated by the Alaska National Interest Land Conservation Act, Public Law 96–487. If it does, the Department of Interior and Department of Agriculture are instructed to participate to the extent practicable.

Section 2 – Nonacceptance of Council Recommendations: If any federal agency does not accept a recommendation from the Council regarding a proposed federal action, such agency, within thirty days of receipt of the recommendation, shall inform the Council, in writing, of its reason for such action.

Section 3 – Council Proposals for Changes to Existing Federal Regulations, Policies, and Decisions: If the Council recommends in writing that an action be taken by a federal agency to change existing federal regulations or policies or decisions, that agency shall respond in writing within six months of receipt of the

recommendation. The agency shall state whether it will take all, some, or none of the requested action and provide a statement of reasons.

Section 4 - Judicial Review: When a reviewing court decides whether an agency action under ANILCA taken in contravention of Council recommendation is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law under 5 U.S.C. § 706(2)(A), or whether an agency's decision not to take action recommended by the Council is contrary to 5 U.S.C. § 706(1), the court shall evaluate the agency's action or inaction without any deference to the agency's interpretations of statutes, rules, and legal principles that might otherwise be due. When reviewing the whole administrative record under 5 U.S.C. § 706, the court shall include any recommendations made by the Council.

Conclusion

Thank you again for drawing attention to ANILCA and for considering our concerns and recommendations. Please do not hesitate to contact any of the undersigned individuals if we may be of assistance.

Sincerely yours,

BIRCH, HORTON, BITTNER AND CHEROT, P.C.

William P. Horn
James H. Lister
Zach D. Olson

John Stacey
Director of Government Relations
Alaska Professional Hunters Association
Post Office Box 240971
Anchorage, Alaska 99524
P. 907.929.0619
office@alaskaprohunter.org

CC: Sen. Dan Sullivan
Rep. Don Young

Alaska Trappers Association
PO Box 82177
Fairbanks, AK 99708

Darla Ripchensky, PMP, Chief Clerk 12/15/15
U.S. Senate Committee on Energy and Natural Resources
304 Dirksen Senate Office Building
Washington, DC 20510

Dear Committee Members:

I am writing on behalf of our nearly 900 members. We are dedicated outdoor users who seek assistance in continuing to live the Alaskan way of life.

When ANILCA was passed in 1980, it promised to protect the access and infrastructure which allows Alaska residents to hunt, fish and trap on lands throughout the State.

One of the key requirements for remote trappers is shelter. In most cases, shelter takes the form of a small cabin and related out-buildings. A cabin can be crucial to the safety and success of a trapper. Winter temperatures can reach -60F, making shelter a matter of life and death. Many of our more dedicated trappers operate in remote areas; often more than 100 miles from any roads. They typically use aircraft to access their trapline. If these trappers don't have adequate on-site shelter, they must "commute" from a more developed area, which wastes valuable time that they could spend trapping. A cabin can be the key to a safe and successful season.

Unfortunately, federal land management agencies (primarily the Bureau of Land Management) have not fulfilled the promises made in ANILCA. BLM policies and procedures have driven some long-term trappers out of their cabins and precluded new trappers from obtaining a permit. Two trappers near Bettles were

required to remove doors, windows and roofs from cabins due to their failure to meet an arbitrary income requirement, which even BLM admitted later was unnecessary. The cabins quickly deteriorated when exposed to the elements.

More recently, a young trapper near Tok inquired about obtaining a cabin permit on land managed by BLM. He was met by stacks of paperwork, negative attitudes and unrealistic financial requirements (up to $10,000). With our encouragement, he forged ahead. After a full year of investigation and planning, he concluded that the process was too burdensome and abandoned his quest for a permit. This shouldn't be the manner in which a federal agency serves its constituency.

By contrast, obtaining a permit to build a trapping cabin on State land is relatively easy. The process typically requires nothing more than one or two visits to the local office of the Department of Natural Resources and payment of a $100 processing fee.

We ask you to direct BLM to revise policies and procedures and bring them into alignment with the promise made to State residents under ANILCA. We are prepared to respond to any comments or questions. Thank you for your consideration of our request.

Sincerely,

Randall L Zarnke, president

Anchorage Office • 3900 C Street, Suite 801 • Anchorage, Alaska 99503-5963 • 907.339.6000 • FAX 907.339.6028 • 1.800.770.2772

December 16, 2015

The Honorable Lisa Murkowski
Chairman, Committee on Energy and Natural Resources
U.S. Senate
304 Dirksen Senate Building
Washington, DC 20510

RE: DECEMBER 3, 2015 HEARING ON "IMPLEMENTATION OF THE ALASKA NATIONAL INTEREST LANDS CONSERVATION ACT OF 1980, INCLUDING PERSPECTIVES ON THE ACT'S IMPACTS IN ALASKA AND SUGGESTIONS FOR IMPROVEMENTS TO THE ACT"

Dear Chairman Murkowski:

On behalf of Arctic Slope Regional Corporation ("ASRC"), I am pleased to submit comments on the subject of the Committee's December 3, 2015 hearing on the implementation of the Alaska National Interest Lands Conservation Act of 1980 ("ANILCA"). Our comments focus on *Sturgeon v. Masica*, a case pending before the U.S. Supreme Court. Unless the recent ruling by the Ninth Circuit Court of Appeals in *Sturgeon*[1] is overturned by the Supreme Court, the ruling has the potential to dramatically upset the balance of conservation, Alaska Native, and other interests that Congress struck in ANILCA.

Through ANILCA, Congress Balanced the Conservation Interests of the Federal Government with the Economic Development and Subsistence Interests of Alaska Native Corporations

ASRC is an Alaska Native Corporation, representing the Iñupiat people of the North Slope region of Alaska. We were created at the direction of Congress under the terms of the Alaska Native Claims Settlement Act of 1971 ("ANCSA"). ANCSA was designed to settle the aboriginal claims of Alaska Natives and authorized the transfer of roughly 45 million acres of land to twelve for-profit regional corporations and more than two hundred village corporations in the state. The legislation extinguished Alaska Native aboriginal land rights, and authorized and directed us to adopt a western corporate model to manage Native lands and natural resources for the benefit of our shareholders.

ASRC owns nearly 5 million acres of land on Alaska's North Slope. Our shareholders live primarily in eight extremely remote Arctic villages in one of the most isolated and challenging environments in the world. Through ANCSA, Congress authorized ASRC to use the North

[1] *Sturgeon v. Masica*, 768 F.3d 1066 (9th Cir. 2014).

Slope's natural resources to benefit the Iñupiat people both financially and culturally. Consistent with this unique legislation, ASRC is a for-profit business committed both to providing sound returns to its shareholders and to preserving Iñupiat culture and traditions.

Nearly ten years after passing ANCSA, Congress enacted ANILCA. The purpose of ANILCA was two-fold: to preserve the natural landscapes in Alaska and its wildlife, while also allowing rural residents to maintain their subsistence way of life. Congress was clear that ANILCA was not intended to impede upon Native Corporations' control of Native lands conveyed under ANCSA. Rather, Congress repeatedly emphasized in ANILCA that regulation under that Act was to be limited to "public lands," which were by definition specifically limited to "Federal lands" in Alaska (specifically excluding certain State and Native Corporation lands). ANILCA established "units" which would be federally regulated as new or expanded national parks, preserves, monuments or wildlife refuges. At the time, Congress made clear that only the "public lands" within such boundaries would "be deemed to be included as a portion of such unit."

Over 120 million of Alaska's federally owned acres are now protected within federal conservation system units ("CSUs"). ANILCA-created federal CSUs ultimately have engulfed over eighteen million acres of Native Corporation-owned land. Eleven of Alaska's twelve regional corporations and many of its over 200 village corporations own inholdings within ANILCA CSUs, and many Native people live on these lands in rural villages.

More than 380,000 acres of ASRC lands are "inholdings," situated within the Gates of the Arctic National Park, the Alaska Maritime National Wildlife Refuge, and the Arctic National Wildlife Refuge ("ANWR"), all federal CSUs created or expanded by ANILCA. ASRC shareholders reside in two villages located on its inholdings within CSUs—Anaktuvuk Pass within Gates of the Arctic National Park and Kaktovik on the coastal plain within ANWR. These inholdings are necessary to ASRC's shareholders for subsistence use and economic development. The health of, and access to, caribou herds, fish, water fowl, Dall sheep, musk oxen, marine mammals, and other subsistence food populations are critically important to ASRC's shareholders. Many of the inholding acres also have high potential for oil and gas development, other mineral development, tourism, and other economic uses that could support our communities.

***Sturgeon v. Masica* Threatens to Upset the Balance Established by Congress, Undermining Alaska Native Access To and Use of Lands Conveyed In Settlement of Aboriginal Land Claims**

In *Sturgeon*, the U.S. District Court for the District of Alaska and the Ninth Circuit Court of Appeals both incorrectly interpreted the plain language in section 103(c) of ANILCA to expand federal authority over non-federal inholdings, including millions of acres of lands owned by Native Corporations. The plain language of section 103(c), supported by the structure and context of ANILCA as a whole and the legislative history of that Act, unambiguously limits federal regulatory authority to "public lands."

Federal regulatory authority over ANCSA lands is an issue of tremendous economic and social importance to Alaska Native Corporations. Given oil and natural gas development possibilities on some of the affected State- and Native-owned lands, the *Sturgeon* decision also has potential nationwide consequences.

Under the Ninth Circuit's reading of ANILCA, forty percent of private ANCSA lands may now be subject to this vast federal regulatory scheme. Innumerable activities integral to economic and social life on inholdings can fall within the regulatory ambit of the federal government. The potential day-to-day consequences of applying the general National Park Service regulations – which are specifically at issue in *Sturgeon* – to private inholdings are stunning. Buildings may not be constructed in national parks without advance approval from the federal government. Hunting and fishing on park lands are subject to extensive restrictions and permitting requirements. Even gathering berries requires written findings from a park superintendent. Modes of transportation critical in rural Alaska such as snowmobiles, ATVs, watercraft, and even bicycles, are all limited to locations approved by the Park Service. Aircraft—another critical aspect of access to rural Alaska communities—may be used only in designated locations and by permit. Commercial activities are circumscribed and regulated. Research may be conducted only by specific institutions and agencies and only under the regulatory watch of the Park Service. Public meetings, demonstrations and distribution of printed materials all require permits and federal government oversight.

Through ANCSA, Congress specifically intended that Native Corporations would utilize ANCSA lands largely for economic development benefiting the Native people of Alaska. Through ANILCA, Congress made clear that the establishment of new conservation units would not impede Native Corporations' control of their own lands. ASRC seeks to pursue responsible economic development while maintaining our Iñupiat traditions. We are significantly challenged by the climate, by the cost of energy, by the lack of transportation infrastructure and distance to markets, and by the regulatory environment in which we work. In *Sturgeon*, the Ninth Circuit Court of Appeals has upended the balance established by Congress in ANCSA and ANILCA by allowing federal regulatory authority to be extended to millions of acres of Native Corporations' lands through the very statutory provision meant to limit that authority.

We appreciate the attention this Committee is giving to the implementation of ANILCA and the enduring challenge we face as Alaska Native Corporations seeking to fulfill the promises Congress made in ANCSA, 44 years ago, and to maintain the balance Congress sought to establish in ANILCA, 35 years ago. We have highlighted the pending *Sturgeon* case in our comments due to the immediate and significant nature of the threat that the *Sturgeon* case represents for ASRC and other Native Corporations. We also look forward to working with you and with the Committee to identify and resolve other outstanding challenges associated with the implementation of ANCSA and ANILCA.

Sincerely,
ARCTIC SLOPE REGIONAL CORPORATION

Rex A. Rock, Sr.
President & CEO

Cc: Senator Maria Cantwell, Ranking Member
Senator Dan Sullivan
Congressman Don Young
Governor Bill Walker

ASSOCIATION of FISH & WILDLIFE AGENCIES

The voice of fish and wildlife agencies

1100 First Street, NE, Suite 825
Washington, DC 20002
Phone: 202-838-3474
Fax: 202-350-9869
Email: info@fishwildlife.org

December 15, 2015

Hon. Lisa Murkowski, Chair
Senate Committee on Energy and Natural Resources
304 Dirksen Senate Office Building
Washington, DC 20510

Hon. Maria Cantwell, Ranking Democrat
Senate Committee on Energy and Natural Resources
304 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairwoman Murkowski and Ranking Democrat Cantwell:

I write on behalf of the Association of Fish and Wildlife Agencies (Association) to submit comments for the public record on the December 3, 2015 Committee "Hearing to Receive Testimony on Implementation of the Alaska National Interest Lands Conservation Act of 1980, Including Perspectives on the Act's Impacts in Alaska and Suggestions for Improvements to the Act". Founded in 1902, all 50 state fish and wildlife agencies are members of the Association.

The Association is very concerned about the diminishment, by a soon to be published US Fish and Wildlife Service (USFWS) regulation regarding management of National Wildlife Refuges (NWR) in Alaska, of the Alaska Department of Fish and Game's management authority for fish and wildlife by federal actions that are contrary to the intent of ANILCA and the National Wildlife Refuge System Administration Act (NWRSAA), as amended by the National Wildlife Refuge System Improvement Act (NWRSIA). State fish and wildlife agencies are the principle front-line managers with authority to manage fish and wildlife within their borders, including on most federal lands. The Association acknowledges that ANILCA affirms that authority, which is also affirmed in the respective organic acts for the National Wildlife Refuge System, National Forests, and Bureau of Land Management lands. Finally, the Association is concerned that the USFWS by administrative fiat, or as a result of litigation, will apply this draft regulation to all NWRs in the country, with the resulting usurpation of all state fish and wildlife agency authority on all NWRs.

When Congress passed ANILCA, it directed the Secretary of Agriculture and the Secretary of the Interior to manage natural resources to meet the needs of local communities that depend on these natural resources as well as "to provide for the maintenance of sound populations of and habitat for, wildlife species of inestimable value to the citizens of Alaska and the nation". In order to fulfill this statutory mandate, Congress further obligated the federal agencies to "cooperate with adjacent landowners and land managers including Native Corporations, appropriate state and federal agencies, and other nations". The soon to be published USFWS regulation clearly contravenes Congress' intent in enacting ANILCA.

The USFWS has developed a draft proposed regulations package which would have the effect of limiting hunting authorized under certain State of Alaska regulations on NWR lands. The package is currently under review by the Department of the Interior. Following that internal review the USFWS intends to release it for a public review and comment period.

The USFWS Proposal

The Association recognizes the preeminence of ANILCA in directing federal land management in Alaska, but observes that except for conflicts with ANILCA, the NWRSAA as amended by the NWRSIA in 1997, provides comprehensive Congressional direction to the Secretary of the Interior for managing NWRs. We believe that there is little conflict between ANILCA and the NWRSAA, but Congress explicitly addressed that in the NWRSIA.

Section 9 of NWRSIA as enacted explicitly states "If any conflict arises between any provision of this Act and any provision of the Alaska National Interest Lands Conservation Act, then the provision in the Alaska National Interest Lands Conservation Act shall prevail", providing primacy of ANILCA over NWRSIA. Sect 668(dd) (f) of the Act with respect to Refuge conservation planning, states "except with respect to refuge lands in Alaska (which shall be governed by the refuge planning provisions of the Alaska National Interest Lands Conservation Act [ANILCA]), the Secretary shall ...". This language was specifically drafted in NWRSIA to ensure that with respect to conservation planning, ANILCA prevailed over NWRSIA on Alaska refuges. The Association believes that much of the NWRSAA applies to Alaska because it is not in conflict with ANILCA.

The NWRSAA as amended by the NWRSIA at Sect 668(dd)(a)(4), assigns the Secretary 14 responsibilities in administering the System. At Sect.668(dd)(4)(B) the Act directs the USFWS to "ensure that the biological integrity, diversity and environmental health of the System are maintained for the benefit of present and future generations of Americans." The USFWS draft proposal would codify in regulation for Alaska NWRs, USFWS policy 601 FW 3 regarding Biological Integrity, Diversity, and Environmental Health (BIDEH) and make it the principle objective for Alaska refuges. The Association concerns are:

a. There are 13 other statutory responsibilities given to the Secretary, and the Act does not prioritize those responsibilities but simply lists them. Likewise, House Committee Report 105-106 (NWRSIA) does not assign a priority to these 14 responsibilities. The USFWS is assigning priority to this aspect of administering refuges over all other mandated responsibilities.
b. The adoption of this one aspect of the Act as regulation clearly usurps and undermines the authority, responsibility, and objectives of the Alaska Department of Fish and Game regarding the conservation (including take) of fish and resident wildlife in Alaska under the sustained yield principle. This authority is grounded in Article VIII of the Alaska Constitution.
c. Sect 668(dd)(m) states in part "Regulations permitting hunting or fishing of fish and resident wildlife within the System shall be, to the extent practicable, consistent with State fish and wildlife laws, regulations and management plans." The current proposal by the USFWS clearly is not consistent with this Congressional direction.

d. While the proposal is currently intended to apply only to Alaska refuges, there is nothing preventing the USFWS from subsequently applying these regulations to all refuges in the System, resulting in usurpation and undermining of state fish and wildlife authority to manage fish and resident wildlife on all refuges in the System.
e. The USFWS is directed at 43 CFR 24.4(e) to manage refuge units "to the extent practicable and compatible with the purposes for which they were established, in accordance with State laws and regulations, comprehensive plans for fish and wildlife developed by the states, and Regional Resource Plans developed by the Fish and Wildlife Service in cooperation with the States". Instituting a region-wide rule outside of the Comprehensive Conservation Planning (CCP) process for the individual refuge and in conflict with state wildlife management plans is contrary to this intent.

The Association identifies five significant changes that would result from the proposed rule, as articulated below.

- The proposed rule would introduce undefined and subjective reasons for closing NWRs to hunting under state regulations, including "particularly efficient" methods and means of take and "conserving the natural diversity, biological integrity, and environmental health of the refuge," absent decision criteria to guide refuge managers or the public in its implementation.
- It would prohibit methods and means for the take of species under state management authority, seeking to "Prohibit the following particularly efficient methods and means for non-subsistence take of predators", including prohibiting the use of bait for the harvest of brown bears. If the use of bait is "particularly efficient" for brown bears, what would prevent application of this criteria to other species (black bear) in Alaska or in the Lower 48 States where it is currently allowed under state authorization in some states. In many large states, baiting is necessary as a wildlife management tool to ensure the achievement of desired bear population numbers that remain within social tolerance for bears.
- The USFWS intends to "manage populations for natural densities and levels of variation throughout the Refuge System", and that "These proposed regulatory changes are aimed at ensuring that natural ecological processes and functions are maintained and wildlife populations and habitats are conserved and managed to function in their natural diversity on Alaska refuges." This intent lacks criteria for implementation or consistency with state fish and wildlife agency planning and could easily be applied to all NWRs in the system.
- Proposed changes to the USFWS closure process includes an allowance that would essentially permit "temporary regulations" to extend indefinitely, avoiding both the full regulatory process and the CCP process allowing for public comment.

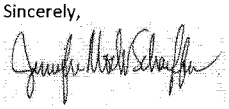
The Association is concerned that movement of the BIDEH policy into regulation will diminish the ability of the states to manage fish and wildlife on NWRs. While the current proposed rule only targets Alaska and the management of predators, there is the distinct potential that it would be applied to the NWRS nationally by administrative fiat or as a result of litigation, and that other refuges would be required to passively manage for the extreme end of BIDEH for all species (predators and prey). For example, a state may manage ungulate populations for bull:cow ratios of 30:100, which allows for sustainable harvest opportunities and subsistence use. This is not a "natural population," but a reasonable objective for state management goals under sustained yield management.

The USFWS has not differentiated the need to manage Alaska refuges at the extreme end of the BIDEH spectrum, other than to mention the ANILCA purpose of "natural diversity," which is not equivalent to BIDEH. Therefore, application of this policy could conceivably extend to other refuges as well, superseding refuge purposes and influencing management of areas such as Waterfowl Production Areas by requiring that the USFWS to apply "natural ecological processes," significantly limiting opportunities for compatible wildlife-dependent public uses. The regulations proposed by the USFWS do not address any conservation concerns for any species and appear to be derived by concerns regarding ethical behavior as determined by USFWS staff.

Links to the USFWS generated documents to this proposal are below:
http://www.fws.gov/alaska/nwr/ak_nwr_pr.htm
http://www.fws.gov/alaska/nwr/pdf/NWRS-Statewide-Regs-Proposal-FAQ-06-23-15.pdf

The Association sincerely appreciates the opportunity to submit testimony for the record.

Sincerely,



Jennifer Mock Schaeffer
Government Affairs Director

Borell Consulting Services LLC
6420 Rockridge Drive
Anchorage, AK 99516
907-230-7580

December 16, 2015

Honorable Lisa Murkowski
United States Senate
Washington, DC 20510

Re: Changes Needed In ANILCA

Dear Senator Murkowski,

Thank you for considering the need for changes to the Alaska National Lands Conservation Act of 1980. I have seen the testimony of Mr. J.P. Tangen and fully support those changes but there is at least one very serious issue that he did not address.

That issue is the abuse of the "No More" clause/intent of ANILCA regarding international designations of Alaska lands and waters. My concern is regarding World Heritage Sites, Biosphere Reserves, RAMSUR sites, international parks, and any other such designation. These are all administrative designations and do not require the approval of the Congress or the state.

The National Park Service, with help and collusion from ENGOs, has been pushing for international park, World Heritage and Biosphere Reserve designations in Alaska for most of the past 35 years. Each time they are challenged that this would violate the promises of ANILCA, the response is that "no new lands would be added" and that only existing conservation system units (CSUs) would be included.

Then Secretary Hillary Clinton and her Russian counterpart had reached an agreement for an international park in Western Alaska and Eastern Russia but it was canceled after Russia attacked Ukraine. The Alaska Legislature passed a Resolution in 2014 urging that no such international designations be allowed unless supported but an act in the State Legislature, and the U.S. Congress. Obviously, Secretary Clinton did not consider either the "No More" clause of ANILCA or the Alaska Legislature.

ANILCA needs to be changed to make it clear that international designations, which are administrative designations, and every other type of administrative overlay of CSUs or other lands are not allowed in Alaska.

Sincerely,

Steven C. Borell, P.E.
Principal

Testimony before the US Senate
Committee on Energy and Natural Resources

The Alaska National Interest Lands Conservation Act

December 3, 2015
Submitted December 15, 2015

Testimony on behalf of:
Citizens Alliance Protecting School Lands (CAPSL)
A 501(c)3 non-profit advocacy group working to restore the historic 1915 Congressional commitment (Exhibit A) to reserve Sections 16 and 36 in every township in Alaska for financial support of Alaska public schools.

Submitted by: Allen McCarty, President

For further information:
CAPSL c/o Allen McCarty, PO Box 322, Seward, AK 99664
Akcapsl13@gmail

Honorable Chair Senator Murkowski and Committee Members,

Thank you for this opportunity to submit written testimony on the impact of ANILCA on Alaska over the past 35 years. This testimony will focus on the direct impact of ANILCA on Alaska public school children.

35 years ago, Congress and President Carter negatively impacted the birthright of Alaska public school children when a relatively short paragraph containing two sentences was included as Sec 906(b) in the Alaska National Interest Lands Conservation Act (Exhibit A). Most Alaskans probably didn't even know about this ANILCA provision let alone it's true impact on Alaska public school children. Most Alaskans are unaware there is an Alaska public school fund or that there was ever a public school land trust.

The birthright taken from Alaska public school children was created by one of the oldest legal relationships dating back to Roman times, a trust. Trusts provide for a special relationship between the trustee (Congress and the President) and the beneficiaries (Alaska public school children). This particular trust may not be sacred. However, the trustee's duties are required to remain focused on the trust beneficiaries. Congress and the President, as trustees, were duty bound to manage the trust for the maximum benefit of Alaska public school children.

This trust, the birthright of all Alaska public school children and created by Chap 181 - An Act To reserve lands to the Territory of Alaska for educational uses and other purposes (Exhibit B), was enacted in March 4, 1915 by Congress and signed by President Wilson. In the 1915 Act the federal government pledged to:

1. Hold in trust every unencumbered, federally-owned Section 16 and 36 statewide for the benefit of Alaska public school children;
2. Reserve Sections 16 and 36 in almost every township in Federal ownership, when surveyed, from sale or settlement for the benefit of Alaska public schools;
3. Allow the option, if homestead entry was made upon any part of the sections reserved before the federal government could complete a survey in the field, to designate or reserve other lands in lieu thereof;
4. Provide for additional in lieu of lands if any of these sections were sold or otherwise appropriated by or under the authority of any Act of Congress, or are wanting or fractional in quantity;
5. Give the Territory the ability to lease these lands not to exceed one section to any one person, association, or corporation for not longer than ten years at any one time;
6. Retain any revenue generated "when surveyed", including from mineral rights, in a public school permanent fund with fund earnings used to support public schools

The 1915 Act also provided for a Territorial land-grant, agricultural college and school of mines with its own significantly smaller land trust and permanent fund consisting of Sections 33 in the Tanana Valley plus four sections reserved and dedicated as the campus.

For further information:
CAPSL c/o Allen McCarty, PO Box 322, Seward, AK 99664
Akcapsl13@gmail

When the 1915 Act was enacted, there were very few federal reservations in Alaska. CAPSL has been able to confirm Chugach National Forest and one small national park in Southeast Alaska predated the act. It is our understanding Alaska now has more acreage in federal reservations than any other state. ANILCA provided for the creation or expansion of nearly 20 Conservation System Units in Alaska without compensation or provision of in lieu of lands for Alaska public school children whose school sections were encumbered.

The 1915 Act predates the July 10, 1915 Land Auction (aka The Great Anchorage Lot Sale) when Alaska's largest city went on the auction block with newly platted lots available for settlement. The Municipality of Anchorage and the 1915 Act are both celebrating their centennial year.

The trust covenant was transferred to the state of Alaska at statehood. Pre-statehood continuing through the land selection process of statehood until ANILCA, the vastness of Alaska and the extensive time and commitment required of the federal government to survey the reserved sections and provide in lieu of lands for federal reservations worked to deprive Alaska public school children of the full benefit of the 1915 Act. Only a minimal number of these sections were transferred to the state to work for Alaska public school children.

Alaska, with the largest land mass (over 365,000,000 acres consisting of about 18,000 townships) and tidelands in the nation and a large federal foot print, should have the largest acreage nationwide retained in its public school land trust. Additionally, the oil removed on federal and state lands should have grown the public school permanent fund to surpass those in most if not all states. ANILCA contributed greatly to stunt the Alaska trust.

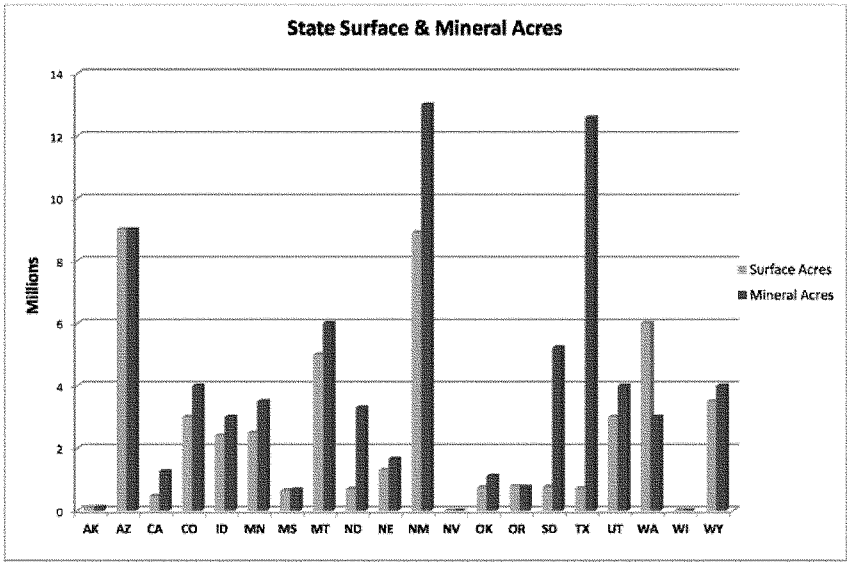
Congress and President Carter violated the Equal Footing Doctrine when potential trust lands reconfirmed at statehood for the benefit of Alaska public school children were relinquished and so grossly diminished with enactment of that single paragraph in ANILCA. A trust that once had the potential to reserve over 20 million acres, many yet to be surveyed, and their vast resources, was repealed with ANILCA and settled with a final grant of merely 75,000 acres. This new land is reportedly in lieu of land Alaska was entitled to at statehood. Four tracts totaling 74,930 acres and reportedly chosen for their potential coal resource had been selected by 1992. The State of Alaska, during ANILCA negotiations, also violated their trustee obligations relinquishing most of the lands promised reportedly to expedite statehood land transfers.

Additionally, Congress and President Eisenhower approved a smaller yet significant breach of the public school land trust and the Equal Footing Doctrine with Public Law 190 Chapter 323 on August 5,1953 (Exhibit C). This act amended the 1915 Act to require that receipts from oil, gas, oil shale, phosphate, sodium, and potassium be split from that point with 90% to the Alaska public school permanent fund and 10% to the federal treasury instead of wholly to benefitting the trust. The act also provided for the transfer of these mineral leases to any future State erected out of the Territory of Alaska.

For further information:
CAPSL c/o Allen McCarty, PO Box 322, Seward, AK 99664
Akcapsl13@gmail

CAPSL is an invited participant in the activities of the Children's Land Alliance Supporting Schools (CLASS), a non-profit 501 (c) 3 corporation, organized under the laws of the State of Utah in 2000. It is funded by grants from the United States Department of Education and donations from corporations and individuals. The CLASS vision is "Productive school trusts providing for world-class schools." CAPSL wants no less for Alaska public school children now and in the future.

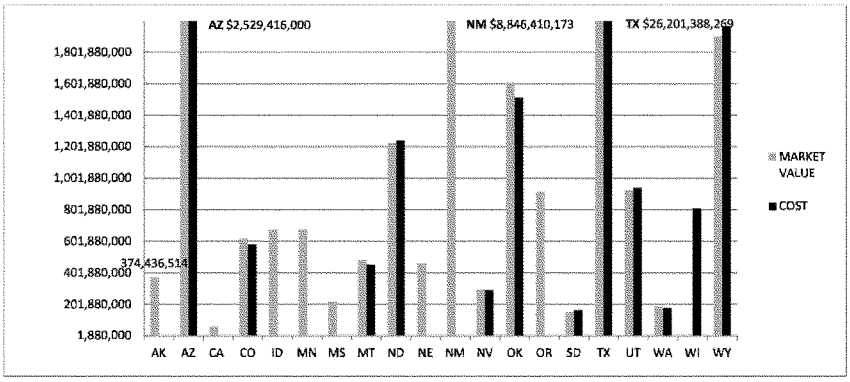
CLASS reports on their website www.childrenslandalliance.com that the Alaska public school land trust was granted 105,000 acres at statehood. With the nearly 75,000 acres granted under ANILCA, Alaska school children are the blameless beneficiaries of one of the three smallest public school land trusts reported by states that are members of CLASS. The graph below provided by CLASS on their website clearly illustrates the inequity thrust upon Alaska public school children by ANILCA.



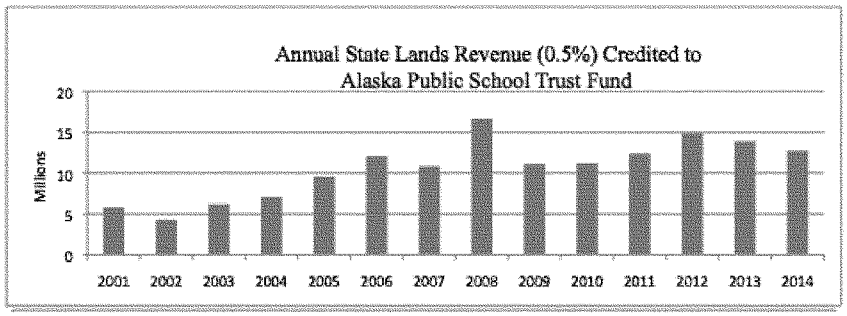
The relative position of the Alaska Public School Land Trust to those of fellow states improves a little when looking at the size of our Alaska School Fund. The fund receives .5% of revenue from all state lands which is still greatly below the revenue one would expect to be generated from 1/18th of land in federal ownership in 1915. The following graph is also from the CLASS website and reflects 2010 values. In the point of time captured, only five states have smaller permanent school funds than Alaska.

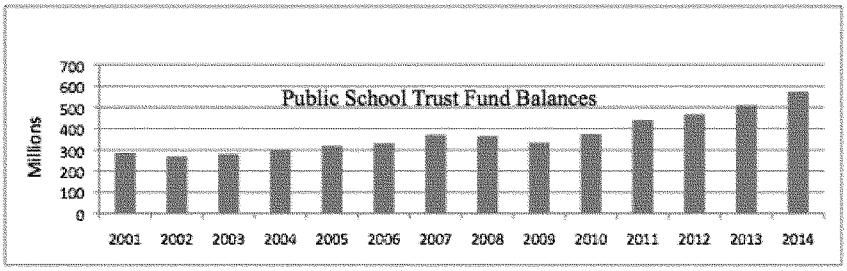
For further information:
CAPSL c/o Allen McCarty, PO Box 322, Seward, AK 99664
Akcapsl13@gmail

FY 2010 PERMANENT SCHOOL FUNDS MARKET VALUE AND COST (BOOK VALUE)



More recent financial information reflecting only the Alaska Public School Fund can be found on the CLASS Alaska state page including the following two graphs.





For further information:
CAPSL c/o Allen McCarty, PO Box 322, Seward, AK 99664
Akcapsl13@gmail

The CLASS Alaska Report notes "The balance for FY 2013 was $510 million[1]. Rents and royalties from the land totaled $13.9 million; investment income totaled $38.1 million; and the total return for the fiscal year was 8.19%, one of the lower returns of the twenty states with school funds. Only $9 million was paid directly to the schools via the state aid foundation program, though $10,328,000 was committed."

It is the opinion of CAPSL and others, that Alaska public school children were not represented during statehood, when their resource revenues were reduced in 1953 and during ANILCA negotiations. CAPSL (The Childrens Alliance Protecting School Lands) has filed a lawsuit on behalf of the children in the State of Alaska Superior Court seeking reconstitution of the original promise. This case is scheduled to go to trial in Juneau in the spring of 2016.

The Litigation:

Citizens Alliance Protecting School Lands vs State of Alaska, Case No 1JU-00582CI.filed in the Superior Court of Juneau, April 2013. This complaint for Declaratory Relief would correct trust violations, obtain new lands lost at statehood and ANILCA, as well as establishing a new management scheme for the land and the fund. The management proposed would be similar to the Alaska Mental Health Authority.

The Alaska Public School Land Trust was entwined in an earlier case, *Kasayulie v State of Alaska,* involving rural school construction funding. The 2011 consent decree and settlement agreement of this historic school funding case provided that the plaintiffs dismiss all claims related to public school land trust issues. However prior to settlement, Alaska Superior Court Judge John Reese stated in September 1999:

"The Court holds that the State has breached its duties as a trustee of the public school lands. The purpose of the trust was to create a permanent source of revenue for the exclusive benefit of state schools."

This brings us back to ANILCA 35th Anniversary and why this testimony is being provided to this particular committee.

CLASS answers the basic question "What are school trust lands?" very simply on their website.

"When states were created, Congress granted them school trust lands. The money the states earned from these lands was to be put in trust funds so future as well, as current generations, would have money for education."

---

[1] All data in the preceding two graphs and descriptive paragraph taken from State of Alaska CAFR FY 2013 report Statements 3.11, 3.12, and 3.23 with assistance from University of Fairbanks retired Professor E. Dean Coon.

For further information:
CAPSL c/o Allen McCarty, PO Box 322, Seward, AK 99664
Akcapsl13@gmail

Some members of CAPSL have been working to reconstitute the Alaska Public School Land Trust and Fund for over ten years when Alaska PTA first learned of the 1915 Act and land trusts from CLASS. Alaska public school children need the help of our Senior Senator and your Committee Chair Lisa Murkowski, your committee and Congress. The trust breach is obvious. That Alaska public school children have not received the commitment made by Congress to the Territory and later to the State of Alaska and comparable to all other states upon admission to the Union is equally apparent.

We are requesting the federal government uphold their trustee responsibilities under the 1915 Act and develop a long-term plan to fulfill the land reservations granted to Alaska public school children.

Thank you for recognizing 35 years of ANILCA by reaching out to Alaskans and publicly reviewing and discussing the pros and cons of this impactful legislation. It was during ANILCA negotiations that the original promise to Alaska public school children and the potential of this trust was set aside to expedite statehood land selections and simplify ANILCA negotiations.

As additional information we've included the Alaska Public School Trust Lands & Fund FY 2014 CLASS report and the research paper *State of Alaska Land Trust and History and Status of Alaska's Public School Trust Land* authored by University of Fairbanks retired Professor Dr. E. Dean Coon. Pages 35-45 in Dr Coon's report are most relevant to ANILCA.

Please let us know if we can be of any assistance in your efforts and if further opportunities arise for us to participate.

For further information:
CAPSL c/o Allen McCarty, PO Box 322, Seward, AK 99664
Akcapsl13@gmail

178

History and Status of Alaska's Public School Trust Land

A Research Paper

Third in a Series - Previous Papers:

The Alaska Public School Fund, A Permanent Fund for Education, 1984

A Promise to Keep: The Alaska Public School Trust Fund, A History of the Fund 1985-2004, 2005

by

E. Dean Coon, Ed.D.
Assoc. Prof. of Education (Ret.)
University of Alaska Fairbanks

March 2009

Author's Notes

Agencies whose on-line property records management systems were accessed in preparing this paper included the Alaska Department of Natural Resources, Municipality of Anchorage, Kenai Peninsula Borough, Matanuska-Susitna Borough, Fairbanks North Star Borough, and the Bureau of Land Management. DNR records were most used, since it has the most detailed historical information on public school trust land. Financial information came from the Departments of Revenue and Administration, and the Legislative Finance Division. *Kasayulie v State of Alaska* documents were the primary information source for the litigation history. Other references came from my personal files as a result of monitoring the state's management of the school land and school trust for the past 25 years.

Several individuals who provided information deserve mention and thanks. They include Kathleen Sheehan-Dugan and Chester Murphy in the Department of Natural Resources, Karlee Gaskill and Lynn Van Horn in the Municipality of Anchorage Heritage Land Bank, Shane Horan, Kenai Peninsula Borough Assessor, and Tara Jeans in the Department of Administration.

Every effort has been made to present accurate and up-to-date facts and data. If there have been failures to achieve this, the responsibility is mine.

Persons interested in more information on the trust land and the trust fund are referred to two previous papers listed in Section One of this paper. Another valuable source is a web site established and maintained by the Alaska Parent and Teacher Association: www.alaskaschoollandtrust.com. See also a Partial List of Information Resources in the Appendix.

Comments or questions? Let me know.

E. Dean Coon, 11835 Spyglass Circle, Anchorage, AK 99515
Or email at dean.ak@gci.net

TABLE OF CONTENTS

Section		Page
1.	Purpose of the Paper A Short History of Alaska's School Trust Land	4
2.	Alaska's Public School Trust Land, 1959-2009 Five Area Maps Fairbanks • Glennallen • Wasilla/Palmer Kenai Peninsula • Southeast	
3.	Additional Grant Land Patented Maps of Six Tracts	20
4.	A New School Trust Land Grant Maps of Four Tracts	35
5.	The Future	46
6.	Appendix Resolution of Alaska Parent Teachers Association Resolution of Alaska Association of School Boards Partial List of Information Resources	49

Section One

Purpose of the Paper

This paper presents a brief history of Alaska's public school trust lands including the current status of these lands. Maps are included showing the first land grant of 1959, added lands claimed in the 1980's, and a new grant of 75,000 acres made by Alaska National Interest Land Claims Act (ANILCA). The final section presents options for the future and resolutions of groups interested in strengthening the trust and the fund for the benefit of Alaska's public school children.

This paper is intended to be of value to those persons and agencies interested in the public school trust land, in its management, and in the future and potential of this land to provide financial support to the public schools.

This paper does not review the Alaska Public School Trust Fund, although it is an equally important half of the school trust. Descriptions and status of this Fund will be found in these two papers:

> *The Alaska Public School Fund: A Permanent Fund for Education.* A research paper by E. Dean Coon, University of Alaska Fairbanks, March 1984, 40 pp.
>
> *A Promise to Keep: The Alaska Public School Trust Fund: A History of the Fund - 1985-2004,* research paper by E. Dean Coon, Anchorage, Alaska, May 2005, 55 pp.

A Short History of Alaska's School Trust Land

First Federal Grant of Public School Trust Land

At Statehood in 1959 Alaska received a federal grant of 104,000 acres of public school trust land. The land was scattered across the state in township sections 16 and 36 which had been surveyed. The income from this land was put in a public school permanent fund. Fund investment earnings were spent on support of public schools. This arrangement - land receipts to the fund, investment earnings to the public schools - was a trust to be continued in perpetuity.

Legislature Converts School Trust Land to General Grant Land

In 1978 the school trust land was redesignated and put into the pool of general grant lands by the legislature. There was no school trust land anymore. No longer would receipts from the school land be credited to the Public School Permanent Fund, which was renamed the Public School Trust Fund. To make up for the income loss to the Fund, the legislature specified an alternative source of income: one-half of one percent of the receipts of all general grant lands. The Fund also receives similar percentages of receipts from fines and forfeitures associated with these lands, as well as from the National Petroleum Reserve Special Revenue Fund.

Additional School Grant Land Patented

In the 1980's, the Department of Natural Resources found 2,850.18 acres of school lands which had not been conveyed to Alaska at Statehood due to pre-statehood federal withdrawals that had subsequently been removed. This land was then patented to the state between 1985 and 1992.

New School Trust Land Grant is Made

In 1980 the Alaska National Interest Lands Conservation Act (ANILCA) specified that the State was to receive an additional 75,000 acres of school land. This new land grant was in lieu of the land that Alaska was entitled to at Statehood but had been unable to select and patent. This land did not have to be in sections 16 or 36 and by 1992 four tracts of new school land totaling 74,930 acres had been selected.

Court Finds the State Breached the School Trust

Litigation (*Kasayulie vs. State of Alaska;* Case No. 3AN-97-3782 Civ) initiated in 1997 charged that the State of Alaska breached the school land trust by (1) redesignating the school lands as general grant lands and (2) failing to properly use and account for school trust funds. In 1999, the court agreed and stated that redesignation of public school lands into general grant lands is not permitted, and that a further breach of the state's obligation was that there was no valuation of the land prior to the action. The court called for an appraisal of the land, noting that without such a valuation it is premature to consider remedies. Nine years later this case is in hiatus as there has been no appraisal; the State and the plaintiffs have stopped discussions on how to conduct it.

Section Two

Alaska Public School Trust Land, 1959-2009

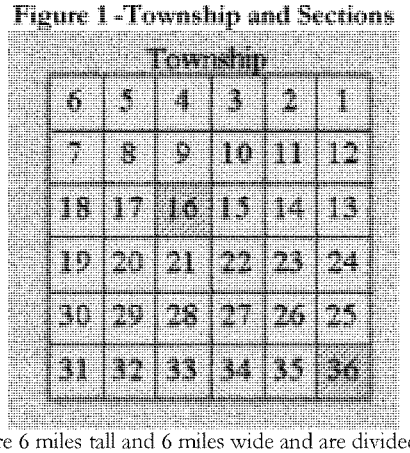
Federal Lands Reserved for Public School Support

An Act of Congress of March 4, 1915 reserved sections 16 and 36 in each surveyed township in Alaska from sale or settlement, and directed that the income from these reserved lands be put into a School Permanent Fund in the Territorial Treasury. The Act further specified that the investment income of the School Permanent Fund be used only for the benefit of the public schools. The Act stated, in part:

> . . .when the public lands are surveyed . . . sections numbered sixteen and thirty-six in each township . . . (are) . . . reserved from sale or settlement for the support of common schools in the Territory of Alaska . . .(and) . . . the entire proceeds or income derived by the United States from such sections . . . and the minerals therein . . . are hereby appropriated and set apart as separate and permanent funds in the Territorial treasury, to be invested and the income from which shall be expended only for the exclusive use and benefit of the public schools of Alaska . .

The land consisted of part or all of eligible acreages in Sections 16 and 36. Figure 1 below shows the size and layout of townships and sections.

Figure 1 -Township and Sections



Townships are 6 miles tall and 6 miles wide and are divided into 36 sections. Each section is one mile tall and one mile wide. The sections are numbered starting in the northeast corner and ending in the southeast corner. Each section contains 640 acres.

Even as additional land was surveyed the Public School Permanent Fund grew slowly. In 1958 the Fund's balance was $161,700. School land acreage was estimated at 105,000 acres.

Alaska Gets a School Land Grant at Statehood

Changes were in store at Statehood. The Alaska Statehood Act, enacted July 7, 1958, stipulated that:

> Grants previously made to the Territory of Alaska are hereby confirmed and transferred to the State of Alaska upon its admission. Effective upon the admission of the State of Alaska into the Union, Section 1 of the Act of March 4, 1915 (38 Stat. 1274; 48 U.S.C., sec. 353), as amended . . . (is) repealed and all lands herein reserved under provisions of Section 1 as of the date of this act, shall upon admission of said state into the Union be granted to such state for the purposes for which they were reserved (emphasis added).

On January 5, 1959, the federal school lands became state school lands. The lands and the fund were to be managed and used according to the original provisions of the 1915 legislation. This was the stipulation accepted by Alaska at Statehood.

In the first year of statehood, the legislature specified that state lands, including school lands, would be managed by the Division of Lands in the Department of Natural Resources (DNR). Its first big task would be to obtain Federal patents from the Bureau of Land Management for all the school land that had been surveyed. A patent is the instrument by which the United States Government conveys, or grants, the fee-simple title to public land to another. Most of the Federal patents for Alaska's school land were issued by 1961.

The Case File System

Management of school trust lands by DNR begins by assigning a Case File Number to each township. The Case File Number would be the identifier for all school lands within each township. For example: **Sch 13.** School land within a township usually includes a section 16 and a section 36, but it can be just a 16 or 36, or portions of both or either. It all depends upon what's available after prior claims are recognized and other factors.

As before, receipts from school land income were credited to the Public School Permanent Fund. The Fund's investment earnings were then posted to the state's General Fund. The contention was that since the investment earnings were less than the General Fund appropriation for support of schools then the intent of the law was met. The School Permanent Fund grew more rapidly during the next 20 years, and by 1978 showed a balance of $8.5 million. Investment income in FY '78 exceeded $560,000.

Inventory of Patented School Trust Acres

Table 1 below shows (1) the number of sections 16 and 36 at Statehood, (2) the number of those sections from which acreages could be selected, and (3) the number of acres ultimately patented prior to June 30, 1978. Table 1 does not show land obtained and then disposed of through sale or trade or lost for other reasons prior to 1978.

Table 1
Alaska School Land Grant Status
June 30, 1978

Meridian	Surveyed Sections 16 & 36	Sections Open for Selection	Acres Patented
Seward	287	105	52,714
Fairbanks	113	69	39,045
Copper River	108	22	9,861
Totals	508	196	101,620

Sources: (1) School Grant Audit, DNR, 11/17/98
(2) Acres of Land in School Trust Appraisal Project, DNR, Jan. 12, 1999

Sections open for selection are fewer than total sections because of federal withdrawals for a variety of reasons. For example, a substantial portion of the land in the Copper River Meridian was not available as it was in the Tongass National Forest, which was established in 1907. No school land was patented in the Umiat and Kateel River Meridians. Federal homestead lands were not eligible for designation at school land.

It is interesting to contemplate a "What if?" at this point. What if Alaska had received as school land the entire acreages of sections 16 and 36, which was the intent of the 1915 Federal law? The computation: 508 sections times 640 acres per section equals 325,120 acres. More than three times as much school grant land would have been obtained!

School Land Management Problems

During the early 1970's legislative audits revealed illegally executed school land leases and that some land rental income was not credited to the Fund. Over $2 million was credited to the Fund in settlement of two of the cases. As a result of these happenings, the State Board of Education was named trustee of the school lands and was charged with approving every land transaction.

Because of these problems, and because of public and legislative pressure to make more state land available for sale to the public and for use by state and local agencies, major changes in the management of the lands and the fund were made by the Legislature in 1978.

The Legislature Takes the School Land

The legislature redesignated the school trust lands, some 103,000 acres (2,300 acres had been sold) as general grant lands (FCCS, CSSB 159, Sec. 4, Chapter 182, SLA, 1978). Thus the state school land "disappeared" into the pool of state grant lands; there was no legal challenge to this action.

To replace the lost school land receipts, the School Permanent Fund, now renamed the Public School Fund, was to be credited with one-half of one percent of total receipts from the management of all state grant lands. These lands, some 103 million acres, were granted by the Alaska Statehood Act. Selection of this vast acreage is still underway.

The new Public School Fund also would receive its percent of land fines and forfeitures as well as its percent of the National Petroleum Reserve special revenue fund. The Fund would be managed by the Department of Revenue with advice from a Public School Fund Advisory Board.

At the same time, the legislature sought to convert Mental Health Lands and University of Alaska lands to become general grant lands. Mental Health advocates fought this action in the courts and retained control of their land. The University of Alaska opted out of this land conversion. If anyone in the education community, including the State Department of Education, stood up for retaining the school trust land as school trust land they were unsuccessful.

New School Land Obtained

Despite losing the original school land, new school trust land would be obtained in two ways. The first would be to recover a small amount of land

the State was eligible for in 1959 but which could not be selected due to various withdrawals by the Federal government. The second way is from a new land grant authorized by the Alaska National Interest Land Conservation Act. This 1980 Federal law granted Alaska 75,000 additional acres of land for public school support. Descriptions and maps of the recovered land are presented in Section Three. The ANILCA grant, with maps, is described in Section Four.

State is Sued for Conversion of School Land

In 1998 the State of Alaska was charged with breaching the school land trust by redesignating the school lands as general grant lands and that it had failed to properly use and account for school trust funds. These allegations were added to *Kasayulie vs. State of Alaska,* Case No. 3AN-97-3782 CIV, filed in 1997, which charged that the state was failing to provide adequate educational facilities, especially in the rural areas.

Plaintiffs in this action included three sets of parents, six school districts, and an advocacy group named Citizens for the Educational Advancement of Alaska's Children. They were represented by two law firms, Jermain Dunnagan & Owen, and Middleton & Timme, P.C.

Soon after the school trust issue was added to the *Kasayulie* litigation, the Department of Natural Resources established new management criteria for the former school lands held with other general grant lands. Pending and future actions which would dispose of school land or resources must meet criteria in DNR Department Order 143, dated December 21, 1998, which stated, in part:

> 1. The action approved must be for full, Fair Market Value at the highest and best use of the parcel, or
> 2. The action must be a result of an existing contractual obligation (i.e., land sale contract, reappraisal of an existing lease, or a land settlement within a municipality)

This Order further required the DNR Commissioner to be notified of any pending action not meeting these criteria; the Commissioner will determine if the action may proceed. It also noted that conveyances to boroughs and municipalities do not meet the criteria. This last condition effectively prevented continuing municipal entitlements of former school land during the life of the litigation.

At the same time a notice of litigation was added to all school land case files and maps in the DNR land information system. The Attorney General also established an escrow account for the receipts from 21 school land sales underway. The FY '08 balance of this account, Fund 11162, was $3,414,737.

Judge Reese Finds the State Breached the Trust

On September 1, 1999, Superior Court Judge John Reese found in favor of the plaintiffs: (1) failure by the state to provide adequate educational facilities, and (2) that the state had breached its duties as a trustee of the public school lands.

Judge Reese noted that redesignation of public school lands into general grant lands is not permitted, and that a further breach of the state's trust obligation was that there was no valuation of the land prior to that action. He called for the lands to be appraised, noting that without such a valuation it is premature to consider remedies.

Judge Reese's Rulings

Judge Reese's rulings were contained in an 18-page Order Regarding Motions for Partial Summary Judgment on Breach of Trust Issues. Significant content regarding the school trust and school land follow:

> The court holds that the State has breached its duties as a trustee of the public school lands. The purpose of the trust was to create a permanent source of revenue for the exclusive benefit of State schools.
>
> Redesignation of the school lands into general grant land is not permitted.
>
> There was no valuation of the land before the State redesignated it in 1978. That was a breach of the State's trust obligations.
>
> *There followed a discussion as to whether the state paid fair market value for the land at redesignation. The plaintiffs contended there has been no determination, or indication in the statutes, that the 1/2% paid from state lands is full compensation, that the state did not commit to contribute for any set time or for any specific amount, and that the 1/2% is illusory as it could be revoked at any time. The State contended that the 1/2% of receipts from management of state land is compensation for up to the fair market value.*
>
> The court finds that it is impossible to know if the fair market value has been paid (through the contribution of 1/2% from state land revenues to the school trust fund) without an appraisal. The lands must be appraised or otherwise valued before any acts subsequent to the redesignation will be judged.
>
> *There followed discussion regarding revenues from the ANILCA 906(b) lands. This is a 75,000-acre grant of additional federal land in lieu of school lands never received under the 1915 Act of Congress. The land was finally selected in 1992, 12 years after the grant was made. Plaintiffs contend the school trust fund should get 100 percent of revenues generated by this land through leases, gravel sales, etc. The State says it has set up a separate agency trust fund especially for the ANILCA land revenues.*

The court holds that it is not clear from the record that adequate separation and accounting has occurred (with respect to the ANILCA land). An appraisal must take place before the court will be prepared to rule on this issue.

The court finds that aside from breaches of trust duties, appraisal of the res of the trust is an appropriate trust expenditure. The fund should bear the appraisal expense ultimately. However, the State should front it as the land cannot be properly defined until the appraisal and remedies are accomplished.

There followed a discussion on the premise that State expenditures on education set off, or compensated for, the interest on the unpaid balance due the fund. Plaintiffs contend the State failed to account for or pay interest or capital gains on the unpaid balance due the schools after the 1978 redesignation. The State asserts that any money owed the fund for interest on the unpaid balance is set off by the large sums the State pay to the schools each year, and that after the appraisal the interest can easily be determined.

The court holds that an amount equal to what properly enumerated, valued, and managed trust assets would have produced could be set off.

The court holds that the State has not commingled the trust assets by depositing the funds into the general fund. The assets are deposited into the general fund late in the fiscal year for an appropriation from the legislature to the Department of Education.

There followed a discussion regarding an accounting of the trust. The plaintiffs contend they are entitled to an annual accounting. The State contends it has provided an adequate accounting of the trust activities and assets.

(*The court says*) Therefore, resolution of this issue, if needed, will occur at a later date.

(*With regard of the use of trust funds by the Department of Revenue*) The court finds that reasonable fees for the management of the fund are appropriate. This policy encourages the trustees to continue to administer the fund even after a breach.

There followed a discussion regarding the 1/2% of total receipts derived from state land use. The State contends that after the State pays back the value of the land, the 1/2% would be a constitutionally prohibited dedicated fund. Plaintiffs do not agree, and say this was a grant of public school land which was to exist in perpetuity, that the State's actions do not change the nature of the trust, and if the 1/2% is compensation, it is to be the trust's permanent and primary funding scheme. Art. IX, Sec. 7 of the Alaska Constitution reads in part: "This provision shall not prohibit the continuance of any dedication for special purposes existing upon the date of ratification of this section by the people of Alaska."

The court holds that there is no violation of the dedicated funds provision. Education funding is required by the federal government for State

participation in federal programs and the assets are dedicated to schools by federal law. Furthermore, the trust fund and the purposes therefore existed prior to ratification of the Alaska Constitution.

There followed a discussion about requests by both parties for instructions regarding the 1/2% contribution as compensation for the full market value of the land taken, as applied to the dedicated fund provision. Plaintiffs contend the State wants to value the land to determine if payments have exceeded the fair market value of the land taken, whereby the excess would be prohibited as contributions to a dedicated fund and could be withdrawn from the fund. The State asks the court to use the remedy used in Weiss v. State, 706 P.2d 681 [Alaska 1985], and that if there is a breach the State wants to pay full market value, instead of reconstituting the land.

The court holds that without a valuation of the trust violations, it is premature to consider remedies. Therefore the parties' request for instructions is DENIED at this time.

Land Appraisal Hiatus

As noted earlier, the State should have conducted an appraisal when the school lands were redesignated as general grant lands in 1978. Then in 1999 the Superior Court ruling previously referenced ordered that there be an appraisal. Remedies in *Kasayulie vs. State of Alaska* cannot be considered without an appraisal, the Court said. *Nine years later there has been no appraisal.* A new judge, Mark Rinder, has been assigned this case.

There has been considerable dialogue between the State and the plaintiffs on this matter. Draft versions of a Request for Proposals (RFP) to conduct the appraisal have been circulated back and forth. There has been no activity on this matter for several years. The Department of Natural Resources ultimately will issue the RFP and will be responsible for the appraisal.

There has been no lack of funds to pay for the appraisal. Legislative appropriations from the School Trust Investment Earnings Account totaling $737,525 have been made to DNR. Of this amount, $580,325 is unexpended and has appeared in the DNR operating budget through FY '09; it is not in the operating budget request for FY '10. The plaintiffs have received $110,900 from the same account for expenses associated with planning for the appraisal.

Maps of School Trust Lands, by Area

The maps which follow show school trust lands patented to Alaska within a few years following Statehood, those added shortly after 1985, and those granted by the Alaska National Interest Lands Claim Act of 1980.

Maps of School Trust Lands, by Area

Fairbanks • Glennallen • Wasilla/Palmer
Kenai Peninsula • Southeast

The Department of Natural Resources has three case types for school trust land. The maps that follow show each school section or tract in the color which identifies its type. They are:

Case Type 107

Case type 107 consists of school sections 16 and 36 surveyed prior to Statehood. As explained earlier, a case file number is the identifier for all school trust lands within a township (with some exceptions). These are the public school trust lands that were changed to general grant lands by the legislature in 1978.

Also included as case type 107 are sections or part sections surveyed prior to Statehood, but not confirmed as school trust land until after 1978. There are six such cases, some with two sections and each is described in this paper. These are described in Section Three of this paper.

Case Type 112

Territorial grants are included in this case type. But only a single territorial grant included an eligible public school section 36. It was TG 3 and by the time it was confirmed as school trust property, it consisted of only the mineral rights on 160 acres. It is described in Section Three of this paper.

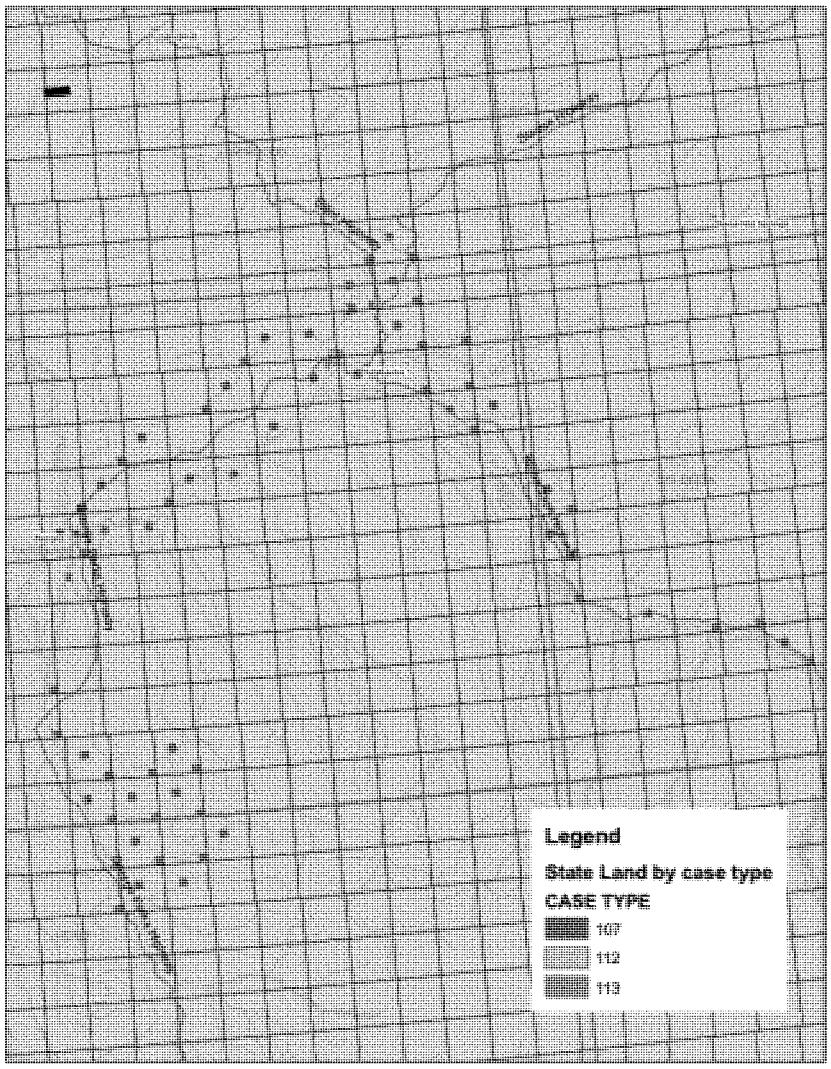
Case Type 113

Case type 113 consists of 75,000 acres of land granted to Alaska in 1980 under provisions of Section 906(b) of ANILCA. The grant was made in lieu of school trust lands not vested prior to Statehood. Three of these tracts will be found on the Wasilla/Palmer area map and one on the Southeast area map.

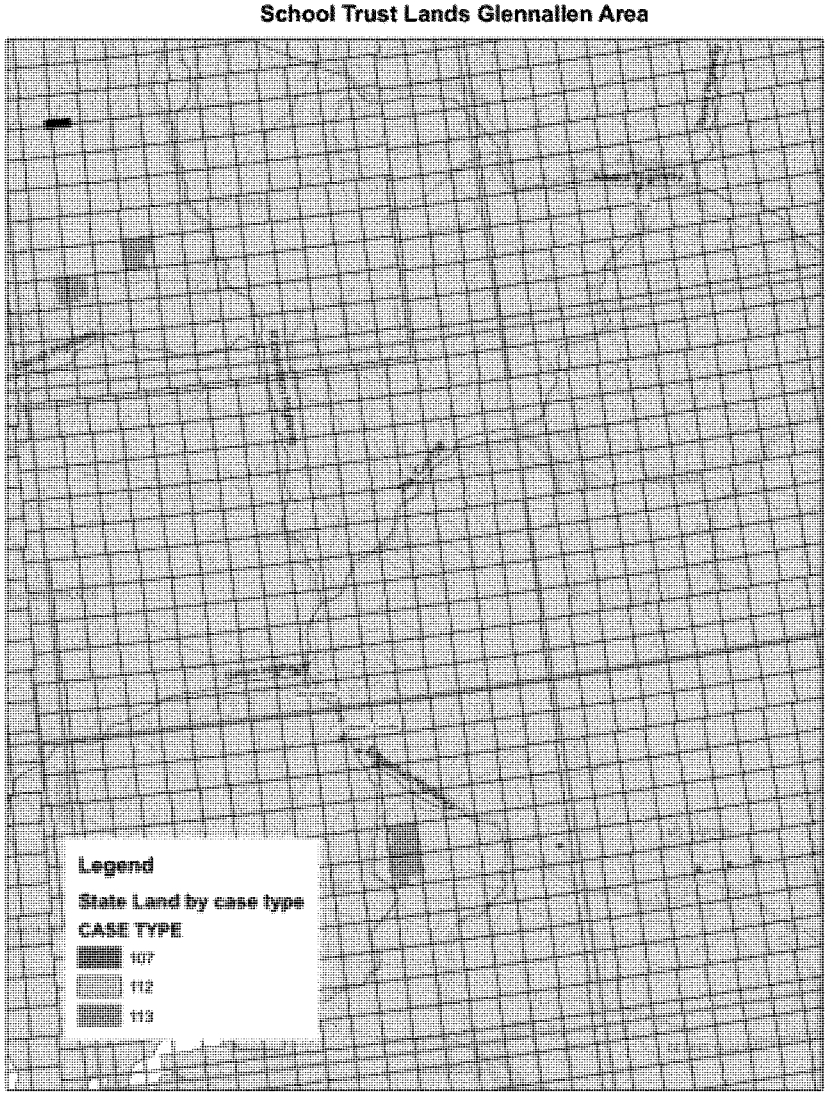
Maps courtesy of Chester Murphy, Cartographer, DNR

15

School Trust Lands Fairbanks Area



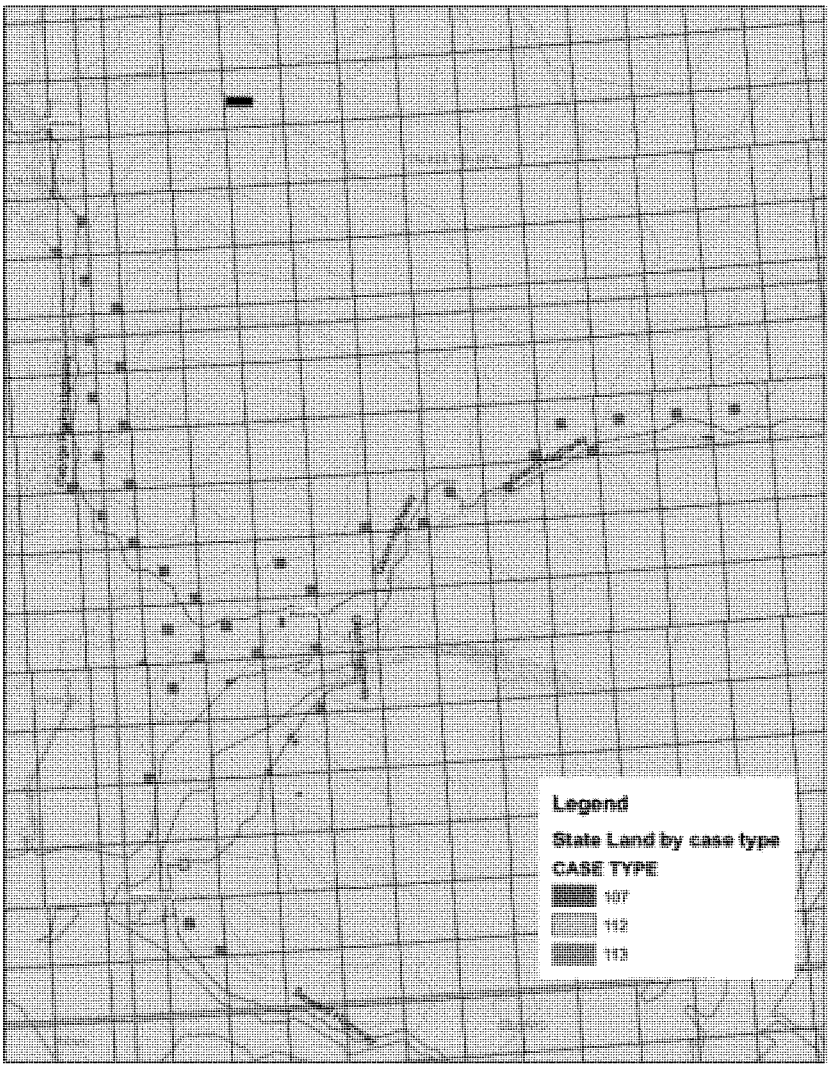
See the large Territorial Grant, Case Type 112, near Fairbanks. That is TG 2 and it was granted in 1946 as a site for the Fairbanks Agricultural Experiment Station.



The three large green tracts are ANILCA land grants.

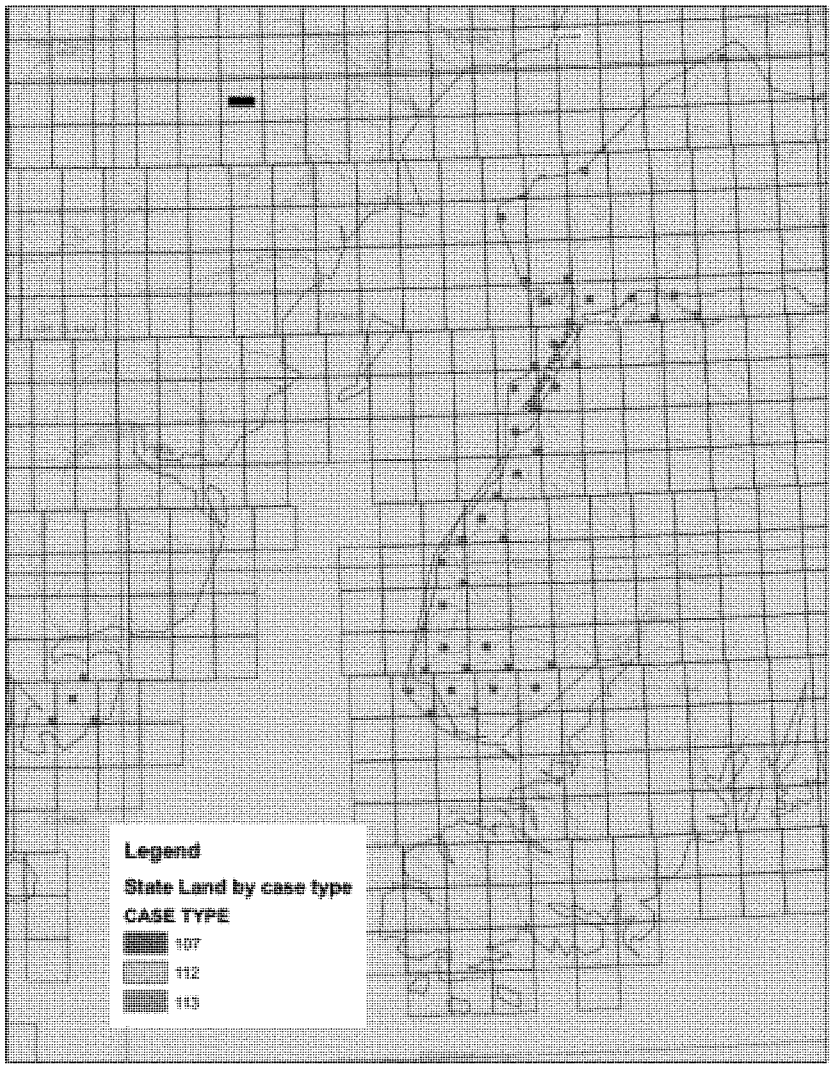
17

School Trust Lands Wasilla/Palmer Area



18

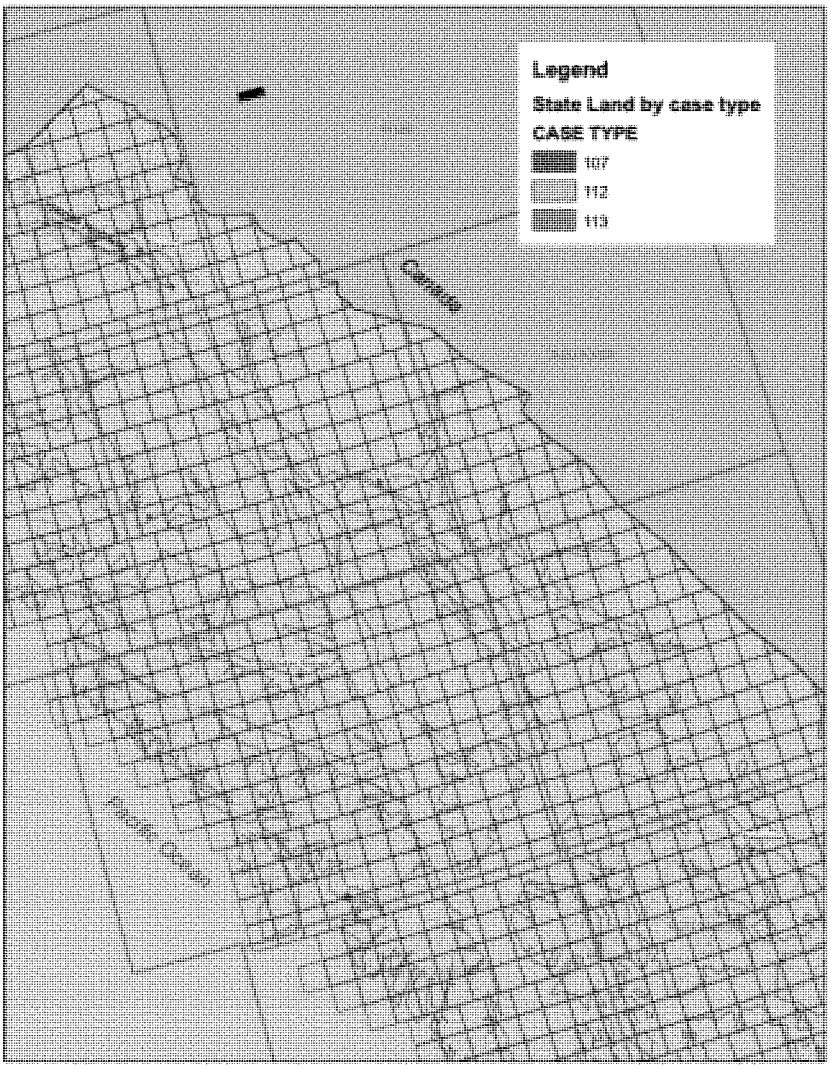
School Trust Lands Kenai Peninsula Area



One school section in Seward does not show as it is outside the east border of the Kenai Peninsula Borough map.

19

School Trust Lands Southeast Area



Several school sections near Haines are only partially shown. A tiny tract near Gustavus is not visible on the map. The green square near Tenakee Springs is not an ANILCA tract.

Section Three

Additional Grant Land Confirmed

During the 1980's, audits by the Department of Natural Resources revealed that some of the 1959 school land withdrawals by the Federal government had been reversed. Audit results were reported by Carol Shobe, Chief of Realty Services, Land Division, DNR (Affidavit of Carol Shobe, *Kasayulie v. State of Alaska*, Nov. 16, 1998). Excerpts from this Affidavit follow:

> This audit determined which lands had not been conveyed to the State at statehood due to pre-statehood federal withdrawals that had been subsequently removed. BLM indicated that it would convey such lands to the state . . . As a result of the audit . . . the state obtained an additional 2,850.18 acres of school trust land after the enactment of ANILCA in 1980 . . . These lands are in addition to those land conveyed under 906(b) of ANILCA.

According to the *School Land Trust Appraisal Project*, a Department of Natural Resources report issued early in 1999, there were seven cases totaling 3,010 acres which were confirmed between October 8, 1985 and February 2, 1992. These cases:

Seward Meridian:	Sch 13, Sch 230, Sch 231A. and TG 3.
Fairbanks Meridian:	Sch 232.
Copper River Meridian:	Sch 233 and Sch 235.

TG 3 was a Territorial Grant of a section 36 made in 1957, according to the DNR report previously cited. By the time it was confirmed in 1991 prior claims had reduced school trust ownership to 160 acres of mineral rights.

These seven cases were confirmed as school trust land after 1985 and so could not be included in the 1978 redesignation of school trust lands. Thus they have status as school trust land, with 100 percent of receipts from use to be credited to the Public School Trust Fund.

Current Status of the Added School Land

Several of the school trust tracts are not whole anymore and have been put to other uses. Here is a brief report of the current status of each case.

Sch 13 (Sections 16 and 36 southeast of Sterling): Cook Inlet Region Inc. acquired 812 acres in a trade; Seldovia Native Association acquired 15 acres in the same trade. The balance is still owned by the State,

Sch 230 (a section 36 north of Anchorage): The state first leased a small tract. Later the Municipality of Anchorage acquired a large portion under the municipal entitlement program and then deeded some to the Eklutna Native Association. In 1996 DNR reclassified Sch 230 as general grant lands.

Sch 231A (part of a section 36 in southeast Anchorage): Obtained by MOA under the municipal entitlement program.

Sch 232 (a section 36 southeast of Fairbanks): Intact. Still owned by the State.

Sch 233 (part of a section 36 east of Chitna): Intact. Still owned by the State.

Sch. 235 (small portion of a section 36 on Admiralty Island): is part of a school site for the City of Angoon.

TG 3 (mineral rights on a portion of a section 36 near Anchor Point): Currently leased for oil and gas exploration.

Income Prospects

As will be revealed, only one of these tracts, TG 3, is receiving mineral lease receipts for the school trust fund. The amount could increase considerably if it became a gas producer. One other tract, Sch 13, has a lot of valuable Kenai River Front lots. But will they ever sell at the assessed values due to development constraints of being in the Kenai River Special Management Area?

Descriptions and Maps

The balance of this section presents a detailed description and historical account of each of these cases along with a map of each.

SCH 13

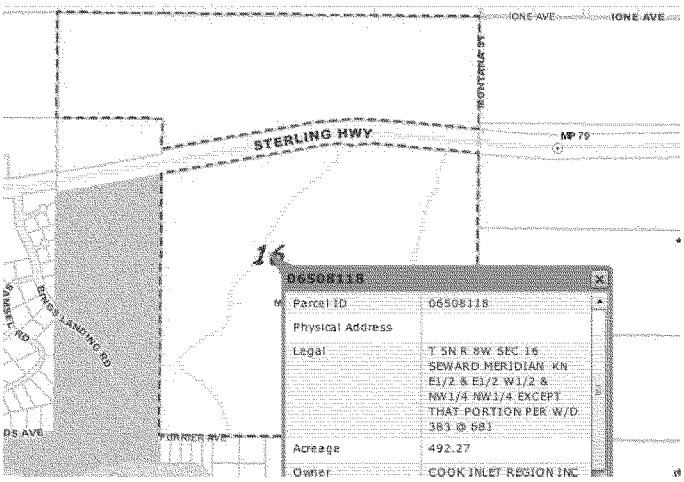
Size: 1,215.97 acres **Title Confirmation:** February 3, 1992

Legal Description: Seward Meridian, Township 5 N, Range 8 W, Section 16, and Section 36 Lots 1-9 inclusive, NE4, N2NW4, S2W4. See USGS Kenai C-2 and B-2 Quadrangle Maps.

How to get there: Section 16 is two miles east of Sterling in the Kenai Peninsula Borough. The Sterling Highway crosses the upper portion. The Kenai River's Naptowne Rapids are a few hundred feet south of Section 16.

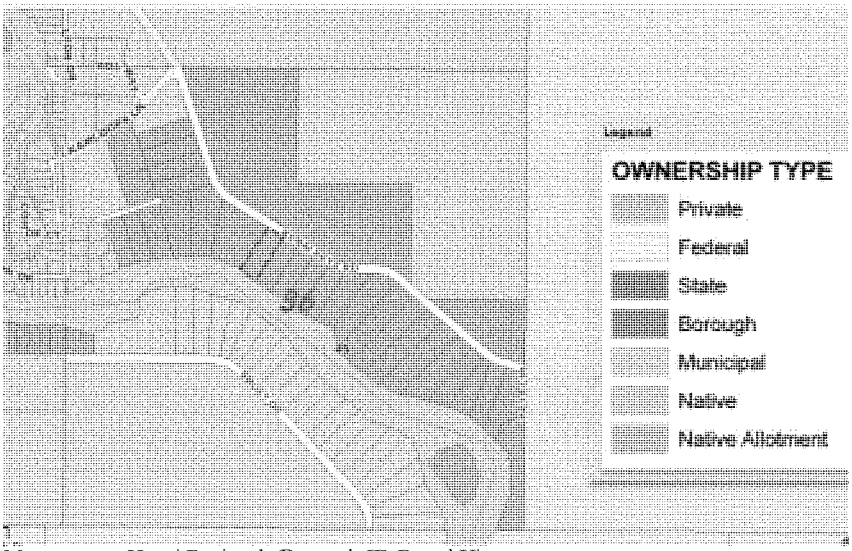
Section 36 is six miles southeast of Sterling; or two and one-half miles south of the Sterling Highway. Feuding Land Road and Kenai Keys Road connect the Sterling with Section 36. The Kenai River crosses the southwest portion.

Ownership of Section 16: Cook Inlet Region, Inc. (492 acres); State of Alaska (145 acres); Seldovia Native Ass'n, Inc. (15 acres). Bing's Landing State Recreation Site, the State-owned tract shown in purple, is also a Kenai River Special Management Area. The small tract above it across the Sterling Highway is owned by the Seldovia Native Association. KPB ID Parcel Viewer Map.



Ownership of Section 36: Cook Inlet Region, Inc. owns about half of the land, which includes 20 lots on the south side of the Kenai River. Borough appraised value of these lots totals $1,472,200, or an average of $73,000 per lot. Average lot size is 3.51 acres.

The State of Alaska owns a bit less of Section 36 than CIRI but has 23 larger lots on the north side of the Kenai River. Total assessed value of these 23 lots in 2008: $9,549,200. The lots range in size from 2.61 acres to 6.99 acres. Average assessed value per lot: $415,183. Average assessed value per acre of the state-owned riverfront lots: $99,730.



Map source: Kenai Peninsula Borough ID Parcel Viewer.

Section 36 of Sch 13 showing Private, Native (CIRI), and State ownership. Platted lots described earlier are shown on each side of the Kenai River. There are 13 small lots in private ownership in the Stephenkie Subdivision on the west edge of the section; some lots border the Kenai River.

Most of the State land above the Kenai River is in the Kenai River Special Management Area. This special use area has many restrictions intended to protect the habitat. The Alaska Department of Fish and Game manages the KRSMA.

History: Cook Inlet Region, Inc. and the Seldovia Native Ass'n acquired their holdings in a reconveyance and exchange agreement dated June 29, 1979. In this exchange, or trade, the state then acquired Native land holdings and allotments in other areas of the state.

This was part of a larger trade in which CIRI acquired 14,714 acres of former school trust land, some of it unpatented as school trust land, in 45 sections in the Seward Meridan. The exchange was a bit complicated: first, the state returned ownership of the land to the Bureau of Land Management; next, BLM patented the land to Native regional and village corporations in the Cook Inlet Region. To complete the trade the State acquired Native-owned land in other locations.

Sch 13 was vested January 3, 1959. But title confirmation of Sections 16 and 36 as school trust land came long after portions of these sections were traded or put to other uses.

Income: None.

Taxes: The tracts owned by CIRI and the Seldovia Native Association are not taxed by KPB. KPB is mandated under Alaska State Statute (29.45.030) and Federal Law (ANCSA) to exempt such undeveloped lands from taxation.

SCH 230

Size: 549.45 acres **Title Confirmation:** October 8, 1985

Legal Description: Seward Meridian
Township 16 N, Range 1 W, Section 36 Lots 2 and 3. E2. E2W2.
See USGS Anchorage B7 and C7 Quadrangle Maps.

How to get there: From Anchorage go northeast about 23 miles on the Richardson Highway; take Paradis Ramp or Mirror Lake exit south between Birchwood and Eklutna; the tract borders Lake Edmund.

Owners: Eklutna Inc., 320 acres; Municipality of Anchorage. 200 acres; Alaska Council of Boy Scouts of America, 29 acres; Private ownership, 40 acres.

History: The State's April 13, 1960 application for patent (as Sch 36) was rejected by BLM because Section 36 was withdrawn by Secretarial Order of October 36, 1936 for possible inclusion in an Indian Reservation. In 1965 this land was released from the Secretarial Order. (DNR Sch. 36 Case Abstract)

In 1969 the State leased Lot 2 for 55 years to the Carlquist Howell Foundation, Inc. In 1979 the lease was amended from $885 per year to $2,302 per year. Lease administration was transferred from the State to the Municipality of Anchorage on November 11, 1986. (ADL File No. 41777) This lease is now being paid by the Great Alaska Council of Boy Scouts of America.

The MOA first sought this land on July 1, 1978, only to find that the State did not yet have title to it. So it was not until January 28, 1987 that MOA acquired this land as a municipal entitlement under provisions of the Mandatory Borough Act of 1963. Then on June 29, 1987, MOA conveyed 320 acres via Quit Claim Deed to Eklutna Inc. This conveyance was done according to MOA's North Anchorage Land Agreement which settled land issues between MOA and Eklutna Inc. (ADL File No. 201183 Case Abstract)

Sch 230 was school trust land when it was conveyed to MOA. On March 27, 1996 the Department of Natural Resources reclassified Sch 230 as general grant land. (ADL 201183 Case Abstract)

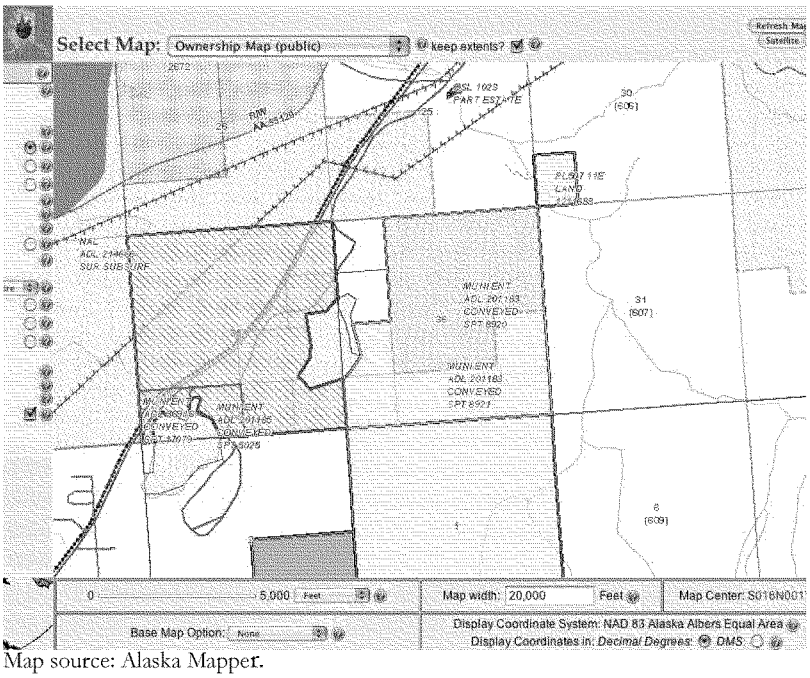
On September 11, 2000 the Great Alaska Council of Boy Scouts of America purchased Lot 3 of this property from the MOA. Appraised value of the 29

acres in 2007 was $799,000. It was given a chartable exemption in 2008. It is the site of Camp Carlquist, and is used by the Boy Scouts, Girl Scouts, and other community groups. (MOA Property Appraisal System, Parcel 052-041-01--000)

Income: Unknown.

General Information Sources: Alaska Department of Natural Resources on-line Land Administration System, including the Alaska Mapper; DNR School Grant Audit, November 17, 1998; Municipality of Anchorage on-line Property Appraisal System, MOA Heritage Land Bank.

Sch 231 is the yellow portion of Section 36 in the map below. The darker yellow tract is owned by Eklutna Inc.; the balance is State, Great Alaska Council of Boy Scouts of America, and privately owned. The heavy black dotted line starting at the lower left corner of the map is the Richardson Highway.



Map source: Alaska Mapper.

SCH 231A

Size: 160 acres **Title Confirmation**: March 31, 1988

Legal Description: Seward Meridian
Township 12 N, Range 3 W, Section 36 N2 N2
See USGS Anchorage A-8 Quadrangle Map

How to get there: In South Anchorage take Rabbit Creek Road east from the New Seward Highway for three and one/half miles. At that point Rabbit Creek Road crosses the northwest corner of Sch. 231A. East 140th Avenue borders it on the north; Hosken Street borders it on the west.

Owner: Except for a 2.9 acre tract, Section 36 is owned by the Municipality of Anchorage. Initially it was managed by the Heritage Land Bank, and now by the Parks and Recreation Department.

History: Sch 231A, the north one-quarter of Section 36, was obtained by the MOA December 15, 1988 under provisions of the state's municipal land entitlement program. Sch 231A was school trust land when it was conveyed to MOA.

Sch 2, the 480 acre balance of Section 36, had been patented to the State August 26, 1964. Then it was converted from school trust land to general grant land by the legislature in 1978. MOA received ownership August 25, 1980, under the municipal entitlement program.

Even before MOA obtained ownership of the entire Section 36, residents of the Rabbit Creek and Bear Valley areas began discussions on public and private use of the land. Many issues came up and many plans were proposed. Current plans for Section 36 to be a public park, with provisions for recreation and wildlife habitat, were approved in 2007, and the property has been platted.

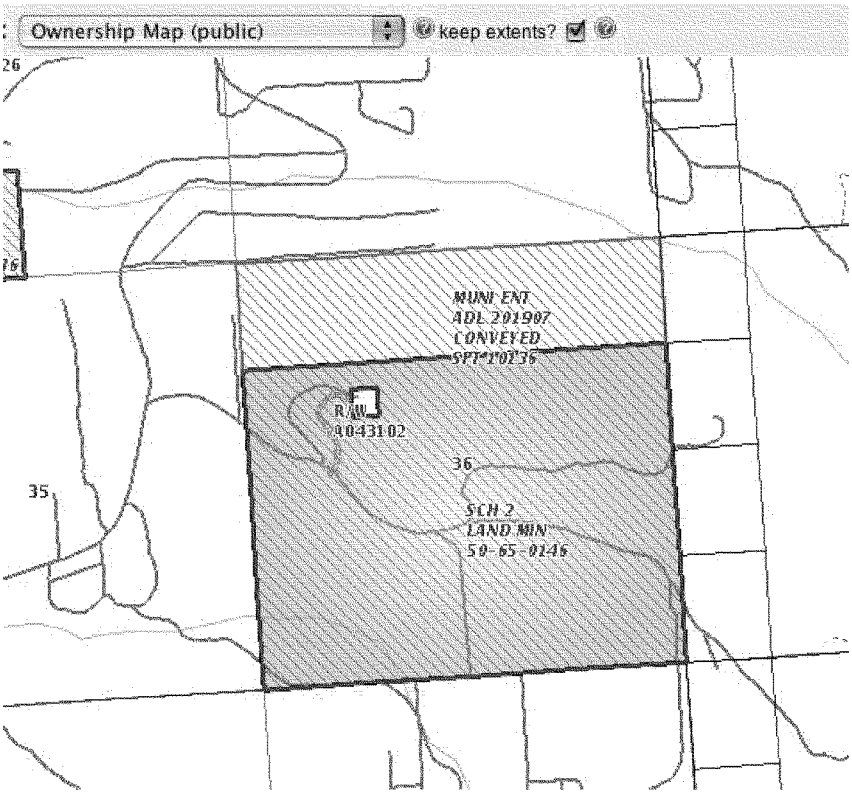
An Air Force Radio Relay Station was constructed in 1955-56 on this part of Section 36. This property, 2.9 acres, was later acquired by ALSCOM which still owns it.

Income: None

28

Sch 231A is the blue-lined upper one-fourth of Section 36 below. The brown-lined lower three-fourths is Sch 2. The tiny square in Sch 2 is the ALSCOM site. Clark's Road crosses Sch 2 and connects to the Bear Valley Subdivision.

Map source: DNR Alaska Mapper



SCH 232

Acres: 640 **Title Confirmation:** March 12, 1990

Legal Description: Fairbanks Meridian, T 4 S, R 4 E, Section 36
See USGS Fairbanks C-1 and Big Delta C-6 Quadrangle Maps. Or for the township location only see USGS Big Delta Topographic Series Map, Scale 1:250,000.

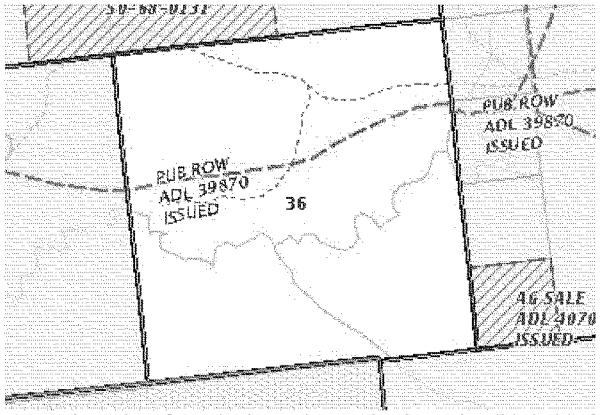
How to get there: Sch 232 is in the Fairbanks North Star Borough approximately 30 miles southeast of Fairbanks and five miles east of the Richardson Highway. It is six miles south of Eielson Air Force Base.

History: On April 12, 1961 the State sought acquisition of Section 36 as part of its general grant land entitlement. This was rejected by BLM.

On February 24, 1972 application for patent as school land was submitted. Time passes. Title was confirmed on March 12, 1990.

The Little Salcha River meanders across this section on its way to the Tanana River. A public use trail (right of way), which originates at the Richardson Highway, also crosses this section just north of the river. The Trans Alaska Pipeline is two miles west of Section 36.

Income: None



Sch 232. The right-of-way is shown in purple; the real trail is in black. The Little Salcha River (in blue) flows from east to west.
Map source: Alaska Mapper, DNR

SCH 233

Size: 280 acres **Title Confirmation:** February 1, 1990

Legal Description: Copper River Meridian
Township 5S, Range 11E, Section 36 S2 NE4, SE4 SW4, SE4.
See USGS McCarthy B7 Quadrangle Map.

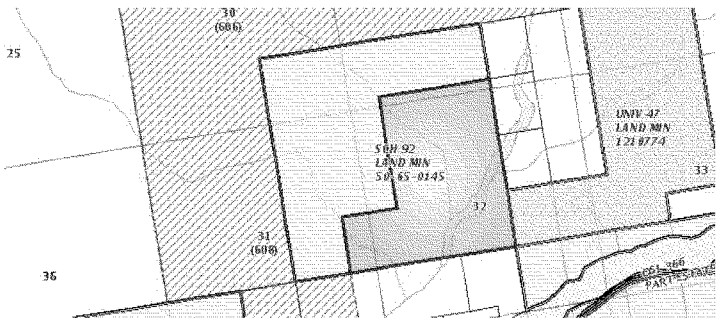
How to get there: Sch 233 is in the Copper River Valley about 38 miles east of Chitina via the road to McCarthy. At that point it is one mile north of the McCarthy Road and two miles north of the Chitina River.

History: Application for Section 36 to be patented as a school section was made to BLM April 15, 1960. This was rejected in part as 280 acres had already been withdrawn under PSR 684. The 360 acre balance of Section 36 was patented August 8, 1964 as school land and designated Sch 92.

On February 24, 1972, patent application on the rejected 280 acres was made again to BLM. Time passes. On February 2, 1990 this land was confirmed as school trust land and was designated Sch 233.

Sch 92, 360 acres, lost its status as school trust land in 1978 when it was classified by the legislature as general grant land. Sch 233, 280 acres, is still school trust land, as it was confirmed to the State after 1978.

Income: None



Sch 233 is the beige colored tract numbered 32 in the center of the map. Former Sch 92 is the white portion of that section. Long Lake and the McCarthy Road are shown at the lower right. Sch 92 and Sch 233 are not shown in Section 36, the usual school section, due to location differences in surveyed land (colored tracts) and unsurveyed data (township and section grids). Map source: DNR Alaska Mapper

SCH 235

Acres: 4.76 **Title Confirmation:** August 22, 1989

Legal Description: Copper River Meridian
T 50 S, R 67 E, Section 36, Lot 8
See USGS Sitka B-2 and C-2 Quadrangle Maps

How to get there: Go to Admiralty Island in Southeast Alaska; then to the City of Angoon. Section 36 is on the west edge of Angoon and is bordered by Chatham Strait.

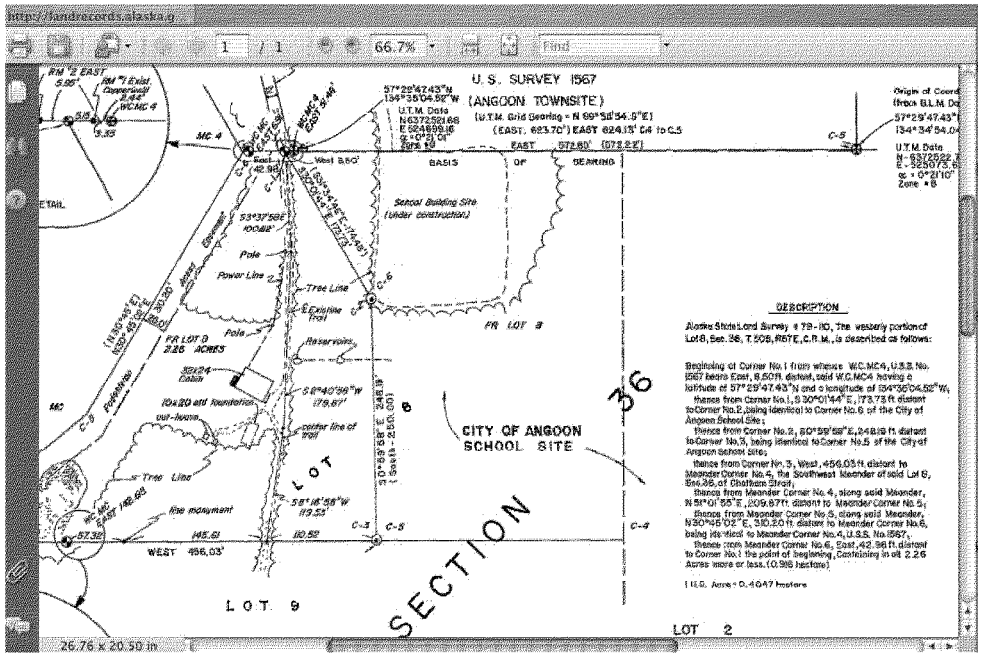
History: The State first sought patent for Lots 2-7 of Section 36, then designated as Sch 118, June 27, 1960. This application was rejected as the land had been withdrawn for Tongass National Forest purposes.

Then on February 11, 1975 school land status as Sch 235 was sought for Lots 2,4,5,8, 9 and a portion of Lot 7 in Section 36. Only Lot 8 was held for approval. The other lots were rejected because they were within Tongass National Forest. Final approval did not occur until August 22, 1989, when BLM confirmed the title.

Lot 8 is a part of the City of Angoon school site. A school building was constructed on it in 1979.

Section 36 totals some 150 acres; the balance of what would be Section 36 is covered by the waters of Chatham Strait.

Income: None



Sch 235 is shown above. It is Lot 8 in Section 36. The U.S Survey 1567 of January 17, 1980 was only on the westerly portion of Lot 8. The U.S. Survey was based on a DNR plat of the area prepared September 30, 1979. This survey was accessed using DNR's Alaska Mapper.

TG 3

Size: 160 acres **Title Confirmation:** December 30, 1991

Legal Description: Seward Meridian, Township 4 S, Range 15 W
Section 36 W2NW4, N2SW4 (minerals only),
See USGS Seldovia D-5, D-6 Quadrangle Maps

Location: Territorial Grant 3 is in the Kenai Peninsula Borough 1 & 1/2 miles east of Anchor Point, a small community on the Sterling Highway north of Homer.

History: On February 19, 1957 title was vested to the State of Alaska for all minerals in this 160-acre tract. The surface rights were already privately owned since the land was homesteaded.

The rest of Section 36, 480 acres, became Sch 77 when on June 20, 1961 BLM granted a patent to the State of Alaska. Then in 1978 Sch 77 lost it status as school trust land when the legislature redesignated it as general grant land. On June 29, 1979, the former Sch 77 was acquired by Cook Inlet Region, Inc. in a reconveyance-exchange agreement with the State of Alaska

Then on December 30, 1991 the State received confirmation of title for TG 3 as school trust land (minerals only).

Oil and Gas Leases: TG 3 was first leased for oil and gas in 1968 and again in 1996. In 2003 the lessees were Aurora Gas LLC and ConocoPhillips Alaska. Since June 1, 2005, it has been under lease by the Union Oil Company of California (UNOCAL).

The 1996 lease of 1,575 acres included TG 3's 160 acres, which is 10.2 percent of the total. TG 3 would have been credited with 10.2 percent of lease income for the entire leased aes

UNOCAL's current lease covers 2,348 acres. TG 3's 160 acres is 6.8 percent of the total acreage. So TG 3's share of any lease income would be 6.8 percent. If there should be production on this lease, royalty income to TG 3 would be 6.8 percent of 12.5 percent of the royalty amount. UNOCAL of course would retain the balance of 87.5 percent net of royalty.

Lease Income:

Year	Total Lease	Est. Amount to TG 3
1996	$ 5,673 (deposit)	$ 579
1997	24,341 (bonus bid)	2,483
1998	5,516	563
1999	3,940	402
2000	4,728	482
2002	4,728	482
2003	4,728	482
2004	15,876 (bonus bid)	1,080
2006	3,524	240
2007	4,698	319
2008	5,872	396

TG 3. The school land trust owns the mineral rights of the blue 160-acre tract of Section 36 shown above. The surface rights of this tract are privately owned. The small lots were subdivided from two 80-acre homesteads.

The brown portion of Section 36 is owned by Cook Region Inlet, Inc. CIRI has both surface and mineral rights of its 480-acre tract. This tract is not included in the oil and gas lease.

Anchor Point and the Sterling Highway are one and one-half miles west of this section.

Map source: KPB Parcel Viewer

Section Four

A New School Trust Land Grant

The Alaska National Interest Lands Conservation Act (ANILCA), P.L. 96-487, Dec. 2, 1980, 94 Stat. 2371, specified that Alaska was to receive an additional 75,000 acres of school land. Provisions for the new land grant was in Section 906(b), which read in part:

> SCHOOL LANDS SETTLEMENT.-- (1) In full and final settlement of any and all claims by the State of Alaska arising under the Act of March 4, 1915 (38 Stat. 1214), as confirmed and transferred in §6(k) of the Alaska Statehood Act, the State is hereby granted seventy-five thousand acres which it shall be entitled to select until January 4, 1994, from vacant, unappropriated, and unreserved public lands. In exercising the selection rights granted herein, the State shall be deemed to have relinquished all claims to any right, title, or interest to any school lands which failed to vest under the above statutes at the time Alaska became a State (January 3, 1959), including lands unsurveyed on that date or surveyed lands which were within Federal reservations or withdrawals on that date.
>
> (3) Lands selected and conveyed to the State under this subsection shall be subject to the provisions of subsections (1) and (k) of §6 of the Alaska Statehood Act.

Reasons for the New School Land Grant

Alaska received this additional school land because it was unable to select and patent all land to which it was entitled in 1959. That is, part or all of many sections 16 and 36 could not be conveyed to the State due to pre-statehood federal withdrawals including territorial homestead entries, inclusion in a national forest, territorial grants, federal public land orders, mining claims, and conveyances for territorial use. One report indicates that of some 181,000 acres eligible for selection as school land, only 104,000 acres were ultimately patented (School Grant Audit, DNR, Revised Updated, November 17, 1998).

By 1986 the Alaska Department of Natural Resources (DNR) had not yet selected any the new school land. According to DNR the delay was necessary to clear up conflicts in conveyances on related land transfers, and because of an ongoing audit of sections 16 and 36 to determine if Alaska received all the school trust land to which it was entitled under the 1915 Act of Congress. As previously noted, lifting of pre-statehood federal withdrawals on some trust land allowed Alaska to now claim school sections it was originally denied. Such action had to be taken before selecting ANILCA Sec. 906(b) lands.

Land Status in 1986

The status of the new school land grant was stated by DNR that year (Letter from Tom Hawkins, Director, Division of Land and Water Management, to E. Dean Coon, December 16, 1986) which stated, in part:

> *As you are aware, on July 1, 1978, the legislature redesignated all trust land as general grant land, which included approximately 103,000 acres of school land. However, the redesignation does not affect land approved for conveyance after July 1, 1978. Sec. 906(b) of ANILCA states that "lands selected and conveyed to the State under this subsection shall be subject to the provisions of subsection (j) and (k) of Section 6 of the Alaska Statehood Act." These particular subsections of the Statehood Act related to the confirmation of title to the State of Alaska and removed land and monetary management restrictions.*
>
> Once the Sec. 906(b) land is selected and title is obtained, this agency will manage the land as general grant land is managed. We will also insure that a trust account is established so that revenues derived from this land will be placed in the public school fund. *Emphases added.*

Criteria for ANILCA Grant Land Selection

The Department of Natural Resources established criteria for selecting the new school land. Resource value of the land would be a major criterion, and was detailed in a DNR document (E. ANLICA School Grant, prepared by Dick Mylius, Manager, Division of Land, Resource Assessment and Development Section, n.d.). An excerpt follows:

> Selections should be for land capable of earning revenue for the state. The desire was to limit the number of parcels to four or less to reduce management and survey costs. Because the grant is small, it was desired that all of the selections be conveyable, that is, the grant would not be used to topfile on lands selected by ANCSA corporations, currently withdrawn, or encumbered with federal mining claims.
>
> Very few of the lands available for selection had high enough surface values that could be turned into revenue with certainty, so the steering committee decided to select land with subsurface values or with both surface and subsurface potential for this grant. It was determined that this acreage was too small to use to acquire land in speculative oil and gas areas. Areas with known and accessible sand and gravel were identified by DGGS (Division of Geological and Geophysical Services), but determined not to be available. As a result, the use of this grant focused on land with potential mineral deposits or a mix of mineral and surface values.

The Land is Selected

The land ultimately selected on May 21, 1993 comprised three large tracts as well as part of one section. Locations of these ANILCA 906(b) lands:

> Copper River Meridian: 38,647 acres southeast of Tonsina, located in Township 3 South, Range 2 East, and T. 4 S., R. 2 E.
>
> Fairbanks Meridian: 17,190 acres north of the Denali Highway in the Clearwater Mountain Range, located in T. 19 S., R. 5 E., and T. 19 S., R. 6 E.
>
> Fairbanks Meridian: 19,027 acres south of Black Rapids Glacier within the Alaska Range, located in T. 18 S., R. 8 E.
>
> Copper River Meridian: 66 acres southeast of Gustavus Airfield.
> Section 16, Lot 2, T. 40 S., R. 59 E.
>
> Acres patented: 74,930

The Mylius document, previously cited, estimates acreages in the Fairbanks Meridian have good economic prospects for mineral development, noting they contain ". . . the Zackly gold-copper skarn deposit with estimated reserves of 1.25 million tons of 2.6% copper and greater than 6 grams of gold per ton . . . with a high potential for metamorphic gold veins and moderate potential for placer gold and basalt-related copper deposits . . .."

Trust Income

The ANILCA grant land is "school land" and all receipts from its use, such as gravel sales, mineral leases, rent, etc., is being held in a DNR escrow account due to the current litigation. Ultimately it will be credited to the Public School Trust Fund. DNR Commissioner Tom Irwin, in a letter to State Representative Bob Roses (8/14/07) stated that ". . . from December 21, 1998, to the present, 100% of revenues generated from these lands have been accounted for within a separate DNR account. As of August 14, 2007, this account contains $1,715,355."

Descriptions and Maps

The Department of Natural Resources designated the ANILCA land case identification ANISS, for Alaska National Interest School Selections. Descriptions, tract income, and maps of the four ANISS cases follow.

ANISS 1

Size: 38,647 acres **Patented to the State:** Sept. 10, 1999

Legal Description: Copper River Meridian
T.3 S, R.2 E. Sections 1-6, 8-17, 20-36.
T.4 S, R.2 E. Sections 1-22 inclusive excluding Native allotment application AA-7242, Parcel A in Sections 8 & 9
T. 4 S, R. 2 E, Sections 23 and 24, 28 and 29, 32, 33, W2,W2NE4
See USGS Valdez C-3 and C-4 Quadrangle Maps

How to get there: ANISS 1 is in Southcentral Alaska 80 miles northeast of Valdez. The northwest corner is one mile southeast of Tonsina. Midpoint of the western border is three and one-half miles east of Milepost 75 on the Richardson Highway. Dust Creek and Bernard Creek traverse Township 3 from NW to SE. Kimball Pass Trail traverses north to south in both townships.

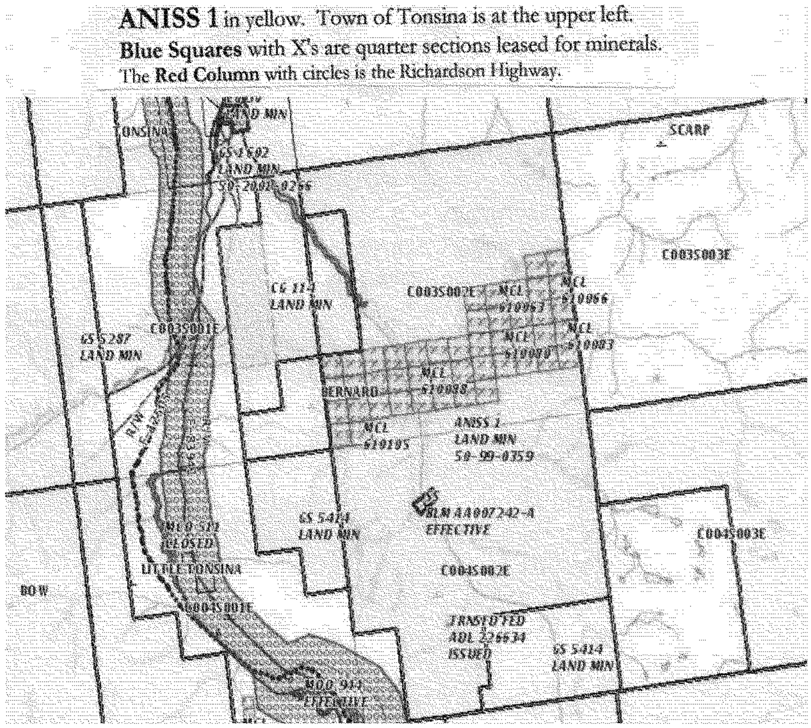
Mineral Lease Activity: There were a number of claims closed after the land was patented. Claims generated approximately $16,375 in lease rent.

There are now 46 160-acre active mining leases in Township 3 S, all based on mineral discovery claimed as of May 15, 2006. They are in Sections 13 and 22 through 34 and encompass 7,360 acres. Rental lease on each quarter section is $100 per year (rate for the first five years).

The mineral leases are now held by Pacific North West Capital Corp., Vancouver, B.C., Canada. It bills itself as an explorer/project generator in the search for Platinum Group Metals (PGM) and Nickel in North America. This is Pacific North West's Tonsina Project, one of 11 mining projects it has in the United States and Canada. According to a 2007 company statement, nickel, copper, and platinum mineralization have been found there. According to an affidavit filed with the Department of Natural Resources, the company spent $119,905 on geologic mapping, geochemical sampling, hand trenching, and sampling in the 12-month period ending August 31, 2007.

In addition to the active mining claims there are two placer mine permits and one active temporary water use permit on ANISS 1. No revenues from these three permits were found.

Income: $ 16,375 from early claims now closed
$ 9,200 from 1995 through 2006.
$ 11,500 for leases in 2007-2008



Map source: DNR Alaska Mapper

ANISS 2

Size: 17,190 acres **Patented to the State:** May 15, 1999

Legal Description: Fairbanks Meridian
T 19 S, R 5 E, Sections 1 and 2, 11 to 14 inclusive, and 23 to 26 inclusive
T 19 S, R 6 E, Sections 4 to 10 inclusive, 15 to 22 inclusive, 29-30
See USGS Mt. Hayes B-6 and A-6 Quadrangle Maps

How to get there: ANISS 2 is in the northern part of the Matanuska-Susitna Borough between the west fork of the Maclaren River and upper tributaries of the east fork of the Maclaren River. The south border of ANISS 2 is nine miles north of the Denali Highway. There is a winter trail from the Denali Highway to an old mine site at the east border of Range 6 E.

Mineral Leases: There were a number of claims after the land was patented to the state, but these have been closed for several years. There are no active claims at the present time.

There is a abandoned mine one-half mile from the east border of ANISS 2. It is on Section 10 of T 19 S, R 6 E and there is an airstrip nearby.

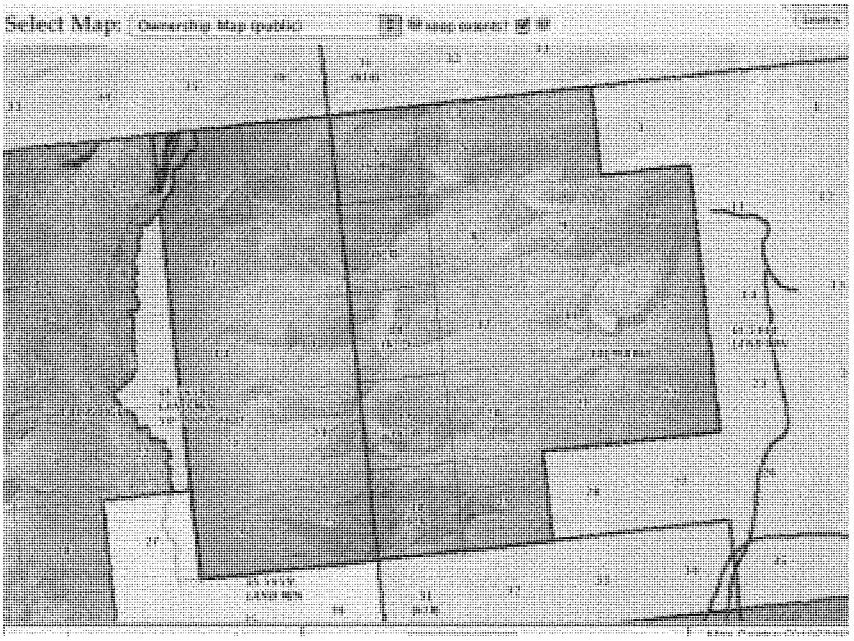
According to DNR documents this acreage has good economic prospects for mineral development, specifically noting it contains ". . . the Zackly gold-copper skarn deposit with estimated reserves of 1.25 million tons of 2.6% copper and greater than 6 grams of gold per ton . . . with a high potential for metamorphic gold veins and moderate potential for placer gold and basal-related copper deposits . . ."

The land is classified by DNR as "'public recreation and wildlife habitat."

Income: $ 3,235 from claims now closed.

ANISS 2, shown below, is devoid of any mineral prospecting. There are mineral claims on several sections bordering the bottom of this tract.

.



Map source: DNR Alaska Mapper with satellite imagery.

ANISS 3

Size: 19,027 acres **Patented to the State**: May 14, 1999

Legal Description: Fairbanks Meridian
Township 18 South, Range 8 East, Sections 1-22, and 27-34
See Mt. Hayes B-5 Quadrangle Map

How to get there: ANISS 3 is in the northern part of the Matanuska-Susitna Borough about 160 miles south of Fairbanks. It is about 12 miles north of the Denali Highway which may be accessed from either the Parks Highway (west) or the Richardson Highway (east). It is northwest of Tangle Lakes.

Mineral leases on 5,040 acres. There are 126 currently active leases in ANISS 3. Sections with active claims in T 18S. R 8E are: 13 (south half), 19 (south half), 27 (south half), 28 (south half), 29 (560 acres), 30, 31, 32, 33, and 34. There are 170 closed mining claims in ANISS 3.

Mineral lease holder: Pure Nickel Inc., 95 Wellington Street West, Suite 900, Toronto, Ontario, Canada. Pure Nickel's MAN Alaska Project encompasses almost 280 square miles in south central Alaska. The ANISS 3 township is near the northwestern edge of this huge leased area.

Pure Nickel bought the MAN Alaska Project leases from Nevada Star Resources in February 2007. Prospecting expenses of $1,461,172 were reported on 1,840 claims in the 12-month period ending September 31, 2008. On November 5, 2008 ITOCHU, a Japanese conglomerate, offered $40 million for 75 percent ownership of Pure Nickel's MAN Alaska Project.

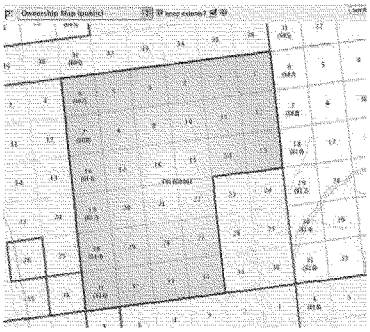
According to a Nevada Star news release dated August 17, 2005, exploration of this large area began in 1995 and findings were characterized by extremely high nickel and gold concentrations in surface samples. More recent exploration results indicate potential for significant discoveries of nickel, platinum-group elements, gold and copper.

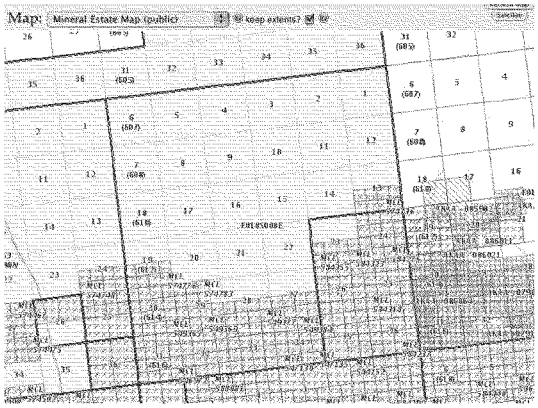
Income from Leasing:

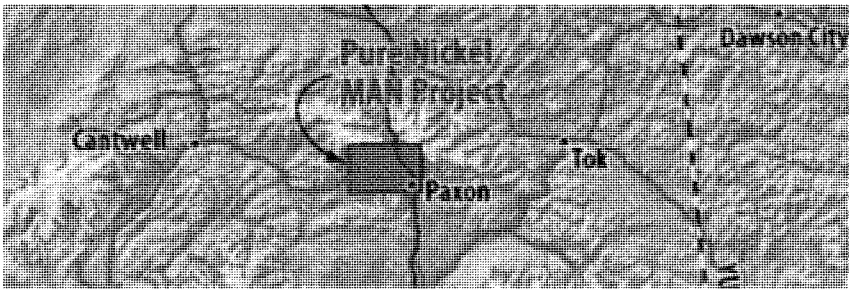
$ 2,424 from closed claims; 2006 or earlier
$ 40,820 from active claims in FY '07 and FY '08
$ 111,750 from all claims since their filings; includes income through FY '08.
(Note: some income may be from leases active prior to May 23, 1994.)

43

ANISS 3 (upper map). **ANISS 3 mineral claims**; blue portion (middle of page). **Pure Nickel MAN Project** location (bottom of page).







ANISS 4

Size: 66.63 acres **Patented to the State:** May 24, 1994

Legal Description: Copper River Meridian
Township 40 South, Range 59 East, Section 16, Lot 2 NW4 NW4.
See USGS Juneau B-6 Quadrangle Map.

How to get there: ANISS 4 is in Southeast Alaska and on the southeast edge of Gustavus just south of the Gustavus Airport. The south and southeastern edge of this tract borders Icy Strait tidal flats. It is about a mile southeast of the Gustauas School of the Chatham REAA District. The Gustavus Rink Trail traverses this tract.

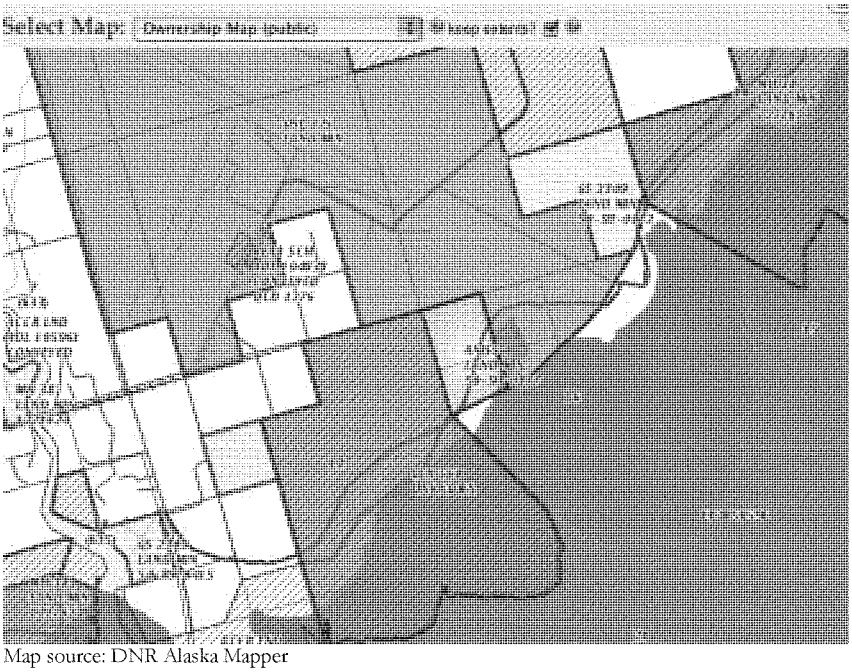
History: On June 27, 1960 the State applied for 168.15 acres of Section 16 (the balance was in the tidal flats and/or under the waters of Icy Strait). This application was rejected by BLM. Eventually 101.5 acres was patented as school trust land and designated as Sch 114.

Later, 66.63 acres of this section adjacent to Sch 114 was reserved by BLM for use of the Civil Aeronautics Administration (now the FAA). This Federal reservation was withdrawn in 1989 and the State applied for a patent as school land. This was rejected. Then, according to the DNR Case File Abstract, the land was to be converted from GS-2309 (General Grant Land) or filed for under Section 906(b) of ANILCA. The ANILCA option was chosen and this small tract, 66.63 acres, became ANISS 4.

ANISS 4 does not meet the criteria for selection as an ANISS property. It appears not to have minerals or other income potential at this time.

Income: None

ANISS 4 is the small light colored rectangle in the center of the map below. Gustavus is to the west. The airport runways are above ANISS 4. Gustavus, directly west of Juneau, is at the entrance to Glacier Bay National Park and Preserve.



Map source: DNR Alaska Mapper

Section Five

The Future

Less than Fair Market Value!

> *"Decision made to issue a .315 lease at less than fair market value due to the fact that the land applied for was "school land."**

*Notation in the DNR case file abstract 6/26/68 regarding lease of public school trust land to the Alaska Department of Transportation for a Fairbanks district depot (South of Airport Way and east of Peger Road). The lease of 34 acres at $40 per year for 55 years was approved.

The lease transaction cited above seems to sum up the attitude that Alaska has taken toward the public school trust land. Certainly no one was "minding the store" when the legislature in 1978 took all the school trust land and made it general grant land. Did anyone consider the trust beneficiaries – the public school students. Did anyone speak for them?

The potential income-producing value of this land, situated as most of it was throughout the populated areas, seemed to have been ignored. Now the land trust is land poor. Can, or should, this situation "be fixed."

Assessing the Situation

Here are the current assets of the Public School Trust:

- 3,010 acres of land patented or confirmed after 1978, although examination will show very little of this is left to produce income for the Fund. Lease income for 2007 and 2008: $ 715 (est).

- 74,930 acres of a new land grant under the Alaska National Interest Land Claims Act; most are large tracts that have some mineral lease income but no producing mines. Lease income for 2007 and 2008: $ 53,320.

- A share of income from the State's general grant lands (.5% of the annual receipts) which amounts to an average of $ 11 million per year; this is credited to the Public School Trust Fund principal. Soon there will be more than 100 million acres of state grant lands.

- A Fund balance on 1/30/09 of $ 318 million which earns, on the average, approximately $12 million per year. This investment income becomes part of the school foundation monies distributed to school districts. Its identity as school trust money is lost.

Isn't Everything O.K.?

So what if the school trust has very little land. And that the school land it has is earning very little. It does have a steady source of other income for the trust fund principal. The investment earnings of the Fund are going to the public schools via the foundation program. Even the litigation has not crippled this process (although several million dollars are being held in escrow pending the outcome of the court case).

What is the matter with that? Does anything need to be fixed?

Yes, Fix It!

"Yes," say several Alaska groups, who contend there are a number of important changes that must be made to enable the school land trust to regain its original purpose and achieve its potential. A "reconstitution" of the Trust is often mentioned as the only sure way to "cure" the breach of the Trust.

The groups are the Alaska Parent Teacher Association, the Alaska Association of School Boards, and the Citizens for the Educational Advancement of Alaska's Children. The PTA and AASB have issued strong resolutions about the trust; these are included in the Appendix.

Some of the changes would require legislative action. Here are a few of the recommended actions and changes proposed by these groups and others:

• *Kasayulie vs. State of Alaska* must be settled. If there must be an appraisal of school land, do it or abort it by mutual agreement of the plaintiffs and the State. (Expense funds for both the State and the plaintiffs to plan the appraisal have already been drawn from the trust fund investment earnings account; this practice can be resumed if there is agreement to conduct the appraisal). Then the long awaited court-specified review of financial management of Fund and land assets can be conducted. The court can then determine the consequences to the State of breaching the trust as well as ordering needed changes.

• There should be reconstitution and active management of the land trust and fund. The nature of this would be determined by additional research and with participation of the beneficiaries or representatives of the beneficiaries. This could call for additional state land to be set aside for public school support. A complete multi-year audit of land and fund management must be conducted. A strong state-level advisory committee must be created. This historic land trust must be allowed to fulfill the purpose for which it was originally created.

• Do not credit the Fund's investment income to the foundation program. The investment earnings must be used in a productive and visible manner by every school in every district. Some alternative uses:

> (1) Use it for local school programs or activities specified by local school advisory committees (district-wide or one for each school). The money would be 'on top' of the regular school budget. Such things as school activities, student travel, or library and media are examples. Distribution to the districts would be on a weighted student basis.
>
> (2) Or the money could be used for a state-wide school construction bond program. Current investment income could easily pay for a $250 million 25-year bond issue.

Diverting the Fund's investment earnings from being put in the foundation program, where it is a very small percent of the total, is crucial to getting the time and support of the groups interesting in "fixing it."

What's Next?

Who can best represent the beneficiaries – the public school students – in this endeavor to restore the Public School Land Trust and Public School Trust Fund to positions of strength and growth? An endeavor which will enable the State to renew the promise it made at Statehood.

Who will spearhead the necessary actions and when will the ongoing modest effort be expanded? Do the current interested parties agree on the desired goals? Are the financial resources available to pay for legal and other expenses which will be required? Are there other agencies with interest and resources which could help?

These challenges must be met if the Public School Trust Land and the Public School Trust Fund are to achieve their potential.

APPENDIX

School Trust Land and Funds

Alaska PTA Resolution

* * * * * * * * *

Reconstitution and Active Management of the Public School Land Trust and Permanent Fund

Alaska Association of School Boards' Resolution

* * * * * * * * *

Partial List of Information Resources
Alaska Public School Land Trust and Fund

School Trust Lands and Funds

Adopted by Alaska PTA Convention, April 29, 2005

Whereas; Early in our nations history the import and support of public education was established by the granting of school trust lands in every state and the establishment of corresponding permanent school funds; and

Whereas; In 1915, 106,000 acres were transferred by the Alaska School Lands Bill to the Alaska Public School Lands Trust in the original school trust land grant; and

Whereas; In 1978, The Alaska State Legislature converted the school trust land to "state lands" to be compensated by .5% of all of the income generated by all general state lands; and

Whereas; The conversion was made without the beneficiaries or representative of the beneficiaries consent; and

Whereas; The income derived from these lands must be used to support the public school children of Alaska as the beneficiaries of the trust; and

Resolved; That Alaska PTA shall provide information to parents, educators, policy makers and the public about school and institutional trust lands and permanent school funds; and be it further

Resolved; That Alaska PTA shall support management of the Alaska Public School Lands Trust that is consistent with legally recognized trust principles of sound financial management to provide maximum benefit to the children in public schools who are the beneficiaries of that trust; and be it further

Resolved; That Alaska PTA supports compensation for unfulfilled legally binding commitments made by state and federal governments to the Alaska Public School Lands Trust; and be it further

Resolved; That Alaska PTA urges state and federal lawmakers to support public schools by ensuring that the historic trusts are allowed to fulfill the purpose for which they were originally created.

Alaska Association of School Boards

Resolutions: FUNDING

2.27 RECONSTITUTION AND ACTIVE MANAGEMENT OF THE PUBLIC SCHOOL LAND TRUST AND PERMANENT FUND

AASB supports additional research into reconstitution of the Alaska Public School Land Trust, active management of the trust and working with Alaska PTA and other educational stakeholders to that end.

Rationale. A promise was made to Alaska public school children on March 4, 1915, when "An Act to reserve lands to the Territory of Alaska for educational uses, and for other purposes," (38 Stat. 1214, Public Law 63-330/Chapter 181, 63 Congress, Session 3) was approved by Congress and signed by President Woodrow Wilson. PL 63-330 requires when federal lands are surveyed, Sections 16 and 36 in each township shall be and were reserved for the support of common schools in Alaska.

Adopted 2007

Partial List of Information Resources

Alaska Public School Land Trust & Fund

March 2009

State Agencies

1. **Alaska Department of Revenue**
   Commissioner Patrick Galvin
   550 W. 7th Ave., Suite 1820, Anchorage, AK 99501
   Treasury Division, Pam Green, Comptroller
   P.O. Box 11405, Juneau, AK 99811-0400
   Investment Policies and Procedures, Version 2.2 Released January 21, 2005
   (Get later edition)
   Section XII C: Public School Trust Fund - Investment Policy Statement
   Available online at http://www.revenue.state.ak.us/treasury/default.asp
An excellent source; besides investment policies it has historical and financial data.

2. **Alaska Department of Natural Resources (DNR)**
   Commissioner Tom Irwin
   400 Willoughby Ave 5th Floor, Juneau AK 99801-1724, or
   550 West 7th Ave, Ste 1400, Anchorage AK 99501-3554
   Fiscal information: Division of Support Services
   Land information: Division of Mining, Land and Water, online at
   http://plats.landrecords.info/index.html
   Select: Research DNR Case Files Land Administration System (LAS)
Case type for the new school land is 113 ANISS, ANILCA School Select, files 1-4.
Case type for former school land is 107 SCH, files 1-232 (need 1999 DNR audit nos.)
Or for sections 16/36 anywhere enter the following abstract information: meridian, township, range, section, and case type.

3. **Alaska Department of Education and Early Development (DEED)**
   Commissioner Larry LeDoux, or Eddie Jeans, School Finance Director
   801 W. 10th St., Ste 200, Juneau AK 99801-1894

4. **Alaska Superior Court, Third Judicial District, Anchorage**
   Judge Mark Rinder
   825 W. 4th Avenue, Anchorage, AK 99501-2004
Judge Rinder is assigned to handle Kasayulie vs. State of Alaska. He succeeds Judge John Reese, who retired in 2004.

5. **Department of Law, Office of the Attorney General**
Labor and State Affairs Section - Anchorage
Brian Bjorkquist, Senior Assistant Attorney General
1031 W. 4th Ave, Ste 200, Anchorage, AK 99501-1994

6. **Public School Fund Advisory Board** (per AS 37.14.120)
c/o Alaska Department of Revenue, Treasury Division
This Board has five members, currently Commissioner of Revenue Patrick Galvin, Commissioner of Education and Early Development Larry LeDoux, and State Board of Education members Phillip Schneider, Patrick Shier, and one to be named.

Other valuable information sources, all accessible via the State of Alaska website, include the Legislative Finance Committee and the Department of Administration, which compiles the Comprehensive Annual Financial Report (available every January).

Plaintiffs and Counsel - *Kasayulie vs. State of Alaska*

7. **Parents**. Willie and Sophie Kasayulie, Akiachak; Paul and Mary Mike, Kotlik; and Arthur and Ruth Heckman, Pilot Station.

8. **School Districts.** Bering Strait S.D., Unalakleet; Iditarod S.D., McGrath; Kashunamut S.D., Chevak; Lower Kuskokwin S.D., Bethel; Lower Yukon S.D., Mountain Village; and Yupiit S.D., Akiachak.

9. **Citizens for the Educational Advancement of Alaska's Children**
CEAAC is a broadly based association of Alaska school districts.
Joe Beckford, President (Superintendent, Aleutian Region Schools)
Spike Jorgenson, Executive Director
c/o Harold Webb Associates Alaska, P.O. Box 132, Tok AK 99780

10. **Counsel.**
Jermain Dunnagan and Owens, P.C.
Attorney Howard S. Trickey
3000A Street, Suite 300, Anchorage, AK 99503

Trust Fund History and Analysis

11. ***The Alaska Public School Fund: A Permanent Fund for Education***, a research paper by E. Dean Coon, University of Alaska Fairbanks, March 1984, 40 pp.

12. ***A Promise to Keep: The Alaska Public School Trust Fund: A History of the Fund - 1985-2004***, a research paper by E. Dean Coon, Anchorage, AK, January 2005, 50 pp.

These papers are in the State Library in Juneau and at Loussac, UAA and UAF. A Promise to Keep may be accessed on the PTA web site. Abstracts of these papers, and copies of the following two documents, are available from the author at dean.ak@gci.net.

13. **Timeline, Alaska School Trust Land and Trust Fund, Major and minor facts and events of the past 90 years, Fall 2005,** by E. Dean Coon. 3 pp.

14. **Partial List of Information Resources, Alaska Public School Land Trust & Fund,** March 2009, by E. Dean Coon. 2 pp.

Advocacy Groups

15. **Alaska Parents and Teachers Association**
President, Al Tamagni
Alaska Public School Land Trust Committee, Suellen Appellof, chair
(past president)
555 West Northern Lights- Ste 204 (or Box 201496)
Anchorage, Alaska 99520-1496

Web site: http://www.alaska.net/~akpta/
Web site: http://www.alaskapublicschoollandtrust.org/

16. **Children's Land Alliance Supporting Schools - CLASS**
675 East 500 South, Suite 340, Salt Lake City, Utah 84102
www.childrenslandalliance.com
CLASS is a 501c 3 beneficiary organization formed in 2001 for the purpose of educating and training education leaders and the public about school trust lands.

Testimony before the U.S. Senate Committee on Energy and Natural Resources

Implementation of the Alaska National Interest Lands Conservation Act of 1980

December 15, 2015

Testimony on behalf of Doyon, Limited

Submitted by James Mery, Senior Vice President, Lands and Natural Resources

Madam Chairman and Members of the Committee, on behalf of Doyon, Limited, thank you for the opportunity to provide testimony to the U.S. Senate Committee on Energy and Natural Resources on the implementation of the Alaska National Interest Lands Conservation Act of 1980 ("ANILCA").

My name is James Mery. I am the Senior Vice President of Lands and Natural Resources of Doyon, Limited.

Doyon is one of thirteen Alaska Native regional corporations established pursuant to the Alaska Native Claims Settlement Act of 1971 ("ANCSA"). Headquartered in Fairbanks, Doyon is the largest private landowner in Alaska, with a land entitlement under ANCSA of more than 12.5 million acres. Doyon's lands extend from the Brooks Range in the north to the Alaska Range in the south. The Alaska-Canada border forms the eastern border and the western portion almost reaches the Norton Sound.

Doyon's mission is to promote the economic and social well-being of our shareholders and future shareholders, to strengthen our Native way of life, and to protect and enhance our land and resources. Voting shares of stock in Doyon originally were issued to 9,061 Alaska Natives who are the indigenous people of the region and whose ancestors inhabited the region for thousands of years. In March 1992, shareholders approved giving stock to Native children born between 1971 and 1992, missed enrollees, and Elders who were age 65 by December 1992. Today, Doyon has more than 19,200 shareholders. We are very proud of our record on behalf of our shareholders.

Doyon, as is the case with other Alaska Native Corporations ("ANCs"), owns lands that now are located within the boundaries of National Wildlife Refuges, National Park System units, and other conservation system units ("CSUs"). In fact, approximately one-third of Doyon's total land allotment—or 3.6 million acres—is located within the boundaries of CSUs. These Native-owned lands are not Federal public lands, are not trust lands, and were not intended to be administered as part of the CSUs. This distinction, in the purpose of land ownership and use, must be understood fully for it governs land management policies and relationships every day.

"ANCSA's legislative history makes clear that Congress contemplated that land granted under ANCSA would be put primarily to three uses—village expansion, subsistence, and capital for economic development. See H.R. Rep. 92-523 at 5, 1971 U.S.C.C.A.N. at 2195. Of these potential uses, Congress clearly expected economic development would be the most significant

. . . ." *Koniag, Inc. v. Koncor Forest Resource*, 39 F.3d 991, 996-97 (9th Cir. 1994). In enacting ANILCA, Congress struck a balance between resource protection and the realization by ANCs of the economic development opportunities that were to be open to them as a fundamental element of ANCSA's settlement of aboriginal land claims. As Congressman Udall further explained: "I want to make clear that inclusion of these Native lands within the boundaries of conservation system units is not intended to affect any rights which the Corporations may have under this act, the Alaska Native Claims Settlement Act, or any other law, or to restrict use of such lands by the owning Corporations nor to subject the Native lands to regulations applicable to the public lands within the specific conservation system unit." 125 Cong. Rec. 9905.

Recognizing and respecting the ANCs' ownership and access rights to ANCSA lands is critical to the ability of Doyon and other ANCs to pursue the economic development of their lands and resources for the economic and social benefit of their Alaska Native and other shareholders, as contemplated by ANCSA. Unfortunately, the manner in which ANILCA and other land management statutes are being implemented in Alaska threatens to diminish the value of the promises made to the Alaska Natives in ANCSA and ANILCA.

ANILCA's Balance Must be Respected

ANILCA was explicitly intended to strike and maintain a balance between conservation and development of lands in Alaska. Although the Act often is mischaracterized, including intentionally by interests opposed to resource use and development in Alaska, section 101(d) of the Act is clear in stating that the 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*." 16 U.S.C. § 3101(d) (emphasis added). Accordingly, in that section, Congress found that "the designation and disposition of the public lands in Alaska pursuant to [ANILCA] . . . represent a proper balance between the preservation of national conservation system units and those public lands necessary and appropriate for intensive use and disposition . . . ." Thus, ANILCA obviated "the need for future legislation designating new conservation system units, new national conservation areas, or new national recreation areas . . . ." The Act, along with other land management statutes, must be implemented accordingly.

Critical to establishing and maintaining this balance is ANILCA's "no more" clause in section 1326. This provision, critical to passage of the Act, expressly and significantly limits the authority of the executive branch to establish or expand conservation areas in Alaska. Despite this and other provisions of ANILCA clearly intended to maintain the balance between conservation and development struck by the Act, through efforts to impose new administrative designations and restrictions, the federal land management agencies have sought to shift this balance in a way that diminishes the availability of lands for use and access necessary for economic development and social needs.

Many large tracts of lands that were selected by Doyon under ANCSA, including lands selected for their mineral or other resource development potential, already are surrounded by CSUs. The Bureau of Land Management ("BLM") is in the process of revising three management plans for huge expanses of land in Alaska, for the Eastern Interior, Central Yukon, and Bering Sea/Western Interior planning areas. Although these planning areas already include various conservation designations pursuant to ANILCA, each of these plans proposes new administrative designations that would shift the balance between conservation and development established by ANILCA and that could impose substantial new restrictions on access to and use of nonfederal land and resources.

As a result of these planning processes, even more Doyon lands could be surrounded by or adjacent to river segments proposed for Wild and Scenic Rivers Act ("WSRA") designation, lands proposed to be maintained for wilderness characteristics, or Areas of Critical Environmental Concern ("ACECs"). Based upon the location of Doyon's lands and the location of resource exploration and development activity on those lands, Doyon anticipates that it ultimately will need to obtain access across certain CSUs in Alaska pursuant to Title XI of ANILCA and across other federal, BLM-managed lands pursuant to ANILCA Section 1323(b). Further enveloping Doyon's lands within Wild and Scenic Rivers, lands to be maintained for wilderness characteristics, and/or ACECs would further complicate access to and use of Doyon lands, and could prevent Doyon and its shareholders from fully realizing the economic and other benefits that Congress intended they would enjoy as a result of ANCSA's settlement of aboriginal land claims.

Recent agency and court actions threaten to further upset ANILCA's balance and to further diminish the value of the promises of ANCSA and ANILCA to Alaska Natives. Congress included section 103(c) of ANILCA, 16 U.S.C. § 3103(c), in order to make clear that the location of ANCSA lands within the boundaries of a CSU would not "restrict use of such lands by the owning Corporations," 125 Cong. Rec. 9905 (1979), or make them "subject to *any* of the laws or regulations that pertain to U.S. public lands" or "controlled by *any* of the public land laws of the United States," *id.* at 11158 (emphasis added). It did so based upon the recognition that regulation of such private lands would be incompatible with the economic development activities that Congress contemplated in ANCSA for the benefit of Alaska Natives.

Despite the clear intent of this provision, the Ninth Circuit *Sturgeon v. Masica* decision now before the U.S. Supreme Court adopts an entirely contrary interpretation and if permitted to stand, would allow the National Park Service ("NPS") and other land management agencies to enforce their regulations on ANC lands and waters within CSUs. In its brief opposing *certiorari*, the United States sought to narrow the significance of the Ninth Circuit's decision to the enforceability of NPS regulations on navigable waters (the actual matter in dispute) and to reassure the Court that the Ninth Circuit's holding would not broadly authorize regulation of ANC-owned lands within the boundaries of CSUs, that to do so would require a dramatic shift in policy "under the application of stringent criteria that the NPS has almost never invoked," and

that the Native amici simply "misunderstand[] both the NPS's regulations and the decision below."

Remarkably, however, mere months after making these statements, NPS published a proposed rule to revise its regulations governing nonfederal oil and gas activity, in which NPS proposed to do exactly what it said it would not—i.e., to assert jurisdiction and control over activities on ANCSA lands within the boundaries of a National Park System unit. Despite section 103(c) of ANILCA, the revised regulations are proposed to apply to "all operators conducting non-federal oil or gas operations on lands or waters within an NPS unit, regardless of the ownership or jurisdictional status of those lands or waters." 80 Fed. Reg. 65571, 65591 (Oct. 26, 2015). Citing the Ninth Circuit decision, the proposed rule states:

> We also note that because these regulations are generally applicable to NPS units nationwide and to nonfederal interests in those units, they are not "applicable solely to public lands within [units established under ANILCA]," and thus are not affected by section 103(c) of ANILCA. *See Sturgeon v. Masica*, 768 F.3d 1066, 1077–78 (9th Cir. 2014).

80 Fed. Reg. at 65573. It appears, therefore, that NPS fully intends, for the first time, to exercise authority over nonfederal oil and gas activities on Alaska Native lands within the exterior boundaries of National Park System units in Alaska.

These regulations can have a significant negative impact on the achievement of the economic development purposes of ANCSA. As but one example, Doyon owns approximately 206,000 acres (320 square miles) of ANCSA lands in the Kandik Basin area of the Yukon-Charley Rivers National Preserve that Doyon selected because of its potential for the discovery of oil and gas. Doyon selected and was conveyed this land before enactment of ANILCA. Under the NPS regulations and the Ninth Circuit's decision, Doyon's development of these lands will now be subject to NPS permission.

The potential absurdities created by the Ninth Circuit's decision are also deeply concerning. If the decision is allowed to stand, activities on private inholdings within the exterior boundaries of CSUs in Alaska would be subject to federal regulation by federal land management agencies under their general nationwide requirements, but not to local regulations adopted specifically to reflect the realities of the unique statutory framework governing land and resource use and access in Alaska. Moreover, agencies could render section 103(c) meaningless simply by adopting nationwide regulations.

In sum, section 103(c) is being interpreted in a manner that diminishes the promise made to Alaska Natives in ANCSA that ANCSA lands would be available for economic development and other purposes, for the benefit of Alaska Natives. Congress and the courts should not permit the erosion of the value of the ANCSA settlement by allowing federal agencies authority to control the use of ANCSA lands in a manner that so directly contradicts the intent of ANSCA and ANILCA.

ANILCA's Access Provisions Must be Implemented in a Manner that Allows ANCs to Realize the Economic and Other Values of Their Lands and Resources

Congress enacted ANILCA to protect Alaska's natural resources and ensure economic development opportunities for Alaska Natives and other private landowners in the State. ANILCA included unique and specific provisions to guarantee that such landowners would have reasonable access to inholdings within or effectively surrounded by one or more CSUs, national recreation areas, national conservation areas, or areas of public lands designated as wilderness study so that they could make economic and other use of their property. For instance, section 1110(b)—intended to ensure that inholders not be denied the economic benefit of their land ownership—guarantees "adequate and feasible" access to privately-owned lands (*i.e.*, inholdings) within or effectively surrounded by CSUs. Section 1111 provides for temporary access across CSUs for private land owners for exploratory or similar purposes. Title XI of the Act further established a specific set of procedures for federal agencies to follow when processing applications for "transportation or utility systems" in Alaska when any portion of the route of the system will be within a CSU. Recognizing that "the existing authorities to approve or disapprove applications for transportation and utility systems through public lands in Alaska are diverse, dissimilar, and, in some cases, absent," Congress sought to establish in ANILCA "a single comprehensive statutory authority for the approval or disapproval of applications for such systems." 16 U.S.C. § 3161. Finally, Section 1323(b) guarantees access to inholdings across general (non-CSU) BLM-managed public lands. Each of these access provisions is critical to ensuring that ANCs have the opportunity to realize the economic benefit of the land interests they obtained pursuant to ANCSA in order to provide for their shareholders.

ANILCA's access provisions must be implemented in a manner that ensures and provides meaningful access, as intended by Congress. Unfortunately, it is not uncommon for federal agencies to fail to even note the existence of these provisions when they propose to take action that could impact access to private lands in Alaska. Federal agencies, recently supported by certain court decisions, are considering or have taken other actions—through land management planning processes and extension of regulatory restrictions to private lands—that could compromise access to private inholdings in Alaska. Federal agencies should not be permitted to effectively block or unreasonably restrict access to inholdings held by Doyon and other private landowners—whether through land management decisions, the application of regulations that should be applicable only to federal lands, or otherwise.

Appropriate Implementation Requires Both Understanding and Consultation

Appropriate implementation of ANILCA requires both a consistent and accurate understanding of the Act and its context, as well as meaningful engagement with the Alaska Natives whose interests it was intended to protect.

The passage of time and staffing turnovers since the enactment of ANILCA thirty-five years ago have contributed to a loss of institutional knowledge that appears ever more

apparent in land and resource management planning and decisionmaking processes as the years pass. The change in the level of understanding is deeply troubling and has come to affect land management and federal-Native landowner relationships in significantly negative ways. More and more, the unique statutory framework created under ANCSA and ANILCA is ignored or misunderstood by the executive branch and federal agencies in the development or modification of regulations and policies. Training and guidance are essential to making sure that the policies and obligations that ANILCA established are fully and consistently adhered to as federal agencies engage in these activities.

Meaningful consultation with ANCs also is essential, but often lacking. Unfortunately, in addressing their consultation obligations, federal agencies often either disregard their specific consultation obligations to ANCs, or offer opportunities that seem more like a "check the box" effort than opportunities for meaningful sharing and consideration of ideas and concerns. In Executive Order ("EO") 13175, *Consultation and Coordination with Indian Tribal Governments*, the President required federal agencies to implement an effective process to ensure meaningful and timely consultation with tribes during the development of policies or projects that may have tribal implications. Such consultation is intended to assure meaningful tribal participation in planning and decision making processes for actions with the potential to affect tribal interests. Although EO 13175 itself applies specifically to federally-recognized tribal governments, pursuant to Pub. L. 108-199, 118 Stat. 452, as amended by Pub. L. 108-447, 118 Stat. 3267, Congress specifically extended these obligations to Alaska Native corporations, requiring the Office of Management and Budget ("OMB") and all Federal agencies to "consult with Alaska Native corporations on the same basis as Indian tribes under Executive Order No. 13175."

In accordance with this mandate, the Department of the Interior's 2012 Policy on Consultation with ANCSA Corporations purports to "recognize[] and respect[] the distinct, unique, and individual cultural traditions and values of Alaska Native peoples and the statutory relationship between ANCSA Corporations and the Federal Government." In recognition that "Federal consultation conducted in a meaningful and good-faith manner further facilitates effective Department operations and governance practices," it further commits that the Department will "identify consulting parties early in the planning process and provide a meaningful opportunity for ANCSA Corporations to participate in the consultation policy." However, in reality, such a meaningful opportunity often is not provided.

In addition to local and regional actions, even Federal agency actions proposed or taken on a nationwide basis can and do have a substantial and direct impact on ANCs and other Alaska Native entities. For instance, NPS's and the U.S. Fish and Wildlife Service's ("USFWS's") rulemaking processes relating to nonfederal oil and gas development within the boundaries of National Park units and on lands and waters of the National Wildlife Refuge System raise important issues with regard to oil and gas development on lands conveyed to ANCs pursuant to ANCSA. Among other things, USFWS policies and actions relating to management of the

National Wildlife Refuge System, implementation of the Endangered Species Act, and other matters within the purview of the USFWS also can and do impact the interests of ANCs and other Alaska Native entities.

Doyon cannot overstate the importance of federal agencies' obligation to consult with ANCs under Executive Order 13175, as specifically extended to the ANCs by Congress. It is absolutely critical that ANCs be provided the opportunity to meaningfully participate in the development and implementation of policies that could impact our ability to fulfill the purposes for which we were established under ANCSA and to protect and advance the economic, social, and cultural interests of our shareholders—and that agencies provide such an opportunity when an ANC requests it. Such consultation must happen as a matter of course, preferably at the initiative of the agencies but also whenever requested by tribes and ANCs. It must happen early on in the process, when there is still an opportunity to incorporate ideas and/or address concerns. And it must be more than a one-way notification and briefing by agencies.

Conclusion

Thank you for the opportunity to provide testimony for the record before this hearing. The implementation of ANILCA, along with the other statutes that govern land and resource use and management in Alaska, is of critical importance to Doyon and the other ANCs. Implementation of the Act in accordance with its full stated purpose will help enable Doyon and the other ANCs to promote economic growth and development in Alaska and to meet the economic and social needs of the State of Alaska and its people. We appreciate the Committee's efforts to bring attention to these important issues, and we would be pleased to address any questions or follow-up that the Members of the Committee may have.

Fortymile Mining District
P.O. Box 4
Chicken, Alaska 99732

November 30, 2015

Honorable Senator Lisa Murkowski,

RE: Fortymile Mining District testimony before the Committee on Energy and Natural Resources on the implementation ANILCA.

The Fortymile Mining District submits the following testimony on the implementation of ANILCA for the Committee on Energy and Natural Resources.

The Fortymile Mining District believes that the Bureau of Land Management (BLM) is managing Federal lands in the District contrary to the specific intent of ANILCA.

BLM has implemented policy, or intends to adopt policy, that is in direct violation to ANILCA. The following are a few examples of ANILCA violations;

Management plans:

ANILCA required Federal land managers to develop a detailed Development and Management Plan for EACH CSU created by ANILCA.
The Fortymile River Management Plan was created on this direction. This plan was the basis for miners in the Fortymile Mining District to decide whether or not, to invest their time and money developing mineral property. (BLM has yet to fully recognize, and implement this current plan).
BLM has moved to replace our existing Management plan and to create a new plan that would cover the entire Eastern Interior of Alaska !
The Fortymile Mining District has strongly opposed this concept, and has had many meetings on all levels, including a meeting on May 29, 2015 in Chicken, AK with the BLM Alaska State Director, Mr. Bud Cribley, and National Director of BLM Mr. Neil Kornze. They seemed to care little that this proposed plan is contrary to and a direct violation of existing law. (ANILCA).
The Fortymile Mining District believes that Congress must insist that BLM follow the law, and leave in place our current Management Plan that was required by ANILCA.

We have asked BLM repeatedly to show cause for replacing the existing plan, yet BLM has not been able to do so. The District has offered and will work with BLM to make any modifications to our existing, original plan, in any areas shown to need modification.

PRIOR EXISTING RIGHTS;

The Bureau of Land Management is still ignoring ANILCA's requirement that the withdrawals associated with ANILCA are SUBJECT TO VALID EXISTING RIGHTS.
Under the mining laws, a mineral claim that has a discovery (prudent man test) and has been staked and recorded according to law, is a perfected mining claim and the owner of such a claim prior to ANILCA has PRIOR VALID EXISTING RIGHTS.
BLM's position is that unless they conduct a mineral exam or validity exam, as in a miner applying to patent, or the Government seeking to contest the claims, that there are no prior valid existing rights. We believe this is incorrect and shows BLM has very limited knowledge of mining law, and no regard for ANILCA.
Miners in the Fortymile Mining District have been denied our prior valid existing rights. We continue to be told we are part of any withdrawal. This position by BLM has led to many compliance issues, hardships and mismanagement by the agency!

Once again, the District believes Congress must force the Bureau of Land Management to follow existing law. Forbid them from setting a policy based on BLM's redefining the requirements and allow us our Prior Existing Rights according to law.

Sincerely,
Dick Hammond- President
Fortymile Mining District - Alaska

Please add my comments to the Committee Hearing on the Alaska National Interest Lands Conservation Act.

My name is Wayne Heimer. My address is 1098 Chena Pump Road, Fairbanks, Alaska 99709. I have lived in Alaska for 48 years. This means I was here prior to oil discovery/development, ANCSA, and ANILCA. My career work was in Dall sheep for the Alaska Department of Fish and Game. Dall sheep habitat was at the center of the ANILCA negotiations, so I was thrust into that issue from it's very beginning. I spent the last five years of my 25-year career at ADF&G involved in the dispute over wildlife management between the State of Alaska and the Department of the Interior.

Here's what I have to say today:

1. ANILCA began as House Resolution #39. That resolution included a race-based preference for Alaska Natives. When it got to the Senate, Alaska's senior senator, Ted Stevens, noted it was 1969, and that race-based preference was unacceptable. "Race" was replaced with "residence." Of course, "preference" is the lighter side of "discrimination;" and "residence" is no less discriminatory than "race." Reference to the civil rights statement on any federal document will highlight this hypocrisy.

2. Nevertheless, even though the State of Alaska had established a "subsistence preference" (ANILCA referred to it as a necessary "law of general applicability') to forestall federal intervention in fisheries and wildlife management; the state law was equivalent to ANILCA Title VIII) the feds intervened.

3. Alaska's subsistence law was challenged, and found, by the Alaska Supreme Court to define all Alaskans as "subsistence users." When this happened, the feds insisted that "residence" (rather than race) HAD to a be the litmus test of "general applicability." When they couldn't bully Alaska's legislature into changing our Alaska Constitution, the feds said they were "forced" to take over management of subsistence on federal lands, and some waters. This was a functionally unnecessary construct.

3. The feds did this via the federal rulemaking process, which gives the greatest unchecked power to federal bureaucrats, and essentially "freezes" the Alaska public out of decisions made by federal system insiders.

4. Using federal rulemaking, the feds have usurped management of Alaska's fisheries and wildlife.

5. Their latest gambit is to claim that the 100-year-old National Park Service Organic Act gives them powers in Alaska which were clearly revoked by ANILCA.

6. This has got to stop.

I suggest that one solution would be to amend the Environmental Policy Act to require an "impact statement" (because federal actions via rulemaking have significant impacts in Alaska) prior to publication of any final rule in the Congressional Record. The present "compendium/comment/publication" process is simply inadequate to keep silliness like the "organic act" baloney from causing more trouble than it's worth.

Attached is a paper I wrote on the subject for a state-sponsored conference on this silliness a couple years ago. Please add it to the comments.

Thank you, and best regards of the season,

Wayne E. Heimer
1098 Chena Pump Road
Fairbanks, Alaska 99709

CACFA SUMMIT (4th Try)

FEDERAL OVERREACH IN RESOURCE MANAGEMENT IN ALASKA 2013: SUGGESTIONS FROM THE OUTSIDE

by
Wayne E. Heimer

for the **ALASKA WILDLIFE CONSERVATION ASSOCIATION**
updated April 2014

I have some difficult things to say to my friends and fellow Alaskans. My perspective is that of a wildlife manager who "saw it coming," participated in it professionally, experienced it personally as both a "preferred" and "discriminated against" user, and has been watching, thinking, and praying about it from the private sector for 16 years. I shall try not to be harsh, but some words I have may be hard to hear.

We're in a mess. We're in this mess because we have a dual management system where the coerced partners do not agree on the definition of management. Furthermore, the federal side of this duality has abandoned the traditional functional state/federal partnership which has served wildlife restoration so well for most of a century. If we are to reestablish the traditional, constitutionally-appropriate relationship between Alaskans and the federal government with respect to wildlife (and other natural resource) management, we'll have to change the way we've been thinking for the last thirty three years.

The traditional relationship between the states, the people, and the federal government was inferred from simple reading of the 14th Amendment to the US Constitution. Plainly read, the 14th Amendment says that powers *not specifically granted to the federal government by the US Constitution* AS WELL AS powers the US Constitution does *not specifically withhold from the states* belong to the States and the people. The power to manage wildlife was never specifically granted to the federal government by the US Constitution. Neither was it ever constitutionally withheld from the state. Consequently, it must remain a state prerogative despite congressional actions to appropriate it to the federal government.

As you have heard, in Alaska's statehood agreement, management of fish and wildlife was specifically granted to Alaska as a responsibility of statehood. Reinvigoration of this tradition will require federal appreciation of and assent to the fact that Alaska owns and must manage Alaska's/Alaskans' wildlife wherever it happens to be. Traditionally, when wildlife happened to be standing on federal lands, the feds managed the habitat, but the wildlife management prerogatives (including allocation of harvests) remained with the state. That model persisted throughout the United States from the invention of wildlife management as funded and practiced in the USA till about 30 years ago. It was a marvelous success.

The functional relationship between the states and the federal government began to erode with the advent of the "environmental movement," which established a beachhead for the viewpoint that any intervention in (or management of) "Nature" was bad. "**Management,**" whether in the fields of business, finance, human resources, or wildlife, **always involves altering established**

situations to produce pre-defined benefits. Where Alaska wildlife is concerned, this means that managers are statutorily directed to "manage, maintain, protect, enhance, and expand wildlife resources in the interests of the economy and general well-being of the state (paraphrase from AS 16. 05.020(2) -- Functions of the ADF&G Commissioner). Those are Alaska's pre-defined benefits. The politically influential environmentalist philosophy is in obvious conflict with the Alaska's Constitutional and Statutory mandates to manage.

The reason we are here trying to cope with Federal overreach is that 33 years ago Congress, presumably acting as the agent of the American people, passed ANILCA. Historically, ANILCA was an outgrowth of ANCSA. The short ANCSA pre-history is that not everyone thought building the pipeline as quickly as possible was a good idea. "Environmental preservationists," opposed it "on principle," and Alaska Native interests came to see it as a way to leverage settlement of their long-languishing aboriginal land claims. In the end, the "environmentalists" aligned themselves with Alaska Native Interests, to hold up oil development till both sides got what they wanted. Because of their convergent interests, environmental protection interests got "(d)(2)" into ANCSA, and Alaska Native interests got Title VIII into ANILCA. That's the "subsistence section" of ANILCA where I allege the federal overreach into the state's right/responsibility to manage wildlife began.

ANILCA in general is a land designation law. It says which lands shall go into federal conservation system units, and offers a rationale (valid or not) for each unit. "Subsistence" is generally included. Additionally, there's Title VIII, the "federal subsistence law." As interpreted by the overreach-prone feds, this section of ANILCA wrested Alaska's duty to provide (i.e. to actually perform management so allocation becomes possible) for the pre-defined benefit of the economy and general well being of Alaskans, the production and provision to harvest wild food, from Alaska, and vested the allocation function in the federal government. The rationale for this change was the Alaska Native charge that the state had not provided for "subsistence."

The federal justification for this usurpation of state responsibility ultimately came down to the federal insistence that Alaska provide a preference for "rural residents" as a special class. This was an entirely "letter of the law" semantic rationalization by the feds, and really had nothing to do with providing food to Native and non-Native rural Alaskans. In a game of bureaucratic "chicken," the feds tried to force Alaska to alter its constitution to allow discrimination on the basis of residence location. Alaska refused to change to a discrimination-allowing constitution, so the feds said they "had to take over subsistence management on the federal public lands in Alaska." However, the feds confused "allocation" with "management." The two are not the same. "Management" is what you do to provide a harvestable surplus to allocate. Allocation is the end product of successful management.

Even as interpreted by the feds, ANILCA did not totally remove wildlife management from Alaska, only allocation (which the feds confused with management) for rural residents (subsistence) on federal lands. **Hence, a "dual management" system was created.** The unwilling partners in this dual management system have always had opposite views of what "management" actually is. This disagreement was clear from the outset, but the concept upon which "dual management" was developed was that the State and the Feds could manage

cooperatively to allocate subsistence harvests until the courts sorted out the legalities of ownership and management responsibility. The assumption that "the courts would settle it" was incorrect.

Administrations which had brokered or exploited the dual management system for political purposes never quite got around to taking the issue to the courts. About a dozen years after ANILCA passage, the Hickel administration did so. At the outset of this litigation, the basic assumption was that an issue as fundamental as Congress granting the federal government powers reserved for the States and the people by the US Constitution would ultimately be resolved by the US Supreme Court. That never happened because newly-elected Governor Tony Knowles withdrew the Hickel suit with prejudice (thus keeping a campaign promise to Alaska Native interests) just two days before it was to be argued before the 9th Circuit Court of Appeals.

> [Author's Note: Governors may take constitutional issues directly to the US Supreme Court. Governor Knowles did this once over Alaska's title to offshore waters related to the Tongass National Forest. I presume any Alaska Governor could do the same with the issues of federal overreach regarding wildlife management as per the earlier discussion of the 14th Amendment. WEH]

We've been living with dual management ever since, and it isn't working. Even given the ceremonial mechanics of the dual management process, the promise of actual subsistence benefits to Alaska Natives has been broken. In confusing allocation with actual management, the federal system has provided little to nothing that actually maintains practical sustenance for rural residents. In general, all the feds have provided is "peace of mind" by offering longer seasons (sometimes at the risk of population welfare), more liberal methods and means (where they did not conflict with park or refuge "values"), and larger bag limits (also at the risk of population welfare). The feds have done nothing to actually manage (i.e. maintain, protect, enhance, or expand) the populations from which they allocate, sometimes foolishly, "harvest opportunities" to federally-recognized users.

Exclusion of "non rural" Alaskans through application of a changing, a mongrel definition of what a "rural resident" is (a primarily paper preference) is about all the federal program has achieved. The feds have orchestrated this "paper preference" through the machinations of their Federal Subsistence Board, a collection of upper level federal bureaucrats who are apparently more interested in agency policies, "values," and land control than in actual provision of wild foods for rural residents. The fiscal costs (which benefit the Alaskan economy significantly because lots of federal employees work in the subsistence industry) have been immense, but the actual benefits to subsistence users have been insignificant.

Sadly, the most significant product of dual management for subsistence, the vehicle for federal overreach, has been division among Alaskans. I suggest this federal interruption of the primal relationship of both Native and non-Native Alaskans with land is a fundamental factor in the "rural-urban divide" we hear worried over but never resolved by conventional measures.

Thus, Alaskans have a choice. We can either continue with the presently existing dysfunctional, antagonistic relationship, and ineffectual paper preference purporting to provide an ethereal benefit to "rural residents," OR we can take the steps necessary to reestablish the traditionally

harmonious and effective management relationship between Alaskans and the land in which they live. This will require getting the feds out of wild resource management. If, as I argue, federal division of Alaskans by residence is a significant cause of disharmony, the solution would seem to be restoration of the traditional constitutional/statutory relationship between resource owner/managers and the habitat-owning feds. If the feds would re-assume their traditional role with respect to the state's management prerogatives, there could be hope for functional interagency cooperation. There would also be hope for unity among Alaskans. Unfortunately, it appears the feds will have to be forced to re-embrace their traditional functional role. We have to start somewhere.

IF Alaskans should decide against a divided citizenry resulting from dual management, where some have a perceived preference which amounts to real discrimination against others, **we must change our existing thinking.** Realistically, we must understand several things:

Item #1: The issue will never be decided in Alaska's favor in Federal District or Appeals Courts (*see Appendix B for details*).

Item #2: This means Alaska will have to go for the legislative fix. (*see Appendix B for details*)

Item #3: We all realize this legislative repair will never happen unless Alaskan Native interests support it (see *Appendix B for details*).

Item #4: It is highly unlikely the federal government will ever grant full tribal sovereignty to Alaskan Natives. The federal land managers won't even recognize state sovereignty as described in the US Constitution.

In Summary: Our opportunities for legislative relief fall squarely on Alaska's congressional delegation. That is (by order of seniority), Don Young, Lisa Murkowski, and Mark Begich will have to make this happen or nothing will change. There are, however, several things which we can do independent of the congressional delegation.

SUGGESTIONS FOR SOLUTIONS

FOR ALASKA'S CONGRESSIONAL DELEGATION:

1. Introduce clarifying legislation that reestablishes and codifies the authority for resident wildlife management with Alaska. It wouldn't hurt if thiswere done nationwide, but Alaska is our interest here.

2. De-fund the federal agency Landscape Land Conservation program which is creeping into Alaska via ADF&G. This program, which allows federal "management" of non-federal lands, may have a place in eco-fractured states, but Alaska is the last place it is actually needed.

3. De-fund wasteful federal agency spending which establishes elaborate visitor facilities and headquarters buildings where there aren't really significant visitors. National Parks where there *are* visitors could use the money rather than building an infrastructure to support visitors to Alaska's remote parks that may never occur. This is a luxury item in government we cannot afford at this time.

4. Don't be afraid to make specific relief ameudments relative to federal overreach in Alaska. Sen. Stevens always said we can't do this, but ANILCA has undergone many such special interest amendments in the past. How about a special interest amendment for all Alaskans?

TO GOVERNOR PARNELL:

Exercise your privilege as Alaska's Governor to take the constitutional issues relating to federal overreach directly to the US Supreme Court. Tony Knowles did it one time. We may not need "the perfect case" to shepherd through the federal courts with all the hazards that lie with them. The constitutional issue may be sufficient. Please look into this option and get back to Alaskans with the result. (*see APPENDIX A for details*)

TO THE ALAKSA LEGISLATURE:

1. Reclaim and assert your policy making authority. *(see APPENDIX B for details)*

2. Instruct our congressional delegation to reestablish a functional relationship between the State of Alaska federal agencies. The traditional relationship defined earlier worked well for a long time.

3. Introduce legislation to establish co-equal management with Alaska Native tribes on Corporation lands. *(see APPENDIX B for details)*

4. Readjust the mission of the ADF&G Subsistence Division you created it in an unsuccessful effort to preclude federal takeover of subsistence management. *(see APPENDIX B for details)*

5. Consider litigation with the feds to reclaim revenues lost to the state through federal overreach.

TO ALASKA NATIVE INTERESTS:

PLEASE UNDERSTAND YOU HOLD THE VETO POWER OVER REINING IN FEDERAL OVERREACH IN WILDLIFE MANAGEMENT. SO:

1. Please consider the possibility that the feds are not your friends. If ceremonial recognition of the Alaska Native lifestyle is more important than actual food gathering, the Federal Subsistence Board is a logical choice. However, if Alaska Natives want more than "opportunity" to live off the land, actual management is necessary. The feds are not willing to

actually take a significant management action to increase food production. (see Unimak Island and recall the AVCP recommendation for predator control on federal lands and what that request produced) *(see APPENDIX D for details)*

2. Be open to supporting suggestions to the Alaska Legislature (*Appendix B*).

3. Consider the benefits of trading co-equal sovereignty (with respect to wildlife management in all its forms on Corporation lands) for elimination of the federally-recognized rural resident preference on federal lands. *(see APPENDIX C #3)*

TO THE ALASKA DEPARTMENT OF FISH AND GAME:

1. Stop cooperating with the feds. *(see APPENDIX B for details)*

2. Open your minds to consideration and support of suggestions to Alaska Legislature *(see APPENDIX C for details)*

3. Tell the Federal Subsistence Board "Thanks, but no thanks." Share that perspective with the Alaska Board of Game.

FOR STATE'S RIGHTS AND "EQUALITY" ADVOCATES:

1. Open your minds to the realization the federal courts won't provide relief ***(Appendix B #2)***

2. Open your minds to exchanging co-equal management on Alaska Native lands for equality of access on federal lands. *(see APPENDIX C #3)*

3. Open your minds to consideration and support of suggestions to Alaska Legislature *(see APPENDIX B for details)*

FOR CACFA:

1. Stop politely responding to the federal agency bureaucrats who are ruining our lives and "playing their game." Dealing with the NPS "compendium process," the federal agency land plans, and all the other things which consume your time is approximately as effective as the state's longer-term attempts to reason with the Federal Subsistence Board. Overall, our success in making changes is less than 5%, and significant changes are virtually unheard of. Ritual combat with the federal "overreachers" has gotten us virtually nowhere in three decades.

2. Continue to listen to Alaskans, while expanding your services more aggressively. There is a lot to be said, but Alaskans old enough to know the score are wearing out. Involve Native Interests in projects like this one in the future.

3. Be more assertive in offering direct suggestions to the legislature.

4. Be open to evaluating and forwarding new approaches to the federal overreach problem, particularly the necessary legislative fixes and "direct action" options.

APPENDIX SERIES

APPENDIX A: SUGGESTION FOR GOVERNOR PARNELL:

Exercise your privilege as Alaska's Governor to take the constitutional issues relating to federal overreach directly to the US Supreme Court. Tony Knowles did it one time. We may not need "the perfect case" to shepherd through the federal courts with all the hazards that lie with them. The constitutional issue may be sufficient. Please look into this option and get back to Alaskans with the result.

APPENDIX B: REALITY CHECK

Item #1: The issue of federal overreach will never be decided in Alaska's favor in Federal District or Appeals Courts. These courts are oriented to protect federal interests in interpretation of federal law. This issue is larger than that.

> Governors may take constitutional issues directly to the US Supreme Court. Governor Knowles did this once over Alaska's title to offshore waters related to the Tongass National Forest (a commercial fishing issue). If there is any hope for a decision, the constitutional issue must go directly to the Supreme Court. The court's recent rejection of the navigable water issue (whether navigable water flowing through parks is federal public land) illustrates the reluctance of the court to address this issue.. I presume any Alaska Governor could do the same with issues larger than commercial fishing interests.

Item #2: The legislative fix.

When the courts will not grant relief (and the federal courts where this would have to be decided see things through the lens of federal statute), it is appropriate for the citizenry to demand their representatives provide them relief by changing the law. If Alaskans can agree to stop federal overreach, our Congressional delegation will have to act to put the feds in their appropriate "14th Amendment" place. **That means that Don, Lisa, Mark will actually have to draft legislation and get it passed to solve the problem.**

> This will require unusual courage because it may well result in cutting the federal payroll in Alaska. Hence, Don, Lisa, and Mark, will have to decide what price to put on healing the "rural/urban divide" created by ANILCA.

My preference is legislation that codifies the sole management responsibility/authority in Alaska as lying exclusively with the state. This would amount to an Alaska-specific amendment to ANILCA—rather like a Tongass/Regional Corporation land trade.

Item #3: Nothing will happen without Alaska Native interest support.

I suggest that it's time Alaska Native leadership takes a critical look at federal subsistence management. I suggest such an analysis will reveal it has provided insufficient actual yield of food for the costs in money and Alaska Native dignity.

Item #4: If the overreaching feds won't recognize the existing constitutional and statutory sovereignty of the State of Alaska, what hope is there for Native Sovereignty given the nature of the Alaska Native Claims Settlement Act (and the US Supreme Court decision in the Venetie case)?

When a people who desire recognition as actual sovereigns are reduced to petitioning a bunch of federal bureaucrats (the Federal Subsistence Board) for extension of federal largesse for traditional practices, subjugation, not sovereignty, is the actual result.

I respectfully suggest that if Alaska Native leadership is looking toward actual subsistence benefits for those they lead, the more certain bet is with the State of Alaska, which is mandated to produce abundant wildlife for human use. The feds have other "park and refuge values" which the feds have made very clear are in conflict with the state's responsibilities as managers, and trump even the text and intent of ANILCA. If you desire a recent example, look toward Unimak Island.

APPENDIX C: SUGGESTIONS TO THE LEGISLATURE

1. Reclaim and assert your policy-making authority.

Alaska's Constitution (Article VIII Section 1 . Statement of policy) defines Alaska's policy as making resources maximally available for use consistent with the [Alaskan] public interest. Section 2. places the authority to implement this policy exclusively in the Legislative Branch of government. Under dual management, Alaska is constrained from asserting its management imperatives by cooperative agreements and memoranda of understanding with the feds. In the main, these agreements have been primarily executed by the Executive Branch of our government. Many of these agreements (which have never been reviewed or approved by the legislature) are contrary to our constitutionally-established policy.

I suggest the legislature summarily abrogate all memoranda of understanding and cooperative agreements with federal agencies relating to management and allocation of

Alaska's wildlife. These agreements amount to "gentlemen's agreements" with folks who have manifestly failed to behave in a gentlemanly manner.

> Ungentlemanly behavior has recently increased through the citation of "organic acts" by the more progressive federal agency thinkers. These folks claim that protections for the State of Alaska written into ANILCA are irrelevant because of federal agency "organic acts." Effectively this argues that Congress can act outside of the US Constitution's 14th amendment to grant powers reserved for the states and the people to federal bureaucracies.

I suggest that any necessary cooperative agreements with the feds, those which will assist Alaska with its constitutional management responsibilities, be reviewed and reestablished via proper legislative mechanisms.

2. Instruct our congressional delegation to reestablish a functional relationship with the federal agencies. That means to put these federal agencies in their proper functional and traditional place.

Our previous congressional delegations have brought Alaska no relief from the arrogant, unconstitutional overreach by the federal bureaucracies. Maybe, if instructed by the legislature, our present delegation will find the time/courage to introduce clarifying legislation, even if they won't amend ANILCA other than for special economic interests (i.e. Regional Native Corporations).

> My recommendation is clarifying legislation that codifies the sole wildlife management responsibility/authority in Alaska as lying exclusively with the state.
>
> > This would amount to Alaska-specific legislation, perhaps analogous to amending ANILCA—rather like a Tongass/Regional Corporation land trade.

3. Introduce legislation to establish co-equal management with Alaska Native tribes on Native Corporation lands.

One essential element of the understandable quest of Alaska Natives for recognition as sovereign has always involved management (including allocation) of wildlife on Native lands. I suggest it is time that the State of Alaska and the tribes cooperate to share the management/allocation element of sovereignty. The end result of the consistent squabble over who the manager is has resulted in loss of sovereignty and dignity for *both* the state and Alaska Natives. While we've wrestled over who would exercise this essential element of sovereignty, the feds have stripped it from both of us through the magic of federal rulemaking.

Simply put, co-equal management with Alaska Natives on Native Corporation lands means that both entities participate equally in all aspects of management. Those aspects span the entire spectrum of management (intervention to produce a pre-defined result) from both entities

agreeing on the pre-defined benefit. This may not be simple because "subsistence" has been defined as much more than production of food. If there is not agreement on the pre-defined benefit (the goal), nothing good will happen. However, if both sides (the state and corporate interests) can agree on the benefit, then intervening/managing to produce it becomes possible. Intervention may involve everything from harvest restrictions (already possible for land owners via access control) to habitat manipulation and predator control. Both the state and the landowner will have to share equally in the expenses of intervening/managing. Once a surplus capable of meeting the pre-defined benefit is produced, a co-equal agreement on allocation (between two "sovereigns" which both have veto power) will have to be reached. Nobody will be allowed to harvest anything under this agreement until both cooperators (co-management is actually short for COOPERATIVE management) agree.

At present, the term, "co-management" is in vogue with Alaska Natives, but the concept seems not to be well understood, and is so poorly defined that it is not cooperative at all. Rather it seems a means to exclusive management, perhaps with the feds thrown in to give advantage to the race-based corporate interests.

Co-equal management on Native Lands might seem attractive to Alaska Natives, but it would be inequitable for the state to essentially cede that portion of its sovereignty to Regional Corporations without getting something in return. **I suggest the reasonable trade for co-equal management with the state on Native Lands might be Alaska Native support for equal access to resources for all Alaskans on Alaska's public lands.** Accomplishing this exchange would require action by the Alaska Legislature to enable co-equal management with private entities, and would also require the removal of subsistence title from ANILCA, and abrogate the fluffy language ritualizing "subsistence for federally-recognized users" from the rationale of most federal conservation unit descriptions in ANILCA.

4. Readjust the mission of the ADF&G Subsistence Division you created in an unsuccessful effort to preclude federal takeover of subsistence management.

The Division of Subsistence grew out of Alaska's Subsistence Law. The Subsistence Division was established as a state advocate for subsistence users (originally matching federal definitions). Alaska's Subsistence law has been found inconsistent with Alaska's Constitution by almost every standard. At present, Alaska law says that all Alaskans qualify as subsistence users. The role of the Subsistence Division in providing preference to rural residents should be examined and appropriately updated to the times. Perhaps this Division could be profitably redirected as the "Co-management Division."

. Submission for the record relating to the December 3rd 2015 Committee hearing on ANILCA

My name is David Likins. I have lived and mined on the Fortymile River for 43 years.

I remember the day in the mid 70's that BLM personal floated down river, stopping to talk to claim owners. They were informing us that under ANILCA the Fortymile River had been designated as a component of the Wild and Scenic Rivers System. BLM went on to say that this Act wouldn't affect existing claims, and that the Corridor would in fact go around existing claims.. They went on to explain that ANILCA mandated that BLM put together a Management Plan for the Fortymile, and asked us if we'd like to help put the plan together. Over the following months we met many times with BLM,
and offered comments, and suggestions. When the finial Fortymile River Management Plan was submitted to Congress we could see our input was incorporated into the Plan.

Throughout the 70's and 80's there were many family mines along the lower Fortymile. We all saw this new Management plan as something we could live with, and work under. Sadly, shortly after the Plan was adopted BLM chose to ignore certain parts of the plan ,as it related to future and ongoing mineral development. Over the last three decades we have had to fight BLM to follow the Fortymile River Management Plan required by ANILCA.

It should be noted that the Fortymile River was the home of the oldest active Mining District in interior Alaska. At the time of inclusion into the Wild and Scenic River system, unregulated placer mining had been on going for 95 years. Yet the country was wild and pristine enough to meet the standards of the WSR Act. In fact BLM emphasized the "rich mining history" as a reason the Fortymile should be included in the Act.

Today i'm the last active mine owner on the Fortymile River. I have spent decades fighting for the rights granted under ANILCA, the Wild and Scenic

Rivers Act, and the Alaska Statehood Act.

BLM has proposed to do away with our ANILCA mandated Development and Management Plan, and replace it with a broad non specific management plan covering all of Eastern Interior Alaska. This is contrary to ANILCA's intent that each C.S.U. was to have it's own detailed Development and Management Plan. I view our current Fortymile River Management Plan as the document(contract) that i have based spending my life, and money on to develop my mineral property.

Instead as originally promised, that BLM would honor our prior existing rights, as called for in ANILCA, and the WSRA, that the withdrawals, and corridors would not include prior existing claims BLM now say all Federal Mining claims in the Fortymile Mining District are part of the withdrawals, and have no prior existing rights, unless, or until the claims go through the mineral exam required for patent. Further BLM says the claim owner must pay BLM to do this work, at their estimated cost of between 50,000- 100,000 $ per claim. This is contrary to ANILCA's intent, and 100 years of mining law. Further, BLM has tied any new plans of operation, or changes in an existing plan to a mineral exam for patent, totally crippling the few remaining family mines remaining within the Fortymile Mining District.

Having fought the fight, and witnessed the effects of an agency that has never honored the provisions in ANILCA, I'd say this is the last best chance for Congress to insist that ANILCA's intent be fulfilled.

Respectfully Submitted,
David Likins
Fortymile River, Alaska

King Cove
A · L · A · S · K · A
City of King Cove
PO Box 37
King Cove, AK 99612

Testimony For ANILCA Oversight Hearing
To the
Senate Energy and Natural Resources Committee

December 17, 2015

Henry Mack, Mayor, City of King Cove

Dear Madame Chair Senator Murkowski, Ranking Member Senator Cantwell, and Honorable Members of the Committee:

Thank you for this opportunity to submit written testimony for the record on this critical hearing regarding the Alaska National Interests Lands Conservation Act (ANILCA).

I am Henry Mack, Mayor, of the City of King Cove, Alaska. I am an Aleut, born and raised in King Cove.

I appreciate that you have created a forum where responsible discussion can take place about the perhaps unintended, but no less harmful, consequences of the ANILCA legislation. King Cove's residents have been significantly impacted by ANILCA, which officially designated the "wilderness lands" within the Izembek National Refuge. This refuge is in our backyard and surrounds our community.

ANILCA, because of its Izembek wilderness designation, has deprived our residents of safe, dependable, and reliable transportation access to the Cold Bay Airport, which is our primary access to the world. The federal government has repeatedly denied us a modest, surface access through the refuge. Furthermore, because of ANILCA, the attitude of the federal government to our residents has alternated between ignoring us entirely and treating us like second-class citizens.

First, we were the unseen and the unknown. Testimony on the original Izembek Refuge wilderness designation began as a result of a President Nixon Executive Order in the early 1970's. At that time, hearings were held in Cold Bay and Anchorage. Organizations with offices on the East Coast and West Coast were all asked to provide input on the creation of a wilderness area in our back yard. But there was not a single outreach effort to those whose lives here in King Cove were most directly affected by the decision. Whatever the explanation, it can't be because

we were hard to find. We've been an established, organized community[1] of several hundred people since our founding in 1911.

Concurrent to the wilderness debate taking place without us, we were constructing our first gravel airstrip, located in a valley notorious for cross-winds, but the best site we could find in our topography. Prior to its construction, we were primarily a road-less town[2]. But the runway's location, five miles outside of town, motivated us to plan and construct a road system that could accommodate these changes. And always thinking long term, in 1976 the city passed its first resolution making pursuit of a road to Cold Bay a priority for the community.

It was also in 1971 when the Alaska Native Claims Settlement Act passed. It came with deadlines by which land selections had to be made by King Cove's tribal leaders. Had we known about the consequences of the wilderness designation at that time, had it been explained to us that without a carve-out in advance of the designation, we would need an act of Congress to get a road. Had this been known to our leaders we would have certainly tailored our selections to include a route for the road. But we didn't know.

Then, when ANILCA was signed into law, leaders in King Cove were still largely unaware of its implications for our transportation plans. Alarms starting going off for us, when shortly after ANILCA's passage, residents returned from hunting trips to report that their decades-old hunting cabins, long relied upon for shelter, were discovered burned to the ground. Later, we learned that it was USFW&S personnel who had traversed the refuge[3], burning cabins wherever they found them, with no courtesy notice to the users, much less an obligation. Such acts of violent disrespect are difficult to forgive.

It was shortly after ANILCA was passed, when people started dying in plane crashes, some of those losses in an effort to get an injured person quickly out of town, which we recognized that the road must be pursued with a new vengeance. Transformed from a community priority to a matter of life and death, we resolved to find a way to amend the law or create an exception.

The result has been a thirty-plus year campaign to change the mind of any public official who would listen as we pleaded for the right to medevac our sick and injured

---

[1] In contrast, Cold Bay is a community that came to be because of the airport and would almost certainly cease to exist without it. Population as of the 2010 census was 108. By contrast, King Cove's population was 938.

[2] Based on residents' experience watching roads go in during the war years, it was completely plausible to us that eventually, when circumstances warranted it and we had the resources, that we would be able to add on to existing infrastructure and get road to Cold Bay.

3 When contacted, USFW&S staff claimed that these cabins were not allowed under the terms of the legislation but that is not factual. The law specifically provides a right for indigenous people to pursue their subsistence lifestyle, to include the use to the cabins for that purpose. A part of our history is gone forever.

to the Cold Bay Airport, where flights land and take off as scheduled more than 95% of the time.

Members of this committee know most of what came next. You know there was a 2009 Act of Congress, years of getting dragged through a very biased NEPA/EIS struggle, thousands of acres of our land on offer to the Department of Interior for new wilderness land - all in exchange for about 200 acres to construct a single-lane gravel road of 9 miles. You know the final blow came almost two years ago, on December 23, 2013 when Interior Secretary Jewell determined that the Izembek land exchange was *not* in the public interest.

Since then we have suffered through 37 emergency medevacs, including 11 that required assistance from the US Coast Guard. While it is outside the scope of their primary mission, if they can land, the Coast Guard show up for us, but at a risk to both their pilot and patient. We want to do better by both of them.

Whether the government's intention with ANILCA was to treat us like second-class citizens or we were subjected to a bungled public process, what does it matter, if the result to us is the same? In the convergence of events that bring us to this moment, passage of ANILCA primary among them, we are still left without a viable transportation corridor to an all-weather airport that Aleut labor helped build.

We have always worked with the Department of the Interior in good faith, hoping our history with this legislation, in combination with this most generous land exchange offer, would certainly lead to a win-win outcome. Events have shown us to be wrong. We are persuaded that nothing we say or do is going to change Secretary Jewell's mind in this matter.

We need Congress to act. Congress must pass a bill to authorize our lifesaving road without delay. Our lives depend on it.

We also thank Alaska Governor Bill Walker for his staunch support for our issue as evidenced by his in-person testimony before this committee.

We are also deeply grateful to you Senator Murkowski and our entire Alaska Delegation for all of your continued support of our efforts to get a road. You are years into this process with us now, Madame Chair, and your tenacity and determination on our behalf are what keep us going on days when we are feeling worn down. We readily admit to having those days.

It is hard to keep faith with a government that has treated us like second-class citizens, when they bother to acknowledge us at all. It is difficult to negotiate with environmental activists who worry the Refuge will be spoiled by the road but refuse entirely, to acknowledge how the Izembek, described as the crown jewel of the wilderness system, could exist were it not for the First Alaskans who delivered it, unspoiled, into the twenty-first century.

I am of this place. I don't question that I belong to this land. If wilderness is a place where man has not left his mark, then Aleuts are the graduate students of wilderness study. Because while it may be a legal term as defined by legislation, for my people it is a way of life. All we ask is that Congress recognizes this road as a matter of safety, health, and quality-of-life and responds with speed and compassion.

Thank you for listening.

Respectfully submitted,

Henry Mack

Henry Mack
Mayor, City of King Cove

Statement of Joan Frankevich,
Program Manager, Alaska Regional Office
National Parks Conservation Association
To Be Submitted for the Record
For the Senate Energy and Natural Resources Committee
Hearing on the Alaska National Interest Lands Conservation Act (ANILCA) of 1980
December 3, 2015

Chairwoman Murkowski, Ranking Member Cantwell and members of the committee, on behalf of the National Parks Conservation Association's (NPCA) more than one million members and supporters across the country, including over 2,000 in Alaska, I thank you for the opportunity to submit testimony in regard to this hearing on the implementation of the Alaska National Interest Lands Conservation Act (ANILCA). Founded in 1919, NPCA is the leading, independent, private citizen voice in support of promoting, protecting and enhancing America's national parks for present and future generations.

I am Joan Frankevich, Program Manager for the Alaska Regional Office of the National Parks Conservation Association (NPCA) and have been a resident of Alaska for over 25 years. I am proud of the outstanding natural and cultural resources ANILCA has protected and enjoy them often with my family, friends, and out-of-state visitors. Some of my more memorable experiences include watching in awe as hundreds of caribou streamed past either side of my tent in Gates of the Arctic National Park; touring the rustic remains of the Kennecott Copper Mines in Wrangell-St. Elias National Park; watching whales, puffins and calving glaciers during a boat tour in Kenai Fjords National Park; and traveling by sled dog on the Chulitna River in Denali National Park.

Upon its enactment in 1980, ANILCA protected over 100 million acres of America's wildest landscapes with the creation of national parks, national wildlife refuges and national forests. The Act represents a desire to preserve and manage entire ecosystems and it is considered by many to be the most significant land conservation measure in the history of our nation. ANILCA created:

- 9 National Parks and Preserves
- 6 National Monuments
- 16 National Wildlife Refuges (Including the Arctic National Wildlife Refuge)
- 2 National Conservation Areas
- 2 National Forests (including the Tongass, our nation's largest)
- 25 Wild and Scenic rivers
- 35 wilderness areas (on park, refuge and forest lands)

Alaska Regional Office
750 W., 2nd Ave, Suite 205 | Anchorage, AK 99501 | P 907.277.6722 | F 907-277-6723 |
npca.org

ANILCA was not simply a conservation success, it was also a carefully balanced compromise. Not one party got everything they wanted from ANILCA, and disagreements continue today. However, overall the Act is a tremendous success story, honoring ALASKA and benefitting residents, the state's economy, and all Americans.

Below I highlight the terrific benefits ANILCA has provided Alaskans through the lens of our national parks—the economic benefits, the land use balance the Act attempts to strike, the shared management opportunities, and more.

ANILCA and national parks

ANILCA doubled the total acreage of the U.S. National Park System, creating 10 new national park units and increasing the acreage of three existing parks. These parks contain some of the most unique and breathtaking lands on earth—from glaciers and high snowy peaks, to valleys filled with bears, moose, caribou and other wildlife. Many parks protect entire ecosystems with a full complement of native plants and animals that is rarely found outside of the state. Recreation and wildlife viewing opportunities are unsurpassed anywhere else in the world and are treasured by Alaskans and our visitors.

National parks in Alaska are different

From the time it was introduced in the U.S. House of Representatives in 1977 until it was enacted in 1980, Congress considered over a dozen versions of the ANILCA legislation. Many modifications were made to the bill that considered Alaska's unique situations and the desire to preserve traditional ways of life for residents. This resulted in many provisions not typically found in national parks in the lower 48 states.

For example, of the 54 million acres of land managed by the National Park Service (NPS) in Alaska, the majority is open to some form of hunting:

- 44 million acres (81%) is open to subsistence hunting by local rural residents
- 21 million acres (39%) is open to sport hunting by all persons

Additionally, ANILCA allows the use of motorized transportation (snowmobiles, motorboats, and airplanes) for access to traditional activities such as hunting, fishing, berry picking and travel to and from remote villages and homesites. These provisions are intended to enable rural residents to raise their families and live as they have for generations. It's not an easy lifestyle to choose or inherit and ANILCA endeavors to honor Alaska's tribes and pioneers.

National parks in Alaska are also the same

While national parks in Alaska have several unique provisions, it is important to note their overall purpose remains resource protection, and the laws governing parks nationwide (such as the Organic Act and the Wilderness Act) still apply to those in Alaska. For example, while ANILCA allows several specific uses generally not allowed in designated Wilderness, the overall tenets of the Wilderness Act still apply. Congress made this very clear in Section 102(13) of the Act, which states:

> *"The terms 'wilderness' and 'National Wilderness Preservation System' have the same meaning as when used in the Wilderness Act."*

Even more telling are the purpose statements described in the establishment of each area under ANILCA, which clearly articulate the same type of park protection principals found throughout the country. The following are examples of purpose statements for a few areas:

To protect habitat, and populations of, fish and wildlife including but not limited to caribou, moose, black and grizzly bears, wolves, and waterfowl.
- Kobuk Valley National Park

To maintain unimpaired the scenic beauty and quality of high mountain peaks, foothills, glacial systems, lakes, and streams, valleys, and coastal landscapes in their natural state.
- Wrangell-Saint Elias National Park& Preserve

To maintain the wild and undeveloped character of the area, including opportunities for visitors to experience solitude.
- Gates of the Arctic National Park & Preserve

To protect the watershed necessary for perpetuation of the red salmon fishery in Bristol Bay.
- Lake Clark

To protect and interpret historical sites and events associated with the gold rush on the Yukon River and the geological and paleontological history and cultural prehistory of the area.
- Yukon-Charley Rivers National Preserve

To protect habitat for internationally significant populations of migratory birds.
- Bering Land Bridge National Preserve

ANILCA provides balanced land ownership

Following Statehood in 1959 and the Alaska Native Claims Settlement Act (ANCSA) in 1971, ANILCA completed the major lands designations for the state. The Act is a delicately crafted compromise that balances the needs for development and conservation of public lands in Alaska. In addition to the lands managed by NPS, federal protected areas include National Wildlife Refuges, Wild & Scenic Rivers, and Forest Service Monuments and Wilderness areas. ANILCA calls these "Conservation System Units" (CSUs) and they comprise about 34% of the state. The mosaic of lands across the state include the following[1]:

- Federal CSUs (parks, refuges, monuments & wilderness) – 125 million acres
- Other federal land (Bureau of Land Management, US Forest Service) – 95 million acres
- State land – 105 million acres
    - When the additional 60 million acres of state owned tidelands, shorelines and submerged lands are included, total state lands equal 165 million acres, making the state of Alaska the second largest landowner in the United States. The state of Alaska owns more land than all other states combined.
- Native corporation land – 42 million acres
- Municipal and other private – 4 million acres

[1] Source: Alaska Department of Natural Resources

While much focus is put on what isn't allowed in federal CSUs, often overlooked is the vast areas of the state (including other federal lands) that are open to mining, oil & gas, logging and other forms of development.

National Parks are essential to Alaska's economy
Tourism is the second largest private sector employer in Alaska, and therefore a critical component of Alaska's economy. An Alaska Travel Industry Association survey[2] asked *"Why would you want to visit Alaska?"* and the top three answers were:

1. to see spectacular scenery and wildlife;
2. to see glaciers and fjords; and
3. to view wildlife in their natural habitats.

The number one place chosen by visitors to accomplish these goals—to see wildlife, scenery and glaciers —is our national parks. Alaska's national parks support a viable visitor industry that has long provided a strong, sustainable economic engine that will continue long into the future.

Direct spending by National Park visitors
In 2014, Alaska's national parks hosted a record number of visitors, and visitation is expected to grow. Statewide, 2.68 million park visitors contributed $1.6 billion to the state's economy and supported 17,000 jobs[3]. In Denali National Park alone, visitors spent an estimated $524.3 million in gateway communities, which supported 6,800 jobs. Nationwide, Denali has the third largest expenditure for a single park, topped only by Blue Ridge Parkway and Great Smokey Mountains.

Statewide, NPS has about 400 permitted operators that provide visitors services. These businesses employ an estimated 2,100 people and their revenues are estimated to exceed $110 million.

Most of the economic benefit from Alaska's national parks is in surrounding gateway communities – hotels, restaurants, gift shops, and activities. However, Alaska residents in general also benefit from a greater range of amenities supported by tourism. According to a tourism marketing study by Nichols Gilstrap, Inc.[4]:

> *It is obvious that the range of trails, restaurants, employment opportunities, art galleries, unique shopping and many other similar assets found in Alaska would not exist without an active tourism economy. The local population base is simply not large enough to support the size and scope of the state's current amenity infrastructure.*

Spending on park operations: Keeping it local
Federal spending is extremely important to Alaska's economy. NPS in Alaska hosts a roughly $100 million/year operation, funds primarily spent on in-state payroll and purchases. NPS employs about 500 permanent employees, with a peak approaching 1,000 in the summer. These represent good paying jobs, not only in places like Anchorage and Fairbanks – but a source of year around income for residents of places like Copper Center, Kotzebue, Nome, Gustavus, Sitka, and Skagway. Most parks strive to hire local residents through the local hire provision of ANILCA, providing employment and economic benefit in rural communities where jobs are scarce.

---

[2] Source year: 2000
[3] Source: 2014 NPS Visitor Spending Effects Report, http://www.nature.nps.gov/socialscience/vse.cfm
[4] Source: Alaska State Department of Commerce, November 2000.

Infrastructure construction
The other major economic benefit from our national parks is construction necessary for visitor services and to support Alaska's NPS employees. Nearly every project uses local businesses that hire crews of Alaskan workers. Some recent examples include:

- Wrangell-St. Elias – Kennecott Mill Stabilization
  - Twin Peaks Construction of Anchor Point, AK - $3 million
- Katmai – Barge Lands and Access Road
  - Carpenter Contracting of Delta Junction, AK - $1.5 million
- Glacier Bay – Huna Tribal House
  - PK Builders of Ketchikan, AK - $2.9 million
- Denali - Replace Utilidor
  - GMC Contracting of Anchorage, AK - $8.6 million

The combined impact of visitor spending, government spending on operations, and construction projects, plus the larger economic draw that national parks provide to a geographic area is worth hundreds of millions of dollars annually to Alaska's economy. National parks are vital to maximizing Alaska's appeal in the world tourism market. Alaska has the wildlife, glaciers, and wilderness that the rest of the world wants to see. And as wilderness becomes an increasingly scarce economic resource worldwide, Alaska will continue to see growth in the value of our parks and protected areas.

Case Study: Seward and Kenai Fjords National Park
The city of Seward, gateway community to Kenai Fjords National Park, provides an example of both the misconceptions about and benefits of ANILCA.

- 1975 – Seward City Council passed a resolution condemning the formation of Kenai Fjords National Park
- 1980 – ANILCA passed; Kenai Fjords National Park was created
- 1985 – Seward City Council rescinded its resolution

By 1985 the City Council recognized that a trend had begun. There was an increasing number of visitors directly attributable to Kenai Fjords National Park, and these visitors benefitted the community. A 2001 report by the Institute of Social and Economic Research at University of Alaska at Anchorage states that since Kenai Fjords was created:

> *... the Seward economy has expanded and strengthened. ... There is now widespread agreement among the residents of Seward that creation of the Kenai Fjords National Park has been good for the visitor industry, the economy, and for the community. The standard of living is higher, there are more job opportunities, local public revenues have grown, and the economy is more diversified.*

NPS works in partnership with the State of Alaska
Passage of ANILCA has long provided an opportunity for federal and state land managers to work together to protect and enhance the state's resources. NPS cooperates with the State of Alaska on a daily basis in a variety of areas, including:

- Assisting Alaska State Troopers with public safety in remote communities.
- Providing grounds maintenance and litter removal at two state parks near Sitka when state funding was no longer available due to budget reductions.
- Assisting State Department of Transportation on road projects in Denali, Kenai Fjords and Klondike Gold Rush.

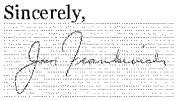
- Cooperating with biologists and resource managers in the field, such as with the Western Arctic Caribou Herd.

Conclusion
As exemplified throughout my testimony, ANILCA is an historic piece of legislation with both measurable (e.g. economic benefits) and immeasurable benefits. Overall, the Act has been a tremendous success for the state of Alaska, preserving some of our nation's most treasured places, while providing direct benefits to local communities.

Certainly there are a few areas within the Act that NPCA would love to see enhanced—for example, the completion of the Wilderness designations in parks and refuges (see Section 1317), and the addition of the "wolf townships" to Denali National Park and Preserve—affirming the 1980 Senate Report language for ANILCA which originally recommended that these lands be added to the park. However, overall we recognize that the final Act was a well-crafted compromise that reflects the struggles for balance between development and conservation of public lands in Alaska.

Thank you for your consideration of my testimony. Alaska is home to me and it is my hope, as well as the hope of NPCA's one million members and supporters, that the magnificent national parks and other units created under ANILCA will continue to be enjoyed by our children and grandchildren as much as they are today.

Sincerely,



Joan Frankevich,
Program Manager, Alaska Regional Office
National Parks Conservation Association

Statement of Northwest Explorations Joint Venture
before Senate Committee on Energy and Natural Resources,
Oversight Hearing on
Implementation of Alaska National Interest Lands Conservation Act
December 3, 2015

Northwest Explorations, Joint Venture (NWE) is a business entity formed in 1970 to explore and develop mineral property now located within the Wrangell St. Elias National Park and Preserve (WRST). WRST was one of the conservation system units created through enactment of the Alaska National Interest Lands and Conservation Act of 1980 (ANILCA). Prior to enactment of this legislation, NWE owned approximately 3,600 acres of patented and unpatented mining claims that showed potential for development of a major porphyry copper-molybdenum deposit. The deposit is known as "Orange Hill" for the distinctive color the mineralization displays on the landscape.

NWE submits this statement to summarize its efforts and frustration over more than thirty years to obtain reasonable compensation from the National Park Service (NPS) which manages the WRST as a unit of the National Park System. This statement can be considered an abstract of many reports, memoranda and correspondence authored by the Park Service, NWE, consultants, and congressional representatives on issues associated with acquisition of the Orange Hill deposit. Supporting this statement is a selection of such documents with a numbered index referenced herein by bracketed document numbers.

Orange Hill had been subject of extensive exploration in the 1970's prior to ANILCA. [1-3, 7]. Immediately prior to its enactment NWE had entered into an exploration and purchase option agreement with Pacific Coast Mines, a subsidiary of U.S. Borax and Chemical Corporation valued at $2 million plus a production royalty. Reports authored by the U.S.G.S. and NPS estimated the deposit contained 300 to 400 million tons of copper ore. By 1977, NWE had established ore grade reserves of 0.4% copper for 177 million tons of the deposit. The U.S. Borax subsidiary's last exploration results in 1980 showed proven reserves of 115 million tons of marketable minerals.

Upon enactment of ANILCA in 1980, Orange Hill became subject to the Mining in the Parks Act due to the WRST becoming a unit of the National Park System [1, 3, 7]. In 1985, the NPS was sued for failure to undertake proper environmental assessments of mining operations in WRST and a federal court entered an injunction against further permitting of such operations. Five years later in 1990, the Park Service issued a Final Environmental Impact Statement and Record of Decision wherein it announced a program to acquire all mining claims within WRST. NPS' acquisition program was authorized by ANILCA Section 1302(a) [1-3, 7].

During the pendency of the injunction, NWE expressed interest in NPS' acquisition of its claims because it understood that future mining opportunities were likely foreclosed. However, it took the NPS ten years (1999) after ANILCA's enactment to authorize an appraisal assignment on Orange Hill that purportedly included mineral value [1, 3, 7]. That authorization was aborted

when the consultant visited the property, was shown geologic records and realized Orange Hill exhibited serious mineral value [2, 7]. So the Park Service instead contracted for a realty appraisal which disregarded mineral value altogether and valued the property at $146,000 in 2000 [5].

Also in 1999, NWE initiated a lawsuit sounding in inverse condemnation against the NPS and sought just compensation for the taking of the Orange Hill mineral deposit [2, 7]. In June 2000, the U.S. District Court dismissed the lawsuit because NWE had not submitted a mining plan of operations that had been denied on the merits and which would be a predicate to the case being jurisdictionally ripe for adjudication [1]. A few years later, another federal judge acknowledged that the Park Service's delaying tactics and refusal to decide mining plan submissions on the merits meant that commercial mining operations in Denali National Park were effectively prohibited.

Not being deterred on property acquisition, NWE negotiated with the Park Service several more years (between 2000 and 2008) to obtain a mineral property appraisal on Orange Hill [2, 7]. Once again, however, the Park Service did not retain a qualified mineral property appraiser but instead a real estate appraiser who opined in 2008 that the highest and best use for NWE's patented claims was "limited recreation" and valued the property at $290,000 [5, 7]. The NPS did contract with Adventurine Engineering for an economic analysis of mineral development of Orange Hill in 2008 [7].

However, that consultant's assignment was constrained by several assumptions that doomed any positive valuation; consequently, it valued the minerals at a negative $70 million [7]. NWE contends this outcome may be attributed to the NPS' meddling with the consultant's work product [7]. NWE retained its own consultant (Robert Trent and Richard Hughes) who prepared a critique of the Adventurine Engineering report in May 2008 which noted positive cash flow improvements of $210 million if specific parameters were changed to reflect more realistic data and assumptions [4].

NWE complained to the NPS, the Interior Department and the Alaska congressional delegation over the years regarding the improper and unreasonable tactics employed regarding the Park Service's valuation of Orange Hill. For example, in April 2010, NWE through its counsel corresponded with the Alaska congressional delegation seeking its assistance on the Orange Hill valuation dispute with NPS [10-12]. NWE has demonstrated that the Park Service as well as the Interior Department generally have a poor record on their appraisal practice and voluntary acquisition programs over the last 40 years [7, 11, 20].

Due to these problems, in 2003 then Secretary Gail Norton consolidated the appraisal function into a new Office of Appraisal Services within the Department of Interior [7]. Still, this new entity failed to properly apply appraisal standards and procedures in contracting for and administering the 2008 consultant work products on Orange Hill due, inter alia, to the fact that the Appraisal Services Directorate (ASD) lacked any professional personnel qualified in mineral property valuation [7]. In May 2009, NWE's consultant (Trent and Hughes) proffered that Orange Hill could be valued at $43 million using a discounted cash flow approach [6]. NWE's

counsel separately demonstrated in a detailed critique of the ASD's appraisal process in December 2009 that any valuation of Orange Hill would require application of the "scope of the project" rule in appraisal practice and just compensation law that disregards the regulatory effect of NPS' de facto prohibition on commercial mining within WRST [7].

Recognizing the parties' extreme differences in valuation, NWE in 2009-10 requested the Park Service's participation in alternative dispute resolution (ADR) in order to effectuate its stated 1990 policy of mineral property acquisition under ANILCA [7]. Corresponding with ASD, NWE noted that Congress enacted the Administrative Disputes Resolution Act in 1990 that authorized ADR among executive branch agencies, including arbitration. Even though the Interior Department had promulgated regulations to implement this legislation, the ASD in 2010 declined NWE's request for dispute resolution because this would compromise the integrity of Interior Department's appraisal process and no precedent exists for such application to property acquisition [8, 9].

NWE disagreed with the bona fides of ASD's refusal to participate in ADR. In the 2010-11 time frame, NWE communicated with the Alaska congressional delegation, the Interior Department Office of Secretary for Alaska affairs and the Inspector General seeking approval for ADR resolution of the valuation dispute [10-12]. In April 2011, NWE worked with Congressman Don Young's office to draft a bill that would require the Secretary of Interior to participate in ADR for patented lands within units of the National Park System in Alaska, or alternatively, authorize condemnation [18]. Unfortunately, the draft legislation was not introduced.

In September 2011 former Interior Secretary Andrus, on his own initiative, wrote to then Interior Secretary Salazar recommending that the Park Service agree to submit the Orange Hill valuation dispute to binding arbitration [19, 21]. NWE retained another consultant who arranged a December 2011 meeting with the Park Service Director in Washington, D.C. on the issue [20]. The NPS Director still refused NWE's request.

Participating in the December 2011 meeting was McKie Campbell, staff to the Senate Energy and Natural Resources Committee. NWE's counsel thereafter wrote to Campbell as staff to this Committee in January 2012 wherein he responded to the ASD's concerns about protecting the integrity of the Interior Department's appraisal process and the absence of precedent [20]. Suffice it to say that the Director Bureau of Land Management has disagreed with the Park Service Director on the merits of ADR to resolve property acquisition disputes.

It seems preposterous that the Interior Department would have a sinecure in Washington, D.C. named the "Office of Collaborative Action and Dispute Resolution" with a budget probably in seven figures and yet it refuses to apply a congressional mandate for ADR enacted in 1990. This was the same year the NPS announced its official policy for acquisition of all mining claims within WRST. Twenty five years have now passed and the government only has itself to blame for its failure in realizing voluntary acquisition of Orange Hill through a reasonable valuation that recognizes some measure of mineral value rather than realty value.

Prepared by Lawrence V. Albert, Attorney at Law, P. O. Box 200934, Anchorage Alaska, for Wallace McGregor, Northwest Explorations JV, 1212 N. Washington Street, Spokane Washington, December 10, 2015

List of Attachments Accompanying

Statement of Northwest Explorations Joint Venture
before Senate Committee on Energy and Natural Resources,
Oversight Hearing on
Implementation of Alaska National Interest Lands Conservation Act
December 3, 2015

1. Chronological Summary: U.S. National Park Service Acquisition Activity Re: Orange Hill Mineral Deposit owned b Northwest Explorations (:NWE"), October 2009.

2. Wallace McGregor (Northwest Explorations), ANILCA's Legacy–an Unambiguous Taking–The Orange Hill Story, November 2005.

3. Northwest Explorations, Meeting with Regional Director Marcia Blaszak. National Park Service, Anchorage, Alaska, June 2006 (report).

4. Robert Trent, Ph.D. and Richard Hughes, P.E., Critique of Adventurine Mine Cost Engineering Report on Orange Hill, Mineral Property Characterization and Resource/Reserve Determination for the National Park Service, dated May 26, 2008.

5. National Park Service Alaska Region, letter to Fred Gibson, George R. Brown Partnership (offer to purchase Orange Hill for $290,000), December 24, 2008.

6. Robert Trent, Ph.D. and Richard Hughes, P.E., Orange Hill Copper-Moly-Silver-Gold Property Assessment, Nabesna Alaska, prepared for Northwest Explorations Joint Venture, dated May 2009

7. Lawrence V. Albert, Attorney at Law, letter to Helen Honse, U.S. Dept. of Interior Appraisal Service Directorate, with attachment "Deficiencies in Appraisal Practice of Orange Hill Mineral Property," dated December 16, 2009.

8. Helen Honse, U.S. Dept. of Interior Appraisal Service Directorate, letter to Lawrence V. Albert, dated January 22, 2010.

9. Helen Honse, U.S. Dept. of Interior Appraisal Service Directorate, letter to Lawrence V. Albert, dated April 27, 2010.

10. Lawrence V. Albert, Attorney at Law, letter to Hon. Lisa Murkowski, Mark Begich and Donald Young, Re: Northwest Explorations Joint Venture-Orange Hill Mineral Deposit–Valuation Dispute with DOI Appraisal Services Directorate, with attachment "Summary of Inquiry to Alaska Congressional Delegation April 2010 . . . ," dated

April 30, 2010.

11. Lawrence V. Albert, Attorney at Law, letter to U.S. Dept. of Interior Office of Inspector General re: Request for OIG Investigation of Interior Department Appraisal Services Directorate, dated April 30, 2010.

12. Lawrence V. Albert, Attorney at Law, letter to Special Asst. to Secretary of Interior for Alaska Affairs Re: Orange Hill Valuation Dispute, dated April 30, 2010.

13. Interior Department Office of Inspector General, letter to Lawrence V. Albert dated May 27, 2010.

14. Interior Department, Office of Secretary (for Alaska affairs), letter to Lawrence V. Albert, Attorney at Law, dated June 22, 2010.

15. National Park Service, Alaska Region, letter to Cong. Don Young, dated September 7, 2010.

16. National Park Service, Alaska Region, letter to Fred Gibson, George R. Brown Partnership, dated September 9, 2010.

17. Fred Gibson, George R. Brown Partnership, letter to Charles Gilbert, NPS Alaska Regional Office, dated September 22, 2010.

18. Draft legislation to be authored by Cong. Don Young requiring Secretary of Interior to participate in ADR or authorize condemnation of patented lands within units of National Park System in Alaska, with attachment "Explanatory Statement Accompanying Draft Bill on Alternative Dispute Resolution for Patented Lands within NPS Units in Alaska," dated April 2011.

19. Cecil Andrus letter to Hon. Ken Salazar, Secretary of Interior, Re: Request for NPS Dispute Resolution Process on Orange Hill, dated September 19, 2011.

20. Lawrence V. Albert, Attorney at Law, letter to McKie Campbell, Senate Committee on Energy & Natural Resources, Re: Request for Alternative Dispute Resolution on Property Acquisition–Orange Hill Deposit, Alaska, dated January 9, 2012.

21. Wallace McGregor, Geo-Enterprises, Inc., letter to Hon. Ken Salazar, Secretary of Interior, dated January 21, 2012.

(prepared December 10, 2015)

CHRONOLOGICAL SUMMARY

U.S. NATIONAL PARK SERVICE
ACQUISITION ACTIVITY RE: ORANGE HILL MINERAL DEPOSIT
owned by Northwest Explorations ("NWE")

April 73	Park Service prepares "Wrangell St. Elias Park Master Plan." NPS identifies the Orange Hill and Bond Creek deposits at p. 53 and provides an *in situ* valuation: "At April 1973 prices, the values of this deposit of 400 million tons of 0.4 percent copper is estimated at $1.6 billion."
12/11/80	ANILCA is enacted. Orange Hill is included in Wrangells St. Elias Park and Preserve. ANILCA § 1302(a) authorized Secretary of Interior to acquire in-holdings "by purchase, donation, exchange or otherwise."
07/24/85	U.S. District Court (D.Alaska) enters a preliminary injunction against permitting of mining operations within the WRST. *See Northern Alaska Environmental Center v. Hodel.* NPS is ordered to prepare an EIS on cumulative effects of mining within WRST. A permanent injunction is later entered that prohibits NPS from approving plans of operation.
11/09/86	NPS issues General Management Plan, Land Protection Plan and Wilderness Suitability Review for WRST. The document does not address minerals management in detail because this is being covered under the EIS required by the 1985 court injunction. The Land Protection Plan proposed acquisition of patented mining claims in Priority I.
08/21/90	NPS issues Record of Decision on Final EIS Cumulative Impacts of Mining for WRST. The NPS adapts Alternative D in the FEIS, which is acquisition of all mining claims within the park. The ROD indicates that "[i]ndividual claim fair market values will be determined at the time of acquisition."
02/10/99	NWE executes NPS form "Owner's Permission to Inspect and Appraise" for Tract No. 32-101, with a property description of Orange Hill.
06/10/99	NPS informs NWE that "we now have an approved appraisal contract in place. . . Your property has been included on the list for appraisal this summer."
07/10/99	NWE (McGregor) visits Orange Hill property with Onstream Resource Managers (ORM), NPS' contract appraiser. NWE shows geologic mapping and data on copper ore mineralization to ORM. ORM suggested that NPS would not likely proceed with a minerals appraisal for Orange Hill under its existing contract or it would need authorization to revise its appraisal contact (McGregor undated

document)

09/02/99 Through telephone conversation, ORM informs NWE (McGregror) that it lacks a contract authorization to prepare appraisal on Orange Hill.

09/29/99 NPS (Gilbert) informs NWE that ORM was too busy to proceed with appraisal on Orange Hill. Issue of ORM's authorization not resolved.

12/22/99 NWE files an inverse condemnation action against NPS for taking Orange Hill property. *Northwest Explorations Joint Venture v. Bruce Babbitt, et al,* No. A99-0643 CV (JWS) (D. Alaska).

08/11/00 NPS writes to NWE responding to its letter of 06/28/00 regarding property acquisition. NPS notes that its contract appraisers, Onstream Resource Managers, will be subcontracting with experts to acquire information about Orange Hill. NPS advises that any discussion of property acquisition will have to be coordinated with the Justice Department due to the taking lawsuit.

09/07/00 U.S. District Court issues Order from Chambers dismissing NWE's taking action without prejudice due to lack of jurisdiction. The court concludes its lacks jurisdiction because NWE's taking claim is not ripe for judicial review; NWE has failed to submit a plan of operations which has been subject of an adverse agency decision on the merits and has failed to prove the futility exception to the ripeness or administrative exhaustion requirement.

xx/xx/00 Conference Report on Interior Appropriations Bill for FY 2001 directs NPS to consult with NWE on selection of an appraiser for the property.

10/26/00 NPS Director Stanton writes to Andrus assuring that an appraisal will be completed and an offer to purchase made. Director Stanton states that "the purchase of these claims is a priority for the Park Service."

12/29/00 NPS appraisal report for Orange Hill is completed. According to report, "the fair market value of the fee simple estate of the property, less the mineral estate is $146,000." This appraisal was for surface estate only. NWE provided copy of report (copy not available).

03/05/01 NWE/Birch Horton meeting with NPS personnel in D.C. to discuss parameters for a minerals appraisal for Orange Hill. The parties could not reach agreement on appraisal issues. Specifically, NWE contended a 1978 date of valuation should be used due to surface management restrictions while NPS contended a current valuation date should be used due to the federal court's dismissal of the taking action. According to NPS, it need not proceed with an appraisal if NWE refused

to agree on the approach. NWE requested NPS not proceed with an appraisal until it advised the agency of its intentions.

06/08/01 Birch, Horton writes to NPS requesting mineral appraisal proceed

06/27/01 NPS writes to Birch Horton and advises that progress has been made towards purchase of Orange Hill. The letter states "a mineral appraiser and a fee appraiser have been selected that are mutually acceptable to the National Park Service and NWEX, and the NPS is prepared to award contracts for those appraisals." NPS the parties' disagreement about valuation date and requests a response so that the contractors may proceed.

01/18/02 At NWE's request, Degen & Degen Architects prepares a development plan for the "Orange Hill Wilderness Report." This is a concept plan with an estimated budget of $37MM to completion.

04/02/02 Birch, Horton submits ANILCA §1110(b) application for improved road access to Orange Hill comprising 14 mile road.

07/08/02 Conference call between NWE applicant, NPS, EPA and COE. NWE advised that ANILCA access application would require wetlands delineation and applicant would bear the cost of such delineation.

11/19/02 NWE writes to NPS proposing lodge development for Orange Hill and inquires about access permutations for surface use of the in-holding.

xx/xx/04 House Conference Report on Interior Appropriations Bill for FY 2005 states an expectation that NPS "will commence acquisition negotiations based upon an appraisal of the market value of the property." H. Conf. Rep. 108-542.

xx/xx/05 NWE retains appraisal firm Mundy Associates (n/k/a Greenfield Associates) to do fee interest valuation. Consultant provides opinion of value ranging between $1.2 to $1.5 million presumably for 2005 valuation date (copy of report unavailable)

05/11/06 NWE submits 36 CFR Part 9A mining plan of operations to NPS for exploration work on property, specifically diamond core drilling and bulk sampling. Phase One of the plan concerns the exploration work while Phase Two concerns development of an open pit mine.

06/13/06 NWE and counsel (Tangen) meet with NPS WRST personnel to discuss acquisition process for Orange Hill along with its plan of operations. NWE provides narrative summary document to NPS providing abbreviated property

history and synopsis of prior events concerning valuation and property acquisition.

06/14/06 NPS forwards e-mail to NWE (Tangen) authored by Martin Wild, NPS Review Appraiser. Wild's e-mail explains the new Appraisal Service Directorate established in 2004 for the Interior Department along with the procurement process that is followed for contract appraisals.

06/28/06 NPS responds to NWE's plan submittal following the meeting with WRST personnel. NPS will initially evaluate the exploration work proposal and indicates additional information will be required, to be specified in a later transmittal. The Phase Two mine development is inadequate for NPS evaluation and will require further information.

07/11/06 NPS writes to NWE regarding appraisal for Orange Hill and notes the meeting of June 13, 2006. NPS recites NWE's intention to use a contract appraiser (Trevor Ellis) and that NWE's contract appraiser will not be funded by the government. NPS advises it will proceed with a contract appraiser through the Appraisal Service Directorate as that is the process Interior agencies must follow. NPS solicits NWE's permission to inspect the property for appraisal purposes.

08/11/06 NWE responds to NPS letter of July 11. NWE indicates that it previously provided consent for property inspection through form executed on Feb. 11, 1999, copy enclosed for NPS. According to NWE, NPS previously represented that ORM was a contract appraiser for the mineral value of the property in 1999, however, "the appraisal was terminated after the geologic and ore reserve data on the property were revealed to the appraiser."

11/02/06 NPS follows up on previous letter of August 29, 2006 to NWE wherein it requests a copy of the geologic and ore reserve data on the Orange Hill property which it may use for minerals appraisal.

12/28/06 NPS informs NWE that its plan of operations lacks sufficient information and is deemed incomplete for purposes of evaluation under 36 CFR Part 9A standards. NPS lists items of additional information needed before it will proceed to process the plan of operations submittal.

(edited 10/07/09)

ANILCA'S LEGACY, AN UNAMBIGUOUS TAKING
THE ORANGE HILL STORY

CELBRATING A FLEETING FREEDOM

December will mark the 25th anniversary of the passage of the Alaska National Interest Lands Conservation Act (ANILCA). The celebration will mark, as well, the fleeting freedom of private property rights as exemplified by the history of the taking of the Orange Hill property without compensation.

Former U.S. Attorney General Edwin Meese III recently commented in a Wall Street Journal article ("The Property Rights Test", WSJ, August 2, 2005) that, 'Few constitutional protections are less ambiguous than the requirement that private property must not be taken for public use "without just compensation."' In the eyes of a growing number of property owners, Mr. Meese cast his words in the wrong tense. What was an unambiguous freedom in the minds of the drafters of the Fifth Amendment is today a tenuous freedom, at best.

A LOSS OF NO SMALL CONSEQUENCE

The Orange Hill property was a 3603-acre parcel of patented (363 acres) and unpatented (3,280 acres) mining claims enclosed within the Wrangell-St. Elias National Park and Preserve (WRST) by ANILCA. The history of the property stands as proof of the ambiguity of the law as it stands interpreted today. By every historical measure, the loss of freedom at Orange Hill is a private property taking, but in today's legal context, the action of the government in denying the beneficial use of the property for twenty-five years has yet to be recognized as a taking. Unarguable is the fact that the loss to the owners and, for that matter, to the State of Alaska, is of no small consequence.

At the time of the creation of the WRST, the Orange Hill property was the second largest holding in the WRST, exceeded only by the Kennecott Copper Co. holdings in the vicinity of McCarthy. A one-page document entitled "Lode Values-WRST" made available by the Park Service in 1991 noted the Orange Hill property as having a large tonnage potential and high potential for future development. The acreage of the property was shown to constitute 21% of the total of 17,333.2 acres of patented and unpatented mining claim holdings considered of economic significance within the Park at the time of the creation of the WRST.

The property had been under intensive exploration for the two decades prior to the passage of ANILCA. At the close of the last year of exploration in 1980, U.S. Borax and Chemical Co., which was exploring the property under an Exploration and Option to Purchase Agreement, reported proven reserves of 115.7 million tons

containing copper, molybdenum and silver with additional values in zinc and gold. The gross metal value of the proven reserves at current metal prices is in excess of $2.5 billion. There are additional values in the zinc and gold. The contained copper in the proven reserves, not to mention the probable reserves, placed the deposit well above the median among the 50 % largest copper deposits in the world as defined in the *Quantitative Analysis of World Class Deposits* published in *Economic Geology, Volume 90, 1995.*

NOT SO UNAMBIGUOUS

One would think that to be denied the right to use such a property for a period of twenty-five years and with no legal right to ever mine the mineral deposit of world class size would be an unambiguous taking. Not so, as the history of the Orange Hill property so graphically illustrates.

The fact that the property was under active exploration, being conducted by a major mining company under option to purchase, lends undeniable credibility to the validity of the proven reserves as cited. Lending further credibility is the fact that, because all activity on the property had to be suspended for an indefinite period of time upon the enactment of ANILCA, the Exploration and Option to Purchase Agreement was amended by mutual agreement to extend the period of the option in recognition of the fact that, as cited in the agreement, "the objectives of the Agreement have been delayed for a period of time by the action of the U.S. Department of the Interior." The Amended Agreement extended the option period to the year 1995. In recognition of the time value of money and inflation, the amended agreement provided for an escalation of the purchase price and provision for price adjustment based upon the "Price Indexes for the Non-ferrous Metals Commodity Code 102, published by the U.S. Department of Labor Statistics."

It was only when, in 1985, the National Park Service was enjoined from approving any mining plans of operation that the parties accepted the inevitable outcome of the injunction, the loss of the right to ever mine the property. There was no question that the right to enjoy the use of the property had been taken. With the loss of value of the mineral rights unquestionable, the parties mutually agreed to terminate the Agreement. Under the circumstances, there was no point in holding the unpatented claims. As a result, the owners allowed the unpatented claims to lapse in 1986.

A HOLLOW PROMISE

In a naive state of trust, the owners were to take comfort in what they believed to be the unambiguous Constitutional guarantee of compensation for their taken property. When the Wrangell-St. Elias National Park and Preserve published the Environmental Impact Statement Record of Decision on August 21, 1990, the decision was presented in bold print, "**Acquire All Claims.**" Logically, but not wisely, the owners took the statement to be a good faith commitment on the part of the Federal Government to acquire their claims. In reality, the decision proved to

be not only a hollow promise, but a ploy that held dire consequences for any inholders trusting enough to take the statement of the Park Service at face value.

Buoyed in spirits by the belief that the Record of Decision was a commitment of the government in compliance with the tenets of the Fifth Amendment, the owners immediately sought information from the Park Service in preparation to cooperate fully with the Park Service in the implementation of the decision. A letter written to the Alaska Regional Director dated November 5, 1990, requested information under the Freedom of Information Act pertinent to arriving at a value for the patented claims at Orange Hill. By 1992, lacking an offer to purchase the claims from the Park Service, the owners took the initiative to offer the claims to the Park Service subject to an appraisal. The Park Service replied that Congress had not appropriated funds with which to conduct appraisals in the WRST. The statement had a basis in fact. Year after year, thereafter, the Park Service sidestepped the repeated requests to conduct appraisals by citing the decision of Congress to appropriate funds only for property acquisitions in the Denali National Park. Efforts by the owners to press the Alaskan Congressional delegation for equal consideration under the law was to no avail. For whatever political reason, the appropriation of funds for acquisitions were to be focused solely on properties in the Denali National Park, or at least that was the story being told.

In May 1994, the owners turned to the Pacific Legal Foundation for help but were informed by Attorney James Burling (property rights, natural resources) that, "the wording of the Record of Decision had been so written that holding the NPS to that statement would be next to impossible." *(Telephone discussion on May 20, 1994.)* In the meantime, the ten-year extension of the statute of limitation to bring inverse condemnation action was ticking away.

AN ABORTED APPRAISAL

In February 1998, the owners received a letter from the WRST inquiring about their interest to sell the Orange Hill property. What prompted the change of stance by the Park Service was the closing on the purchase of the surface rights to a 1,000 acre parcel of the Kennecott patented mining claims consummated after eight years of negotiation entailing repeated appraisals. It was not until June 1999, however, with the statutes of limitations due to expire in six month, that the Park Service was willing to commit to a mineral appraisal of the Orange Hill Property on the condition that the appraisal be conducted by the Park Service contract appraiser, a requirement agreed to by the owners.

The property examination by the appraisers was conducted in mid-July 1999. In a meeting prior to the helicopter flight to the property, the appraisal team was given geological information and preliminary data on the proven reserves. The comprehensiveness of database was obviously unexpected. The reaction of the appraisers was a frank disclosure that, in all unlikelihood, the Park Services would decline to proceed with the appraisal. When questioned why, no reason was given but the reaction proved to accurately reflect the National Park Service position.

After receiving the full database pertaining to the property in September, the appraiser informed the owners that he did not have a contract to proceed with the appraisal. A letter from the Alaskan Branch Chief of the Land Resources confirmed the decision shortly thereafter.

NO OPTION BUT TO SUE

Faced with the pending loss of the right to appeal under the Statute of Limitations, the owners were left with no recourse but file suit. They informed the Park Service of their need to protect their right to pursue an inverse condemnation action by year-end unless the Park Service proceeds with its commitment to timely complete the appraisal as agreed. The Alaska Regional Resource Officer responded, claiming not to know about a deadline for filing a takings action and steadfastly refused to proceed with the mineral appraisal. On December 22, 1999 the owners filed a complaint charging the National Park Service with, "committing a compensable taking of its eighteen patented and ninety-nine unpatented mining claims when mining operations having environmental impact were prohibited in the Wrangell-St. Elias National Park." The filing was made with the offer to withdraw the suit upon the agreement of the National Park Service to conduct the appraisal. Former Secretary of the Interior, Cecil Andrus, on whose watch ANILCA had been passed, took note of the injustice and in a letter to Director Stanton, urged him to proceed with the appraisal. Director Stanton replied to Andrus indicating his determination to proceed with an appeal of the taking action while refusing to proceed with the appraisal. It was a calculated decision purposely taken to mute the charge of taking thereby effectively validating the government's action while not being compelled to compensate for the taking.

JUDICIAL BIAS

The motivation for the Director Stanton's decision became clear when it was learned that the judge selected to hear the case, Judge Sedwick, was known to have a bias on takings. Judge Sedwick's decisions in previous cases had turned on the premise that, if a Plan of Operation had not been submitted and denied, a taking had not occurred. Thus, the Government moved to dismiss the case maintaining that the owners must have submitted a plan of operation that, short of arbitrary inconsistency, the Park Service could not approve. According to the Government, in the absence of this formalistic process, the Court has no jurisdiction to address the owners' cause of action. The Government prevailed in its argument. The Case was dismissed on the grounds that it was not ripe for adjudication. In retrospect it could be seen that the owner's naivety in accepting in good faith the government's statement of "Acquire All Claims" and its unwillingness to take the disingenuous step of submitting a Plan of Operation in obvious contradiction of the intent of the law, proved to be its undoing.

Judge Sedwick's decision set a standard for government compliance with Fifth Amendment Right to Private Property that, in effect, absolves the government of the responsibility for denying property owners the free use and enjoyment of their

property without compensation. Under the standard set by Judge Sedwick, it is the formalistic act not taken by the property owner on the word of the government that absolves the Government of its responsibility to provide just compensation for a property taken for public use. The fact that ambiguity in the protection of private property rights now reigns is hardly disputable when the government acts with the intent to obfuscate compliance with the Constitution.

BUREAUCRATIC STONEWALLING

Having lost on its inverse condemnation suit, the owners continued to press for an appraisal but at the same time turned their efforts to gain Congressional support for appraisal and acquisition funding for the WRST. Cecil Andrus once again urged Director Stanton to follow through on the appraisal of the Orange Hill property and made note that the owners were pursuing support for an appropriation of $3.8 million for acquisitions of inholdings within the Wrangell-St. Elias National Park. Director Stanton's reply to Andrus in a letter dated October 26, 2000 gave assurance that the appraisal would be completed and that an offer would be made to the Owners.

Director Stanton's intent can be assumed to have been honorable but the implementation of his intent under circumstances of a change of administration was left to the behest of the bureaucracy, which made clear its intent to the contrary. In a meeting arranged for the purpose of coming to mutual agreement on the parameters of an appraisal, an owner representative accompanied by counsel met with NPS Chief Appraiser Gerald Stoebig and Chief Realty Officer Eugene Repoff and staff in Washington, D.C. on March 5, 2001. In opening the meeting, counsel for the owners referred to the language of the FY 2001 appropriations bill that instructed the National Park Service to set a "purchase price that is objectively fair and equitable." He asked for their view of the term "fairness." The gist of the response of the National Park participants was that the basis for judging fairness was an unknown. The comment was made, "never heard of basis for fairness." The discussion set the tenor of the meeting. Typical of the unyielding stance was the position expressed by Appraiser Stoebig's to the effect that the mineral rights had not been diminished by enclosure within the Park. It was impossible to achieve mutual agreement on any parameter. As the negotiations came to a close without agreement, Realty Officer Repoff observed that without a mutual agreement on the proposed parameters, the need for an appraisal was mute. The statement was made with an air of 'mission accomplished.' The silence that followed was broken by the Alaska Regional Resource Officer's mention that a fair market appraisal had been completed. The Park Service would argue that the appraisal had been conducted with the approval of the owners, but the fact is, no such approval had been given and the appraisal had been conducted unbeknown to the owners. When earlier reported to the owners, they refused disclosure and responded with a reaffirmation of their decision to refuse acceptance of a real estate appraisal without the mineral appraisal. The meeting closed on the note of irreconcilable differences.

After the meeting, at the recommendation of counsel, the owners relented on their decision not to accept the release of the real estate appraisal. It was learned that the Park Service had commissioned the appraisal on November 29, 2000. In the appraisal report dated December 29, 2000 with an opinion date of December 5, 2000, the appraiser reported that "the fair market value of the fee simple estate, less the mineral estate, in the subject property, is: ONE HUNDRED FORTY-SIX THOUSAND DOLLARS ($146,000.)" The per acre value of $$401.87 was the lowest per acre value of all WRST appraisals with one known exception, a property described as "rocky talus slopes."

A TURN TO CONGRESS –TO NO AVAIL

With good reason to be discouraged but determined to gain compensation, the owners turned the focus of their efforts on negotiating a mutually approved appraiser in conjunction with mounting an effort to gain Congressional help to resolve the impasse in dealing with the Park Service. The owners turned to the guidance of new Washington, D.C. based counsel. It was assumed that dealing with the bureaucracy would change for the better under a Republican administration but that proved not to be the case. As negotiations progressed, what were thought to be agreements on the selection of an appraiser proved temporary and subject to the same intransigence on the part of the Park Service management that plagued the effort to mutually agree on appraisal parameters. After two more years of stonewalling by the Park Service it became apparent that the burden of addressing the issue of compensation for the Orange Hill property taking lay on the shoulders of Congress.

Lobbying Congress for help to bring the Orange Hill taking to closure achieved nothing more than securing appropriations to fund WRST property acquisitions in three annual budgets but never to the extent of gaining earmarks dedicated to compensation for the Orange Hill property. When, in the closing sessions of Congress in December 2004, the FY 2005 appropriations bill passed as an omnibus bill, again with no specific instructions to the WRST regarding instructions to acquire Orange Hill, it was clear that the Congress was deaf to the plea for just compensation. The pursuits of legal, political and legislative recourse had all proven failures. The taking of the Orange Hill mineral rights without compensation had to be accepted as an accomplished fact.

ONE OF A MYRIAD OF TAKINGS

It is important to understand that the Orange Hill experience stands not as an illustration of an isolated abrogation of a Constitutional Right but, rather, as one of a myriad of takings that occurred when ANILCA was enacted. For the owner of each and every mineral property enclosed within a National Park there was a penalty to be borne, not a compensation to be paid. The minimum penalty took the form of a pittance payment for the properties based upon a biased appraisal of the surface rights value. The more costly form of penalty involved the expensive and time-consuming commitment required of those owners willing to fight for just and

fair compensation. At worst, the penalty entailed the extraordinary cost of bringing action for inverse condemnation.

THE NEED FOR CLAIRVOYANCE

In a telephone discussion on June 28,2005 Pacific Legal Foundation Principal Attorney James Burling attempted to explain why pursuit of compensation for a taken property is, for the most part, a lost cause. He cited the need for "*clairvoyance* (Italics added for emphasis), stamina and resources." He explained that need to be clairvoyant is because you do not know what is going to happen in the future. If you knew then what you know now, you would do things differently to protect your rights, but things are changing in the courts so you could not have known. Attorney Burling emphasized the importance of stamina, pointing out that it will take years to deal with the appeals and everything that is involved. The need for financial resources, he said, is obvious.

Attorney Burling's point is that legal interpretations change and that the laws are in flux. As a consequence, in Attorney Burling's view, if a property owner is incapable of reading the future and of taking actions in anticipation of the signs of change, the almost certain outcome of a face-off with the government on a property rights issue will be failure. Given Attorney Burling's expertise on property rights, it is difficult to question the credibility of his insight, but to property owners who have been dealt the ultimate penalty of incurring inordinate expense to fight unsuccessfully for their property rights, Attorney Burling's explanation has the aura of a far-fetched rationalization of a legal system gone amuck.

IN THE FINAL ANALYSIS

In the final analysis, the Orange Hill experience exemplifies the very circumstances that the writers and signers of the Fifth Amendment of the Constitution sought to protect against. Foremost is an un-reigned, overzealous bureaucracy lacking oversight and unanswerable for their actions even to their appointed management. There is the drafting of legislation and the casting of legal decisions with language intended to circumvent the Constitutional safeguards, which allow interpretations inimical to freedom. There is the ever present preoccupation by elected officials with what are deemed to be more pressing or important issues than protecting essential Constitutional rights. And, as with the case of the dismissal of the Orange Hill inverse condemnation suit, there are judges willing to pass subjective judgments rather than strict adherence to the words of the Constitution that jeopardize the very foundation of our freedoms. The ominous fact is that today, there are no safe havens for citizens whose property has been taken without compensation, certainly not in the courts, certainly not government administrators, certainly not the Congress.

PLAN TO ADDRESS THE FESTER OF ANILCA

A vibrant Alaskan economy depends upon soundly financed, expanding natural resource industries. Achieving the goal of a strong resource based economy can only be assured by continued investment in mineral and petroleum exploration and development under circumstances of secure private property rights. Under no circumstances can investors chance to be summarily denied the right to exploit a natural resource without just and fair compensation in the event that there is determined to be a purpose or use for the property of greater value to the whole of society. In order to achieve this goal, the fester of ANILCA must first be addressed and brought to closure. The means to do so, is proposed as follows:

1) The State of Alaska will work with the Congress to negotiate the terms of agreements with owners of mineral properties enclosed within the National Parks and Preserves by the enactment of ANILCA with the purpose of: a) allowing the economic use of the properties for mining; or b) purchasing the mineral rights for just and fair compensation.

2) The negotiated compensation for the purchase of properties will take into consideration the limiting provisions of the Mining in the Park Act and the period of 25 years since the passage of ANILCA during which the owners have been denied the use of their properties.

3) In the event that the mineral rights are purchased, a condition of the purchase shall be the contribution of all data relating to the mineral resources to Minerals Data and Information Rescue-Alaska (MDIRA.)

4) Funding for the purchase of the mineral rights will be by Congressional appropriations from the Land and Water Conservation Fund (LWCF).

In so doing, the rights to private property under the Fifth Amendment of the Constitution will be reaffirmed in the State of Alaska, greatly enhancing the attractiveness of Alaska as the premier State for resource industries investment.

Wallace McGregor
November 8, 2005

MEETING WITH REGIONAL DIRECTOR
MARCIA BLASZAK
NATIONAL PARK SERVICE
240 W. 5TH AVE
ANCHORAGE, AK 99501

JUNE 13, 2006

Northwest Explorations JV Statement to Sen. Energy Committee
Hearing on Implementation of ANILCA
Attachment 3

TABLE OF CONTENTS

ORANGE HILL OWNERSHIP SUCCESSION 1

SUMMARY OF EVENTS 1970 – 1978 3

SUMMARY OF EVENTS 1979 – 1980 4

SUMMARY OF EVENTS 1981 – 1990 5

SUMMARY OF EVENTS 1991 – 2005 6

THE NEED FOR AND THE PURPOSE OF A PLAN OF OPERATION FOR THE ORANGE HILL PROPERTY 9

ARE THERE BENEFITS TO A FAIR AND EQUITABLE ACQUISITION OF THE ORANGE HILL PROPERTY? 10

LIST OF FIGURES

Fig 1 WHERE IT ALL STARTED – CALIFORNIA GULCH 2

Fig 2 BECKY / NIKE CLAIM GROUPS 11

Fig 3 AMENDED TERMS OF OPTION TO PURCHASE AGREEMENT 12

Fig 4 Lode Values - WRST 13

Fig 5 DIRECTOR STANTON Letter dated August 11, 2000 to Northwest Explorations 14

Fig 6 FY 2005 APPROPRIATION BILL 15

ORANGE HILL OWNERSHIP SUCCESSION

1911 Bud Sargent stakes claims. Placer mines gold in California Gulch. (See Figure 1)

1923 Sargent sells claims to Alaska Nabesna Corporation.

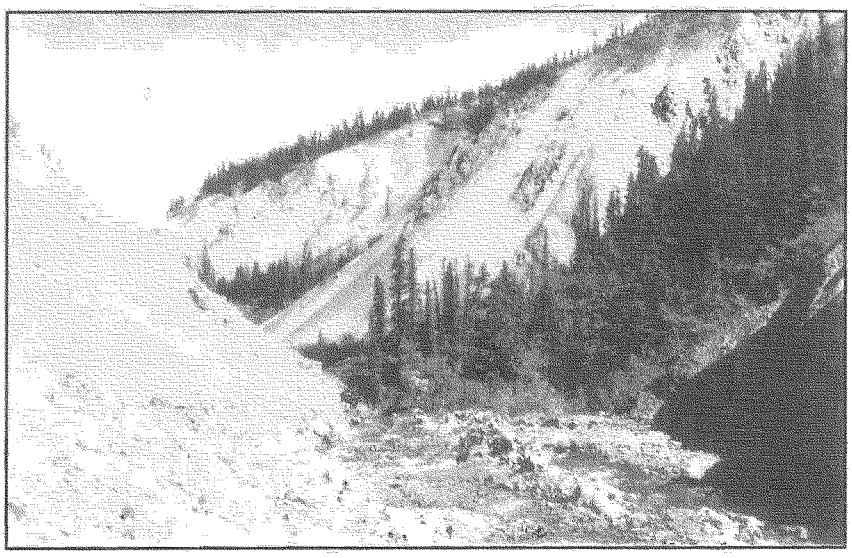
1928 Alaska Nabesna Corporation patents eighteen mining claims and five-acre mill Site.

1967 AJV Corporation (Now Geo-Enterprises, Inc.) acquires Orange Hill property from Alaska Nabesna Corp. The Company stakes additional contiguous lode mining claims.

1970 Northwest Explorations Joint Venture is organized by AJV Corp. with the participation of Brown & Root, Inc., Highland Resources, Inc. and The Louisiana Land and Exploration Company.

- AJV Corp contributes Alaskan mineral holding, including Orange Hill patented and unpatented claims.
- Joint Venturers contribute funding for exploration.

WHERE IT ALL BEGAN – SITE OF EARLY PLACER MINING AT ORANGE HILL



CALIFORNIA GULCH

Looking northerly down stream

Figure 1

SUMMARY OF EVENTS 1970- 1978

1970-1976 Venture conducts exploration at Orange Hill now enclosed within the Wrangell-St. Elias National Park and Preserve.

1977 Northwest Explorations enters into an Exploration and Option to Purchase Agreement with Pacific Coast Mines, a subsidiary of U.S. Borax and Chemical Corporation to explore and acquire the Orange Hill property.

- The Agreement provides for minimum cumulative expenditures of $800,000 over a five-year period and purchase terms of $2,000,000 cash plus a 2½% royalty on net smelter returns from production.

Mobilization for exploration in 1977 is begun before agreement is finalized.

1978 Borax expands scope of exploration, considerably exceeding the annual work commitment. Following the close of the 1978 field season. . .

- November 16, 1978 Interior Secretary Andrus withdraws lands in the vicinity of Orange Hill from exploration and development.

- December 1, 1978, by a Presidential Proclamation, President Carter declares the area a National Monument placing a moratorium on all mineral activity on the unpatented claims.

- Wrangell-St. Elias and contiguous conservation units in Alaska and Canada are declared an International World Heritage Site.

SUMMARY OF EVENTS 1979 -1980

1979 Letter dated May 21, 1979, amends the Agreement of May, 1977, "The parties acknowledge that the objectives of the agreement have been frustrated by the action of the Department of the Interior . . . the parties desire to effect a moratorium on their respective obligations under the Agreement"

Nevertheless, Borax elects to continue exploration confined to investigation of the patented claims focusing on the potential for high-grade skarn mineralization. The findings are very encouraging.

1980 In May, Borax reported to Northwest Explorations that it has acquired an option to purchase claims from Inspiration Development Co. The claim block covering the "Becky and Niki claim groups were contiguous to the Orange Hill claims and within the area of influence of the Northwest Explorations Option Agreement. (See figure 2)

Exploration is confined to the patented claims but expanded to helicopter supported diamond drilling of the skarn zone.

- December 2, 1980 Congress passes ANILCA establishing the Wrangell- St. Elias National Park and Preserve enclosing the Orange Hill property within the Preserve.

SUMMARY OF EVENTS 1981 - 1990

1981 Exploration and Option to Purchase Agreement is amended to extent option period 13 years until 1994 with escalating cash considerations to $3.6 million during the final three years with a price adjustment based upon the price index of non-ferrous metals. (See figure 3)

1981 Borax reports Orange Hill ore reserves of $.32x10^6$ metric tonnes of copper placing the partially explored deposit among the 50% largest copper deposits in the world. (six times greater than the median size of the largest deposits*)

1981 Application to National Park Service for permit to continue drilling is not responded to until November, well after the close of the field season.

1981 It is mutually agreed under the terms of the moratorium provision of Agreement, to defer further exploration until policy regarding mineral development in the WRST is in place.

1985 National Park Service is enjoined from approving mining plans of operation and related mining activities.

1986 By mutual agreement the parties terminate Exploration and Option to Purchase Agreement.

1986 October, General Management Plan/Land Protection Plan for WRST is approved by the Director of the NPS. The Plan identifies claims that present a potential threat to Park resources. Some seventeen properties are identified, among them Orange Hill constituting 22% of the total acreage and noted to have a high future development potential. (See figure 4)

1987 Northwest Explorations allows unpatented claims to lapse.

SUMMARY OF EVENTS 1990 – 2005

1990 National Park Service completes EIS and publishes RECORD OF DECISION "Acquire All Claims."

1991-1997 Annual requests to National Park Service by Northwest Exploration to proceed with acquisition are declined. It is the position of Northwest Explorations management that acquisition by the National Park Service is in the best interest of all. On the assumption that Record of Decision will be carried out, no Plan of Operation is submitted.

1998 National Park Service expresses interest in acquiring the Orange Hill property. Northwest Explorations agrees to mineral appraisal to be conducted by a National Park Service appointed appraiser.

1999 June 10 – Letter from National Park Service (Ref: L1425 (AKRD-L) stating, "we now have a mineral appraisal contract in place . . . . Your property has been included on the list for appraisal this summer."

- July 10 - Mineral appraisal of Orange Hill Property is initiated with visit to the property by James and Ellen Hodos of Onstream Resources Managers, Inc. accompanied by Wallace and Darlene McGregor representing Northwest Explorations. In preparation for the examination McGregor briefs the appraisers on the geology and mineralization drawing upon a portion of the comprehensive geologic database of the deposit.

- **September 2 - Appraiser reports that he does not have contract to proceed with appraisal.**

- **September 29 - National Park Service informs Northwest Explorations that it will not proceed with the appraisal.**

- **Northwest Explorations urges completion of appraisal because of the statutes of limitations due to expire December 31, 1999. The National Park Service refuses to proceed.**

- **December 22, 1999 Northwest Explorations files Reverse Condemnation lawsuit subject to the offer to withdraw the suit upon the assurance from National Park Service that it will proceed with the appraisal to completion.**

2000 August - Judge Sedwick dismisses the lawsuit on the grounds that a Plan of Operation had not been submitted to the National Park Service and declined, therefore, the issue was not ripe for adjudication.

- **August 11 - In letter to Northwest Explorations, Director Stanton states that the appraisal will begin in October 2000. Director Stanton's assurance is incorporated in the 2001 Interior Appropriations Bill. (See figure 5)**

- **November 29 - Without notification to the property owner the National Park Service authorized an appraisal of the fee simple estate of the Orange Hill property. The property examination is accomplished with a fly over, presumably on December 5, the date of the opinion. By report dated December 29, 2000, The National Park Service appointed appraiser reported his opinion that "the fair market value of the fee simple estate of the property, less the mineral estate, is $146,000.00."**

- **In 2005, Northwest Explorations commissioned Mundy Associates, LLC (now Greenfield Associates) to evaluate the Orange Hill fee simple estate. Following an on the ground examination and several months of research Mundy Associates determined that the range of fair market value of the fee simple estate of the Orange hill Property is between $1.2 million to $1.5 million.**

2005 **FY 2005 appropriations bill made specific reference to the Orange Hill property: "For the purposes of acquiring the Orange Hill patented mining claim within the Wrangell-St. Elias National Park and Preserve, the Committee expects the Service to commence acquisition negotiations based upon an appraisal of the market value of the property . . . . . In the determination of the highest and best use, the appraisal should consider all available economic uses of the property (and) shall recognize statutory rights of surface access to the property." (See figure 6)**

THE NEED FOR AND THE PURPOSE OF, A PLAN OF OPERATION FOR THE ORANGE HILL PROPERTY

1999 **To date, no action has been taken by the National Park Service to commence acquisition negotiations as expected by the Committee.**

- **Northwest Explorations management continues to hold the view that the preferred disposition of the Orange Hill Property is inclusion within the Wrangell-St. Elias National Park and strongly believes that the acquisition of the property would best serve the mission of the WRST and the interest of all stakeholders.**

- **There is, however, a timeliness to carrying out of the word and the intent of the Record of Decision. In the equation of 'fair and equitable' a necessary consideration must be the time value to money.**

- **Management is equally mindful that the highest and best economic use of the property is the mining of the mineral reserves that at current metal prices, have a gross metal value of 3.5 billion dollars.**

- **An estimated 65% to 70% of the reserves are recoverable from mining confined to the Orange Hill Property. There is a high likelihood that additional ore would be developed during the course of mining.**

ARE THERE BENEFITS TO A FAIR AND EQUITABLE ACQUISITION OF THE ORANGE HILL PROPERTY?

- A MAJOR INHOLDING WITHIN THE WRANGELL-ST. ELIAS NATIONAL PARK AND PRESERVE WILL BE ELIMINATED.
- THE POSSIBILITY OF NEAR-TERM MINING WITHIN THE WRANGELL NATIONAL PARK AND PRESERVE WILL BE ELIMINATED.
- A MAJOR LONG TERM ASSET WILL BE HELD IN TRUST BY THE NATIONAL PARK SERVICE FOR USE WHEN NEEDED BY FUTURE GENERATIONS.
- THE POSSIBILITY OF CONFLICT WITH RECREATIONAL EXPERIENCES WILL BE REMOVED.
- THE WISHES OF SENATOR STEVENS AND THE CONGRESS, AS REFLECTED IN THE APPROPRIATIONS BILL LANGUAGE, WILL BE ACTED UPON AS DIRECTED
- ACQISITION WILL UPHOLD THE RIGHT OF PRIVATE PROPERTY AND THE FREEDOM FROM TAKING WITH OUT DUE COMPENSATION.

BECKY / NIKI CLAIM GROUPS
Inspiration Development Co.

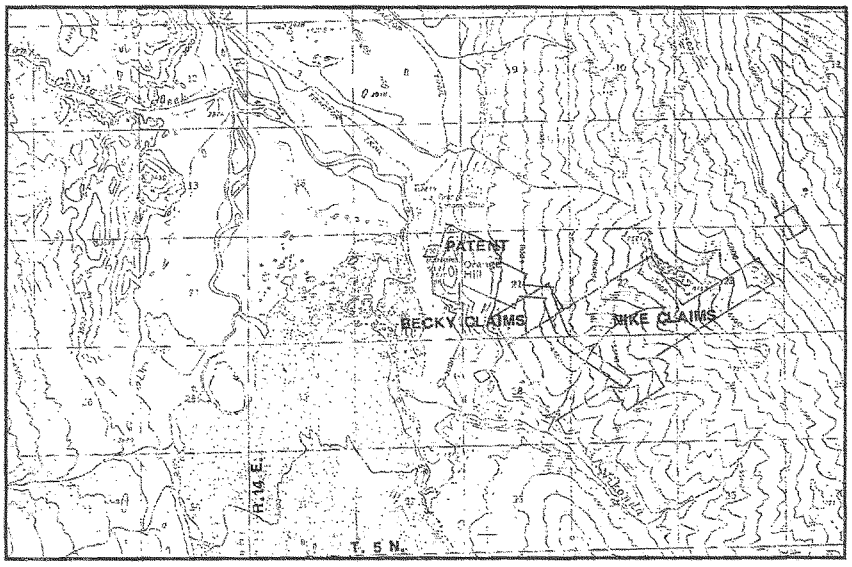


Figure 2

2. Section 6 hereof is amended to provide for the following purchase prices applicable to any exercise of option to purchase during the extended term of the Agreement:

(a)	From the end of the 5th to the end of the 7th year	$2,250,000.00
(b)	From the end of the 7th to the end of the 9th year	2,550,000.00
(c)	From the end of the 9th to the end of the 11th year	2,850,000.00
(d)	From the end of the 11th to the end of the 13th year	3,200,000.00
(e)	From the end of the 13th to the end of the 15th year	3,600,000.00

and, where appropriate, the purchase price payable if the option is exercised during the period described in (a) through (e), above, shall be increased by the amount of increase reflected in the "Producer Price and Price Indexes for the Non-ferrous Metals Commodity Code 102, U.S.Department of Labor Statistics," using ~~1981 as the base year.~~ May 1981 as the base index period.

3. All the provisions of the Agreement (as previously amended), other than those amended herein, shall continue in full force and effect during the term of the Agreement

IN WITNESS WHEREOF, this Amendment has been executed as of the date first hereinabove set forth.

PACIFIC COAST MINES, INC.

By _____
H.Steinberg, Vice President

Attest: _____
W.A.Ackerman, Secretary

NORTHWEST EXPLORATIONS
BY: AJV CORPORATION

By _____
Vice Pres

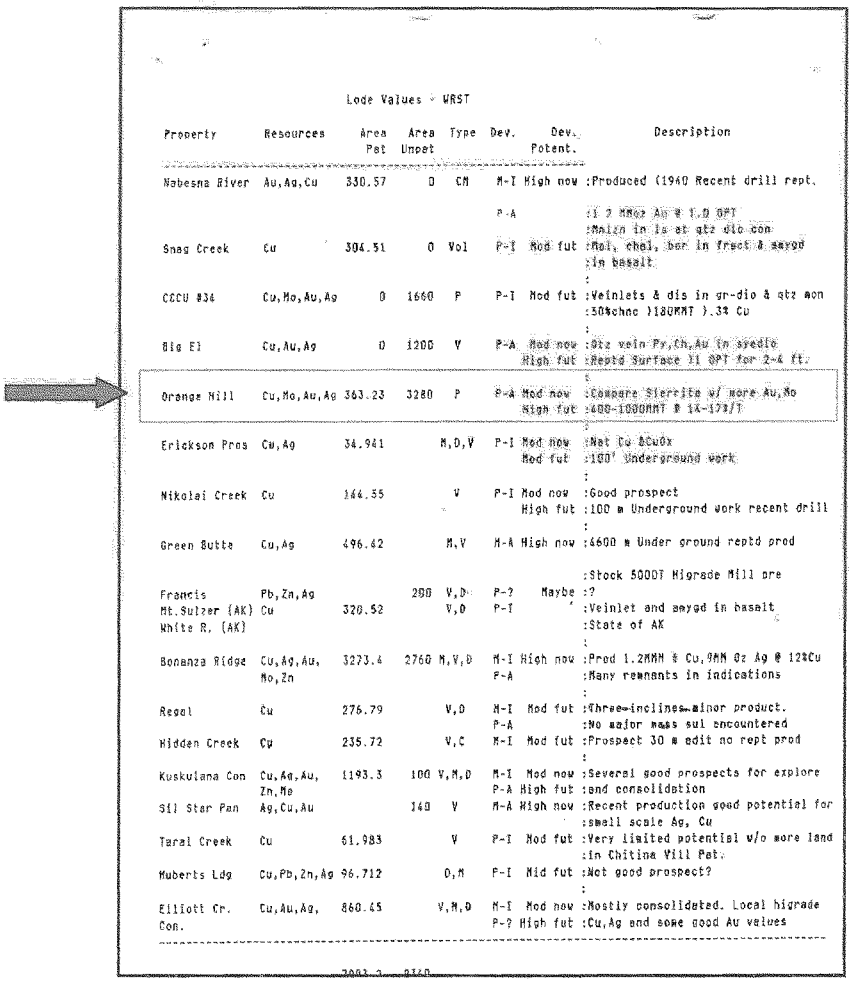
Attest: _____

THE LOUISIANA LAND AND EXPLORATION COMPANY

By _____
R.L.Wood, Vice President

Attest: _____
Michael W. Coriden Asst. Secretary

"Lode Values - WRST"



Lode Values - WRST

Property	Resources	Area Pat	Area Unpat	Type	Dev.	Dev. Potent.	Description
Nabesna River	Au,Ag,Cu	330.57	0	CM	M-I	High now	:Produced (1940 Recent drill rept.
					P-A		:1 ? MMoz Au @ 1.0 OPT
							:Main in is at qtz dio con
Snag Creek	Cu	304.51	0	Vol	P-I	Mod fut	:Mal, chal, bor in fract & amygd
							:in basalt
							:
CCCU #34	Cu,Mo,Au,Ag	0	1660	P	P-I	Mod fut	:Veinlets & dis in gr-dio & qtz mon
							:30%chac)180MMT).3% Cu
							:
Big El	Cu,Au,Ag	0	1200	V	P-A	Mod now	:Qtz vein Py,Ch,Au in sredio
						High fut	:Repld Surface 11 OPT for 2-4 ft.
							:
Orange Hill	Cu,Mo,Au,Ag	363.23	3280	P	P-A	Mod now	:Compare Sierrita w/ more Au,Mo
						High fut	:400-1000MMT @ 1%-.17%T
							:
Erickson Pros	Cu,Ag	34.941		M,D,V	P-I	Mod now	:Nat Cu &Cu0x
						Mod fut	:100' Underground work
							:
Nikolai Creek	Cu	144.55		V	P-I	Mod now	:Good prospect
						High fut	:100 m Underground work recent drill
							:
Green Butte	Cu,Ag	496.42		M,V	M-A	High now	:4600 m Under ground reptd prod
							:
							:Stock 50007 Higrade Mill ore
Francis	Pb,Zn,Ag		200	V,D	P-?	Maybe	:?
Mt.Sulzer (AK)	Cu	320.52		V,D	P-I		:Veinlet and amyad in basalt
White R. (AK)							:State of AK
							:
Bonanza Ridge	Cu,Ag,Au, Mo,Zn	3273.4	2760	M,V,D	M-I	High now	:Prod 1.2MMM # Cu,9MM Oz Ag @ 12%Cu
					P-A		:Many remnants in indications
							:
Regal	Cu	276.79		V,D	M-I	Mod fut	:Three inclines minor product.
					P-A		:No major mass sul encountered
Hidden Creek	Cu	235.72		V,C	M-I	Mod fut	:Prospect 30 m edit no rept prod
							:
Kuskulana Con	Cu,Ag,Au, Zn,Mo	1193.3	100	V,M,D	M-I	Mod now	:Several good prospects for explore
					P-A	High fut	:and consolidation
Sil Star Pan	Ag,Cu,Au		140	V	M-A	High now	:Recent production good potential for
							:small scale Ag, Cu
Taral Creek	Cu	61.983		V	P-I	Mod fut	:Very limited potential w/o more land
							:in Chitina Vill Pat.
Huberts Ldg	Cu,Pb,Zn,Ag	96.712		D,M	P-I	Mid fut	:Not good prospect?
							:
Elliott Cr. Con.	Cu,Au,Ag,	860.45		V,M,D	M-I	Mod now	:Mostly consolidated. Local higrade
					P-?	High fut	:Cu,Ag and some good Au values

FY 2005 APPROPRIATION BILL

LAND AND WATER CONSERVATION FUND

(RESCISSION)

Appropriation enacted, 2004	−$30,000,000
Budget estimate, 2005	−30,000,000
Recommended, 2005	−30,000,000
Comparison:	
Appropriation, 2004	0
Budget estimate, 2005	0

The Committee recommends the rescission of $30,000,000 in the annual contract authority provided by 16 U.S.C. 4601–10a. This authority has not been used in years, and there are no plans to use it in fiscal year 2005.

LAND ACQUISITION AND STATE ASSISTANCE

Appropriation enacted, 2004	$135,594,000
Budget estimate, 2005	178,124,000
Recommended, 2005	107,500,000
Comparison:	
Appropriation, 2004	−28,094,000
Budget estimate, 2005	−70,624,000

The Committee recommends $107,500,000 for land acquisition and State assistance, a decrease of $70,624,000 below the budget request and $28,094,000 below the enacted level. Within the funds provided, $91,500,000 is for assistance to States, of which $1,500,000 is for administrative expenses, and $16,000,000 is for Federal land acquisition program activities, including $3,000,000 for emergencies and hardships, $10,000,000 for acquisition management, and $3,000,000 for inholdings.

For the purposes of acquiring the Orange Hill patented mining claim within the Wrangell-St. Elias National Park and Preserve, the Committee expects the Service to commence acquisition negotiations based upon an appraisal of the market value of the property prepared in conformance with the Uniform Appraisal Standards for Federal Land Acquisitions. In the determination of highest and best use, the appraisal should consider all available economic uses of the property, shall recognize statutory rights of surface access to the property, and consider the prices of other mining claims, patented and unpatented, within other Alaska National Park System units including Denali National Park and Preserve.

ADMINISTRATIVE PROVISIONS

Bill Language.—Existing concession contracts provide for a contractual right of compensation, known as "possessory interest" in structures, fixtures or improvements made or acquired by the concessioner under the terms of the contract. The amount of compensation is described in the contracts as the "fair value" of a PI, which is deemed to be its "sound value." The contracts provide that "the sound value of any structure, fixture, or improvement shall be determined upon the basis of any reconstruction cost less depreciation evidenced by its condition and prospective serviceability in comparison with a new unit of like kind, but not to exceed fair market value." However, the results of recent value determination proceedings suggest that valuations do, in fact, exceed the fair market value of the improvements provided by the concessioner, and suggest that the value may be based, in part, on the value of the

CRITIQUE OF THE

ADVENTURINE MINE COST ENGINEERING

REPORT ON

ORANGE HILL, MINERAL PROPERTY CHARACTERIZATION AND RESOURCE/RESERVE DETERMINATION FOR THE NATIONALPARK SERVICE, JANUARY 2008

BY

ROBERT H. TRENT, PE, PhD

&

RICHARD A. HUGHES, PE

H2T MINE ENGINEERING SERVICES
318 JUNEAU AVE.
FAIRBANKS, AK 99701-3768
(907) 451-6537

May 26, 2008

TABLE OF CONTENTS

	PAGE
EXECUTIVE SUMMARY	1
Table 1. CASH FLOW SUMMARY	2
SUMMARY OF OBSERVATIONS RELATIVE TO REPORT	2
RESOURCES AND RESERVES	3
DEVELOPMENT	5
MINING	5
MILL AND TAILINGS CONSIDERATIONS	7
GENERAL	9
CONCENTRATE HANDLING	9
COLD CLIMATE CONSIDERATIONS	10
ECONOMIC EVALUATION	11

EXECUTIVE SUMMARY

This report is to provide the results of an analysis of the Scott Stebbins (Adventurine Mine Cost Engineering) "Mineral Property Characterization and Resource/Reserve Determination for the Orange Hill Copper-Molybdenum Deposit" REPORT, dated January 2008, for the National Park Service, Alaska Region. This CRITIQUE will present an overview of efforts to identify short-comings of, and improvements to, the REPORT and include a review of reserves, development methods and costs, mining plan and manpower, mill and tailings handling considerations, general considerations, concentrate handling, cold climate considerations, and economic evaluation. In the interest of brevity, no effort will be made to repeat rudimentary facts such as location and access, claims list, topography, history, acreage, other, unless those facts are found to be mistaken or engineering/costs assumptions and calculations used in addressing these issues are different than we consider practical.

We note that Scott Stebbins is registered as a professional engineer in the State of Washington, but not in the State of Alaska. Registration in Alaska is discipline-specific and requires that the applicant successfully complete Arctic Engineering course(s).[1] The reason for this registration requirement is to assure that the engineer understands cold weather and Alaska conditions, acceptable operational methodologies, local and statewide standards, laws and customs.

"REPORT" as used herein shall refer to the Stebbins report. "CRITIQUE" as used herein shall refer to this analysis and related calculations.

The REPORT goes into elaborate detail and demonstrates an obvious competence in computer evaluation of mining projects. Nevertheless, there are a number of short-comings in assumptions and costing that deserve comment and serious consideration. We have examined a few of the short-comings and conclude that significant improvements can be gained in efficiency and plan adjustments. We were limited in our time to review the voluminous document, but were able to identify cash flow improvements amounting to $284.2 million, as set forth in TABLE 1, which follows. This brings the net cash flow to $210.0 million for the project. A net present value calculation has not been performed.

[1] Statutes and Regulations, Architects, Engineers, and Land Surveyors, October 2007, http://www.commerce.state.ak.us/occ/pub/aelsstatutesregs.pdf

TABLE 1

CASH FLOW SUMMARY

ITEM	$M	COMMENTS
NCF from REPORT	($74.2)	A negative cash flow.
IMPROVEMENTS		
Include Silver	$108.8	Must be included.
EPC consulting costs	$12.9	Excessive EPC rate – 32% to 17% rate
Road Construction	$10.3	More realistic scope
Eliminate pre-splitting	$41.5	Pre-splitting for ore control is unnecessary
Power cost recalculation	($33.3)	Fuel costs not calculated correctly
Eliminate tailings lines heating	$86.8	Not necessary. Return water also included.
Soil stabilization elimination	$25.3	Complete overkill and not needed.
Property and severance tax	$44.3	No borough in the area and no associated taxes.
Labor cost adjustment	($16.0)	Adjusts for 3 to 1 schedule and correction in burden calc's.
Staff reduction	$3.6	Unnecessary positions elimination
TOTAL NET CASH FLOW	$210.0	

Table 1. Cash flow summary. Preliminary list of cash flow changes for the Orange Hill project considering improvements in development and operating plans and procedures.

SUMMARY OF OBSERVATIONS RELATIVE TO REPORT

- The REPORT appears to be heavily padded to increase costs to inordinately high levels in both capital and operating cost estimates
- Mr. Stebbins is not registered or licensed to practice mining engineering in Alaska
- The REPORT is very detailed and demonstrates computer-aided experience and competence in cost calculation
- Resource/reserve calculations should include silver as a recoverable commodity
- The cut-off grade should be calculated and be based on the recoverable metal prices/quantities and costs relative to the operating plan; the current cut-off grade is arbitrary; a quick calculation showed that in using the REPORT's costs and plan, the cut-off grade should be 0.235% copper; further efforts should be based on copper-equivalent grades, taking molybdenum and silver into account
- In-fill drilling is needed to more fully define the reserves; the proposed plan is considered acceptable
- Commodity pricing is considered acceptable for the period of the REPORT
- EPC (engineering, procurement and construction management) costs are considered to be significantly higher than is acceptable at 34%; normal charges are in the order of 17%
- The road between Slana and the White Mountain mine is State owned and all cost for operation and upgrades needed will be the responsibility of the State
- Dust suppressant applicant frequency and needs are significantly exaggerated and must be reduced or eliminated
- Alternative power sources must be considered in the feasibility determination; a hydropower generating facility at Slana is a possible alternative

- Mining by other methods should be considered; underground block caving is a possible alternative
- The mining rate should be reviewed to be more cost-effective; a rate to be based on a 15 year mine plan should be considered
- The proposed mining plan as related to pre-splitting for ore control, 10-ft benches, equipment selection, manpower requirements is not practical
- The coarse ore bin is not needed and should be eliminated
- The mill and tailings disposal proposal needs considerable scrutiny; improvements are very probable
- Mill location at off-site locations should be considered
- Dry stack tailings storage is an enhanced opportunity
- Tailings pipelines heating is unnecessary and should be eliminated
- Power costs are probably low and should be re-calculated
- Concentrate handlings are excessive and need to be reduced to eliminate dust control and excessive grading
- Other destinations should be considered for concentrate sales
- Labor cost benefits and burden calculations were not calculated correctly
- The working schedule should be modified to 2 weeks on and 1 off with workers working either 11- or 12-hour shifts; the 4 on and 2 off schedule with workers working 8 hour shifts, being paid for time off is unacceptable
- Property and severance taxes should not be included in the costs; the mine is not located in a borough and the State does not impose property or severance taxes.

RESOURCES AND RESERVES

The REPORT advises that reserves and resource calculations are based on over 30,000 feet of drilling in more than 80 holes. The deposit has been reasonably well defined, according to the REPORT. Issues of importance included in this section include cut-off grade calculations, reserves and metal used in value calculations.

The REPORT shows reserves of 62,427,000 tons with a grade of 0.308% Copper (Cu) and 0.031% Molybdenum (Mo) with a stripping ratio of 3.65:1. A cut-off grade of 0.20% Cu is used in the determination. A polygonal method of reserve calculation was used. We take no issue with these determinations given that it is not dissimilar from reserve calculations presented by others and that we did not have the time and luxury to perform independent estimates. Only copper and molybdenum values are used in the determination; silver appears to be a valuable additional metal that should have also been used in the analysis. There is also a question raised as to cut-off grade since no basis is given for its value.

A significant number of silver values have been determined for the drill returns. Work by Pacific Coast Mines, Inc. (a wholly-owned subsidiary of US Borax and Chemical Company), estimated proven reserves of 115,700,000 tons with a copper grade of 0.308%, molybdenum grade of 0.024%, and a silver grade of 0.175 ounces per ton. The average grade of silver reported by Wallace McGregor is 0.175 ounces per ton of

ore. The net smelter return value (NSR)[2] of the contained silver would be in the order of $1.74/ton of ore after deduction for smelter and refining charges; the total cash flow would move from negative $74.2 million to plus $34.6 million based on this consideration alone. Although we have not had the time to carefully examine the assays relative to silver content, the Pacific Coast Mines, Inc. data very clearly indicates that silver is contained in the ore in economic amounts. Leaving this product from the determination of value is negligent and biases the results in a negative manner.

The selection of cut-off grade can influence the mine plan and resulting economics considerably. The selection of 0.2% Cu cut-off is quite arbitrary and is not correct. A copper-equivalent grade calculation should be determined in order to calculate reserves; and the copper equivalent cut-off grade should be based on total operating costs to optimize the economics of the project. It is interesting to note that the NSR for a 0.2% copper grade, assuming that the grades of the molybdenum and silver would vary proportionally, would be an average of approximately $20.53 per ton. The total operating costs of the project as calculated in the REPORT amounted to $1,586,511,144 which calculates to $25.41 per ton of ore. Performing a rough cut-off grade calculation based on the REPORT's operating costs indicates that the cut-off grade should be in the order of 0.235% copper; this would impose a small reduction of reserves by an unknown amount. The REPORT's operating costs are considered to be very aggravated to the extent, however, that the 0.20% Cu cut-off is probably satisfactory if not too high.

On page 13 of the REPORT a statement is made that *". . . for the purposes of our analysis, that most locations within the Orange Hill claim block, resource volumes with stripping ratios of greater than 10.0:1.0 (ore:waste) could not be recovered at a profit."* We assume that this should be "waste:ore" as the stated relationship would indicate a very profitable scenario.

On page 14 of the REPORT a statement to the effect that *". . . the drill-hole density is sufficient (given the deposit model) to provide a reasonable level assurance to grade and volume. However, more drilling (commonly referred to as in-fill or mine-block definition drilling) would be required prior to production. For the purposes of this evaluation, we've assumed that an additional 45 holes will be needed, which would provide an estimated 36,000 feet of additional drilling."* This seems to be a reasonable assumption and is not challenged in this CRITIQUE; however, a more detailed analysis might indicate that this is not a valid assumption.

Commodity pricing assumptions seem reasonable and are not challenged in this CRITIQUE. The metal prices used in the REPORT were $3.46/lb for copper and $34.35/lb for molybdenum and were based on the average historic prices near the date of the REPORT. In order to present a metal price comparable with that of the REPORT, the average price of $13.46/oz for silver for the last 6-months of 2007 was used.

[2] Assumes that silver will report to the copper concentrates in proportion to copper recovery and that typical smelter and refining charges will be assessed against recovery.

DEVELOPMENT

The REPORT advises that *"Fees for engineering, planning, and feasibility analyses are estimated to be 18.0% of the total capital costs. Construction management and supervision costs are estimated at 14.0% of the total capital costs."* This equates to a total of 32.0% of the total capital costs, which is inordinately high. The total engineering, procurement and construction management costs shown in the Appendices amounts to $34,843,000. Normal feasibility estimates for this item are in the order of 17%[3] for these items. A reduction to 17% would reduce this cost by approximately $12.9 million.

Road construction costs are overstated in the REPORT. The road between Slana and the White Mountain mine is the responsibility of the State of Alaska; if upgrading is needed the State will be responsible for the effort and related cost. The new section of road between the White Mountain mine and Orange Hill does not need to be of the size recommended. Road widths will be minimized due to the lack of large loads. Bridges can be of minimal design to handle minimal material and personnel transport. Capital equipment and other heavy items can be moved to the site after freeze up, across the ice, thereby negating the need for bridges for these items. A conveyor to move the ore from Orange Hill to an off-site mill location will have a significant influence on design.

Very little permafrost should be encountered due to the fact that the entire area was covered until recently by the Nabesna Glacier. Road construction material for the road base will be available at an offsite location that is about equal distance from each end of the road.

Overall, we estimate the cost of the road and bridge construction can be reduced by approximately 60 to 70%. This will reduce this cost by approximately $10.3 million.

There are numerous other areas of improvement that have been noted to the development of the project. Time shortfalls simply do not allow us to investigate or comment on these costs at this time.

MINING

Open pit mining using front end loaders and haulage trucks is an acceptable method for mining porphyry copper-molybdenum ore bodies as in the REPORT. However, the opportunity of using other methods, such as selective underground bulk mining (block caving) should not be dismissed in an analysis. The Henderson mine in Colorado which utilizes underground block caving for mining the molybdenum ore body operates at a cost of $7.99/ton[4]. Transposing those costs to the Orange Hill ore body suggests a cost of $9.43/ton in terms of 2007 costs could be achieved. This opportunity will not be discussed further in this CRITIQUE, but this method will be considered in future reports.

---

[3] Jack de la Vergne, Hard Rock Miners Rules of Thumb

[4] www.minecost.com

The REPORT states, page 19, *"Deposits such as the one found at Orange Hill are typically mined using relatively standard open pit, excavator and truck techniques"* with which we agree. However we are not aware of any open pit mine of this type that utilizes 10-foot benches. We recommend 40-foot benches with all the advantages to be gained - improved drilling and blasting, loading, bench maintenance, truck haulage and support equipment cost-effectiveness. Also, the selection of equipment does not match the 10-ft. bench height mining scenario or the size of the operation. The 992 Cat front end loader and the Cat 785 haulage truck are huge pieces of operating equipment. Smaller equipment may be operationally more cost-effective. The equipment selection should be more carefully undertaken to match the mining conditions and mining rate.

Mining labor needs are greatly influenced by mining plan and the number of operating shifts per day. The latter will be discussed elsewhere. A mining plan requiring 10-ft benches and pre-splitting for ore control will be labor and equipment intensive.

Drilling needs will be significantly reduced by going to 40-ft benches; the number of blast hole drill moves will be significantly reduced thereby improving drill efficiency, and sub-drilling will be reduced. The efficiency of the higher bench will reduce equipment needs by 50%. Eliminating pre-splitting with no other peripheral effects considered will reduce the life-of-mine costs, both for operating and capital by $41.5 million. This calculation does not address reduction in blasting supplies and improvements in blast hole drilling.

Bench height optimization will also reduce the number of blasting personnel. This savings results from elimination need for pre-split hole loading and blasting and in reduction of the number of blast holes. No savings calculation has been undertaken here.

Loading of haulage trucks will be optimized with the improved bench height. Loader movements to chase ore will be reduced. Dozers will not be required to push to the loaders. Equipment and labor will be reduced accordingly. No impact has been calculated.

Haulage truck cycle times will be reduced. The impact of this improvement has not been calculated.

The use of a 50-degree pit slope will leave thousands of tons of un-mined ore. The face of Orange Hill demonstrates the competence of the material, standing at approximately 50-degrees over thousands of years. A steeper pit slope can probably be utilized and improve reserve volumes and still provide the safety required by MSHA.

The REPORT utilizes pre-splitting to optimize ore control yet assumes a 10% ore loss and a 10% dilution with material having a grade of 10% of the average grade of the resource. We are also not aware of any open pit mine that utilizes pre-splitting as a method for ore control, water control and slope waste management. The use of pre-splitting only increases the cost of the operation unnecessarily. Pre-splitting, however, is used for final slope definition at the pit limits, although would not be considered in our evaluation.

Twelve percent (12%) road grades are used in the REPORT's mining plan. These grades are unrealistic for operations in Alaska. High gradients are dangerous when operating in snow/ice or mud-covered road conditions. Wear and tear on equipment and tires also becomes exaggerated.

We consider that leasing of major pieces of mining equipment along with a maintenance contract are important elements for practical purposes. Equipment leasing/ maintenance contracting has become a cost-effective operational procedure in the industry.

The Stebbins mining plan requires far more equipment than we believe is needed for the material mining rate; the elimination of pre-splitting and 10-ft benches will also reduce the equipment needs. For example, the REPORT on page 21, states *"We anticipate that the mine production fleet at it's maximum will consist of thirteen 150-ton capacity rear-dump haul trucks, four 16-cubic-yard (24-ton) capacity front-end loaders, five crawler-mounted rotary drills, four crawler-mounted hydraulic percussion drills, five 460- horsepower bulldozers, and twelve diesel-powered lighting plants. Lighting plants will be situated at each active face, haul-road switchback, dump point, and at each point along the haul route that might require extra lighting (such as the bridge across the Nabesna River)."* We believe that a more realistic plan will reduce equipment requirements by 50% or more thus resulting in lower capital and operating costs.

MILL AND TAILINGS CONSIDERATIONS

The REPORT assumes that a typical copper-molybdenum circuitry will be used in the recovery process. A regrind circuit has been added to improve recovery and concentrate grade. A recovery rate of 71.7% is used for molybdenum and 85.7% is used for copper. These rates of recovery are reasonable.

The coarse ore bin, as mentioned on page 6 of this CRITIQUE and pages 22 and 30 of the REPORT, is located inside the crusher building so that the process of warming the ore to a workable temperature can begin before the material is fed to the crushers. Ordinarily, circuits are designed for direct dumping of trucks or loaders into the primary crusher; no coarse ore bin is provided ahead of primary crushing. Normal design considerations include a crushed ore stockpile to provide for surge needs. The coarse ore bin is an unnecessary item and should be eliminated from the design and costing of the mill. The cost of this item could not be identified in the calculations other than in the floor plan requirements for the building.

Two ball mills are provided for fine grinding. Hydrocyclone sizing of material is incorporated into the circuitry to assure appropriate grinding size. Minus 200 mesh material flows directly to the flotation cells. This is a normal circuit, but the use of semi-autogenous grinding (SAG) mills and screens is a routine consideration to save on grinding media and to improve cost-effectiveness. No cost savings estimate is available at this time.

The flotation process is designed to optimize recovery of copper and molybdenum. Silver is not considered in the REPORT, but should be collected in the copper concentrates. The initial circuitry will recover molybdenum concentrates at 3.05

tons of molybdenum concentrate with a grade of 56.4% molybdenum per day. Tailings from the molybdenum circuit are reground to minus 325 mesh and re-floated to recover copper and additional molybdenum. Copper concentrates amounting to 65.4 tons per day are produced with a grade of 32.2% copper. The total weight of concentrates is 68.45 tons. We take no issue with these assumptions and calculations at this time.

Tailings are thickened and discharged to a selected site at Orange Hill. Flows from and to the mill are heated to prevent freezing (p.22, REPORT). We do not consider that heating will be needed even in the coldest weather; appropriate insulation of pipes will eliminate the need for heating. Elimination of heating will have a fairly significant impact on costs. The capital costs of installing heaters are approximately $250,000; the capital costs of providing insulated pipes will be approximately equal to the heater costs, but if not, the incremental cost of insulated pipes will be insignificant when compared to the operating costs incurred with heating. The operating costs in the REPORT amount to $1.39/ton of ore mined. The operating cost savings here will amount to $86.77 million.

Mill water operating requirements are estimated in the REPORT at 1,460 gallons per minute; 800 gallons will be returned from the tailings ponds. Make-up water will be drawn from the Nabesna River or other sources within the boundaries of the claims. We do not take issue with this estimate at this time, but further scrutiny is needed. Dewatering of the mine will be an obvious need and will have to be considered in a final report.

Power requirements are estimated to be 4,250 kilowatts in the REPORT. This demand should be carefully reviewed; initial calculations indicate that the demand will be higher than this. Power for the mine and mill, the latter being the predominant consumer, will be provided by an on-site diesel-powered generating facility. The power rate used in the REPORT is $0.146/kW-hr. This seems low for diesel powered electrical generation. Examination of the REPORT's calculations indicates that fuel consumption for generation is 6,926 gallons per day; if that is used in the calculation of cost, the indications are

$$\$2.75/gallon \times 6{,}926 \div 24 \div 4{,}250\ kW.hr = \$0.187/kWhr.$$

Adding lube, maintenance parts and labor to this number will increase the costs a bit more to approximately $0.189 per kWhr. The indication is that power generation costs will be very high. Quick calculations suggest that the power costs will be about $33.3 million more than indicated over the life of the mine in the REPORT. The construction of a low-head hydropower plant in the Copper River near Slana and building a power line would provide for low cost power for the site. It would also provide low cost power for residents at Slana and along the power line to the site. A cost analysis is not available for this alternative scenario at this time; however, costs are expected to be at the levels in the REPORT or slightly less.

Locating the mill and tailings at sites other than on the claims will allow for more area for overburden storage with less secondary handling. Ore can be transported to the mill site by conveyor thus reducing the size of bridges and roads from the claims. Heavy equipment required for the operation can be moved in the winter on the ice below the bridge. Further, production of dry stack tailings storage would provide stability and the opportunity to stack the tailings higher thereby using less area.

GENERAL

The REPORT presents a very long development and operating schedule. Eight years are allocated to project development followed by twenty-one (21) years of operation. A dedicated project could possibly be dedicated sooner, within 5 – 6 years. The operating schedule is much too long and strings out the positive cash flow that will result from a properly engineered and operated facility. The extended schedule will have the effect of reducing the net present value of the cash flow. We believe that the development schedule should be compacted to the shortest possible period of time and that the operating schedule should be shortened to not more than 15 years. Increasing the mining and milling rate to mine and mill all the current reserves in 15 years would dictate that the mine and mill be designed to handle 11,500 tons per day or slightly more, perhaps 12,000 tons per day. This is a practical and accepted approach to project design and evaluation.

CONCENTRATE HANDLING

Concentrate handling includes trucking to Valdez and shipment to designated ports for onward trucking or rail movement to the selected smelter/refinery. The cost of the first portion, mine to Valdez is shown in the REPORT to be $0.68 per ton of ore. This is inordinately high and includes excessive road grading and dust suppression between the mine and Slana. The portion of the road between Nabesna and Slana is State road and will be maintained by the AKDOT&PF[5]. Grading of the road is assumed to be once every 14 days and cost $621/day. The cost of dust suppression is calculated to be $2,282 per day. Reducing grading and frequency and confining effort to the Nabesna to mine portion will significantly reduce this cost. Dust suppression application is assumed to be undertaken once every seven days. This is tremendous over-kill and absolutely unnecessary. A good dust suppressant/soil stabilizer, such as calcium chloride, will last up to two (2) years; a once per year application in about mid-May to June 1 should be ample to reduce dust migration and significantly stabilize the road surface. We seriously doubt, however, that surface soil treatment will be needed at all or at least the combination of blading and surface soil stabilization/dust control will not be needed. A blade will obviously be needed for snow removal in winter; summer blading in combination with water dust control/soil compaction should be the only routine

[5] Communication with Clark Milne, Fairbanks office of DOT&PF, 5/19/08.

maintenance needed. The cost of this segment of the operation should be in the order of $0.275/ton of ore. The overall savings would become $25,282,935.

The REPORT recommends that copper and molybdenum concentrates be shipped from Valdez to the west coast of the U.S. and Canada, respectively. From those respective locations they would be rail- or truck-hauled to smelters in Arizona or Endalko, BC. Alternatively, the molybdenum concentrates could be truck-hauled 1,389 miles from the mine to Endalko. Shipping to the west coast should be reasonable, however, materials handling and haulage beyond that point will be quite expensive. The direct truck haulage to Endalko would be even more expensive. We can't understand why Mr. Stebbins did not consider shipping directly from Valdez to either Japan or Korea. Once on the ship or barge, the additional incremental distance-related cost is very small compared to truck or rail haulage with the added material handling. There are several smelters along the Pacific Rim that can process the concentrates. We believe there is a considerable justification to consider shipping to those locations.

COLD CLIMATE CONSIDERATIONS

On page 30 of the REPORT, a statement to the effect that "*At the mill, the coarse ore storage bin is located inside of the crusher building. Doing so initiates the process of warming the ore to a workable temperature before it is fed to the crusher circuit, which in turn serves to minimize the downtime often encountered when frozen ore must be removed from the crusher chamber*". Again we are not aware of any milling operations in Arctic regions of the world that warm the ore to "workable" temperatures. Placing the coarse ore storage bin inside the crusher building for warming will require a very large building to have sufficient ore storage capacity and heat transfer effect, require much additional heating, and reduce flexibility of storage considerably. Warming of the ore 10-degrees Fahrenheit would require 32,000,000 btu of heat per day at 100% heat transfer efficiency. The energy content of a gallon of heating fuel is 139,000 Btu's. At 50% heat transfer efficiency, 460 gallons of fuel would be required per day; the daily heating cost for heating the ore would be approximately $1,266 or $9,879,073 over the life of the project.

Road design is another area of concern. Also on page 30, the REPORT states that "*The road beds, when placed over areas underlain by permafrost, are constructed in a manner that protects the permafrost from thermal degradation. As with the buildings, this is accomplished by first placing a layer of geotextile material over the surface. Then, a six-foot-thick layer of gravel or crushed rock is placed over the geotextile to serve as a foundation. Within the area of the claims, the primary haul roads are 72 feet wide. The concentrate haul road and the tailings facility access road are 40 feet wide. An additional 10-foot-wide, three-foot-thick shoulder is added to each side of these roads to reduce the possibility of plastic deformation of the road bed and to further protect the underlying surface (Renshaw, 1996)*". It should be noted very little permafrost will be encountered in the area of the mine, mill or roads due to the fairly recent withdrawal of the Nabesna Glacier, the river bed location, etc. This is an unnecessary and expensive exercise.

Tailings pipe flow heaters are provided to prevent freezing. This is considered unnecessary. Insulated pipes will be adequate to prevent freezing even in the coldest weather.

ECONOMIC EVALUATION

On page 38 of the REPORT, a statement is made that *"The property is not located in any established borough, so no property taxes were applied in the evaluation."* Yet in the Cash Flow Analysis in the appendices, both property and severance taxes are shown at $5,142,665 and $39,133,893, respectively. There is no borough in the area and no State of Alaska property or severance tax provisions apply. We assume that this is a mistake and inadvertently added to the costs. Deducting these two items would further add to the positive cash flow of the operating property.

Comments will be made about labor costs and shifts on page 33 of the REPORT. *In the project design that we've evaluated, the mine operates eight hours per shift, three shifts per day, seven days per week. The mill operates eight hours per shift, three shifts per day, seven days per week.* It is common practice in Alaska and other mining areas to operate two 11 to 12 hr. shifts per day. Even with the additional cost of overtime it is far more economic than three (3) 8-hour shifts. The savings result from fewer personnel, smaller camp, and general problems associated with a large labor force. We have strong disagreement with the three shift per day provision in the REPORT.

Also, on page 33, ". . . *a burden rate of 78.42% is included for the hourly workers. In addition to social security and Medicare taxes, this burden includes a state workers' compensation rate of $7.97 per $100,000 of payroll for all workers. It also includes a state unemployment insurance rate of 3.97%, as well as allowances for paid vacation, holiday, and sick leave.* An examination of the REPORT's calculations indicate that the actual burden rate was calculated at 71.82%. The two (2) weeks off is included in the burden, meaning that this is paid time off. This is highly unusual, although with a three, eight hour shift schedule, as proposed in the REPORT, might be needed to keep employees in Alaska. Further investigation reveals that all worked hours are paid at straight time; overtime must be paid for all hours worked over 8 hours per day and 40 hours per week in accordance with state laws. The appropriate State statutes: *"Sec. 23.10.060. Payment of overtime. (a) An employer who employs employees engaged in commerce or other business or in the production of goods or materials in the state may not employ an employee for a workweek longer than 40 hours or for more than eight hours a day. (b) If an employer finds it necessary to employ an employee for hours in excess of the limits set in this subsection, overtime compensation for the overtime at the rate of one and one-half times the regular rate of pay shall be paid. An employee is entitled to overtime compensation for hours worked in excess of eight hour a day."*[6] Going to a 2 week on, one (1) week off schedule and working the crews in two 11 or 12

[6] Employment Practices and Working Conditions, Wage and Hour Administration Pamphlet 100, April 2008.

hour shifts per day would change this scenario considerably, be much more worker-efficient, and cost-effective.

Other problems were observed with the REPORT's labor burden calculations and assumptions:

- Unemployment is calculated at 3.79% of the total wages paid; the actual rate for 2007 was 3.54% on the first $30,100 paid[7]
- FUTA is calculated at 2.41% of total wages paid; it should be calculated at 0.8% of the first $7,000 paid[8]
- No liability insurance is included in the wages calculations burden; lack of insurance a risky exercise and should be avoided; the rate is approximately 3.5% of the total wages paid
- Medical and dental insurance will be necessary for employees; this should be added in the amount of approximately $950/month per employee.

The end result of this is that the labor rate will increase by about 39.39%; however, the reduction in manpower by going to a two shift operation, will reduce the number of workers. The REPORT advises that 192 workers are required to operate the mine; a two shift operation will reduce requirements to 128 workers. This will reduce labor costs by 33.33%; the net increase in labor would be 6.57% considering no other efficiencies in the operational planning.

In addition to a reduction of mining, milling and support labor, we believe the administrative staff is far larger than required. Many of the positions can be combined such as Personnel Manager and Purchasing Agent, Mine Superintendent and Manager, Clerk and Secretary. This reduction would reduce over-all costs by $3,572,100.

[7] State of Alaska, Department of Labor & Workforce Development - http://www.labor.state.ak.us/estax/faq/w1.htm

[8] IRS Publication 15, Circular E, Employer's Tax Guide

12-29-08

United States Department of the Interior

NATIONAL PARK SERVICE
Alaska Region
240 West 5th Avenue, Room 114
Anchorage, Alaska 99501

IN REPLY REFER TO:
L1425 (AKRO-L)
WRST 32-101

DEC 24 2008

Fred Gibson
The George R. Brown Partnership, LP
4700 First City Tower
1001 Fannin
Houston, TX 77002

Dear Mr. Gibson:

The appraisal of your property, located in Wrangell St. Elias National Park and Preserve, has been approved. The appraisal indicates a fair market value in the amount of $290,000.00. Just compensation, as defined in Public Law 91-646, the "Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970", is the payment of "fair market value" as determined by an approved appraisal. The approved appraised value was determined after a thorough review and analysis of all pertinent factors affecting the value of your property, including the following:

1. The highest and best use of the property.

2. Comparable bona fide sales of properties between private parties, the date of such sales, price paid, location and other physical characteristics.

A copy of the appraisal has been sent to you.

Any increase or decrease in the fair market value prior to the date of valuation caused by this project has been disregarded in making a determination of just compensation.

Enclosed is a Corporate Offer to Sell Real Property in the above-cited amount. To proceed with this proposed acquisition, please have a representative of Northwest Explorations fill in the blanks on the middle section of the Offer, including the blank for specification of the document authorizing the representative to sign the Offer, and then have this representative sign and date the Offer, and have another representative attest the first signature. Please also, below the line which reads "Notice of acceptance of the offer is to be sent to:" provide such address. After signing and dating, please return the Offer to this office, along with a copy of the corporate document that authorizes the above signatures for the proposed transaction. This Offer to Sell becomes a binding contract upon written acceptance by the United States within the time limit specified in Paragraph One (1) of the Offer (one month).

Also enclosed is an explanation of section 127 of Public Law 105-277 which requires the National Park Service to seek to exchange unreserved public lands before we purchase any lands in Alaska. Please read this explanation and then check the appropriate box on the Land Exchange Certification. The Certification should be signed and returned to this office.

If you have any questions about this matter, please contact me at the above address or by telephone at (907) 644-3426 or by email at Chuck_Gilbert@nps.gov. I will help you determine your rights, and possible eligibility to receive payments, under the Uniform Relocation Assistance and Real Property Acquisition Policies Act.

Sincerely,

Charles M Gilbert

Charles Gilbert
Chief, Land Resource Program Center

Enclosures:
Corporate Offer to Sell and attached Exhibit A
NPS Acquisition Policies and Relocation Assistance booklet
Land Exchange Certification

FORM 10-820 (3/77) UNITED STATES DEPARTMENT OF THE INTERIOR NATIONAL PARK SERVICE

CORPORATE OFFER TO SELL REAL PROPERTY

VENDOR(S): Northwest Explorations

NPS AREA Wrangell-St. Elias NP&Pre

TRACT NO. WRST 32-101

CONTRACT NO.

THIS OFFER CONSISTS OF THE TERMS AND CONDITIONS INCLUDED ON BOTH SIDES OF THIS FORM AND ANY ATTACHMENTS EXPRESSLY MADE A PART HEREOF.

The undersigned, hereinafter called the Vendor, in consideration of the mutual covenants and agreements herein set forth, offers to sell and convey to the United States of America and its assigns, the fee simple title to the following described land, with the buildings and improvements thereon, and all rights, hereditaments, easements, and appurtenances thereunto belonging.

The real property which the Vendor agrees to convey to the United States of America is located in:

County Unorganized Borough State Alaska Acreage 363.24

Described as follows: See Exhibit A for the legal description

The Vendor covenants and agrees to convey to the United States of America the fee simple title to the above-described land subject to existing easements for public roads and highways, public utilities, railroads, and pipelines; and subject to the following outstanding rights in third parties: (If none, so state) None

The Vendor specifically reserves and excepts the following rights and interests in the above-described property: (If none, so state) None

The terms and conditions of this offer are as follows:

(1) The Vendor agrees that this offer may be accepted by the United States through any duly authorized representative, by delivering, mailing, or telegraphing a notice of acceptance to the Vendor at the address stated below, at any time within One (1) month(s) from the date hereof, whereupon this offer and the acceptance thereof become a binding contract.

(2) The United States of America agrees to pay to the Vendor for said land the sum of Two Hundred and Ninety Thousand Dollars ($ 290,000.00), (Continued on next page)

IN WITNESS WHEREOF, Northwest Explorations, the said Vendor, has caused its Corporate Seal to be hereto affixed and these presents to be signed in its name and behalf by

_____, its duly authorized _____,

and the same to be duly attested by _____,

its _____, this _____ day of _____, _____,

as authorized by _____.

Notice of acceptance of this offer is to be sent to:

By _____ (SEAL)

Attest: _____

The foregoing offer of the Vendor is hereby accepted for and on behalf of the United States of America this

_____ day of _____, _____.

THE UNITED STATES OF AMERICA

By _____

Charles M. Gilbert
Chief, Land Resources Program Center
(Name and Title)

payable on the acceptance of this offer and approval of the Vendor's title; provided the Vendor can execute and deliver a good and sufficient general warranty deed conveying said land with the hereditaments and appurtenances thereunto belonging, to the United States of America and its assigns in fee simple, free and clear from all liens and encumbrances except those specifically excepted or reserved above, together with all right, title, and interest of the Vendor in and to water rights, banks, beds and waters of any stream or river bordering or traversing the said land, and in and to any alleys, roads, streets, ways, strips, gores, or railroad rights-of-way abutting or adjoining said land.

(3) It is agreed that the United States, at its expense, will prepare the deed to the United States and obtain the title examination of the property to be conveyed.

(4) The Vendor agrees that all taxes, assessments, and encumbrances which are a lien against the land at the time of conveyance to the United States shall be satisfied of record by the Vendor at or before the transfer of title and, if the Vendor fails to do so, the United States may pay any taxes, assessments, and encumbrances which are a lien against the land; that the amount of any such payments by the United States shall be deducted from the purchase price of the land; that the Vendor will, at the request of the United States and without prior payment or tender of the purchase price, execute and deliver the general warranty deed to the United States, pay the State documentary revenue stamp taxes, State and local recordation or transfer taxes where required by the State or municipal subdivision thereof, and obtain and record such other curative evidence of title as may be required by the United States.

It is agreed that, at its election, the United States may deliver the Government check in payment for the above conveyance to its title contractor or closing agent on the Vendor's behalf, and, the Vendor authorizes said contractor or agent to cash the check and make disbursements out of the proceeds to satisfy any outstanding liens and encumbrances, pay applicable state and local documentary stamps and transfer taxes and other expenses incident to the closing of title which are chargeable to the Vendor, and remit the remaining balance to the Vendor with a statement of the payments made on the Vendor's behalf.

(5) The Vendor agrees that loss or damage to the property by fire or acts of God shall be at the risk of the Vendor until the title to the land and deed to the United States have been accepted by the United States through its duly authorized representative; and, in the event that such loss or damage occurs, the United States may, without liability, refuse to accept conveyance of the title or it may elect to accept conveyance of title to such property, in which case there shall be an equitable adjustment of the purchase price.

(6) The Vendor agrees that the United States may acquire title to said land by condemnation or other judicial proceedings, in which event the Vendor agrees to cooperate with the United States in the prosecution of such proceedings; agrees that the consideration hereinabove stated shall be the full amount of the award of just compensation, inclusive of interest, for the taking of said land; and agrees that any and all awards of just compensation that may be made in the proceeding to any defendant shall be payable and deductible from the said amount.

(7) The Vendor further agrees that from the date hereof, officers and accredited agents of the United States shall have, at all proper times, rights and privileges to survey and enter upon said property for all lawful purposes in connection with the acquisition thereof.

(8) It is agreed that the spouse, if any, of the Vendor, by signing below, agrees to join in any deed to the United States and to execute any instrument deemed necessary to convey to the United States any separate or community estate or interest in the subject property and to relinquish and release any dower, curtesy, homestead, or other rights or interests of such spouse therein.

(9) The Vendor represents and it is a condition of acceptance of this offer that no member of or delegate to Congress, or resident commissioner, shall be admitted to or share any part of this agreement, or to any benefits that may arise therefrom; but this provision shall not be construed to extend to any agreement if made with a corporation for its general benefit.

(10) The terms and conditions aforesaid are to apply to and bind the heirs, executors, administrators, successors, and assigns of the Vendor.

(11) All terms and conditions with respect to this offer are expressly contained herein and the Vendor agrees that no representative or agent of the United States has made any representation or promise with respect to this offer not expressly contained herein.

(12) As soon as possible after the date of payment of the purchase price of this offer, or the date of deposit in court of funds to satisfy the award of compensation in a condemnation proceeding to acquire the real property herein described, whichever is the earliest, the Government hereby agrees to reimburse the Vendor in an amount deemed by the Government to be fair and reasonable for the following expenses incurred by the vendor in completing this transaction:

(a) Recording fees, transfer taxes and similar expenses incidental to conveying the real property described herein to the Government.
(b) Penalty costs for prepayment of any pre-existing recorded mortgage entered into in good faith encumbering said real property; and
(c) The pro rata portion of real property taxes paid which are allocable to a period subsequent to the date of vesting title in the United States, or the effective date of possession of such real property by the United States, whichever is earlier. The Vendor agrees to furnish the Government evidence that these items of expenses have been billed to and paid by him, and further agrees that the Government alone shall determine the fairness and reasonableness of the expenses to be paid.

UNITED STATES DEPARTMENT OF THE INTERIOR
NATIONAL PARK SERVICE

NPS AREA: WRST
TRACT NO.: 32-101
CONTRACT NO.:

EXHIBIT "A" TO OFFER TO SELL REAL PROPERTY

DATED _____

The real property the Vendor agrees to convey to the United States of America is described as follows:

Those patented mining claims known as Camp Bird, California, Lemon, Orange Hill, Nebesna, Glacier, Camp Bird Extension No. 1, California No. 1, Lemon No. 1, Orange Hill No. 1, Californian Extension No. 2, Lemon No. 2, Orangel Hill Extension No. 2, Lemon No. 3, Copper King North Extension No. 1, Copper King, North Star, and North Star East Extension No. 1 lode mining and D.C. Sargent mill site claims, designated by the Surveyor General as Mineral Survey Number 1414A and 1414B, embracing a portion of Sections Twenty (20), Twenty-One (21), Twenty-Two (22), Twenty-Seven (27) and Twenty-Eight (28), Township Five North (T5N), Range Fourteen East (R14E) Copper River Meridian, being more particularly described in that certain patent from the United States of America to Alaska Nebesna Corporation, dated August 17, 1923 as Patent Number 914107; Records of the Fairbanks Recording District, Fourth Judicial District, State of Alaska.

United States Department of the Interior
NATIONAL PARK SERVICE
Alaska Region
240 West 5th Avenue, Room 114
Anchorage, Alaska 99501

IN REPLY REFER TO:
L1425 (AKRO-L)

December 24, 2008

Dear Landowner:

Public Law 105-277, enacted by Congress in the fall of 1998, contains a provision (section 127) that requires the National Park Service to seek to exchange unreserved public lands before we purchase any lands in Alaska. We need to find out if you have any interest in an exchange rather than a purchase. To this end, we have enclosed a short form for your review and signature. Please sign and return it to this office as soon as possible.

To help you in deciding if you have interest in an exchange for unreserved federal lands, we offer the following information.

Unreserved public lands are federal lands that are not already reserved for a particular use. Federal lands within national parks, national preserves, national wildlife refuges, military bases, and other federal reservations are reserved. Basically, unreserved federal lands are those lands managed by the Bureau of Land Management that have been or could be identified for disposal.

Land exchanges require the completion of a number of tasks, some of which are expensive and time-consuming. Required tasks include land surveys, cultural resource surveys, environmental assessments or impact statements, and land appraisals. Land exchanges typically take at least two years. Landowners are expected to share the costs in conducting land exchanges.

If you decide you want to exchange your land for unreserved public lands we will work with you to identify suitable lands and work through the exchange process. If you decide you do not want to pursue an exchange, we will proceed as quickly as possible to complete the purchase of your property.

If you have any questions or want additional information about this matter please call me at 907 644-3426.

Sincerely,

Charles M. Gilbert
Chief, Land Resources Program Center

Enclosure

LAND EXCHANGE CERTIFICATION

National Park Service, Alaska Region
U.S. Department of the Interior

Northwest Explorations owns the following real property in the State of Alaska:

> Those patented mining claims known as Camp Bird, California, Lemon, Orange Hill, Nebesna, Glacier, Camp Bird Extension No. 1, California No. 1, Lemon No. 1, Orange Hill No. 1, Californian Extension No. 2, Lemon No. 2, Orangel Hill Extension No. 2, Lemon No. 3, Copper King North Extension No. 1, Copper King, North Star, and North Star East Extension No. 1 lode mining and D.C. Sargent mill site claims, designated by the Surveyor General as Mineral Survey Number 1414A and 1414B, embracing a portion of Sections Twenty (20), Twenty-One (21), Twenty-Two (22), Twenty-Seven (27) and Twenty-Eight (28), Township Five North (T5N), Range Fourteen East (R14E) Copper River Meridian, being more particularly described in that certain patent from the United States of America to Alaska Nebesna Corporation, dated August 17, 1923 as Patent Number 914107; Records of the Fairbanks Recording District, Fourth Judicial District, State of Alaska.

I have been advised by the National Park Service that Section 127 of Public Law 105-277, the 1999 Omnibus Appropriations Act, requires the Secretary of the Interior to seek to exchange unreserved public lands before using certain types of federal funds to purchase all or any portion of any State, private or other non-federal lands (or any interest therein) in the State of Alaska. Accordingly, the National Park Service offered to pursue an exchange of unreserved public land instead of purchasing my land, described above.

___ I wish to pursue an exchange for unreserved public lands in the State of Alaska.

___ I do not wish to pursue an exchange of unreserved public lands in the State of Alaska.

_____
Print Name

Representing Northwest Explorations

_____ _____
Signature Date

Northwest Explorations JV Statement to Sen. Energy Committee
Hearing on Implementation of ANILCA
Attachment 5

320

ORANGE HILL COPPER-MOLY-SILVER-GOLD PROPERTY ASSESSMENT, NABESNA, ALASKA

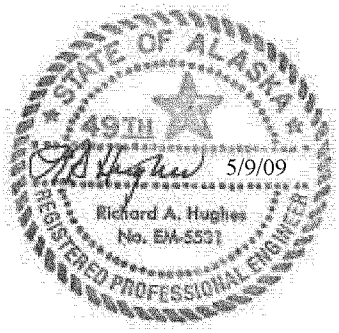
Prepared for

Northwest Explorations Joint Venture
Spokane, Washington

By

Robert H. Trent, PE, PhD
Richard A. Hughes, PE
H2T Mine Engineering Services, LLP
318 Juneau Ave.
Fairbanks, Alaska 99701-3768

May 2009



Northwest Explorations JV Statement to Sen. Energy Committee
Hearing on Implementation of ANILCA
Attachment 6

TABLE OF CONTENTS

EXECUTIVE SUMMARY	1
INTRODUCTION	2
Location and Access	2
Property and Ownership	3
Topography	3
Mine History	4
RESERVES & RESOURCES	5
Development Drilling	5
ENVIRONMENT AND PERMITTING	6
INFRASTRUCTURE	8
Site Preparation	8
Access	8
Employee Dormitory	9
Laboratory	9
Cafeteria/Recreational Facility	9
Office	9
Central Shop	10
Power Supply	10
Fuel Storage & Handling	11
Remaining Infrastructure	12
MINE DEVELOPMENT	12
Underground Development	12
Surface Mine Development	19
MINE OPERATION	20
Drilling and Blasting	20
Loading	21
Haulage	21
Support Equipment	22
Underground Crusher Operation	22
WASTE AND TAILINGS HANDLING AND STORAGE	23
Conveyor System	23
Waste/Tailings Handling	24
MILLING – CONSTRUCTION AND OPERATION	26
Ore Storage	26
Secondary Crushing/Fine Ore Storage	26
Fine Grinding	26
Concentrate Handling	27
Tailings Handling	27
Process Water Requirements	27
Supply Requirements	28
COST AND ECONOMICS	30
REFERENCES	32

TABLES, FIGURES, CHARTS

Table 1. Reserves calculated for the project based on new mining method 1
Table 2. Spot metal prices on 9/5/08 2
Table 3. Project economics 2
Table 4. Resource estimates - Stebbins 5
Table 5. Resource estimates – H2T 6
Table 6. Office requirements 10
Table 7. Power generation capital and operating costs 11
Table 8. Weekly fuel consumption for the Orange Hill Project 11
Figure 1. General layout of open pit operation within claim block 14
Figure 2. Cross section through the underground access openings 15
Figure 3. Underground crusher station layout 16
Figure 4. Underground equipment maintenance shop layout 17
Figure 5. Underground water treatment plant layout 18
Figure 6. Crusher drift ventilation system 19
Table 9. Blasting requirements and cost per standard blast pattern 20
Table 10. Mine loader requirement calculations 21
Table 11. Calculation of truck needs 22
Table 12. Conveyor segment description and horsepower 23
Figure 7. Layout of waste and tailings disposal site 24
Figure 8. Plan layout of the project 25
Table 13. Mill supply consumption and unit cost 28
Figure 9. Mill circuit for the Orange Hill project 29
Table 14. Costs and economics of the Orange Hill project 30
Chart 1. Cumulative Net Cash Flow to Northwest Explorations 31

APPENDICES

A Project location maps
- A1 – Alaska map showing project location
- A2 – Orange Hill map 2 – more detailed road access map
- A3 – Slana to Nabesna road map with topography
- A4 – Slana area map with topography
- A5 – C005N014E – Orange Hill
- A6 – C007N013E – White Mountain
- A7 – C007N014E – Native lot

B Reserve & Resource Estimates
- B1 – Resource calculations by Adventurine
- B2 – H2T Resource volumes
- B3 – Resource and dilution calculations

C Environmental and permitting requirements
- C1 - LMPT Process (State of Alaska Large Mine Permitting Team)
- C2 – LMPT Presentation providing permitting requirements/protocol

D Mine Capital and Operating Costs
- D1 – Mine Inventory

D2 – Mine Capital
D3 – Mine Operating Costs
D4 – Drill & Blast requirements

E Labor Requirements
E1 – Labor Requirements
E2 – Annual wages by position
E3 – Annual wages by year

F Conveyor Profiles

G Project Capital and Operating Costs
G1 – Cost and Economic Summary
G2 – Capital Requirements
G3 – Supply costs by Year
G4 – Mill Cost Details
G5 – Supply Cost Detail
G6 – Sundry Costs by Year

EXECUTIVE SUMMARY

This report has been prepared at the request of Northwest Explorations Partnership, Spokane, Washington and deals with the evaluation of the Orange Hill copper-molybdenum-silver-gold property located near Nabesna, Alaska. The property is within the boundaries of the Wrangell St. Elias National Park and Preserve created by ANILCA, December 1980. The property is comprised of 18 patented mining claims having a land area of 363 acres.

H2T's analysis indicates, conservatively, that the value of the property is very significant.

The property has been extensively explored and drilled. Early placer miners recovered gold from California Gulch in unknown quantities in the early part of the 1900's. A number of companies have drilled the property leading to the calculation of various quantities of resources. H2T has recalculated resources/reserves based on an innovative materials handling and ore treatment system which allowed more effective mining. This calculation determined that 64,451,000 tons of ore can be mined by innovative means between the 2900 level and the 3900 foot level of the property. Reserve numbers are shown in Table 1:

ITEM	VALUE	COMMENTS
Ore tonnage	64,450,508	Cut off grade of 0.2% Cu
Waste tonnage	235,244,356	Stripping ratio of 3.65
Total tonnage	299,694,864	
Cu grade, %	0.309	No dilution
Mo grade, %	0.031	No dilution
Ag grade, opt	0.153	No dilution
Au grade, opt	0.00234	No dilution

Table 1. Reserves calculated for the project based on new mining method.

The operating plan for this property considers that ore and waste will be transported off-property in order to optimize mining. The White Mountain mine at Nabesna has been selected to be the location of the mill and supporting infrastructure. A native lot containing 320 acres located adjacent to the Nabesna River and east of Nabesna, in sections 7, 8, 17, & 18, T 7 N, R 14 E, Copper River Meridian, has been selected to store waste and tailings from the project.

Development of the property will be undertaken during a 5-year period. Activities undertaken in this period will involve construction of all operating facilities and supporting infrastructure. Power requirements will be high; power will be provided by a hydro-power plant constructed near Slana and energy transmitted to the mine by a 69kV line built along the right of way between Slana and Nabesna. The total initial cost of development will be approximately $383.9 million.

The mining plan calls for mining from the top down with haulage of almost all ore and waste to a raise bored to the surface from underground workings containing a crusher station and supporting facilities. Conventional drilling and blasting followed by front end loader loading and truck haulage will be employed in the operation. Crushed ore and waste will be conveyed to the surface and transferred to an overland conveyor system to move the material to the mill or waste-tailings storage site. Tailings from the mill will be dewatered and conveyed to the same location. Mixing of tailings and waste will minimize storage requirements and create a neutralizing effect for the waste material should there be an acid rock drainage issue.

A total of 54,740 tons of ore and waste will be mined per day; 11,772 tons of this will be ore and be transferred to the mill at Nabesna (White Mountain) for a period of 15 years. This shortened mining period will improve operating results.

The mill has been designed to handle 12,000 tons of ore per day. An average of 11,772 tons of ore will be treated daily. Two crushed-ore stockpiles are included in the circuit. Tailings will be dewatered and fed to the conveyor system for disposal at the waste-tailings storage site, described above. Process water will be re-circulated and re-used; treatment to remove the buildup of contaminants will be incorporated. Makeup water will be provided as needed. Optimization of circuit design will include stockpile and storage bin buffering to assure continuous operation.

The total operating cost during the operating period will amount to $19.25/ton of ore. Metal prices used in the analysis are based on the average spot price on 9/5/08 and are

METAL	PRICE
Copper, $/lb	$3.1494
Molybdenum, $/lb	$33.25
Silver, $/oz	$12.72
Gold, $/oz	$808.50

Table 2. Spot metal prices on 9/5/08.

The economic parameters of the venture considering this innovative approach are shown in Table 3:

ITEM	VALUE	COMMENTS
Net Cash Flow	$268.0	Millions, to Northwest Explorations
Net present value @ 5% discount	$43.23	Millions, to Northwest Explorations
IRR, %	6.67%	Internal rate of return to NWE
Payback, yrs	13.64	From start of project
Taxes paid	$18.28	Millions in all taxes.

Table 3. Project economics.

At closure, the project will be reclaimed to acceptable standards. A $10 million reclamation bond, as cash[1], is created during the development period of the mining operation. This front-loads the project and creates negative economics, never-the-less is a reality. No reclamation costs are shown at the end of the project. Demobilization costs of $3.0 million costs are included at the end of the project.

INTRODUCTION

Location and Access

By Alaskan standards, access to Orange Hill claim group is comparatively simple. A good road leads to within a little more than 12 miles of the site; an RS2477 trail extends from the end of the road to Orange Hill over relatively flat terrain.

Road access to the site from Anchorage includes, driving north to Palmer, then northeast on the Glenn Highway to Glennallen. From Glennallen, continue northeast on Alaska State Highway 1 (Glenn

[1] A letter of credit could suffice given bank financing; this would reduce front-loading, but not replace reclamation requirements.

Highway) until reaching Slana, then head southeast on the Nabesna Road past Devil's Mountain Lodge to the White Mountain mine site at Nabesna. The distance between Slana and the White Mountain mine at Nabesna is approximately 43.2 miles. Maps showing location, topography, roads, distances and BLM records are included in Appendix A. From the White Mountain mine, an RS2477 trail leads east to the Nabesna River, then south along the Nebesna River to the airstrip and camp site adjacent to the Orange Hill claim group.

The site is also accessible by air. A short landing strip has been in use for years and is located just to the northwest of the claims. Originally constructed in 1953, this strip was then 1,700 feet long. Subsequent changes in the course of the Nabesna River have eroded the strip and shortened it to its current length of approximately 600 feet. Approximately 85,000 feet of dozer trails exist on the property. The dozer trails provide access from the airstrip, a nearby campsite, and to the various drill and adit sites found throughout the property.

Property and Ownership

The Orange Hill property is comprised of 18 patented mining claims and one patented mill site. The claims are found near the terminus of the Nebesna Glacier, near the northern boundary of the Wrangell - St. Elias National Preserve in eastern Alaska. The names of the claims are shown below.

Lemon No. 1
California No. 1
Camp Bird
Camp Bird Ex. No. 1
Lemon

Orange Hill
Orange Hill No. 1
Nabesna
Glacier

California
California Ex. No. 2
Lemon No. 2
Orange Hill Ex. No. 2
Lemon No. 3

Copper King

Copper King Ext. No. 1

North Star

North Star East Ext. No. 1

The last four (4) claims were not drilled and are not included in the evaluation exercise although they do provide an opportunity to develop limestone resources for use in the mining operation.

Topography

Orange Hill itself is a topographic high that rises to just over 600 feet above the east margin of the out-wash plain of the Nabesna Glacier. The plain is relatively flat and is approximately 2¾-miles wide at the site of the claim group. The Nabesna River flows north from the terminus of the glacier, which is a few miles south of the Orange Hill claims. The out- wash plain in the area of Orange Hill is aligned almost directly north/south.

The eroded face of Orange Hill is relatively steep at a gradient of over 100% (45°). However, the top of the hill is somewhat rounded and the terrain levels off from there to the east for a distance

of perhaps 2,000 feet. From that point, mountains rise to an eventual height of over 8,000 feet (the top of Orange Hill reaches an elevation of 3,510 feet).

Within the boundaries of the claim group, the terrain is seldom flat. Level spots do exist throughout the center of the group and the topography, in general, is not steep, but the land consists for the most part of rolling rises and depressions. The eroded slopes in California Gulch are quite steep, and the mountain faces in the eastern portion of the claim group are typified by significant gradients.

Several streams flow intermittently through the claim group, and for the most part these run north/south. Several gulches, including the aforementioned California Gulch, as well as Big Gulch, Moly Gulch (which both flow into California Gulch), and Moose Gulch, all represent stream channels that carve into the property.

Most of these gulches, in addition to the west face of Orange Hill, are active erosional features and are, as such, almost devoid of vegetation. Brush covers most of the rest of the surface of the claim group, although trees extend over some of the central portion, as well as the lower slopes of the mountains that rise to the east.

Mine History

The U.S. Geological Survey (Mendenhall & Schrader, 1903) reports that gold was first discovered at Orange Hill in 1899, and that some portions of the site were staked at that time. The first specific recorded activity was in 1911, when Mr. Bud Sargent staked claims to recover gold in California Gulch by means of placer mining methods. The Gulch is a drainage that flows north from the patented claims. Attention then turned to the copper-molybdenum mineralization signified by the coloration of Orange Hill. In 1923, Mr. Sargent sold his claims to the Alaska Nabesna Corporation. The corporation spent the next five years exploring the area with the apparent intent of identifying and delineating disseminated copper-molybdenum resources. Records indicate that Alaska Nabensa drilled at least 10 holes, and perhaps as many as 20, and that there were other workings already on the site as suggested by references to the "Iron Tunnel," in their drill logs. In 1928, the Corporation patented 18 claims together with an adjacent mill site.

Through the depression years, activity was minimal to non-existent at Orange Hill. However, World War II generated a need for metals that renewed interest in the region, which resulted in an investigation of the property by the U.S. Geological Survey in 1943. Reportedly, Kennecott Copper Company sent a team of geologists to examine resources encompassed by the claims in 1953, based primarily upon information contained in the U.S. Geological Survey report. By 1962, the property was again under investigation in that Kennecott undertook a drilling program. Bear Creek, in 1964, also drilled the property.

AJV Corporation acquired Orange Hill in 1967 as part of their plan to evaluate the porphyry copper-molybdenum potential of the northern flank of the Wrangell Mountains. Three years later, they teamed with others to form Northwest Explorations Joint Venture (NWE), and AJV contributed Orange Hill to that Joint Venture as its principal asset. During those three years, at least 46 exploration holes were drilled in an effort to delineate mineable resources at the Orange Hill property. With a resource identified, the Joint Venture then spent the next seven years drilling the property with the goals of proving up the extent and the grade of the deposit at Orange Hill, and of locating additional mineralized zones.

As a result of NWE's efforts, U.S. Borax and Chemical Company (Borax) took a purchase option on the property in 1977, and then undertook their own exploration and resource delineation efforts until the end of the 1980 field season, after which Congress enacted the Alaska National Interest

Lands Conservation Act (ANILCA). This act established the boundaries of the Wrangell-St. Elias National Park and Preserve, and the Orange Hill property is situated within those boundaries. The establishment of the Preserve effectively stopped any further deposit delineation and mineral exploration work at the property. However, Borax chose not to abandon its interest in Orange Hill and instead renegotiated its purchase option, extending it until the year 1995.

RESOURCES & RESERVES

Adventurine (Scott Stebbins) calculated resources based on limited operating area, 0.2% copper cut off, and inclusion of all drill intervals for silver and gold regardless of whether there were assays or not. The results of his calculations are shown in Appendix B1 and are summarized in Table, 4.

ITEM	VALUE
Ore, tons	62,468,000
Waste, tons	227,984,000
Cu, %	0.309
Mo, %	0.031
Ag, opt	0.091
Au, opt	0.001

Table 4. Adventurine (Stebbins) resource calculations.

Material volumes were re-calculated as a result of the improved ore and waste handling through an underground system, storage of waste and tailings off-site, and the construction of the milling operation at White Mountain (Nabesna) and different grade-interval calculations. This improved material volumes, and improved grades. Silver and gold grades were re-calculated considering only intervals with assays; intervals with no entries were considered to have not been assayed.

The redesign discourages mining to the lower levels that were included in the Adventurine considerations, however, optimizes the mining of the ore body. As the project matures, and more data is acquired, deeper level mining may become possible; this will require moving the underground facilities to the surface and re-installing them there to be functional; we have not considered this option. This will become entirely possible as the pit reaches its currently intended lower limit. Although the facilities will take some operating room, they should not significantly obstruct the mining of considerable volumes below the current level of operation considered in this report. Undertaking the exercise to the extent considered in this report provides a reliable indication of costs and economics; extending the effort to a finite degree would not improve results significantly.

Our recalculation of material volumes is based on mining from the 3900-ft to the 2900-ft level and within the confines of the property boundaries. Pit slopes were selected to be 50-degrees. No in-pit ramps will be left since mining will proceed from top to bottom. The material density used by Stebbins was also used in this calculation; tonnage factor calculations indicate that 11.66 cubic feet of material in-place will weigh one ton. Grade and stripping ratio were left the same as in his calculations. A 10% dilution with waste-grade material was assumed to be reasonable and included in the calculations. The results of our calculations follow:

ITEM	QUANTITY/VALUE	COMMENTS
Ore, tons	64,450,508	Calculated at Stebbins stripping ratio of 3.65
Waste, tons	235,244,354	
Total, tons	299,694,862	
Ratio, W:O	3.65	Used Stebbins numbers
Ore grade	Cu: 0.286%	Considers 10% dilution with waste grade material
	Mo: 0.029%	Same
	Ag: 0.142 opt	Same
	Au – 0.021 opt	Considers 10% dilution with no gold
Cut-off grade	0.20% Copper	

Table 5. Reserve estimates based on new mining plan as calculated by H2T.

Appendix B1 shows Stebbins ore reserve calculation which were the basis for calculation of resources by H2T, shown in Table 5, above with volume calculations shown in Appendix B2.

Development Drilling

Core and reverse circulation development drilling will be undertaken during the first year of development to more carefully delineate the ore body and clearly establish grade. This drilling will be on a contract basis. The additional data will provide the ability to further optimize the operating plan and economics. Additional delineation drilling may be required, but is not budgeted in this analysis. A core processing facility will provide splitting for analysis and further review as needed; one half of the core will be stored at the mine site, the other sent to the Nabesna-located laboratory.

ENVIRONMENTAL AND PERMITING

Environmental monitoring and data collection will be an initial and continuing part of the project. The initial effort will be followed by permitting, expected to be completed by the end of year three (3). Environmental baseline monitoring will include a long list of activities, including:

- Surface water quality and quantity
- Groundwater quality and quantity
- Meteorology
- Aquatic life
- Wildlife
- Wetlands
- Socioeconomics
- Cultural resources – native use and remnants
- Subsistence
- Traditional ecological knowledge
- Visual resources
- Noise
- Air quality.

Monitoring facilities will include establishing weather and hydrological stations at Nabesna, the Native lot intended to be the waste-tailings storage site, and the mine site at Orange Hill. The weather

stations will monitor precipitation, solar incidence, daily temperatures, wind velocity and direction, sound, and air quality. Other monitoring efforts will measure stream levels, flow and be sampled for quality. All steams that could possibly be impacted by the operation, including the Nabesna River will be monitored and sampled for water quality on a periodic basis. An experienced and expert environmental consulting firm will be hired to undertake this effort.

We do not expect to encounter permafrost, but will definitely encounter seasonal frost. The area has been covered by the Nabesna Glacier until recently which should have provided insulating cover for the areas to be utilized.

Sampling of the ore body will be undertaken to determine metallurgical conditions and to do acid rock drainage characterization. The samples will be tested in an acceptable and licensed facility such as McClelland Laboratories Inc., Reno, NV, Kappes Cassiday & Associates, Reno, NV, others. These tests will include laboratory scale and bulk testing to determine work index numbers for grinding needs and cost determination, flotation testing for recovery data, acid rock characterization, metal-ion mobilization, other as needed. The testing will also include humidity cell tests to determine the potential of the tailings and waste material to produce acid rock drainage. This data will be fed to the permitting and design engineering firms to do permitting and detailed engineering for the facilities. The budgeted cost of the environmental and permitting effort has been included at $15 million.

Permitting efforts will be started in year 2 and continued to completion in concurrence with detailed engineering to acquire the necessary permits for the operation. The State of Alaska Large Mine Permitting Team process will be utilized to acquire permits. Participants in the process will include various state and federal agencies – State Departments of Natural Resources, Environmental Conservation, Fish & Game, Transportation and Public Facilities, Commerce, Community and Economic Development, Labor, Law, and Federal agencies including the Corps of Engineers, Fish and Wildlife Service, National Marine Fisheries, Bureau of Land Management, National Park Service, and Environmental Protection.

The process will include the approval of a number of permits and will have to be conducted in accordance with the National Environmental Protection Act (NEPA). The permitting process will include the approval of an Environmental Impact Statement to include consideration of hydrology, air and water quality, noise, wetlands, fish and aquatic habitat, wildlife, threatened and endangered species, socioeconomics, land use, subsistence, cultural resources, subsistence, visual resources, recreation, safety and feasibility, and cumulative impacts. This is an arduous process and extensively involves public participation.

A partial list of permits will include the following:

- Operating plan
- Reclamation and bonding
- Waste Management Permits and Bonding
- NPDES permit for discharge of waters
- Sewage Treatment System
- Air Quality Permits
- Fish Habitat and Fishway Permits
- Water Rights
- Right of Way/Access
- Dam Safety Certification – if a dam or dams are required
- Cultural Resources Protection
- Monitoring Plan
- Surface/Groundwater/Wildlife

- Dredge and Fill Permit
- Threatened and Endangered Species Act Consultation
- Essential Fish Habitat
- Bald Eagle Protection Clearance
- Migratory Bird Protection
- MSHA Certification
- Explosives Handling Permit
- Spill Prevention Control and Countermeasures Plan
- Stormwater control and mitigation
- Environmental Impact Statement to cover the entire scope of the project

See Appendices C1 and C2 for more detailed information.

INFRASTRUCTURE

The infrastructure required for the operation will be fairly extensive since the operation must be fully self-supporting and capable of housing and feeding employees during their assigned period at the mine. A two week on, one off schedule will optimize employee numbers. Infrastructure requirements will include site preparation, access improvements, employee dormitory, laboratory, cafeteria/ recreational facility, office, central shop, power, worker change house, central warehouse, potable water and sewage supply, waste handling and storage, fuel storage, other as needed.

Site Preparation

We used Stebbins site preparations costs considering that he spent a lot of time doing his estimate. The effort will involve preparation of bases for all surface facilities at the White Mountain (Nabesna) site, at Orange Hill, the native lot, other. The cost used in this estimate was $2.53 million.

Access

Access will include consideration for the road between Slana and Nabesna and roads construction and upgrading in the project area. The total cost of local access construction is estimated at $4.7 million. This will include an initial application of calcium chloride for dust suppression. Dust suppression is included annually during the operation of the project at $279,100.

Access to the mine site is provided by a good quality dirt road from Slana to Nabesna as described above. The department of Transportation and Public Facilities maintains the road between Slana and Nabesna and has advised that this activity would be intensified as needed to support the operation.[2] Road construction between Nabesna and the mine site and to the waste-tailings storage facility will be required early in the project development. RS2477 trails between the various sites at the project will be improved to provide efficient travel. Site roads will be constructed along the intended location of overland conveyors to facilitate construction of those facilities and power lines and to minimize the impact on the area. Site roads will be approximately 23.6 miles in length; 18.1 miles of this will be along the conveyor routes, the remainder will include a light duty road from Nabesna to the waste-tailings storage facility along a pre-existing road from the Devils Mountain Lodge to the Native lot (waste-tailings) site.

[2] Clark Milne, DOT&PF May 2008.

Three crossings of Jacksina Creek will be required. Each of these crossings are intended, at this time, to include 2 parallel culverts each 10-ft in diameter and 36-ft in length. Hydrologic monitoring and precipitation/ run-off analysis may change these assumptions as the project matures.

One crossing of the Nabesna River will be required. A bridge will be constructed across this drainage capable of moving heavy equipment between the mine and the waste-tailings storage site and the mill at Nabesna.

Employee Dormitory

The employee dormitory must house employees at site and visitors who from time to time will be at the property. Estimates provided by vendors indicate a cost of $2.2 million will be required for this facility. The total number of workers at site will grow from 175 to 181 between the 1st and 15th year of operation. A buffer of rooms will be provided for corporate, state and federal permitting, and other visitors.

Laboratory

A laboratory will be required to do mine and mill sample analysis and undertake metallurgical (recovery) testing. An average of sixty-three and one-third (63⅓) holes will be drilled each day. When in suspected ore zones, each of these holes will have to be chemically analyzed for copper, molybdenum, silver, and gold; other elements may be included in the analysis from time to time to assure that valuable minerals, are being considered and recovered. In addition, analysis of concentrates from the mill and occasional confirmation testing of materials handling streams in the mill will be undertaken to provide the control needed for the operation. Development drilling, which will probably be undertaken will require laboratory support. Each sample will be dried in a drying oven, pulverized, divided into aliquots, and chemically analyzed. Rejects will be stored for a period of time for possible re-assay checking should there be an indicated problem with assay returns. The cost of a laboratory facility has been estimated at $557,300 by Stebbins; we used his numbers since they appear to be very credible.

Cafeteria/Recreational Facility

A cafeteria/recreational facility will be required since this is a remote fully self-sufficient mine camp. Stebbins costs, amounting to $688,019, were used for this item since his estimate seems comprehensive and accurate.

Office

Offices will be required for management, accounting, purchasing, internet technical, clerical, engineering, surveying and geological personnel. Although a temporary office will be provided at the mine for some of these personnel, their main offices will be at the White Mountain site. The total salaried compliment at the project at any given time will be 55 persons; however, not all will require an office assignment. A list of salaried (and other) positions is shown in Appendix E. The positions that will not need an office will include the expeditor, shift foremen for the mine and mill, the chemists/assayers, lab technicians, and mill maintenance clerks. The numbers of these positions add to 19, leaving office needs for 36 persons. The area requirement calculated by Mr. Stebbins was 120 square feet per person. This is light considering the need for conference rooms, service areas, and gross-up. The needs in square feet are

OFFICE REQUIREMENTS		AREA, SQ. FT.	
POSITION	NO.	PER PERSON	TOTAL
Management	14	187.5	2,625
Non Management	22	150	3,300
Service	36	3.75	135
TOTAL			6,060

Table 6. Office requirements

This is only slightly less than Stebbins calculated needs of 6,120 square feet; his numbers were used in the capital cost estimate of $1.04 million.

Central Shop

A central shop will be constructed at the White Mountain site to be fully capable of servicing all equipment. This is intended to be a backup facility in the event that the underground facility at the mine becomes temporarily un-useable for any reason. This central facility will also serve to maintain equipment at the waste-tailings storage site, the mill operation and other centrally assigned equipment including public road vehicles, etc. Stebbins numbers are very well done in this case and are used for this facility; the capital cost is estimated to be $803,560.

Power Supply

The total power demand for the facilities at the mine, mill, and central facilities will average 22,126 kW. This is a huge demand and will require significant generating facilities. The cost of providing this amount of power required innovative considerations of a number of opportunities to arrive at the most economic alternative.

We considered providing on-site diesel power generation. NC Machinery[3] was contacted to acquire capital and operating costs for the site. The results drove operating costs, due to very high fuel consumption, to exorbitant extremes. This approach was considered prohibitive.

Our next approach was to consider gas turbine generation with gas provided by the AGIA gas line between from Alaska to the L48. We assumed that the line would be constructed in time for us to tap that facility. We also assumed that a 100-mile high pressure 6-inch line would be constructed between Tok and the mine site. Gas would be provided at $3/mbcf. This also became prohibitive.

Our next approach was to consider building a 25 mW hydro-power generating facility near Slana (see Slana Area map in Appendix A4) and constructing a 69kV line in the right of way between Slana and the White Mountain and mine sites to provide power. This approach provided much better economics due to lower operating costs. The results are set out below:

[3] Lloyd Shanley, NC Machinery, Anchorage

HYDRO-POWER GENERATION	AMOUNT
Plant construction[4]	$50,000,000
Power line construction, $350k/mile[5]	$13,000,000
Total Capital	$63,000,000
Operating Costs, $/kW-hr.	$0.015
Annual generator operating cost	$2,946,171
Power line operating cost/year	$84,446

Table 7. Power generation capital and operating costs.

The Slana general area provides a number of opportunities for hydro power generation. These will require a more comprehensive investigation and selling to the local community to move the project forward. Potential sites could be constructed on the Slana River, and at a number of lakes near Slana; Suslota Lake is an obvious possibility, but needs investigation. The selected site would have to be outside the Wrangell St. Elias park system. Selling to the local community could include providing power to the local residents at cost with charging intended to recover line construction, switching and transformers in a reasonable period of time. The utility could qualify for special consideration since the quantity of power supplied to the locals would be relatively small. State support through the AIDEA loan fund or alternative energy program is a likely probability; this would reduce the front-loading of the project considerably.

Fuel Storage & Handling

Fuel will be the single most expensive supply item for the project. A large fuel storage facility will be required for the project. At this time, due to logistics, the facility is planned to be constructed at the White Mountain site. A minimum of a full week's consumption in storage volume will be constructed. An analysis of the consumption indicates an average as follows:

FUEL CONSUMPTION, GAL'S/WK		
GASOLINE	HEATING	DIESEL
435	3,924	24,815
29,174		

Table 8. Weekly fuel consumption for the Orange Hill Project.

A lined and bermed, tank facility will be constructed to store at least one week's consumption of fuel. Three 10,000 gallon diesel fuel, one 5,000 gallon heating oil and one 1,000 gallon gasoline tank will be included in the facility. Piping, pumping, electrical and metering components will be included to assure appropriate control and permitting compliance. Stebbins budgeted $238,470 for fuel storage and handling; this seems to be an adequate number and is accepted for this report.

Delivery of fuel to the mine will be handled with a mine fuel truck. The truck will provide fueling to all equipment at the mine as needed. Minimal temporary storage at the mine may be necessary to avoid shut-downs due to being out of fuel; a mechanical failure or storm events could upset haulage between sites.

[4] Idaho National Laboratory, http://hydropower.inl.gov/hydrofacts/plant_costs.shtml
[5] Dryden & LaRue, 2006

Remaining Infrastructure

The remaining infrastructure, comprised of worker change house, central warehouse, potable water supply and sewage treatment, and garbage handling and disposal, does not need elaborate discussion. Suffice to advise that Mr. Stebbins did a reasonably good job of estimating these requirements and his numbers, for the most part, were used in the analysis. The exception was water supply and sewage treatment and discharge and waste handling. We note that he used a sewage treatment plant cost of $72,600; this is very light considering the volume of sewage and the discharge regulations. We have assumed a total cost of water supply and sewage handling at $200,000 with an annual operating cost of $150,000; this needs further consideration in the engineering, permitting phase of the study.

MINE DEVELOPMENT

Improving ore body data will be an important front end effort requirement. This will involve an early and intensive drilling program intended to further delineate the ore and configuration, grades and to provide samples for metallurgical testing.

For the purpose of this assessment two mining methods were considered, open pit and block caving. Block caving was eliminated due to the low recovery possible without caving encroaching on Park Service land. It should be noted that the ore body extends beyond the patented mining claims but due to Park Service rules these strategic metals cannot be mined and will be permanently lost.

Open pit mining was selected as the most efficient from the standpoint of mineral recovery and economics. The proposed mining plan (Figure 1) gives the mining levels in 100-ft. increments as can be noted by their color and topographic contours. Elevations ranges involved in the mining process are from 2900 ft, (level 10) to just over to 3900 ft. (level 1).

The open pit operation will be supported by an underground system to handle all mined-materials to be moved off of the mine property. The underground system will be comprised of an ore pass, lower conveyor drift, upper crusher access drift, crusher station, crushed rock conveyor to the surface, maintenance shop and water treatment drift. All facilities located underground will be below the 2900 ft. level of the ore body.

Total Mine power requirements will be approximately 1,988 kW and be provided from a generating facility located at Slana and transmitted to the mill and mine by 69 kV lines constructed in the right of way along the Slana to Nabesna road. Power supply is described in more detail, above. A transformer and switching station will be provided at the mine and at other locations in the operation.

Underground Development

The arrangement of the underground facilities is shown on Figures 1 through 6. Location of the ore pass and crushers will avoid the need for surface crushing facilities on the limited area of surface available on the mill site claim. Heating and maintenance of a surface structure in the harsh winters of the Wrangell Mountains is expensive. Maintenance facilities, Figure 4, including warehouse will also be located underground for the same reasons as the crushing facilities. The maintenance facility will have seven bays for trucks and loaders of both the mine and tailings disposal site. Mine office and employee facilities will be located on the surface at the mill site location. The water treatment facility, Figure 5, will be located adjacent to the lower crusher drift near the crusher location. Most of the water will flow by gravity to the treatment drift. Water not flowing by gravity will be pumped from collection sumps.

Crushing will be accomplished with two 50-inch gyratory crushers each capable of handling 2,475 tons per hour of minus 6-inch product. Two crushers are provided to allow continuous operation while one crusher is down for maintenance, which can be for several days to weeks for mantle buildup or large component replacement. The crushed rock will move from the crusher discharge with an armored feeder to the belt conveyor to the surface. Feed rates will depend on mill requirements. Once access has been established to the mine site, excavation will begin on the upper and lower crusher drifts, crusher station, ore pass, and mine maintenance shops. A surface access road on the claim group will be constructed to provide for mine development.

Access drifts will be 25 ft. wide and 20 ft. high. This size of drift will allow the movement of crusher components to the crusher station. Upon completion of drifting, the maintenance shop, crusher station and water treatment drift, the temporary ventilation system will be removed and the permanent ventilation system installed. See Figures 4 and 6. Ventilation requirements are provided by MSHA standard 30 CFR 57.4761.

Completion of the drifts and ventilation system will allow the eight foot diameter ore pass to be drilled.

Shop openings will be developed and be 30-ft. wide and 25-ft high. This size is required for haul trucks and loader access. The shop openings will include a maintenance warehouse and maintenance office. A connection to the lower crusher drift with an escape raise will be included. Completion of the underground access facilities will provide for installation of permanent facilities. A permanent ventilation system will be installed in both crusher drifts to assure proper air quality to the underground. The maintenance shop, water treatment facility, crushers, etc. will be installed at this point. This will include foam fire suppression systems and maintenance support equipment. A crusher to portal 42-inch wide conveyor belt will be installed to move crushed material from the crusher to the surface. The conveyor will be suspended from the back in the lower drift and be out of the way of machinery movement. Conveyed material will be transferred at the portal to the overland conveyor system and sent to intended locations, described below.

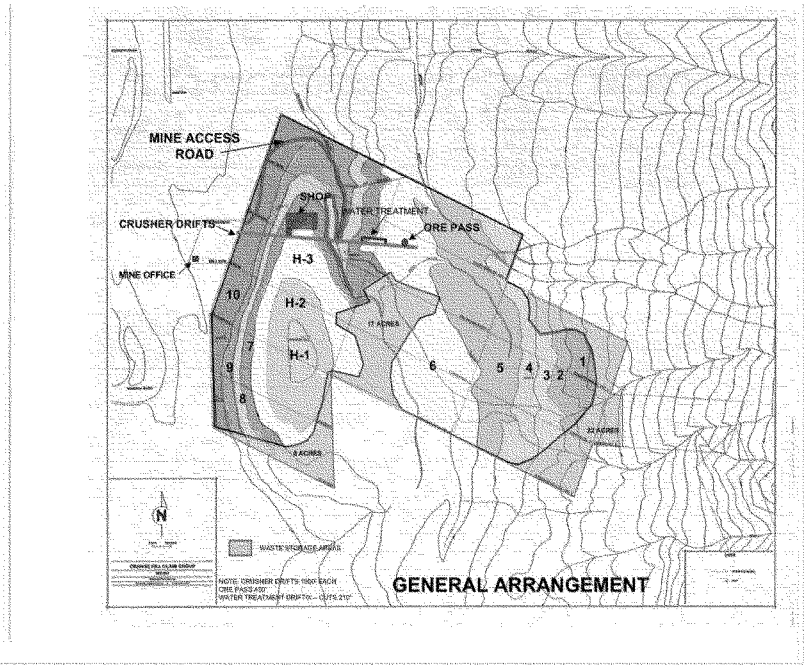


Figure 1. General layout of the open pit operation within the claim block. The colored contours intervals represent 100-ft vertical intervals of the orebody. The underground workings are shown in orange, with the ore pass shown in green. An underground shop, shown in black-dark grey, will be provided to minimize surface impact. Water treatment of all waters flowing into the underground operation, and if necessary, from the surface operation will be treated at an underground site, shown in purple. Access to some of the upper portions of the surface will be provided by a road shown in red; additional surface road development will be required to access the extreme upper section of the orebody. Top soil and some waste storage to be used in reclamation of the site will be stored in the blue areas; a total of 47 acres are available for this need.

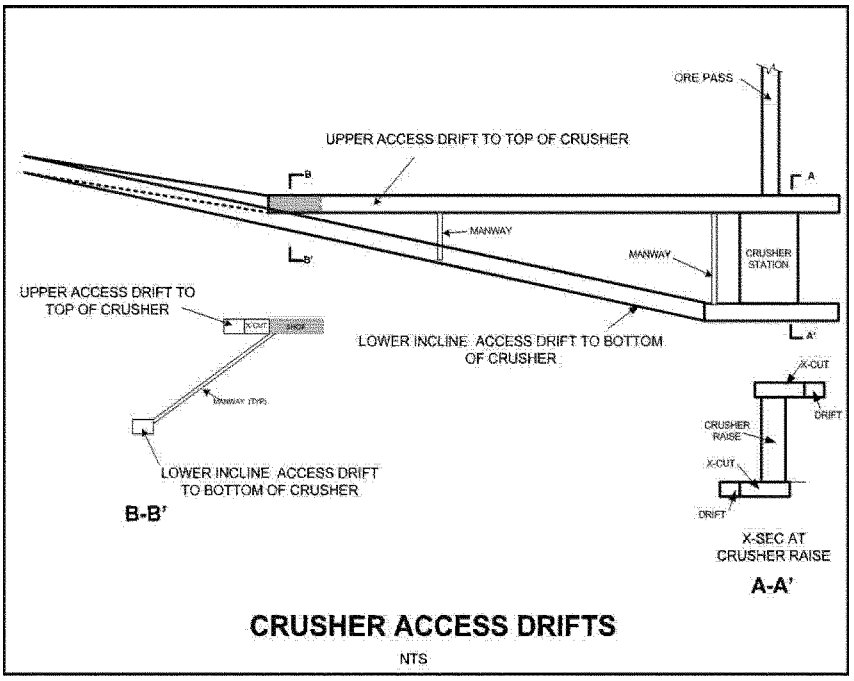


Figure 2. Cross section through the underground access openings to the crusher station.

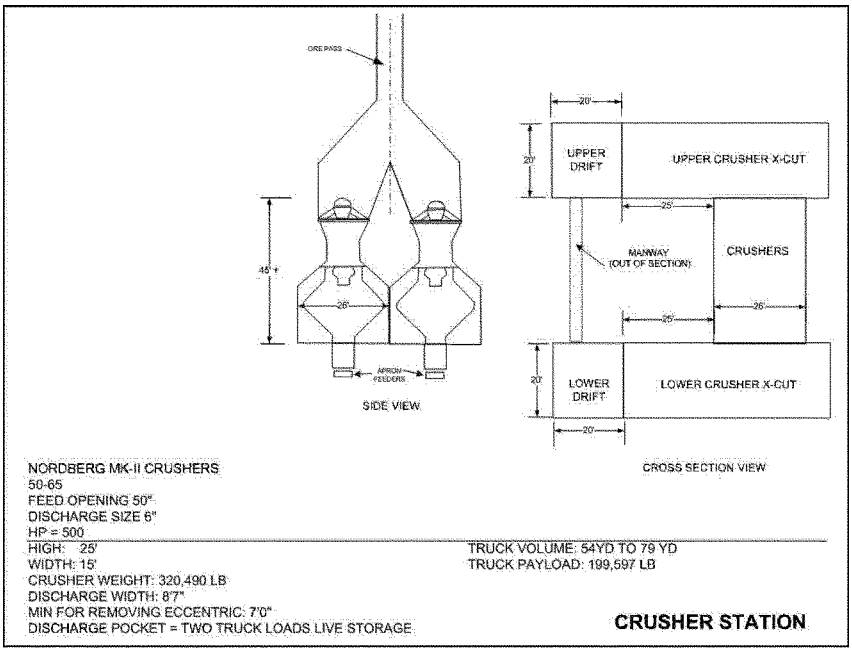


Figure 3. Layout sketch of the crusher station, showing the feeder raise, crusher station layout, crusher installation, and apron feeders. Crusher specifications are included.

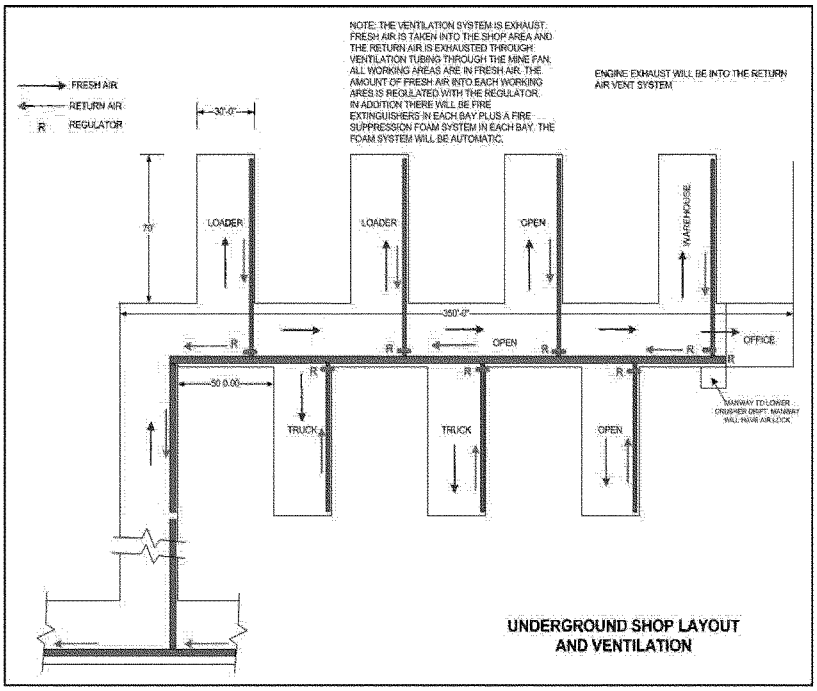


Figure 4. Underground equipment maintenance shop layout. Ventilation requirements for this facility will be high. In order to prevent diesel exhaust from passing through the access workings, a withdrawal ventilation system will be utilized – hard ventilation tubes will exhaust air from the bays; this will withdraw welding gasses and exhaust smoke.

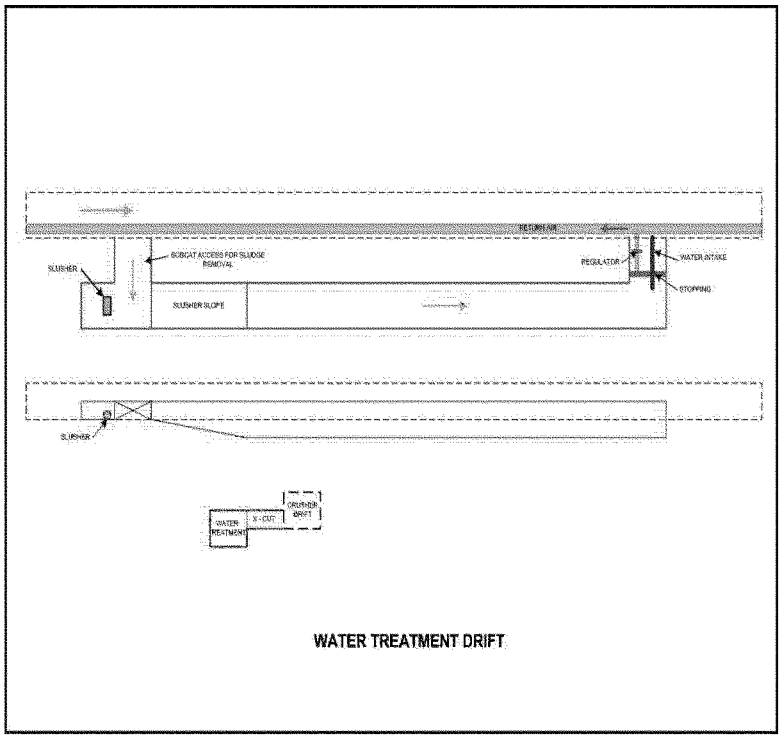


Figure 5. Layout of the underground water treatment facility. The slusher shown in this drawing will probably be replaced by a continuously operating electrical motor - chain scraper system operated automatically and independently through the treatment pit for withdrawal of settled solids. The system will be operated with only minimal attendance – removal of solids and maintenance as required.

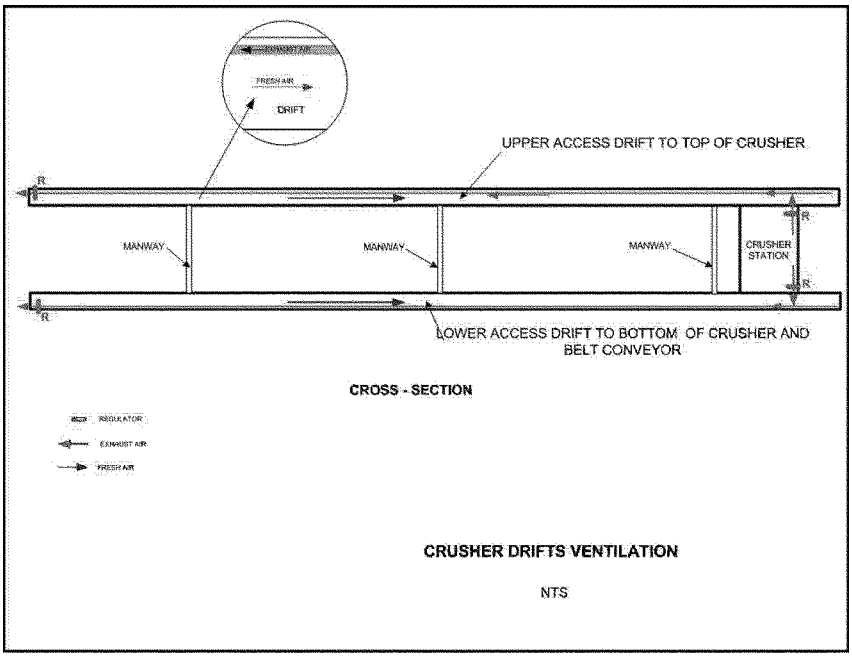


Figure 6. Crusher drifts ventilation system.

Surface Mine Development

Surface development will involve road access construction, stripping, and otherwise include support facility construction that will be needed to facilitate efficient mining of the deposit. Development materials will be stored at site, and used to enhance the road between Nabesna and the mine and tailings. Top soil will be stored at sites that will be available to reclaim disturbed areas at completion of mining; the pit will not be filled or reclaimed – birds like cliff-type nesting sites for safety from predators. See Figure 1 for location of top soil sites.

The daily mining requirement is designed for 54,700 tons per day. The mining plan is unique in that almost all ore haulage is downgrade or level. Level or downgrade ore haulage results in greater productivity and improved maintenance on truck components; in fact the level portion of the haul will be at higher speeds than the down hill portion due to braking restrictions of the trucks. Production of 54,700 tons per day will require two rubber tired blast hole drills, two 25-ton front end loaders and six 100-ton trucks. Maximum haul distance is approximately 3,000 feet. Trucks will be loaded and travel to the ore pass. A grizzly at the top of the ore pass will allow any material less than 42 inches to pass. Material that is larger than 42 inches will be reduced in size with a hydraulic hammer on a boom.

Other equipment required for the operation will include, but not be limited to explosive loading trucks, bulldozers, road graders, portable lighting plants, crew trailer, backhoes, small skid loaders, fuel truck, a service truck, tire changing equipment, etc. See Appendix D for a list of equipment needed for the project.

Equipment selected for mining of the ore body is typical open pit equipment where blasting is used. Equipment includes 100-ton haul trucks similar to the Caterpillar 777, 25- ton front end loaders similar to the Caterpillar 992, blast hole drills capable of drilling 40-ft. blast holes, explosive loading trucks, bulldozers for road construction and general mine earth moving, road graders for road maintenance, and reverse circulation drills. In addition there will be portable lighting plants, crew trailer, backhoes, several small skid loaders, fuel truck and maintenance trucks for tire changes etc.

Surface stripping and development will be undertaken concurrent with the underground development. This activity should start in year 4 and become intense in year 5. Activities involved in this effort will include access road construction, top soil stripping and storage, bench development, and surface facility construction. The pit walls will be constructed at an overall 50-degree angle including catch benches, but excluding roads. The material is expected to be competent at a 50-degree angle as evidenced by the slopes of Orange Hill.

MINE OPERATION

The mine operation is structured to comply with acceptable mine operations principles and practices. Bench heights have been selected to be 25-ft. Equipment selection, as depicted in Appendix D1, has been optimized to consider operating conditions and production requirements. The operating sequence will involve surface drilling and blasting, loading and haulage to the collar of the raise, underground crushing and conveyance to the surface overland conveyor system, and support activity at the mine, both underground and on the surface.

Drilling and Blasting

Drilling and blasting is an incredibly important component of the operation. Good fragmentation at the mine site reduces a lot of subsequent operational needs and costs. In this case, primary crusher operation is reduced, conveyor operation is improved, and secondary and additional stage size reduction requirements are reduced. Drilling and blasting operations and costs have been calculated on an H2T program designed to optimize parameters, see Appendix D4. A 100-hole blast will provide the following:

ITEM	AMOUNT	COMMENTS
Tons broken per 100-hole blast	86,432	
Supplies (explosives and accessories)	$15,525	Based on quotes provided for this study by supplier[6]
Cost per ton of material broken	$0.1796	Does not include labor, depreciation, or equipment operation costs.

Table 9. Blasting requirements and cost per standard blast pattern.

Sixty three and one third (63⅓) blast holes will be required per shift in order to maintain efficient operation. The footage requirement will be 1,853 ft per day. A good drill operator should be able to achieve 1,000 ft per shift, thereby providing 54,800 broken tons of broken material per shift, fully

[6] Cochlin, Alaska Pacific Powder, July 2008

sufficient to satisfy production requirements. Drilling is provided on both operating shifts to assure that the ordinary delays are overcome and that sufficient broken material is provided. Truck mounted drills will be able to move from site to site to accomplish drilling needs; however, in order to assure that moves, servicing, maintenance, other delays, will not hinder production, three (3) drills are provided to assure that drilling can be accomplished cost-effectively.

Loading

Truck loading will be by 25-ton capacity wheel loader similar to the Cat 992. The operating capability/requirements of a 25-ton loader is shown in Table 10:

MINE LOADER REQUIREMENTS	VALUE
Loader bucket size, cu yds	16
Cu ft/ton	17.5
Tons per bucket (pass)	24.7
Passes per truck	4.0
Tons per truck	98.8
Seconds per pass	35
Passes per minute	1.7
Minutes per truck	2.3
Truck loads per hour (50 Minutes/hr)	21.4
Tons per hour	2,117
Tons/loader/shift (10-hour shift)	21,171
Loaders Required to be operated per shift	1.29

Table 10. Mine loader requirement calculations

The calculations in this table indicate that 1.3 loaders will be required per shift. For a 2-shift operation, this equates to 2.6 loaders. By operating 2 loaders on day shift and one on the night shift or vice versa to accommodate personnel preferences, production requirements of 54,740 tons per day, will be fully satisfied.

The operating cost of the loader, without labor will be approximately $56.73/hour. The operating cost per ton will amount to approximately 2.7¢/ton of material loaded.

Haulage

Truck haulage of ore and waste material will move material to intended destinations. The principal destination will be to the raise to the underground crusher facility. Top soil and some waste will be stockpiled at the sites shown in Figure 1 to facilitate proper mine reclamation at closure. Truck requirements are shown in the following Table 11:

TRUCK CALCULATIONS	VALUE
Average haul distance, ft	2,500
Average grade, almost entire distance	10%
Haulage is downhill, speed, mph	18.0
Ft. per hour travel	95,040
Ft. per minute	1,584
Cycle time, minutes	
Travel time	3.2
Load time	2.3
Dump time	1.0
Total cycle	6.5
Tons per hour/truck (50 Minute hour)	761
Effective Hrs per shift	10.0
Tons per truck per shift	7,612
Tons required per shift	27,369
Trucks required per shift	3.6

Table 11. Calculation of truck needs.

The operating cost of a truck, without labor, will be approximately $104.17 per hour. Four (4) trucks will be operated each shift to satisfy production requirements. This will result in a haulage truck cost of approximately 15.2¢/ton of material hauled, not including labor.

Flexibility has been built into the scheduling for haulage truck drivers. Water trucks and other equipment will be needed for portions of shifts during the dry, warmer months and other periods for dust suppression purposes and for various purposes. Five drivers have been scheduled for each shift to handle all equipment driving requirements.

Support Equipment

Support of the mining operation will include road maintenance, construction of ramps and roads, drill grade construction, dump pushing as needed. Three dozers, and three blades, will be provided to satisfy these needs. Two operators will be provided for each shift to assure operator coverage.

Underground Crusher Operation

As noted earlier, two 54-inch crushers will be provided to accomplish reduction of materials fed to the units. This will be necessary to assure efficient conveyance of material to the surface and overland to the mill or to the waste-tailings storage site. Ore and waste will be stage-fed to the crushers through the raise in a manner that separates the two materials. Flagging of the material or timing to assure that there is a separation of the two products will be critical. Specifics of this exercise have not been fully worked at this time, but this is not considered a formidable exercise. The exercise might require that material be dumped in stockpiles at the raise collar by type and fed to the raise by a loader in material-type batches. Adequate cost and manpower have been allocated to handle this procedure.

Two crushers will be the normal mode of operation and excepted only when one crusher is down for maintenance or repair.

The cost of crusher operation has not been fully calculated since power is calculated on a property-wide basis and this will be a major component of the crusher operation. Cost without power and labor will be approximately 11.3¢/ton.

Crushed material will be conveyed to the surface and dumped on the first overland conveyor for appropriate delivery to intended location. This exercise will be described in more detail below.

WASTE AND TAILINGS HANDLING AND STORAGE

In order to optimize mining at Orange Hill, reduce operating costs and provide for cost-effective disposal of tailings, we investigated the opportunities for off site milling, and waste and tailing storage. An obvious solution became readily apparent - a private 320 acre native lot approximately 12.9 miles north of Orange Hill on the west side of the Nabesna River. Haulage by truck to the site was considered prohibitively expensive, so a conveyor system was considered for delivery of waste to the site. We have chosen the patented land at White Mountain (Nabesna) for the treatment of ore. Tailings from the mill will be dewatered and conveyed back to the waste-tailings storage site; mixing with waste whenever possible will minimize volume requirements at the storage site. The ground materials (tailings) will mix well with the coarser waste product to fill the void spaces in the waste and have virtually no impact on volume of the waste. This may also have a moderating effect to any tendency of the waste to be acid generating – tailings will have a basic pH (9 – 10.5). Crushing, as provided above, will be required for both ore and waste to facilitate efficient conveyor handling. See Figure 8 for a depiction of the conveyor layout from the mine to the waste-tailings storage and to and from the mill site.

Conveyor System

A conveyor system was developed that would minimize impact to the environment, utilize to the extent possible RS 2477 existing trails, minimize capital investment in construction, and provide the intended results. Six conveyors beyond the portal of the mine openings were needed to accomplish requirements. A belt width of 42-inches was selected considering the size of the crushed product and the volume of material to be conveyed each day. The system was designed to handle 3,000 tons per hour, leaving some room for expansion should an increase in capacity become apparent at some point and to handle fluctuations in throughput.

A detailed description of each segment of the belt is unnecessary as most of the information relative to the system is provided on Figure 8, following. Appendix F provides a profile of each of the belts. All but segment 4 will convey materials on a negative grade; this reduces horsepower needs; however, rolling resistance, and drive power consumption requires a total of 14,625 horsepower; this is a very high demand and virtually eliminated the ability to produce diesel-generated power at the site. Tables setting out the details of the belts follows:

SEGMENT	ELEV DELTA, FT.	HOR. LENGTH, FT	HORSEPOWER	COMMENTS
1	(246)	29,832	3,431	Mine to River
2	(116)	18,216	2,199	River to Pivot pt.
3	(57)	8,131	966	Pivot pt. to Transfer
4	888	19,642	5,441	Transfer to Mill
5	(138)	16,210	1,851	Transfer to Waste-Tailings
6	(788)	18,374	737	Mill to Transfer
TOTAL		110,405	14,625	

Table 12. Conveyor segment description and horsepower.

The total capital and operating costs of the system has been estimated using Cost Mine information and other resources. The capital costs are estimated to be $56,097,900. The annual

operating costs are estimated to be a total of $20,301,000; these numbers do not include electrical costs, again calculated on a property-wide basis.

Waste/Tailings Handling

Conveyor segments 3 – 6 will have a common collection point, called "Transfer" herein. This point will include a carefully designed system to accommodate transfer of ore conveyed on belt 3 to belt 4 for delivery to the mill. It will also provide for tailings conveyed to this point from the mill on segment 6 to be transferred to segment 5, with or without mixing with waste, for conveyance to the storage site. It will also provide for transfer of waste conveyed to this point on segment 3, from the mine, to be transferred to segment 5 to be mixed with tailings from segment 6.

Segment 5 will deliver crushed waste and tailings to a stockpile at the discharge site on the native lot site. We considered a conveyor stacking system to handle site disposal; however, quickly realized that the capital costs involved in this exercise would be prohibitive. We chose instead to utilize conventional loader-truck handling for placement. Materials will be dumped at the site in layers intended to provide for efficient and cost-effective reclamation – sloping to a 30-degree angle and placement of top soil and seeding, etc. A plan view of the site showing ramp and centroid for haulage calculations is shown in Figure 7, below. Offsets will be left on underlying benches, as shown, to provide for rounding of the heap and altering the slope to the intended final reclaimed angle.

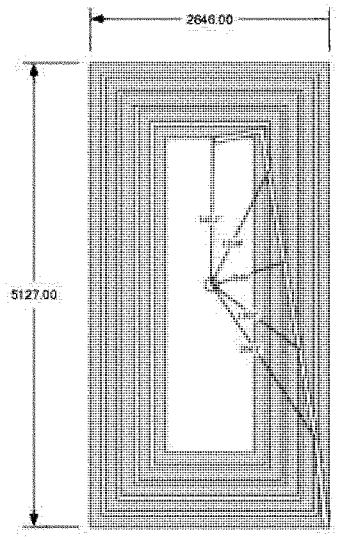


Figure 7. Layout of waste and tailings pile with ramp and haulage distances used to calculate equipment requirements. The heap will reach a height 531-ft. Tailings are assumed to mix easily with waste and not increase volume.

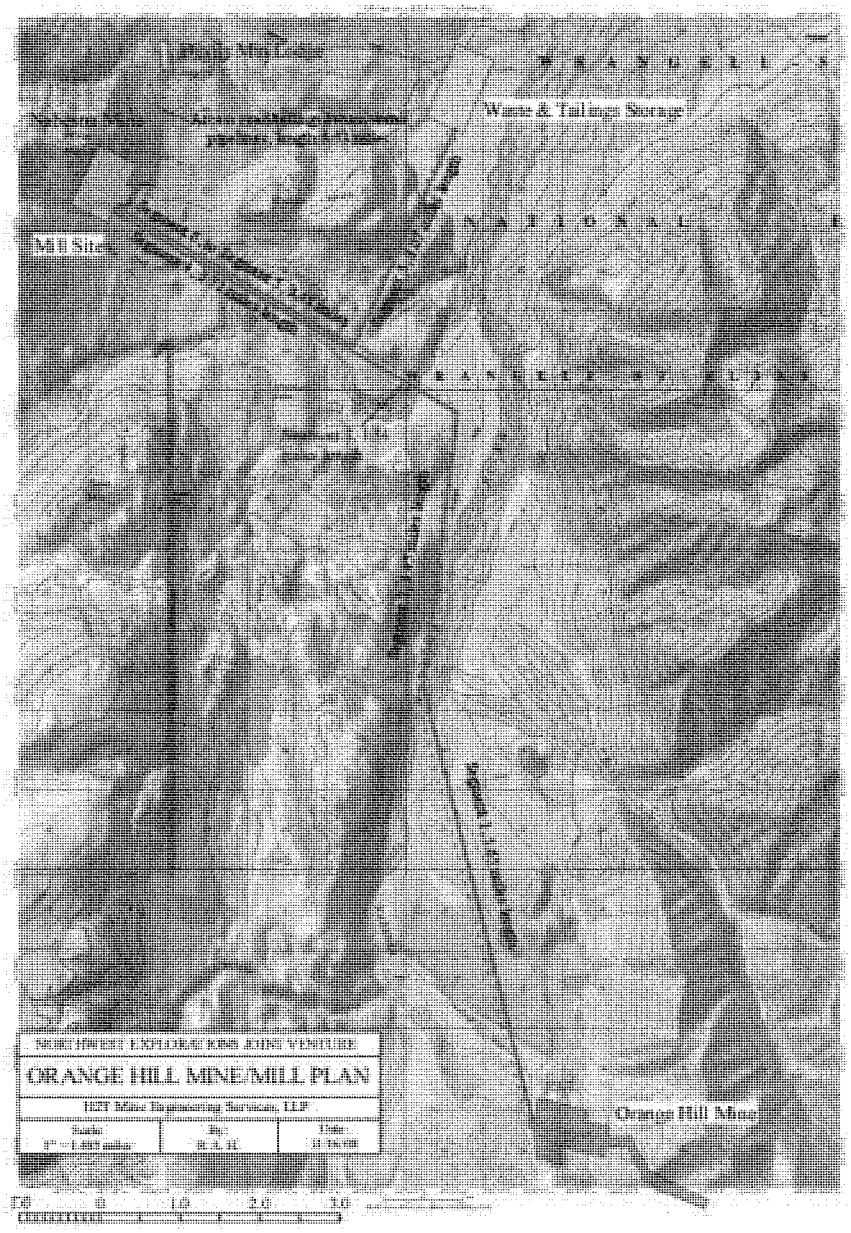


Figure 8. Plan layout of the project. .

A 992 Cat loader (similar size) will be used to load from discharge pile to trucks. The trucks will dump the waste-tailings in 100-ft layers on the lot. A two dozers and one blade will be employed as needed to construct and maintain the roads and push the dump and to perform ongoing reclamation – slope work. The blade will also maintain site roads and the road between the site and the transfer point and mill and mine. Three (3) trucks will be required from year 1 of the operation to year 7. The length of the ramp and overall haul will then require 4 trucks for the period 8 to year 12. Five trucks will be required from year 13 to year14. Six trucks will be required for the last year of operation. New trucks will be added to the needed compliment for all but the last increment; a truck from the mine will be used to compliment that need – the mine will have neared the bottom, haul distances will be shorter there, and spare trucks will be available.

MILLING – CONSTRUCTION AND OPERATION

As noted earlier, the mill, central facilities and most of the support infrastructure will be located at White Mountain (Nabesna). This site is 12.8 line miles northwest of the Orange Hill mine. The conveyor system providing ore to the site was described above. The mill has been sized to handle 12,000 tons per of ore per day. Moderate changes were made to the Stebbins' flow sheet to handle the additional material and to improve cost-effectiveness. The Stebbins' mill flow sheet was designed to handle 8,000 tons per day, never-the-less, was over-designed in some parts of the process. We will not compare one to the other, but present our design considerations. Figure 9 shows the mill circuitry proposed for this operation.

Ore Storage

A 12,000 ton live-storage stockpile will receive ore from conveyor segment 4. The live and dead storage will be approximately 20,000 tons. This will allow for intermittent disruptions to the material flow and still maintain continuous mill operation. Four apron feeders will withdraw ore from the stockpile to feed material to the transfer conveyor then to the screening plant; the screening plant will separate coarse product for secondary crushing. Four multi-deck screens will provide adequate capacity.

A second, crushed ore storage facility will be provided for fine ore to assure continuous operation. Material provided to this facility will come from the secondary crushing plant and be comprised of minus ½-inch product. Dust control will be important at this facility. The secondary storage facility will be the same size as the primary storage facility, above. This will provide for fluctuations in the source, and intermittent supply sources.

Secondary Crushing/Fine Ore Storage

Two 5.5-ft short head crushers will receive plus ½-inch material from the screening plant. Each crusher will be driven by 500-hp motors. We estimate that 75% of the material will be delivered to the secondary crushers.

Fine Grinding

Minus one-half inch crushed ore will be delivered by conveyor to the fine grinding mills. Two 16' x 28' ball mills, each driven by a 2500-hp motors will grind the ore feed to 80% -200 mesh. Ground product will be sized by hydro-cyclone separation with overflow delivered to a bulk sulfide concentrate flotation section.

Concentrate Handling

Flotation of sulfides will be used in the concentration process. A bulk sulfide concentrate with sodium cyanide pyrite suppression will produce a copper-moly rich concentrate. A subsequent recovery circuit will separate moly (molybdenum disulfide) from the copper concentrate. The moly concentration process will involve re-grinding to produce optimum recovery. Moly concentrates will be pumped to a thickener. The thickened product will be pumped to a disk filter to produce a moist concentrate. The product will dried and conveyed to a bin. Super sacks will be filled from the concentrate bin and stored in appropriate location outdoors or in a shed to protect them from damage and moisture collection. About 4.4 tons of moly concentrate will be produced daily.

Tailings from the first section will be copper-rich and be delivered to a thickener to produce a thickened product. This will be pumped to a disk filter to produce a moist product for drying through rotary dryers. The dried, copper concentrates, will be conveyed to a bin for super sack loading. About 89.6 tons of dry copper concentrate will be produced daily.

The association of gold in the ore is not known. A pyrite association is possible; we have assumed, for purposes of our design, that the association is with copper (as chalcopyrite). This association will have to be understood. A pyrite association will drive the need for an upgrade to the circuit to provide for recovery of gold. This will require regrind and chemical treatment. In addition, a gravity circuit may be required to assure coarse gold particle recovery. The cost of this modification will not materially change the cost of the mill.

Tailings Handling

The underflow from the bulk sulfide flotation process will be tailings from the recovery processes. It will be pumped from the flotation section to a thickener. The thickened product will be pumped to four parallel 13-ft. disk filters to produce a moist tailings product containing about 10% water. The moist product will be conveyed to a 6,000 ton inside storage bin. The bin will feed a transfer conveyor to feed belt 6 of the overland conveying system, described earlier. The transfer conveyor will also be configured to discharge into an exterior stockpile. The combination of bin and stockpile storage will provide the flexibility of continuous operation and upsets in product conveyance integrity/operation. The average tonnage of moist tailings conveyed to the storage facility on a daily basis will be 12,976 tons. The moist tailings will contain about 311,000 gallons of water per day.

Process Water Requirements

The mill has been designed to almost completely re-circulate water. Feed requirements will be approximately 5,242,000 gallons per day at 35% solids requirements in the process. Water loss in tailings and from drying of concentrates will result in a loss of about 313,700 gallons per day. Effective settling of solids will be an important requirement to assure that there is no buildup of solids in the water and slurry pumping system. Also, anti-scalant treatment will be required to assure that calcium carbonate and other compounds (anhydrite, etc.) do not build up in pipes and pumps. Supernatant water will be pumped to the process water storage tank located in a strategic location outside of the mill building. The tank will be insulated and the heated to increase the water temperature by an average of 2.5° F to prevent freezing. The tank will be sized to handle the initial process requirements to fill all components of the system plus a reasonable surplus; initial calculations indicate that this storage capacity is 537,000 gallons.

Initial and makeup water requirements will be supplied from the White Mountain mine and drainages in the area. No initial treatment is anticipated to remove contaminants as the process will

provide neutralization. However, testing will be required to assure that there are no detrimental effects that could be caused by any possible contaminants.

Supply Requirements

The consumption of supplies is been based on quotes received for this report, the Stebbins' report, and other sources. Actual consumption will be dependent on thorough testing and ongoing metallurgical testing of concurrent mill feed. Unit costs are based on quotes supplied by Alaska-based suppliers, on State of Alaska research, and on Stebbins' sources. Table 12, provides pertinent data:

Mill Supply Consumption/Costs Table	$/lb	Lbs/ore ton	$/ton
Quick lime, lbs	0.175	1.900	0.33
Xanthate collector, lbs	0.75	0.300	0.23
Frother, lbs	0.50	0.080	0.04
NaCN, lbs	1.10	0.300	0.33
Diatomaceous earth, lbs	0.275	0.001	0.00
Grinding media, lbs	0.408	1.762	0.72
Mill Liners, lbs.	0.408	0.220	0.09
TOTAL			1.74

Table 13. Mill supply consumption and unit cost.

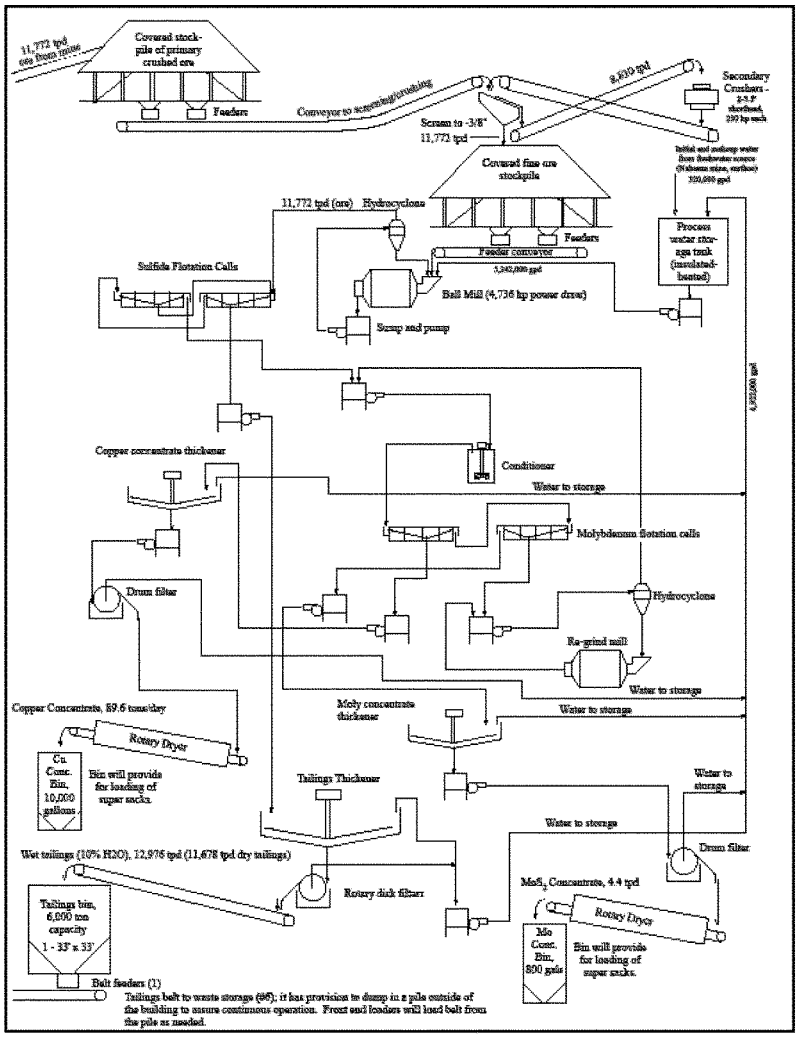


Figure 9. Mill circuit for the Orange Hill project.

COST AND ECONOMICS

The mine costs and economics are based on a 5-year development period followed by a 15-year operating period, in turn, followed by reclamation and demobilization over a 1-year period. All costs are calculated at constant 2008 dollars throughout the mine life and are reported on an accrual basis. Total project life is 21-years. Capital expenditures during the development period amount to $383.9 million. The NWE management costs are expensed during the development period and amount to $22.9 million. Operating costs during the operating period average $19.65 per ton of ore treated. Additional capital items, particularly haulage trucks, will be purchased as haulage distances become longer at the waste-tailings storage facility; the expenditures relating to those acquisitions will amount to $2.9 million. Overhaul expenditures amounting to $167.3 million are accrued throughout the life of the project; these accruals are sustaining capital and would be treated as capital in nature; however, they are reported as expenses in the calculations due the method of determination. The resulting tax differences will be inconsequential.

Capital and operating costs were largely determined from Cost Mine[7] costing methods purchased for this project. The costs reported by this system were increased by a reasonable factor to obtain 2008 costs. Other sources of costs were from local vendors and from State of Alaska cost determination – the State undertakes detailed checking of operating costs in the oversight of reclamation costing by operators in the state (these costs served as a reliable comparison).

Economics and taxes were determined by a program developed by the State of Alaska to calculate mine project taxes and owner/operator economics. The project is located on private land which dictates certain tax calculations. We have assumed, for legal purposes, that NWE would become incorporated, making it subject to State income tax provisions; State corporate income taxes are inconsequential due to loss carry-forward and carry-back provisions. Mining license taxes also apply to the project and require payments of $6.77 million over the life of the project. The project is not within the boundaries of a borough - no borough taxes apply. Federal corporate income taxes were calculated to be $11.51 million. Costs and economics are summarized in the following table:

ITEM	VALUE	COMMENTS
Capital expenditures, total	$386.7 M	Includes additional trucks for waste haulage
Operating costs, total	$1,266.7 M	Includes pre-development and post operating costs
Operating costs, per ton	$19.65	During the operating period
Taxes paid	$18.28 M	Mining License Taxes only
Net Cash Flow to NWE	$268.0 M	Total cash flow to Northwest Explorations
IRR, %	6.67%	Internal Rate of Return to NWE
NPV @ 5%	$43.23 M	Net present value discounted at 5% to present dollars
Payback period, yrs.	13.64	

Table 14. Costs and economics of the Orange Hill project.

Appendices in section G show details of capital and operating costs for the project with the exception of labor costs that are include in Appendix E, above. Appendix G1 presents a summary of costs and pertinent economic parameters; this appendix does not show economic parameters after taxes – these parameters are shown in Table 14, above. Appendix G2 shows capital costs in detail for the project; capital needs after production commissioning are included. Appendix G3 shows supply by year – this appendix does not consider year-to-year variation; however, the variations are included in the

[7] See "Cost Mine" in references section, http://calc2007.costs.infomine.com/

calculations. Appendix G4 shows details of capital and supply cost requirements for the mill operations. Appendix G5 shows a summary of supply cost calculations; this appendix includes accruals for capital overhaul items – these items are ordinarily considered capital, but due to the nature of the operating cost calculation methods, are included in operating expenses. The significance of this consideration is in-consequential.

Chart 1 shows the net cash flow to owners and government for the commissioning of the project.

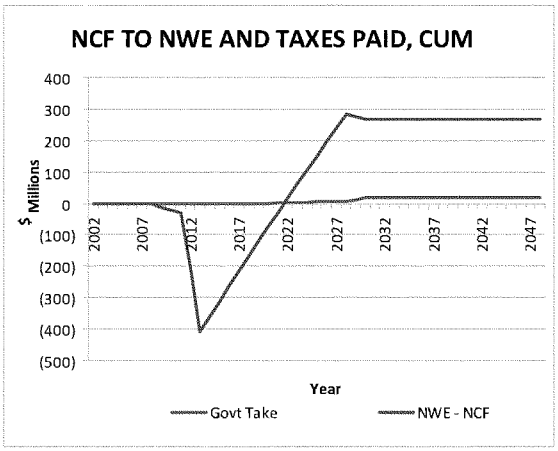


Chart 1. Net cash flow (cumulative) to Northwest Explorations as calculated by State of Alaska mine economics program.

Not in-consequential is that the operation will contribute $6.77 million in taxes to the State of Alaska in mining license taxes through the life of the project.

REFERENCES

AUTHOR	REFERENCE
Burgess, Jack, PE	Material Properties, *SME Mining Reference Handbook*, Raymond Lowrie, PE, Editor, SME, 2002, 448 pp.
Butler, Robert B.	"Architectural & Engineering Calculations manual", McGraw Hill, 1984.
Cochlin, Dennis	"Feasibility Cost Estimate Explosives Pricing, Surface Products", Alaska Pacific Powder Co., letter dated July 28, 2008.
Dryden & LaRue, Inc.	"Power Line Construction and Costs", November, 2006, AMA Convention PowerPoint Presentation.
Ellis, Cody	Weather Conditions, Native Lot, Flight to Orange Hill, Sept. 08
Gerondale, Chad	Hitachi, Mining Equipment Availability and Costs, Telephone communication, December 2008
Gibson, Herb	Underground Mining Costs, Cowin & Company, Telephone communication, Jan 2009.
Graham, Dave	Caterpillar, Mining Equipment Availability and Costs, NC Machinery, Telephone communication, December 2008
Holland, Rick	"Chemicals and Reagents Availability & Cost", Univar USA Inc., 8/19/08 email, 2 pages.
Hudsou, Wilbur G.	"Conveyors and Related Equipment", 1950, John Wiley & Sons, NY, pp. 185 - 239
McGregor, Wallace	"Orange Hill Property Profile", Northwest Explorations, Private informational paper, no date.
Meiling, Paul	Surface Evaluation Appraisals, Visit to Orange Hill, September 08
Milne, Clark	"Road Dust Suppression", Oral Communications, 5/20/08
Milne, Clark	"Road Maintenance From Slana to Nabesna" DOTPF, Oral communications, May 2008.
Nordell, Lawrence	"A New Era in Overland Conveyor Belt Design" E&MJ, Apr, 1999.
See, Mark	Redpath Mining Costs, E-Mail, Telephone Communication, Jan 2009
Shanley, Lloyd	"Cost of Power Generating Facility", NC Machinery, 3/25/09, Telephone contact.
Smith, Mike	Mine Camp Catering Costs, Alaska Minerals Inc., Telephone Comm. Dec. 08
Stebbins, Scott, PE	"Mineral Property Characterization & Resource/Reserve Determination for the Orange Hill Copper-Molybdenum Deposit", NPS, January 2008
	Mine and Mill Equipment Costs, An Estimator's Guide, 2007, *Cost Mine*, Spokane, Washington
	"Caterpillar Performance Handbook" Ed. 36, Caterpillar, Peoria, IL, January 2008.
	"Hydropower, Plant Costs and Production Expenses", Idaho National Laboratory, http://hydropower.inl.gov/hydrofacts/plant_costs.shtml
	Komatsu, Mining Equipment Availability and Costs, Telephone communication, December 2008

LAWRENCE V. ALBERT
ATTORNEY AT LAW
P. O. BOX 200934
ANCHORAGE, ALASKA 99520
TELEPHONE (907) 243-2172
FAX (907) 243-5476

December 16, 2009

Ms. Helen Honse
U.S. Department of Interior
Appraisal Services Directorate
Pacific Northwest Office
P. O. Box 2965
Portland, Oregon 97208

Re: Northwest Explorations JV--Orange Hill Patented Mining Claims
Wrangell St. Elias Park, Alaska--Valuation for Voluntary Acquisition

Dear Ms. Honse:

I have been retained by Northwest Explorations JV (NWE) to evaluate the Interior Department's 2008 fee appraisal on the Orange Hill property located within the Wrangell St. Elias National Park & Preserve, Alaska (WRST). Mr. Meiling opines the highest and best use for the property is recreation rather than minerals development.

My review has focused on your office's compliance with federal appraisal standards for real property acquisitions, along with criticism of the Interior Department's practice on this subject. My opinion, set forth in the attached submission, is that the 2008 fee appraisal does not meet USPAP standards along with the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970.

NWE has obtained an independent assessment of the economic feasibility of mining the Orange Hill property. H2T Mine Engineering estimates the market value of the property to be $45 million in 2008 dollars using the discounted cash flow method. A copy of that report is enclosed for your consideration.

Clearly, there is a difference of opinion between the H2T and Aventurine reports on the feasibility of Orange Hill mineral development. Given this dispute, NWE recommends non binding arbitration in order that NPS' 1990 policy for WRST mining claim acquisition be effectuated. As stated in the attached submission, federal law and Interior Department policy authorize alternative dispute resolution. On behalf of NWE, we look forward to discussing this proposal with your office.

Please note that I will be absent from my office between December 21-29, 2009.

Sincerely,

Lawrence V. Albert
Attorney at Law

encls
cc: Northwest Explorations JV

Northwest Explorations JV Submission to
U.S. Department of Interior, Appraisal Services Directorate
Re: Deficiencies in Appraisal Process of Orange Hill Mineral Property
December 2009

Introduction

This submission documents deficiencies in the Interior Department's appraisal practice and land acquisition policy associated with the Orange Hill mineral property located with in the Wrangell St. Elias National Park & Preserve (WRST), Alaska. Northwest Explorations (NWE) has been attempting to realize fair valuation of its mineral deposit for 20 years without success. This submission demonstrates the National Park Service (NPS) and the Appraisal Services Directorate (ASD) have failed to provide a fair mineral valuation and therefore requests that valuation be resolved through arbitration or mediation. NWE's only recourse is to pursue takings litigation or seek condemnation.

I. Property History

The Orange Hill property comprises a group of 18 patented mining claims located southeast of Nabesna in interior Alaska. The property was discovered early in the 20th Century and the claims were patented in 1928 by the Alaska Nabesna Corporation. The mineralization is porphyry copper-molybdenum and extends beyond the boundaries of 363 acres comprising the claim block. Commencing during the Second World War, the U.S. Geological Survey and thereafter various companies undertook exploration programs of the Orange Hill mineralization.

Modern ownership and exploration effort trace from when the AJV Corporation (now Geo Enterprises, Inc.) acquired the property from the Alaska Nabesna Corporation. Thereafter, the AJV Corporation conducted exploration of the property in conjunction with regional exploration of the Wrangell Range. The exploration resulted in the company expanding the area of its holdings contiguous with the Orange Hill patented claims to include 99 unpatented claims. In 1970, the AJV Corporation organized the Northwest Explorations Joint Venture (NWE), with the participation of Brown & Root, Inc., Highland Resources and the Louisiana Land & Exploration Co.

The focus of the venture activity was diamond drilling the Orange Hill property with the result that by 1977, the venture had delineated a major deposit of copper, molybdenum, silver and gold and thereupon, entered into an Exploration and Option to Purchase Agreement with Pacific Coast Mines, a subsidiary of U.S. Borax and Chemical Corporation. The agreement provided for minimum cumulative expenditures of $800,000 over a five year period and purchase terms of $2,000,000 cash and a 2.25%

royalty on net smelter returns from production.

Mobilization of drill rigs began in 1977 before the agreement was finalized. In 1978 U.S. Borax expanded the scope of exploration, considerably exceeding the annual work commitment. After the close of the 1978 field season, a Presidential Proclamation declared the area a National Monument which placed a moratorium on all mineral activity on the unpatented claims. Though the parties acknowledged that the objectives of their agreement had been frustrated by the monument withdrawal, nonetheless U.S. Borax elected to continue exploration drilling that was confined to the patented claims and which focused on the potential of the high-grade skarn mineralization.

Based upon encouraging findings in 1979, U.S. Borax acquired an option in 1980 to secure additional unpatented mining claims within the area of influence of the option agreement and continued the program of helicopter supported drilling. After the passage of ANILCA in December 1980, the Exploration and Option to Purchase Agreement was amended in 1981 providing for an extension of the option period 13 years to 1994 with annual escalation of the cash consideration to $3.6 million subject to adjustment by the price index of non-ferrous metals.

By 1980, the Orange Hill property and surrounding unpatented claims had been subject of more than ten annual drilling campaigns that resulted in 80 holes and a total depth exceeding 30,000 feet. U.S. Borax in 1979 estimated the deposit to contain 115.7 million tons of resource at 0.308% copper, 0.014% molybdenum and 0.175 oz/ton silver. Based on this estimate of deposit size and tenor, Orange Hill's contained copper of .32 x 10^6 million metric tons placed it in the upper 25th percentile of the 1,342 largest copper deposits worldwide according to a USGS study in 1995.[1]

II. ANILCA, the Park Service and 1985 Court Injunction

In December 1980, Congress enacted the Alaska National Interest Lands Conservation Act (ANILCA), creating the WRST and subjecting the area to NPS surface management.[2] ANILCA preserved valid existing rights for prior mineral entries and in-holdings such as Orange Hill.[3] However, Orange Hill became subject to the

---

[1] Singer, Donald. 1995. World Class Base and Precious Metal Deposits--A Quantitative Analysis. ECONOMIC GEOLOGY, v. 90, pp. 88-104 (Fig. 13: contained copper content distribution of copper bearing deposits, measured in metric tons).

[2] Pub. L. No. 96-487 § 201(9), 94 Stat. 2371, 2381 (1980).

[3] *Id.,* § 206, 94 Stat. 2384, *codified at* 16 U.S.C. § 410hh-5.

Mining in the Parks Act.[4] This legislation manages the surface estate of mining claims even though a patented claim owner has fee title to the surface and mineral estate.

In 1985, an environmental group sued the NPS for failure to undertake cumulative impact assessments associated with mining operations in the WRST. The U.S. District Court entered a preliminary injunction in July 1985 prohibiting the NPS from approving further mining operations and required the agency to prepare an EIS on the cumulative effects of mining operations.[5] The preliminary injunction was affirmed by the Ninth Circuit Court of Appeals on appeal[6] and a permanent injunction followed.

In October 1986, the Director of the National Park Service approved a General Management Plan/Land Protection Plan for the Wrangell-St. Elias National Park and Preserve. The Plan identified the Orange Hill property for acquisition and further noted the property had high future development potential.[7] NWE decided to acquiesce to the Park Service's objectives in the 1986 Management Plan due to the injunction and congressional policies in both ANILCA and the Mining in the Parks Act that were elaborated in the 1986 plan. By mutual agreement, the managements of NWE and U.S. Borax terminated the Exploration and Option to Purchase Agreement. NWE thereafter terminated its holding of the contiguous unpatented claims realizing that mineral development would not occur.

The Park Service took four years to prepare its EIS on the cumulative effects of mining in WRST. In November 1989, NPS released its Final EIS.[8] Its preferred alternative and proposed action for NEPA purposes was to acquire all mining claims within WRST subject to the Park Service's continuing authority to regulate mining

---

[4] 16 U.S.C. § 1901, *et seq.*

[5] *Northern Alaska Envt'l Center v. Hodel,* No. J85-009, Memorandum & Order (D. Alaska, filed July 22, 1985).

[6] *Id.,* 803 F.2d 466 (9th Cir. 1986).

[7] U.S. National Park Service, General Land Management Plan, Land Protection Plan and Wilderness Suitability Review, Wrangell-St.Elias National Park & Preserve, Alaska 99 (1986). NPS' statement regarding Orange Hill's high future development potential came from a table in the plan draft.

[8] U.S. National Park Service, Alaska Regional Office, Final Environmental Impact Statement, Cumulative Effects of Mining, Wrangell St.Elias National Park & Preserve, Alaska, November 1989.

operations. NPS then issued a Record of Decision in August 1990 wherein it declared an official policy for acquisition of mining claims within WRST.[9]

Following the 1985 injunction, commercial mining operations has ceased in all units of the National Park System in Alaska. Thus, notwithstanding several requests for approvals to operate, the NPS has basically prohibited mining in the WRST and other Park System units in Alaska. The Park Service does not officially acknowledge a prohibition on commercial mining activity because to do so would establish a regulatory taking. Instead, the agency maintains the illusion that mining operations might be allowed upon submission of an administratively complete plan of operations that complies with its surface management authority.

The cumulative effects methodology employed in the EIS' required under the court injunction commonly employed a surface disturbance criterion measured against "Resource Protection Goals." Where the RPG's had been violated for one or more habitat types or surface management values, and typically these had been violated in the Denali and WRST parks, then further surface disturbance due to new mining operations would only exacerbate the previous violations, and therefore, could not be approved in order to adhere to Mining in the Parks Act policies.

Even prior to ANILCA, the Park Service understood that Orange Hill had significant mineral potential. In 1973, as part of the ANCSA Section 17(d)(1) studies on potential national interest lands, the Park Service prepared a report wherein it noted the Orange Hill and Bond Creek deposits contained 400 million tons of 0.4% copper and estimated an *in situ* value of $1.6 billion in 1973 dollars.[10] Further, in a draft version of NPS' 1986 General Management Plan for WRST, it noted Orange Hill contained 400 to 1,000 million tons of minerals, included an assembly of 3,000 acres of unpatented claims, and had high future development potential.

III. NWE's Difficulties in Obtaining a Mineral Appraisal

NWE has repeatedly expressed interest in Orange Hill's sale to the government once NPS established its policy of property acquisition. It took the Park Service ten years,

---

[9] U.S. National Park Service, Alaska Regional Office, Record of Decision, Wrangell St. Elias National Park & Preserve, Final Environmental Impact Statement--Cumulative Effects of Mining 3, August 21, 1990.

[10] U.S. National Park Service, Alaska Planning Group, Wrangell St. Elias National Park, Alaska: Master Plan 53 (1973).

i.e. from 1990 to 1999, to authorize an appraisal on Orange Hill. In 1999, NPS wrote to NWE to indicate that it had contracted with a consultant named Onstream Resource Managers to appraise the mineral estate. The consultant met with NWE for this purpose in the fall of 1999 and was provided an opportunity to examine the extensive exploration and geologic information compiled on the property. After a meeting and site visit, Onstream informed NWE it did not have a contract to value Orange Hill. NPS instead produced a real estate appraisal in December 2000, valuing Orange Hill at $146,000 for surface use. NPS' 2000 real estate appraisal disregarded mineral value.

Between 2000 and 2007, NWE retained various consultants and counsel in attempting to get the NPS to do a minerals appraisal on Orange Hill. Towards this end, NWE obtained the assistance of the Alaska congressional delegation regarding the Interior Department appropriation bills for FY 2001 and 2005.[11] The enacted legislation directed Interior to negotiate with NWE regarding an appraisal and acquisition of Orange Hill. Still, NPS failed to undertake a minerals valuation of Orange Hill for several more years.

In March 2007, NPS announced to NWE its intention to contract with Scott Stebbins d/b/a Aventurine Engineering to perform an economic evaluation of the Orange Hill mineral deposit. NWE made available its exploration and geologic information on the property and met with Stebbins for this purpose. Based upon NWE's repeated communications with NPS and Stebbins, it appears that the consultant's work was prolonged, constantly supervised, and subject of modifications required by the NPS before completion. A year later, Stebbins completed his economic analysis in February 2008.[12] He concluded Orange Hill mineral development is not feasible and would generate a negative $70 million return on investment.

In June 2007, the Appraisal Services Directorate (ASD) informed NWE that it would procure a fee appraisal of the Orange Hill property and that the appraisal would incorporate Stebbins' work product. However, it took ASD another year to solicit requests for proposal on fee appraisal of Orange Hill. Only one contractor responded to the solicitation, Paul Meiling & Associates, and the appraisal contract was awarded to Meiling. Meiling completed his fee appraisal of Orange Hill in December 2008.[13]

---

[11] *E.g.*, H. Rep. No. 108-542 at 53 (2004).

[12] Aventurine Mine Cost Engineering, Mineral Property Characterization and Resource/Reserve Determination for the National Park Service, January 2008.

[13] Paul H. Meiling, MAI, A Self Contained Appraisal Report of: The Orange Hill Patented Mining Claims Located in Wrangell-St. Elias National Park and Preserve,

Meiling determined the highest and best use of the property is "limited recreation" and his opinion of value is $290,000. Meiling reviewed Stebbins' report along with a critique thereof submitted by a consultant on behalf of NWE,[14] and concluded that "mining is neither financially feasible nor maximally productive" for the property. Meiling acknowledged that the highest and best use determination was fundamental to valuation and that his reliance upon Stebbins' work product "significantly influences" his opinion.

IV. Criticism of NPS and Interior Department Appraisal Practice

The NPS as well as the Interior Department's appraisal practice has been subject of criticism. Further, NPS' program for voluntary acquisition of mining claims within the Denali, Yukon Charley and Wrangell St Elias Parks has been roundly criticized. The criticism was that NPS refused to allow mining pending its acquisitions, it took too long to complete appraisals, its appraisals consistently used a sales comparison approach and would not consider income value from minerals production, and its purchase offers were too low to induce any voluntary purchases for mineral value as distinguished from real estate value (for patented mining claims only).[15]

Due to the Denali mining claimants' dissatisfaction with the Park Service's voluntary acquisition program, Senator Stevens incorporated into the Interior Appropriations Bill for FY 1998 a provision authorizing condemnation with declaration of taking of mining claims with the claimowners' consent.[16] Several suits ensued with some reaching judgment, others being settled, and other claimowners agreeing to voluntary acquisition after higher valuations had been established. In five cases of this type, the valuations ultimately obtained by Kantishna mining claimants were all

---

December 2008 (valuation date Sept. 23, 2008).

[14] H2TMine Engineering Services, A Critique of the Aventurine Mine Cost Engineering Report on Orange Hill, Mineral Property Characterization and Resource/ Reserve Determination for the National Park Service, May 26, 2008 (prepared for Northwest Explorations JV).

[15] *See* U.S. Sen. Subcomm. on Public Lands, Nat'l Parks & Forests, Hearing on Mining Activities in Units of National Park Service in Alaska, S. Hrg. Rpt. 103-577 (1994); Lawrence V. Albert, *ANILCA Promises Broken: the Demise of the Kantishna Mining District,* in D(2), PART 2: A REPORT TO THE PEOPLE OF ALASKA ON THE LAND PROMISES MADE IN ANILCA (2000).

[16] Pub. L. No. 105-83, § 120, 111 Stat. 1543, 1564-66 (1997).

substantially higher than NPS' approved appraisals or offers of proof on just compensation.

These results are consistent with a remarkable NPS admission elsewhere regarding its land acquisition practice. A Park Service employee assigned to the Voyagers National Park in Minnesota made the following statement in a public meeting regarding its acquisition program for in-holdings:

> My job is to acquire this land for the National Park Service. I hope to acquire it for about 30 cents on the dollar. If the landowner cannot accept our reasonable offers, we let the matter ride for a few years. Then, if necessary, we go to court, including trials and appeals. This procedure is very expensive for the landowners. If we cannot agree on our terms, the landowners can hire lawyers at one-third [i.e. contingency fee arrangements] and pay the court costs in addition. All of this takes several years.[17]

The Park Service's attitude on property acquisition in the Voyagers National Park flaunts congressional policy set forth in 1970 legislation on the subject.[18] Thus, congressionally established policy commands that the Park Service not engage in coercive practices to compel acquiescence on voluntary acquisition.

In 2003, Secretary Gail Norton consolidated the appraisal functions performed by individual Interior Department agencies into a single entity, the Office of Appraisal Services.[19] According to the Secretary, this reorganization was performed to provide unbiased appraisals, ensure appraiser independence and to make certain that appraisal meet recognized professional standards. Further, the Secretary stated the reorganization was a response to long standing criticism by the Department's Inspector General and General Accounting Office, and most recently a study conducted by the Appraisal Foundation.

---

[17] *U.S. v. 341.45 Acres of Land,* 751 F.2d 924, 927 (8th Cir. 1984).

[18] *See* Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Pub. L. No. 91-646, Title III, § 301(7), (8) *codified at* 42 U.S.C. § 4651(7), (8).

[19] U.S. Dept. of Interior, Office of Secretary, News: Norton Finalizes Real Estate Appraisal Reform, Nov. 12, 2003, available at www.doi.gov/news/031112e.htm (last visited June 4, 2007). *See also* U.S. Dept of Interior, Office of Secretary, Order No. 3251 (Nov. 12, 2003).

In 2006, the GAO reviewed the ASD's experience in performing appraisals for Interior agencies.[20] The GAO found that the quality of Interior appraisals had improved since ASD's inception, however, its policies and procedures still did not fully ensure compliance with recognized appraisal standards [report at 13]. GAO found approximately 40% of appraisals reviewed failed to meet standards because the authors lacked specialized skills appropriate for valuation of resources, including minerals [report at 5, 13, 15]. The GAO cited to USPAP[21] standards for the proposition that if Interior appraisers lack qualifications to do specialty appraisals, then such disclosure must be made and an explanation given for correction of the deficiency [report at 13, 15, 16].

V. The Scope of the Project Rule in Real Property Acquisition.

The determination of just compensation in federal real property acquisition is governed by the Takings Clause. The conventional standard for just compensation is fair market value between a willing buyer and willing seller for an effective date of valuation. As part of the market value standard, federal courts have recognized a principle known as the "scope of the project" (SOP) rule. This rule states that no increase or decrease in property value attributable to governmental action prior to the date of valuation shall be considered in determining just compensation.[22]

Courts recognize the SOP rule applies to decreases in property value due to an acquisition project.[23] Thus, the government "may not take advantage of any depreciation

---

[20] U.S. General Accounting Office, Interior's Land Appraisal Services: Actions Needs to Improve Compliance with Appraisal Standards, Increase Efficiency and Broaden Oversight, Report No. GAO-061050 (2006).

[21] "USPAP" is an acronym for the Uniform Standards of Professional Appraisal Practice authored by the Appraisal Standards Board, Appraisal Foundation. Title IX of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (FIRREA) enacted reforms in appraisal standards and certifications in connection with federally related transactions. *See* Pub. L. No. 101-73, Title IX., 103 Stat. 183, 511-19 (1989). The Appraisal Foundation was one entity created as a result of FIRREA.

[22] *E.g., United States v. Reynolds,* 397 U.S. 14, 16 (1970) ("to permit compensation to be either reduced or increased because of an alteration in market value attributable to the [government's] project itself would not lead to the 'just compensation' that the Constitution requires").

[23] *E.g., United States v. 0.59 Acres of Land,* 109 F.3d 1493, 1497 (9th Cir. 1997) ("the Government is barred from first driving down the value of property it intends

in the property taken that is attributable to the project itself."[24] Additionally, "the government may not regulate for the purpose of depressing value in eminent domain proceedings."[25] The courts reason that "[s]uch action would be an abuse of governmental authority, resulting in a denial of due process."[26]

The courts have applied the SOP rule to reject diminution in value associated with government regulation of mineral property prior to taking or condemnation. In *Florida Rock*, the Federal Circuit rejected the government's contention that its wetland regulation of limestone property should be considered in valuation because such regulation caused the taking.[27] In *Silver Queen*, the Tenth Circuit rejected the government's contention that unproven potential of mineral property should be disregarded given the government's prohibition on exploration for 18 years.[28] A recent decision has applied the SOP rule to preclude the government from asserting restrictions on geothermal development in valuation of fractional mineral interests.[29]

---

to acquire").

[24] *Almota Farmers Elevator and Warehouse Co. v. United States,* 409 U.S. 470, 478 (1973). *See also United States v. Virginia Electric & Power Co.,* 325 U.S. 624, 636 (1961) ("The court must exclude any depreciation in value caused by the prospective taking once the Government was committed to the project").

[25] *United States v. 320.0 Acres of Land,* 605 F.2d 762, at 820 n.131 (5th Cir. 1979).

[26] *Washington Metropolitan Area Transit Authority v. One Parcel of Land,* 413 F.Supp. 102, 106 (D.Md.1976), *aff'd per curiam,* 548 F.2d 1130 (4th Cir. 1977).

[27] *Florida Rock Industries, Inc. v. United States,* 791 F.2d 893, 905 (Fed. Cir. 1986).

[28] *United States v. Silver Queen Mining Co.,* 285 F.2d 506, 509-10, 511 n.5 (10th Cir. 1960) ("No advantage should accrue to the government because of the difficulties of proof occasioned appellee because the United States had possession of the [mining] claims for eighteen years and had thus prevented any possibility of development during those years").

[29] *United States v. 99,223 Acres of Land,* Memorandum Opinion & Order 26-30, No. Civ 06-0933 (D.N.M, filed Sept. 17, 2007), available through PACER at www.nmcourt.fed.us/ web/DCDOCS/dcindex.html (last visited Nov. 3, 2009).

In 1970, Congress ratified the SOP Rule when it enacted legislation for real property acquisition by the federal government: "[a]ny decrease or increase in the fair market value of real property prior to the date of valuation caused by the public improvement for which the property is acquired . . . will be disregarded in determining the compensation for the property."[30] Further, the Justice Department's guidelines on valuation for federal real property acquisition recognizes the SOP rule.[31]

Application of the SOP rule is critically important to ascertaining fair market value for Orange Hill: the historical record is abundantly clear this property was subject of serious exploration commitment and a purchase option by a major American company prior to enactment of ANILCA in December 1980. Since that date, absolutely no activity associated with exploration or development of Orange Hill has occurred due to the Park Service's regulation of mining activity as well as the federal injunction that existed between 1985 and 1990. Further, the NPS has had a clearly announced acquisition "project" for WRST mining claims, including Orange Hill, since its 1986 General Management Plan together with the 1990 NEPA Record of Decision.

Therefore, any government approved appraisal of Orange Hill that purports to comply with USPAP standards along with established principles of real property acquisition must incorporate the SOP rule in ascertaining fair market value, including highest and best use determination for minerals exploitation. Application of the SOP rule to Orange Hill means that any objection regarding uncertainty associated with the quantum and tenor of mineral resources, suitable mining methods and other parameters associated with development of the deposit must be disregarded. Further, the federal government's environmental or land use regulations applicable to mineral development of Orange Hill must be construed to permit a hypothetical mining operation.

VI. Criticism of ASD Appraisal Process for Orange Hill.

A. NPS Contract for Orange Hill Mineral Property Characterization and Resource/Reserve Determination.

In 2007, NPS contracted with Aventurine Mine Cost Engineering to do an economic analysis of mineral development for Orange Hill. Aventurine's principal is

---

[30] 42 U.S.C. § 4651(3).

[31] Interagency Land Acquisition Conference, *Uniform Appraisal Standards for Federal Lands Acquisitions* 45-47 (5th ed. 2000).

Scott Stebbins, a mining engineer who specializes in cost analysis of mining plans to determine their economic feasability. Stebbins' analysis includes a resource evaluation, an engineered plan for development and commercial operation of the mineral deposit, estimation of capital and operating requirements to run the hypothetical mining operations, and derivation of income, cash flows and return on investment. Stebbins concluded Orange Hill would show a negative $70 million return on investment if the mineral deposit were developed.

Stebbins' contract was administered by Charles Gilbert of the NPS Alaska Regional Office. Gilbert undertakes land acquisition for Park System units in Alaska. Gilbert has no professional qualifications in mining engineering, mineral economics, geology or real property appraisal. Thus notwithstanding Interior Department's creation of ASD in 2003 to create independence and assure compliance with professional appraisal standards, NPS through Gilbert administered a contract for economic evaluation of mineral property that was utilized by ASD and yet Gilbert was singularly unqualified to do so. At the time, the ASD Northwest Office itself apparently lacked any expertise in mineral property appraisal.[32]

Based on NWE's limited information, there is no assurance that Stebbins performed his work independently and under supervision of a qualified professional according to USPAP standards. Instead, NWE has reason to believe that Stebbins' work product was improperly influenced by Gilbert. Gilbert's role in supervising Stebbins' economic evaluation is illustrative of the deficiencies GAO noted in ASD administration of specialty appraisals for which it lacked expertise. *See supra* at 8. Additionally, any influence that Gilbert or NPS exercised over the independence of Stebbins' professional work product could have violated Secretarial Order 3251 that created ASD.

This submission does not undertake a thorough critique of Stebbins' economic analysis. NWE submitted a preliminary critique through its consultant H2T Mine Engineering Services and noted positive cash flow improvements of $210 million if specific parameters selected in Stebbins' analysis were changed. *See supra* Note 14 at 2.[33]

---

[32] Telephone conversation between Stuart Snyder, ASD Northwest Office, June 5, 2007, with Lawrence V. Albert. Snyder acknowledged the GAO criticism, and that ASD lacked expertise in mineral property appraisal. He thought USPAP standards would be satisfied through ASD contracting for a mineral property appraisal.

[33] The H2T critique identified ten topics which would result in cash flow changes to Aventurine's feasibility analysis. These are identified in Table 1 "Cash Flow Summary" of the H2T critique.

One of H2T's material findings is that Aventurine's report "appears to be heavily padded to increase costs to inordinaately high levels in both capital and operating cost estimates." Items of H2T's disagreement included, but are not limited to, absence of silver recovery in mineral production, improper assessment of property and severance taxes where Alaska law does not impose same, and elimination of a heated conduit for mine tailings. Stebbins generated an addendum to his report where he responded to this critique and yet still found Orange Hill would generate negative cash flow.[34]

Stebbins' analysis can be criticized for failure to apply the SOP rule in his estimation of various resource, engineering and cost parameters. As examples, Stebbins reasons that silver would not be recovered in his mine model due to inadequate sampling and consequent uncertainty associated silver grades at Orange Hill. Stebbins declines to adjust his cutoff grade as being possibly wasteful (i.e. recovery of excessive material at marginally low grade) because such adjustment typically occurs in the iterative process of mine development and production. While such explanation might have merit in an open market context, their application to Orange Hill is improper because the property has been precluded since 1981 from further exploration, development or production that would provide greater certainty in economic analysis.

B. ASD Procurement and Administration of Fee Appraisal.

The ASD prepared a Statement of Work (SOW) to accompany its solicitation for a fee appraisal of Orange Hill.[35] Under the heading "Controversies/Issues" (page four), the SOW indicates "[t]he owners of the property have been trying to sell it to the NPS for many years. The appraiser should be aware that the possibility of an inverse condemnation claim exists." The tenor of these remarks suggests market failure but offers no explanation why and fails to explain the historical circumstances affecting Orange Hill as discussed above.

Thus the SOW fails to disclose that NPS has an official policy for acquisition of mining claims within WRST and that no major mining operations, let alone meaningful exploration of mineral property within the park, had been allowed since ANILCA's enactment in 1980 and reinforced by the 1985 court injunction. If the ASD considered

---

[34] Aventurine Mine Cost Engineering, Inc., Mineral Property Characterization and Resource/Reserve Determination for the Orange Hill Copper-Molybdenum Deposit--Addendum, Nov. 2008.

[35] Statement of Work-SOW; Appraisal Services Directorate-ASD; Agency Case & Number: WRST 32-101; ARRST Number: PE 10J6, dated May 30, 2008.

such disclosures to be irrelevant to the solicitation, then so should the facts of the owners' unsuccessful attempts at voluntary acquisition along with the possibility of inverse condemnation.

That the SOW would insinuate market failure for mineral development of Orange Hill while not assign any responsibility to the government for such failure indicates refusal to acknowledge the SOP rule to valuation of this property. Even a NPS review appraiser in 1988 recognized the adverse effect of ANILCA and the 1985 court injunction in valuing patented claims in Denali Park for surface estate only.[36] If for no other reason, the SOW and ASD's solicitation for fee appraisal of Orange Hills are fundamentally deficient in this regard.

The SOW (page 7) indicates the selected appraiser must be "competent to properly value a property identified as containing minerals, but not considered economic under the mining feasibility study. Therefore, the appraiser should have adequate specialized training and experience to understand and apply the proper methodologies established for estimating the market value of properties with mineral potential." This specification presumably conforms with USPAP's Competency Rule. However, Meiling failed to adhere to the specification as explained below, and ASD has noted no deficiency in his submission on the matter.

The SOW identifies Douglas Bauer of the Interior Department Office of Mineral Evaluations as the Review Appraiser for the solicitation and performance of the contract appraisal on Orange Hill. There is no indication that Bauer performed his function as Review Appraiser according to ASD guidelines and the recommendations in the GAO report. Specifically, there is no indication Bauer certified that Meiling complied with the SOW standard of competence set forth on page seven of the SOW and quoted above.

C. Critique of Meiling Fee Appraisal on Orange Hill

The Meiling appraisal is deficient for several reasons, however, the several deficiencies are not catalogued in this submission. Only three are presented in this

---

[36] *See* National Park Service, Alaska Regional Office, Appraisal Report, Kantishna Mines Limited, Denali National Park, Alaska, "Review Statement" 3, 22-24 (1988) ("the market would recognize the mineral potential involved but would substantially discount this potential because of the current regulations and court injunction"). The NPS appraisal for the Denali claims valued the surface estate only and did not acknowledge the SOP rule but instead the adverse effects of the government's police power. *See id.*

submission; these go to the issue of whether mineral development is an economically viable use of Orange Hill in the absence of governmental prohibition.

1. Meiling Fails to Meet the USPAP Competency Standard for a Mineral Property Appraisal.

Meiling's report includes a Certification that his appraisal complies with USPAP and USAFLA. His report presumably complies with the requirements of the SOW which were incorporated into his contract for professional services. As part of such compliance, Meiling was required to certify that he was competent to undertake a mineral property appraisal. However, Meiling's report nowhere provides such certification in response to the SOW specification (page 7) quoted above.

Meiling's statement of qualifications is set forth as Exhibit A-9 to his report. Therein, he holds out a specialization in mining and mineral properties. However, no disclosure is provided that Meiling has professional training, experience or certification in disciplines relevant to mineral property valuation such as mining engineering, geology and/or mineral economics. The statement of qualifications includes a page "Appraisal Experience--Mining and Mineral Interests." Therein, Meiling represents having done valuations of resource market value but he does not specify minerals valuation. He further states that he has done highest and best use conflicts between surface and subsurface use but again does not specify competence in determining minerals valuation.[37]

According to Meiling's report, the fundamental valuation issue for Orange Hill is determining highest and best use, i.e. would mineral development be economically feasible. The ASD's Statement Work states the same proposition. Given this "crux of the appraisal problem," Meiling's report fails to provide satisfactory assurance that he meets the USPAP competency standard for mineral property valuation. He instead presumes that Stebbins' report satisfies the competency standard along with his utilization of an abbreviated review by a subcontracted geologist.

However, neither Stebbins nor Meiling's contracted reviewer, Robert Murray, qualify as general real estate appraisers nor appraisers having specialized skill to undertake mineral property valuations. In summary, ASD and the Park Service have circumvented

---

[37] Meiling is not shown as being a member of the American Institute of Mineral Appraisers although this association is voluntary. *See* Directory of Certified Mineral Appraisers, available at www.mineralsappraisers.org/directory.html (last visited Nov. 6, 2009).

the USPAP competency requirement and have ignored GAO's criticism of Interior appraisers lacking the specialized skills required for mineral property appraisals.

2. Meiling's Deficiency Was Not Cured by Subcontracting with a Geologist to Review Stebbins' work product.

Meiling implicitly recognizes he is not competent to undertake a mineral property appraisal because he subcontracted with Robert Murray, a consulting geologist. In the engagement letter, Meiling requested Murray review both the Stebbins report and the H2T critique and then arrive at his own conclusions regarding same. In response, Murray submitted a three page report to Meiling attached as Exhibit A-7 to the appraisal.

Murray is a qualified exploration geologist, with experience in Alaskan properties. Still, he is not an appraiser or mineral property appraiser in particular. According to USPAP Guide Note 6, such requirement would not necessarily apply to subcontracts in appraisal assignments. In the case of Orange Hill, however, an understanding of property history, the government's regulation since 1980 and the SOP rule is appropriate to Murray's evaluation of various engineering, economic and geologic parameters for mineral development. Murray's report appears to be oblivious to such considerations and Meiling's engagement letter provided no guidance on the subjects. Therefore, Meiling cannot reasonably rely on another's report when the peculiar circumstances of the appraisal and the specialized skill required to evaluate such constraints for a mineral deposit is not manifested in the subcontract.

The H2T critique of Stebbins report identifies ten issues with significant consequences, totaling a positive adjustment in cash flow of $210 million. Murray's letter comments on only three of these issues--silver value, labor shift, and heated tailings storage. Murray's response on silver values fails to consider the historical constraints imposed after 1980. To the contrary, Murray's response suggests a deliberate disregard of the SOP rule in stating that Stebbins' "mine plan . . . realistically deals with the severe limitations imposed by the location of the claims within the National Preserve."

For the balance of the issues raised in the H2T critique, Murray superficially observes these "are addressed in [Stebbins'] Addendum" without arriving at his own conclusions and opinions on the matters, as requested by Meiling. Further, Murray repeats Stebbins' view that adjustment to several resource and cost parameters cannot be resolved without subjecting the property to actual development and iteration of mine planning processes. This criticism misses the point of the SOP rule and recognition that any uncertainty on mine planning is not due to open market conditions but rather governmental suppression of minerals use.

3. Meiling Failed to Consider the 1979 and 1981 U.S. Borax Purchase Option as Evidence of Market Value.

Meiling's determination of highest and best use was based solely upon Stebbins' economic analysis which employed an income approach to valuation of a hypothetical mine circa 2008. Meiling did not undertake any contemporary or historical analysis of sales comparisons as evidence of market value for Orange Hill. Yet Meiling was evidently aware that Orange Hill was subject of serious exploration work and transactional commitments before enactment of ANILCA. Stebbins report certainly discusses this property history.

Meiling should have considered the U.S. Borax's 1981 amendment to its 1977 Exploration Agreement and Option to Purchase. The purchase option if exercised would have resulted in a purchase price of $2.5 to $3.5 million in 1981 dollars. Though the option was never exercised, this fact may be attributed to the government's regulation of WRST including Orange Hill. Contemporaneous correspondence between NWE and Pacific Coast Mines, the U.S. Borax subsidiary, plainly disclosed the suppression of mineral exploration and development.

Purchase options normally do not qualify as competent evidence in real property valuation. Also, transactions remote in time to the effective date of valuation must be rejected in favor of contemporaneous evidence of value. Again, however, where market failure, i.e the absence of direct sales comparisons, can be attributed to governmental actions such as pending condemnation or an announced acquisition program, then historical or contingent transactions may be considered as competent evidence of value.[38] Accordingly, the 1981 purchase option, adjusted to 2008 market conditions, should have been considered as evidence of market value for Orange Hill. Meiling's appraisal is plainly deficient on this matter.

VII. H2T Independent Assessment of Orange Hill Mineral Development.

NWE has asked its consultant H2T to prepare an independent analysis of the economic feasibility of mining the Orange Hill deposit. H2T completed its report in May 2009, and a copy is provided with this submission. According to the consultant's

---

[38] *E.g., United States v. 320.0 Acres of Land,* 605 F.2d 762, 802-03 (5th Cir. 1979)(only comparable transactions were those influenced by NPS acquisition within Florida Everglades National Park); *accord, United States v. 428.02 Acres of Land,* 687 F.2d 266, 269 (8th Cir. 1982) (executory transaction still considered because non performance due to pending federal condemnation).

analysis, the Orange Hill deposit can be economically mined with a $43 million net present value based on specific parameter values and data inputs. The H2T report reflects the work of two experienced Alaskan mining engineers.

The H2T report is similar to Stebbins' analysis in certain respects but differs materially in other respects. The resource volume and grade for copper are similar, however H2T incorporates a silver value which Stebbins declined to do. The H2T mine plan differs significantly from that of Stebbins, being more efficient in operational features and employing off-site support: the H2T operating plan transports ore and waste material offsite to two separate locations. Ore is conveyed to the White Mountain site (Nabesna Mine) for treatment where the mill and supporting infrastructure are sited. Waste and tailings are conveyed to a 320 acre native owned parcel on the left limit of the Nabesna River four mile northeast of the White Mountain site.

This submission does not purport to demonstrate the merits of the H2T mine plan by comparison to that of Stebbins. Rather, the H2T report is presented to show differing opinions regarding the economic feasibility of mining the Orange Hill deposit. Given the differing opinions, NWE requests an arbitration on the issue of Orange Hill valuation consistent with the analysis below.

VIII. Alternative Dispute Resolution in Property Valuation and Acquisition

In the last twenty years, Congress and the Executive Branch have evolved in their views regarding alternative dispute resolution (ADR) in federal agency functions. NWE believes that application of an ADR process has merit to resolving the valuation dispute on Orange Hill. At least three enactments have affected the Interior Department in regard to lands acquisition or lands valuation. These are briefly discussed to explain possible ADR application to valuation of Orange Hill.

In 1988 Congress enacted the Federal Land Exchange Facilitation Act.[39] This legislation authorized the Secretaries of Interior and Agriculture to engage in land exchanges with private parties while providing procedures for resolution of appraisal disputes on the lands in question. With regard to lands administered by Interior, the legislation authorizes the Secretary to arbitrate or utilize ADR if the parties disagree on valuation. If arbitration is utilized, this is not binding as the legislation authorizes either party to withdraw from the land exchange.

---

[39] Pub. L. No. 100409, 102 Stat. 1086, *amending* 43 U.S.C. § 1716 (1988).

The Interior Appropriations Bill for FY 1991 included provisions specific to acquisition of mining claims within Denali National Park.[40] One of the provisions authorized arbitration on valuation of valid mining claims if the claim owner offered to sell the property to the United States. The arbitration result would be binding on the government although the claim owner had a right of rescission. The government declined to implement this provision due to a constitutionality concern under the Appointments Clause.

Also in 1990, Congress enacted the Administrative Disputes Resolution Act.[41] This legislation applies to an "administrative program" of the Executive Branch generally. Congressional findings of this Act state that ADR is desirable for federal administrative proceedings and programs. The legislation confers discretion on federal agencies not to employ ADR for specified policy considerations. The legislation authorizes arbitration on terms the parties agree upon, including binding arbitration if the agency head makes certain findings.

It appears that Interior and BLM have experience in applying the ADR provisions in the federal land exchange legislation.[42] The BLM has promulgated regulations under the 1988 legislation including guidance for the bargaining process and utilization of arbitration.[43] Regarding the 1990 legislation, Interior has promulgated both policy guidance and a Departmental Manual wherein the Office of Collaborative Dispute Resolution is created to implement the ADR policy.[44]

NWE recommends that Interior's authority under the 1990 Act be applied to authorize non binding arbitration on valuation of Orange Hill. At this juncture, NWE is flexible on the features of arbitration and solicits the Interior Department's views on the subject. NWE believes arbitration would be cheaper, less time-consuming and simpler

---

[40] Pub. L. No. 101-512, § 121, 104 Stat. 1915, 1937-38 (1990).

[41] Pub. L. No. 101-552, 104 Stat. 2738, *codified at* 5 U.S.C. §§ 571-83.

[42] *See Hearing on Bureau of Land Management Realty and Appraisal Issues,* before the Subcomm. on Nat'l Parks & Pub. Lands, Comm. on Resources, 105th Cong., 2d Sess. 4-6, 13-14 (1998).

[43] 43 C.F.R. Part 2200 (2008); *id.* § .2201.4 ("Bargaining; Arbitration").

[44] *See* Department of the Interior's Final Alternative Dispute Resolution Policy, 61 Fed.Reg. 40424 (Aug. 2, 1996); Department of Interior, Departmental Manual, 112 DM 21 (effective Oct. 7, 2005).

than formal litigation regarding valuation of Orange Hill in a condemnation proceeding. NWE suggests non binding arbitration based on the government's concerns and legislative choices expressed in the above referenced legislation.

(rev 12/16/09)

United States Department of the Interior
NATIONAL BUSINESS CENTER
Appraisal Services Directorate NW Region
333 S.W. First Ave.
Portland, Oregon 97204

January 22, 2010

Mr. Lawrence V. Albert
Attorney at Law
P.O Box 200934
Anchorage, Alaska 99520

RE: Orange Hill Patented Mining Claims, Wrangell St. Elias Park, Alaska

Dear Mr. Albert,

I'm writing in response to your letter of December 16th requesting a reconsideration of the appraisal results of the ASD-approved appraisal on the Orange Hill property in Alaska in late 2008. First of all, I should let you know that under ASD's appeal policy, only our client agencies have standing to appeal. Thus the National Park Service would have to agree to the appeal and forward it to us for consideration. Nonetheless, our policy calls for informal discussion and good faith attempts to resolve any issues at the lowest level possible before a formal appeal is made. Therefore, I have taken the following steps in response to your letter:

1) I have requested the Solicitor's office in Alaska to address two of the issues you raised: first, whether we should have instructed the appraiser to apply the scope of the project rule in this case; and second, whether the Solicitor would consider your client to have standing to request arbitration or mediation of the appraisal results, independent of the current ASD process, as you propose in your letter.

2) I have contacted DOI's Office of Mineral Evaluation in Denver who provided expert advice in both development of the scope of work for the Stebbins report and review of said report, and have alerted them that we may need their assistance in review of the H2T Mine Engineering report commissioned by your client.

3) I have alerted Chuck Gilbert, Realty Officer at NPS, and provided him with a copy of your letter and attachments since he would be a key decision-maker on whether to make a formal appeal to ASD.

Once I have been advised by the Solicitor on the issues outlined above, I will be back in touch with you with our plan of action.

Sincerely,

Helen L. Honse
Regional Appraiser

TAKE PRIDE IN AMERICA

United States Department of the Interior
NATIONAL BUSINESS CENTER
Appraisal Services Directorate NW Region
333 S.W. First Ave.
Portland, Oregon 97204

April 27, 2010

Mr. Lawrence V. Albert
Attorney at Law
P.O Box 200934
Anchorage, Alaska 99520

RE: Orange Hill Patented Mining Claims, Wrangell St. Elias Park and Preserve, Alaska

Dear Mr. Albert,

I am writing in response to your December 16, 2009, letter in which you expressed concerns regarding the Department of Interior's 2008 fee appraisal of the Orange Hill claims and requested the Department enter into non-binding arbitration with Northwest Explorations Joint Venture. In my January 22, 2010, response to you, I explained that I needed to obtain additional information, including input from the Solicitor's Office, the Department's Office of Mineral Evaluation, and the National Park Service, before I could fully consider and respond to your request.

Since that time, I have obtained and reviewed the requested information, as well as other relevant background information regarding this matter, including the report you provided from H2T Mine Engineering estimating the market value of the claims to be roughly $50 million. In light of this review, we find that the 2008 appraisal of the property was fairly conducted and properly took into account all relevant considerations, and provides a sound and valid estimate of the fair market value of the claims. Moreover, we have serious reservations about the methodology and support for the conclusions in the H2T Report.

With regard to your request for non-binding arbitration, we do not believe it would be appropriate to engage in alternative dispute resolution to determine the fair market value of the claims, due to the importance of maintaining the integrity of the appraisal process, as provided in Uniform Appraisal Standards for Federal Land Acquisitions and the Uniform Standards of Professional Appraisal Practices, in estimating the fair market value of real property. It is the responsibility of Appraisal Services Directorate to produce sound, reliable appraisals for the Department of Interior bureaus, which we believe we have done in this case.

Given this situation, I suggest that you contact Chuck Gilbert at the National Park Service in Alaska to discuss possible options for negotiating a purchase that may be acceptable to your clients.

Sincerely,

Helen L Honse

Helen L. Honse
Regional Appraiser

TAKE PRIDE IN AMERICA

LAWRENCE V. ALBERT
ATTORNEY AT LAW
P. O. BOX 200934
ANCHORAGE, ALASKA 99520

TELEPHONE (907) 243-2172
FAX (907) 243-5476

April 30, 2010

Hon. Lisa Murkowski
United States Senator
510 "L" Street Ste. 550
Anchorage, Alaska 99501

Hon Donald E. Young
United States Congressman
510 "L" Street Ste. 580
Anchorage, Alaska 99501

Hon. Mark Begich
United States Senator
510 "L" Street Ste. 750
Anchorage, Alaska 99501

Re: Northwest Explorations Joint Venture--Orange Hill Mineral Deposit--Valuation Dispute with DOI Appraisal Services Directorate

Dear Sen. Murkowski, Cong. Young and Sen. Begich:

I write in regard to a long standing problem concerning the Interior Department and my client's attempts to obtain a fair valuation of mineral property located within the Wrangells St. Elias Park (WRST). The client is named Northwest Explorations JV (NWE) and the property is known as Orange Hill. This property comprises patented mining claims that were subject of serious, multi-year exploration efforts prior to the passage of ANILCA. The property has laid dormant since then due to the Park Service's administration of WRST, a 1985 court injunction and a *de facto* prohibition on commercial mining operations.

NWE has attempted to get a fair valuation for the property and has been unsuccessful in doing so due to the Appraisal Service Directorate's (ASD) failure to follow established appraisal procedures for Executive Branch agencies. Because there is a valuation dispute and recognizing the Park Service has an official policy on acquiring mining claims within WRST, my clienr requests non-binding arbitration on the valuation issue before the Interior Department Office of Collaborative Dispute Resolution. However, the Appraisal Service Directorate refuses to cooperate on this request.

Accordingly, NWE seeks your assistance, along with that of Pat Pourchot, representing the Secretary of Interior for Alaska affairs, to explain to ASD and the Park

Service that the public interest--including cost to taxpayers-- is better served through ADR on mineral property valuation than court litigation. In this regard, enclosed is correspondence documenting this dispute and requests for assistance from the Office of the Secretary along with the Interior Department's Office of Inspector General.

On behalf of Northwest Explorations Joint Venture, I appreciate any assistance your respective offices can provide so that my client might realize its constitutionally protected property rights that have been frustrated for the last quarter century.

Sincerely,

Lawrence V. Albert
Attorney at Law

encls
cc: Northwest Exploration JV
(w/o encls)

Summary of Inquiry to Alaska Congressional Delegation April 2010
Northwest Explorations (NWE) Joint Venture--Orange Hill Mineral Property

- Property comprises 18 patented mining claims--363 acres--located near Nabesna and within Wrangell St. Elias National Park & Preserve, Alaska (WRST).

- Deposit is porphyry copper-molybdenum and was subject of major drilling campaign in 1960s and 1970s leading up to ANILCA enactment in Dec. 1980.

- 1995 USGS study placed Orange Hill within top 25th percentile of the largest copper deposits worldwide.

- 1985 court injunction against National Park Service (NPS) prohibited commercial mining operations within WRST, Denali and Yukon Charley National Parks due to environmental non compliance.

- NPS issued Final EIS in 1990 proposing acquisition of all mining claims within WRST. No commercial mining has been permitted within WRST since then.

- NWE repeatedly requested NPS to prepare mineral appraisal of Orange Hill over 20 year period. NPS was dilatory, made excuses and did surface real estate appraisal instead.

- NWE twice obtained the assistance of Alaska congressional delegation through Interior appropriation bills for FY 2001 and 2005, directing NPS to prepare appraisal and negotiate property purchase. Interior and NPS was non responsive in both instances.

- Interior Appraisal Service Directorate (ASD) procured fee appraisal of Orange Hill in 2008. ASD found Orange Hill mineral development uneconomic based upon NPS engineering cost study. ASD valued Orange Hill at $290,000 based on surface use only.

- NWE disagreed with ASD's appraisal and prepared its own engineering-economic analysis. H2T Mine Engineering valued Orange Hill at $43 million in May 2009.

- In Dec. 2009, NWE requested ASD reconsider its uneconomic mineral valuation of Orange Hill based upon H2T's critique. NWE also requested that ASD participate in alternative dispute resolution (ADR) on property valuation pursuant to the Administrative Disputes Resolution Act, 5 U.S.C. §§ 571-83, and Interior's implementation of same.

- ASD in April 2010 declined NWE's request for ADR in order to "maintain[] the integrity of the appraisal process." On behalf of Secretary of Interior, Pat Pourchot also declined ADR on property valuation in June 2010 because "formal arbitration has no precedent in this type of case."

- NWE wrote to the Alaska congressional delegation in April 2010 seeking its assistance on Orange Hill valuation dispute. NWE contends Interior has given no legitimate explanation for declining ADR when Congress and Executive Branch policy promotes this.

- ADR is less expensive to both the property owner and government than formal condemnation. If Interior cannot agree to a voluntary resolution of the valuation dispute, then NWE has no choice but to request condemnation of Orange Hill with declaration of taking. The court will then determine just compensation.

- Kantishna mining claimants in Denali Natl. Park had a comparable problem with NPS. Sen. Stevens enacted legislation as part of Interior FY 1998 appropriations bill that authorized condemnation with DTA for consenting mining claimants. *See* Pub. L.No. 105-83, § 120, 111 Stat. 1543, 1564-66 (1997).

(prepared August 23, 2010)

LAWRENCE V. ALBERT
ATTORNEY AT LAW
P. O. BOX 200934
ANCHORAGE, ALASKA 99520
TELEPHONE (907) 243-2172
FAX (907) 243-5476

April 30, 2010

Ms. Mary L. Kendall
Acting Inspector General
U.S. Department of Interior
Office of Inspector General
1849 "C" Street, N.W. Ste. 4428
Washington, D.C. 20240

Re: Interior Department Appraisal Services Directorate--
Request for OIG Investigation

Dear Ms. Kendall:

I write on behalf of a client, Northwest Explorations Joint Venture (NWE), to request the Office of Inspector General investigate the failure of the Interior Department's Appraisal Service Directorate (ASD) to follow established appraisal procedures in valuation of mineral property for acquisition by the National Park Service (NPS).

The ASD, along with the NPS and BLM as its predecessors in pertinent part, have been subject of continued criticism over the last several years for failure to adhere to established appraisal practice and guidelines for property acquisition. This criticism is particularly relevant in regard to specialty appraisals, as for example mineral property, where the agencies lack expertise. I bring to your attention the following reports on the subject:

U.S. Dept of Interior, Office of Inspector General, Audit Report, Land Acquisition Activities of the National Park Service, Report No. 99-I-518 (May 1999).

Appraisal Foundation, Evaluation of the Appraisal Organization of the Dept. of Interior, Bureau of Land Management, Contract to BLM Asst. Director for Minerals, Realty & Resource Protection (Oct. 2002).

U.S. General Accounting Office, Interior's Land Appraisal Services: Actions Needed to Improve Compliance with Appraisal Standards, Increase Efficiency and Broaden Oversight, No. GAO-06-0050 (2006).

U. S. Dept. of Interior, Office of Inspector General, Evaluation Report on Dept. of Interior's Appraisal Operations, Report No. WR-EV-085-0012-2009 (Dec. 2009).

In December 2009, NWE submitted a request to the ASD to review an appraisal performed on its Orange Hill mineral property located within the Wrangells St. Elias National Park in Alaska. NWE contended the contract appraiser was not qualified to appraise mineral property, the minerals valuation on which the ASD appraiser relied had previously been performed by a contractor to the NPS, both the NPS contractor and its NPS contracting officer lacked appraisal qualifications, and ASD's contract appraisal disregarded a fundamental principle in valuation of property subject of governmental acquisition known as the "scope of the project rule."

A week after NWE submitted its request for ASD to review its 2008 appraisal of the Orange Hill property, the OID issued its most recent report critical of ASD's appraisal function (listed above). ASD recently responded to NWE's December 17, 2009 submission through letter dated April 23, 2010. Therein it found no fault with the 2008 contract appraisal but failed to address any of the questions raised in NWE's December submission.

NWE requests that your office investigate this matter more thoroughly than ASD bothered to. Please feel free to contact either myself or Wallace McGregor on behalf of Northwest Exploration if OID has any questions on the matter.

Sincerely,

Lawrence V. Albert
Attorney at Law

encls
cc: Northwest Exploration JV
(w/o encls)

LAWRENCE V. ALBERT
ATTORNEY AT LAW
P. O. BOX 200934
ANCHORAGE, ALASKA 99520
TELEPHONE (907) 243-2172
FAX (907) 243-5476

April 30, 2010

Mr. Pat Pourchot
Special Assistant to the Secretary
of Interior for Alaska Affairs
1689 "C" Street Ste. 100
Anchorage, Alaska 99501

Re: Orange Hill Patented Mining Claims in Wrangells-St. Elias National Park--Valuation Dispute on Acquisition with DOI Appraisal Services Directorate

Dear Mr. Pourchot:

I represent Northwest Explorations Joint Venture (NWE), which owns patented mining claims within the Wrangells St. Elias National Park (WRST). The property is known as the Orange Hill mineral deposit. The National Park Service (NPS) has had an official program for acquisition of mining claims within WRST since 1990. For years, my client has attempted to get the Park Service to undertake a bona fide mineral property valuation for Orange Hill.

The Interior Department Appraisal Services Directorate (ASD) finally authorized a property appraisal in August 2008. The contracting appraiser issued a report in September 2008 opining that minerals development was not economically feasible, and therefore, this would not be the highest and best use of the property. However, ASD's contract appraiser did not perform a minerals valuation. Instead, the National Park Service (NPS) previously contracted for this work to an engineering consultant who was not an appraiser and then supplied its contract appraiser with the results. NWE subsequently retained its own consultant which arrived at a $45 million valuation for the deposit. Thus, nominally, there is a $45 million valuation dispute concerning this property.

NWE thereafter authorized me to review ASD's handling of the appraisal process on Orange Hill. On December 17, 2009, I wrote to Ms. Helen Honse of the ASD Pacific Northwest Office in Portland Oregon. My letter attached a submittal entitled "Deficiencies in Appraisal Process of Orange Hill Mineral Property." A copy of my letter and memorandum are enclosed. Therein, NWE requested non binding arbitration on the

valuation dispute through DOI's separate Office of Collaborative Dispute Resolution.[1]

NWE's submittal questioned the qualifications of ASD's contract appraiser to conduct a mineral property appraisal and the process used to conduct the mineral resource evaluation through the Park Service rather than ASD. In this regard, NWE noted the DOI Inspector General's criticism of ASD's capability to perform specialty appraisals such as mineral property and meddling in the appraisal process by Interior client agencies such as the Park Service. One week after NWE's submission last December, the IG issued its most recent report critical of ASD. A copy of that report is enclosed for your consideration.

After four months delay, ASD replied to NWE's letter on April 27, 2010, copy attached. Ms. Honse declines to recommend alternative dispute resolution "due to the importance of maintaining the integrity of the appraisal process." However, the integrity of ASD's appraisal process should not provide an excuse to circumvent alternative dispute resolution (ADR). In fact, one of the benefits of ADR that we see is testing the integrity of Interior's appraisal process. As for the purported integrity of the ASD appraisal process, especially in regard to its appraisal of Orange Hill, we are copying the Inspector General on this matter.

It is NWE's position that the Park Service has stifled mineral development in the Wrangells St. Elias Park since a 1985 court injunction and it has now used its police power to suppress valuation of this otherwise economic use of constitutionally protected property. Through the Administrative Disputes Resolution Act of 1996, along with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 U.S.C. § 4651, Congress has legislated that property owners should not be forced to litigate valuation disputes on property acquisition with Executive Branch agencies.

NWE basically has two choices to pursue fair valuation of the Orange Hill mineral deposit: either seek alternative dispute resolution through a consensual process with the Interior Department, or request condemnation with a declaration of taking. The ASD seems

---

[1] Congress has established ADR as a national policy for all executive branch agencies, and the Interior Department has created the Office of Collaborative Dispute Resolution to implement this congressional policy. *See* Administrative Disputes Resolution Act of 1996, Pub. L. No. 104-320, *codified at* 5 U.S.C. §§ 571-83; Dept. of Interior Manual, Part 112, Ch. 21 (effective date 10/07/05); Dept. of Interior's Final Alternative Dispute Resolution Policy, 61 Fed.Reg. 40424 (Aug. 2, 1996).

intent on foreclosing the first option in contravention of congressional policy. Consequently, if the Interior Department is not able to agree on a consensual procedure for resolving this valuation dispute, then NWE has no choice but to go to the Alaska congressional delegation and explain the Interior Department's refusal to implement the Administrative Disputes Resolution Act and seek formal condemnation of the property.

NWE seeks the assistance of your office on this difficult matter. Please feel free to contact me.

Sincerely,

Lawrence V. Albert
Attorney at Law

encls
cc: Hon. Lisa Murkowski, U.S. Senator
Hon. Donald Young, U.S. Congressman
Hon Mark Begich, U.S. Senator
Interior Department, Office of Inspector General
(w/ encls)
Northwest Explorations JV

OFFICE OF
INSPECTOR GENERAL
U.S. DEPARTMENT OF THE INTERIOR

MAY 27 2010

Mr. Lawrence V. Albert
Attorney at Law
P.O. Box 200934
Anchorage, Alaska 99520

Dear Mr. Albert:

The Office of Inspector General (OIG) received your April 30, 2010 letter requesting an OIG investigation into the Department's Appraisal Services Directorate (ASD) for its failure to follow established appraisal procedures in valuation of mineral property for acquisition by the National Park Service (NPS).

Review of your correspondence did not disclose any violations of law, regulation, policy, or procedure, and there was no indication that the appraisal process was manipulated by the NPS and ASD. Therefore, the OIG will not initiate an investigation at this time.

We appreciate you communicating this matter to us. Your commitment in helping the DOI improve the effectiveness of its programs and operations benefits not only the Department but also the public we serve. If you need additional information about our referral, please contact Special Agent Edward Woo, who is a member of my staff, at (703) 487-5425.

Sincerely,

Scott L. Culver
Deputy Assistant Inspector General
for Investigations

Northwest Explorations JV Statement to Sen. Energy Committee
Hearing on Implementation of ANILCA
Attachment 13

United States Department of the Interior

OFFICE OF THE SECRETARY
1689 C Street, Suite 100
Anchorage, Alaska 99501-5151

JUN 22 2010

Mr. Lawrence V. Albert
Attorney at Law
P.O. Box 200934
Anchorage, Alaska 99520

Dear Mr. Albert:

Thank you for your May 3, 2010, letter requesting that arbitration be initiated regarding the potential mining use, estate appraisal, and/or sale of the block of patented mining claims held by Northwest Explorations Joint Venture (NWEX) located within the Wrangell-St. Elias National Park and Preserve.

I have inquired with the National Park Service (NPS) Regional Office about this matter. As you may know, the purpose of the Department's Appraisal Services Directorate is to provide an objective, independent appraisal process. Its appraisal of the property in this case has been completed, and is not subject to further alteration by the NPS or this office. Further formal arbitration has no precedent in this type of case. However, there is an option of further negotiations with the NPS outside of the formal Alternative Dispute Resolution process. I would encourage you to pursue this option.

Thank you for bringing this to my attention. I wish you success in resolving this issue with the NPS-Alaska Regional Office.

Sincerely,

Pat Pourchot
Special Assistant for Alaska Affairs

cc: Sue Masica, Alaska Regional Director, National Park Service

United States Department of the Interior
NATIONAL PARK SERVICE
Alaska Region
240 West 5th Avenue, Room 114
Anchorage, Alaska 99501

IN REPLY REFER TO:

L1425 (AKRO-L)

SEP 07 2010

RECEIVED
SEP - 8 2010

Honorable Don Young
House of Representatives
Attn: Catherine Petty
510 L Street, Suite 580
Anchorage, Alaska 99501

Dear Mr. Young:

This responds to your letter of August 4, 2010, regarding a letter you received from Mr. Lawrence Albert concerning the possible purchase of a property located in Wrangell-St. Elias National Park and Preserve. The property is a 363-acre block of patented mining claims, owned by Northwest Explorations Joint Venture.

The owners of the property are interested in selling it to the National Park Service (NPS) and the NPS is interested in purchasing it. To that end the owners and the NPS agreed to have a mining feasibility study and an appraisal of the property prepared. The feasibility study was contracted to a respected, private sector firm, Aventurine Engineering of Spokane, Washington. The owners made it a condition of proceeding with the acquisition process that Aventurine, specifically, complete the feasibility study. Aventurine's final report (February 2008) concluded that the claims were not economic to mine, and if mining were undertaken, there would be significant financial losses.

In August 2008 the Department of Interior, Office of Valuation Services (OVS) (formerly the Appraisal Services Directorate) contracted for an appraisal of the property. The contract appraiser concluded in his December 2008 report that mining was not economically feasible and that commercial lodge construction was the highest and best use of the property. The report was reviewed and approved by OVS, and on December 19, 2008, the NPS made an offer to the owners to purchase the property at the appraised value, which the owners subsequently rejected. On two later occasions the NPS has made offers to purchase the property at amounts above the appraised value, subject to the required Congressional reviews of such above appraisal offers, which the owners also rejected. The owners have stated that they believe the property is worth more than the offered amounts and are unwilling to sell at those amounts.

Mr. Albert makes several assertions in his letters that the appraisal process was not conducted properly and that the Department of Interior should enter into an arbitration process. His

assertions have been reviewed by Departmental staff and the Office of the Solicitor and have been found to be without merit.

We believe that we have proceeded in good faith to purchase the Northwest Explorations property on a willing seller/willing buyer basis, obtaining sound, independent evaluations of the property and its market value, and making fair offers to purchase. In the end it is the owners' decision whether to accept our offers, or to pursue other options with their property.

Please let us know if we can provide any additional information about this matter.

Sincerely,

Sue E. Masica
Regional Director

United States Department of the Interior
NATIONAL PARK SERVICE
Alaska Region
240 West 5th Avenue, Room 114
Anchorage, Alaska 99501

IN REPLY REFER TO:

L1425 (AKRO-L)

September 9, 2010

Fred Gibson
The George R. Brown Partnership, LP
4700 First City Tower
1001 Fannin
Houston, TX 77002

Dear Mr. Gibson:

In early July I had made a verbal offer to you, as an owner and representative of Northwest Explorations Joint Ventures, to purchase the Orange Hill patented mining claims. And in early August we further discussed the offer, at which time you informed me that the offer was being declined. Nonetheless, I wanted to follow up on our telephone discussions by presenting a written offer. Enclosed is a Corporate Offer to Sell Real Property in the amount of $435,000.

This offer is 50% in excess of the approved appraised value of the Orange Hill claims. Because the offer is in excess of the appraised value, if Northwest Explorations decided to proceed with this offer, the National Park Service would need to obtain the approval of the Appropriation Committees of the United States Congress before accepting it. Although we would diligently pursue obtaining such approval, the process can take six months or more. Consequently we have allowed for a nine month period for acceptance by the National Park Service (see item #1 under "The terms and conditions of this offer" in the body of the offer).

We make this offer at more than appraised value in an attempt to bring a satisfactory conclusion to a long-standing issue, at which both Northwest Explorations and the National Park Service have expended much time and effort over many years. The present offer is our best and final offer. We currently have sufficient funding to be able to complete this transaction. Future funding is uncertain.

Please give this offer serious consideration, and contact me if you have any questions or concerns.

Sincerely,

Charles M. Gilbert
Chief, Land Resources Program Center

Enclosure

GRBP
THE GEORGE R. BROWN PARTNERSHIP, L.P.

4700 FIRST CITY TOWER • 1001 FANNIN • HOUSTON, TX 77002-6792 • TELEPHONE: (713) 652-4901

September 22, 2010

Charles M. Gilbert
Chief, Land Resources Program Center
United States Department of the Interior
National Parks Service
Alaska Region
240 West 5th Avenue, Room 114
Anchorage, AK 99501

Dear Mr. Gilbert:

I am in receipt of your letter of September 9, 2010. The members of the Management Committee join me in expressing thanks for your offer to purchase the Orange Hill Patented Mineral Claims. We fully agree with you that time is of the essence to bring this process to a conclusion and we share your goal to have the property conveyed to the National Park Service.

As we discussed, the evaluation of a potential mining operation is a complex process that can result in significantly different answers depending on the assumptions made, the methodology involved and operational understanding. We envision a successful mining operation at Orange Hill and consequently view the value of the mineral estate to more properly represent the appraised value. Our best estimate remains a value of $45,000,000 in 2008 dollars using the discounted cash flow method.

It is clear that our individual evaluations have arrived at different conclusions. However, we are willing to work with the National Park Service to arrive at a mutually agreeable value by means of dispute resolution as provided by law and propose that we embark on that process. We are certain that such negotiations carried out in good faith can achieve the mutually desired goal of conveying the mineral property to the National Park Service as envisioned by Congress in creating the Wrangell-St. Elias National Park and Preserve in 1980.

Sincerely,

THE GEORGE R BROWN PARTNERSHIP LP

Fred Gibson
President

To require the Secretary of Interior to participate in alternative dispute resolution regarding acquisition of patented lands within units of the National Park System in Alaska, or alternatively, to authorize condemnation of same upon the owner's consent.

IN THE HOUSE OF REPRESENTATIVES

_____, 2011

MR. YOUNG of Alaska introduced the following bill; which was referred to the Committee on _____.

A BILL

To require the Secretary of Interior to participate in alternative dispute resolution regarding acquisition of patented lands within units of the National Park System in Alaska, or alternatively, to authorize condemnation of same upon the owner's consent.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. REQUIRING THE SECRETARY OF INTERIOR TO PARTICIPATE IN ALTERNATIVE DISPUTE RESOLUTION.

Any owner of a public land patent located within a unit of the National Park System in Alaska may request the Secretary of Interior to participate in alternative dispute resolution regarding valuation of the property for purposes of acquisition pursuant to the Administrative Disputes Resolution Act (5 U.S.C. 571-93), subject to the following conditions:

Northwest Explorations JV Statement to Sen. Energy Committee
Hearing on Implementation of ANILCA
Attachment 18

(1) Only owners of patented lands of the National Park System in Alaska shall be eligible to participate in alternative dispute resolution proceedings under this Act.

(2) Congress finds that the considerations stated in 5 U.S.C. 572(b) do not apply to a dispute resolution proceeding on valuation authorized under this Act, and therefore, the Secretary may not object to a dispute resolution proceeding on such grounds.

(3) If the owner of patented land requests arbitration pursuant to 5 U.S.C. 575, the Secretary is directed to consent to such request, however, the arbitration agreement may not specify a limitation on the maximum award pursuant to 5 U.S.C. 575(a)(2), and the proceeding shall be non binding on the parties pursuant to paragraph (4) herein.

(4) Either party is authorized to vacate an award issued pursuant to an arbitration proceeding under 5 U.S.C. 575 before the award becomes final pursuant to 5 U.S.C. 580(b) by serving on all other parties written notice to that effect.

(5) Subject to available funding, the Secretary is authorized to offer to purchase the patented land within ninety days following the entry of a final arbitration award or the conclusion of another form of dispute resolution proceeding conducted pursuant to this Act and consistent with its outcome.

SECTION 2. PATENT OWNER'S CONSENT TO CONDEMNATION WITH TAKING.

(a) If the Secretary declines to purchase patented land or the owner declines the Secretary's purchase offer within the ninety day period set forth in paragraph 5 of section 1, the owner may within one year consent to condemnation of its property with declaration of taking by the Secretary.

(b) The owner's consent to condemnation shall be made in writing to the Secretary, and upon the Secretary's receipt of such consent all right, title and interest to the property, including a right of immediate possession, shall be immediately vested in the United States.

(c) The procedure on condemnation of an owner's patented land shall be as follows:

(1) Either the owner or the United States may initiate proceedings within six years of the date of Secretary's receipt of written consent, seeking a determination of just compensation in the District Court for the District of Alaska pursuant to the Declaration of Taking Act, sections 3114-15 of Title 40, United States Code.

(2) The United States shall pay just compensation to the owner, including any deposits in the registry of the court, solely from the permanent judgment appropriation established pursuant to section1304, Title 31, United States Code and shall include accrued interest in the amount of judgment in accordance with section 3116 of Title 40, United States Code.

(3) If the just compensation proceeding is settled prior to entry of judgment, the owner shall be paid just

compensation according to paragraph (2).

SECTION 3. PROHIBITION ON APPROPRIATIONS FOR THE NATIONAL PARK SERVICE.

If the Secretary declines to participate in alternative dispute resolution according to Section 1 of this Act, then none of the funds appropriated or otherwise made available to the National Park Service pursuant to the appropriation act for the Department of Interior shall be obligated or expended for the unit of the National Park System in Alaska in which the patented land is located.

SECTION 4. PROHIBITION ON APPROPRIATIONS FOR THE DEPARTMENT OF JUSTICE.

If the Secretary declines to participate in alternative dispute resolution according to Section 1 of this Act, then none of the funds appropriated or otherwise made available to the Department of Justice pursuant to the appropriation act for that agency shall be obligated or expended to defend or otherwise represent the position of the Secretary for the unit of the National P:ark System in Alaska in which the patented land is located.

(draft April 1, 2011)

(first revision April 19, 2011)

EXPLANATORY STATEMENT ACCOMPANYING
DRAFT BILL ON ALTERNATIVE DISPUTE RESOLUTION
FOR PATENTED LANDS WITHIN NPS UNITS IN ALASKA

The general purpose of the proposed bill is to provide relief for patented land owners who are in-holders within units of the National Park System in Alaska and who have been frustrated in their attempts to either develop their property to realize economic value thereon and/or the Park Service refuses to provide an acceptable valuation of the property pursuant to its land acquisition authority and appraisal practices of the Department of Interior.

Section one of the bill incorporates with adjustments the provisions of the Administrative Disputes Resolution Act (ADRA), 5 U.S.C. § 571, *et seq*. The ADRA is established policy of the Executive Branch and the Interior Department has created the Office of Collaborative Dispute Resolution to implement its provisions. However, the National Park Service (NPS) refuses to apply the ADRA to resolution of disputes on property valuation for lands within Park System units in Alaska subject of an approved acquisition plan or policy.

At a property owner's request, Section one of the bill requires the Secretary of Interior to participate in an alternative dispute resolution (ADR) proceeding authorized under the ADRA limited to the subject of property valuation. The conditions set forth in paragraphs (2) through (5) of Section one circumscribe in certain respects, and confer in other respects, the discretion of the Secretary with regard to the proceeding conducted pursuant to the ADRA and requested by the patented land owner.

Paragraph (2) does not allow the Interior Department to decline to participate in ADR due to the policy considerations set forth in 5 U.S.C. § 572(a)(2), and the bill makes a congressional finding to the effect that such considerations do not apply to dispute resolution on property valuation.

Paragraphs (3) and (4) address arbitration if that form of ADR is requested by a patented land owner. Paragraph (3) requires the Secretary to consent to arbitration if requested, however, paragraph (4) preserves the Interior Department's discretion on the outcome of the proceeding such that the Secretary may vacate an arbitration award in a timely manner and the proceeding in effect becomes non-binding arbitration. Paragraph (3) also precludes the Secretary from limiting the amount of an arbitration award since paragraph (4) allows the Secretary to vacate an award in any event.

Paragraph (5) authorizes the Secretary to offer to purchase the patented land upon the conclusion of an ADR proceeding, including an arbitration proceeding in which the award has become final, subject to the availability of funds for property acquisition. The bill itself does not appropriate funds for property acquisition, and hence, a delay from the conclusion of an ADR proceeding authorized under the bill until such time as funds are appropriated to acquire the property is recognized.

Section two of the bill provides a separate remedy for an owner who opts to participate under Section one but the outcome of the ADR proceeding does not result in an offer to purchase the property, or the owner declines the Secretary's purchase offer if made. Section two authorizes the owner in such circumstance to consent to condemnation of its property with a declaration of taking pursuant to the Declaration of Taking Act, 40 U.S.C. §§ 3114-15.

Sub-sections (b) and (c) of Section two incorporate relevant provisions of Public Law 105-83, Section 120, 111 Stat. 1543, 1564-66 (1997), which authorized condemnation with declaration of taking for consenting owners of patented and unpatented mining claims within the Kantishna Hills of Denali National Park & Preserve, Alaska. Several mining claimants participated in that legislation and several court actions were conducted such that substantial experience has been realized with regard to the Section 120 legislation. The template provided by that legislation is therefore viewed as appropriate for the proposed bill.

Sections three and four of the bill operate as incentives for the Interior Department and the Justice Department as its legal representative to consent to a patented land owner's request for an ADR proceeding under the bill. Sections three and four state that if the Secretary of Interior refuses to consent to the form of ADR requested by a patented land owner within a unit of the National Park System in Alaska, then funds appropriated or otherwise made available for the Interior Department and the Justice Department shall be withheld with regard to operations of the Park System unit in which the property is located.

(prepared April 19, 2011)

CECIL D. ANDRUS

September 19, 2011

The Honorable Ken Salazar
Secretary of the U.S. Department
Of the Interior
1849 C Street NW
Washington, D.C. 20240

RE: Request to order NPS to enter immediately into a dispute resolution process with the owners of the Orange Hill property within the Wrangell-St. Elias National Park

Dear Ken:

As a former Secretary of the Interior I well recognize the considerable demands on your time and the complexities of the many challenges which face any Secretary of the Interior. For that reason I have almost always refrained from asking any successor to take a specific administrative action. This particular matter is the exception to the rule.

I am respectfully asking that you order the National Park Service to immediately enter into a formal and binding dispute resolution process with a company called Northwest Explorations. One of the principals of that endeavor, Wallace McGregor, is a long-time personal friend of mine. I want to emphasize to you that he has never been a client nor have I ever been retained by him or any of his partners.

For over 15 years now I have watched with growing frustration and anger the National Park Service jerk this good man and his partners around in what can only be described as a callous, imperious, arrogant manner. It is clear to me that the NPS long ago embarked on a deliberate strategy of denying Mr. McGregor and partners any return on a de facto taking of a valid property right.

Unfortunately, I fear this is just another example of the high-handed behavior too many regional and state NPS directors in Alaska have exhibited over the years. This has lead to a clear alienation of Alaskan NPS personnel from the general population.

It was my now well-considered fear that this would happen which lead to my seriously considering recommending to President Carter during the d-2 lands debate that the candidate areas for Park status instead be declared wilderness area and managed by the U.S. Forest Service. With 20/20 hindsight I now wish I'd followed my instinct.

Some brief background is in order.

The ORANGE HILL mineral property is a 363 acre parcel consisting of 18 patented mineral claims and one 5 acre patented mill site located at the head of the Nabesna River within the Wrangell- St. Elias National Park. At the time of the passage of ANILCA the property was the largest holding of contiguous patented and unpatented claims within the Wrangell Range and enclosed by the park boundaries.

It goes without saying that the extensive mineral deposits covered by the patented claims are extremely valuable. Wally and his partners, however, early on acknowledged the compelling national interest in leaving the national park in a natural state. All they have ever sought is some reasonable token payment for the confiscation of a valid existing property right.

If you were to examine the record as I have done, Mr. Secretary, you would be simply appalled by the conduct of the National Park Service.

The problem is this: At the time of ANILCA's passage, the property had been under extensive exploration by Northwest Explorations for a decade and by U.S. Borax and Chemical Co. for the prior three years as part of a five year term Exploration and Option to Purchase Agreement with Northwest Explorations.

ANILCA's passage brought all activity on the property to a halt (Corporations hate uncertainty when investing) and also raised the question whether there would ever be the right to mine. Given these unknowns, the term of the Purchase Agreement was extended 15 years to the year 1995 without annual work commitments but with an escalating consideration based upon inflation and metal prices.

Then in 1986, the WRST General Management Plan (WRST GMP) was published citing the Orange Hill property as a "Priority Group 1 Inholding", in short, the highest degree of threat to the WRST. With the die, thus, cast that mining was out of the question, the parties mutually agreed to terminate the Option to Purchase Agreement. Northwest Explorations management then took the decisive step to convey the patented clams to the National Park Service in compliance with the intent of Congress and they also allowed the unpatented claims to lapse.

When the Record of Decision was published in 1990 it stated a goal to "Buy All Claims." Taking the government at its word, Northwest Exploration's management took immediate action to attempt to convey the patented claims to the National Park Service.

Twenty-one years later this effort continues, Mr. Secretary. The record clearly shows the NPS has thwarted the effort to convey the patented claims by every disingenuous and devious means possible. In the process, I believe the National Park Service has shown its abiding cultural disregard for the law even to the extent of ignoring specific instructions of Congress.

To date the National Park Service has steadfastly refused to conduct a mineral appraisal necessary for the determination of the property value.

I believe there is a solution here that you can administratively make happen, Mr. Secretary. Not withstanding the decades of insincere acts by the National Park Service, the means are readily available to achieve the goal by instructing the Director of the National Park Service to participate with Northwest Explorations in dispute resolution, as provided by law.

Thereafter, oversight of the resolution process by your office , Mr. Secretary, will be necessary in order to assure honest conduct by the National Park Service management.

Finally, there must be the requirement that the National Park Service accept the findings of the arbitration. By the simple act of following the letter and intent of the law, justice will be served and the taking of Orange Hill Property will be brought to closure.

I sincerely hope you can see your way clear to make this happen, Mr. Secretary. It is the right action to take and for the right reasons.

In advance, as always, thank you for your time and kind consideration.

Sincerely,

Cecil D. Andrus

Copies to:
Wallace McGregor and partners
Larry Albert
Rep. Don Young
Rep. Mike Simpson
Rep. Norm Dicks
Senator Mark Begich
Senator Lisa Murkowski
Senator Mike Crapo

LAWRENCE V. ALBERT
ATTORNEY AT LAW
P. O. BOX 200934
ANCHORAGE, ALASKA 99520
TELEPHONE (907) 243-2172
FAX (907) 243-5476

January 9, 2012

Mr. McKie Campbell
Republican Staff Director
Senate Committee on Energy &
Natural Resources
304 Dirksen Senate Building
Washington D.C. 20510

Re: Northwest Explorations JV/Orange Hill Mineral Deposit in Alaska–
Request for Alternative Dispute Resolution in Property Acquisition

Dear Mr. Campbell:

This letter follows a teleconference held on December 19, 2011 regarding Northwest Exploration Joint Venture's (NWE) efforts at obtaining a fair valuation of its patented mining claims within the Wrangells-St. Elias National Park & Preserve in Alaska (WRST). Participating in the teleconference were Mr. Wallace McGregor of NWE; Tim Olson, a consultant for NWE; Chris Carlson, an additional consultant for NWE; and myself.

One of the topics discussed was the National Park Service's (NPS) refusal to allow alternative dispute resolution (ADR) on valuation of NWE's property. NWE has repeatedly made this request in writing to various government officials over the last three years without favorable results. NWE contends that ADR provides an efficient and reasonable resolution of the valuation dispute short of condemnation litigation. NPS's only response has been that ADR would compromise the integrity of the Interior Department's appraisal process and no precedent for its application exists.

During the teleconference, you asked for background materials on ADR applied to the federal government, along with any experience in applying ADR to property acquisition or property valuation. This letter responds to your request. Additionally, this letter evaluates the bona fides of the NPS' objections to ADR. As a preliminary statement, I researched these topics two years ago in preparing NWE's critique of the Interior Department's handling of Orange Hill valuation.[1]

---

[1] *See* Northwest Explorations JV Submission to U.S. Department of Interior, Appraisal Services Directorate, Re: Deficiencies in Appraisal Process of Orange Hill Mineral Property, December 2009.

Background on ADR Applied to the Federal Government

In 1990, Congress enacted the Administrative Disputes Resolution Act (ADRA).[2] In its statement of findings, Congress declared "administrative procedure . . . is intended to offer an prompt, expert and inexpensive means of resolving disputes as an alternative to litigation;" "alternative means of dispute resolution have been used in the private sector for many years and, in appropriate circumstances, have yielded decisions that are faster, less expensive, and less contentious;" "such alternative means can lead to more creative, efficient and sensible outcomes;" and "such alternative means can be used advantageously in a wide variety of administrative programs."[3]

The ADRA applies to an "administrative program" of the Executive Branch generally.[4] The ADRA requires each agency of the Executive Branch to adopt a policy that address the alternative means of dispute resolution and case management.[5] The legislation does not compel ADR upon a private person's request but instead confers discretion upon the agency if the parties agree to such proceeding.[6] The legislation authorizes arbitration if the agency agrees to this method, the agreement specifies a maximum amount of the award and, in the instance of binding arbitration, legal guidance regarding the agency's authority is followed. [7] The ADRA authorizes exceptions to utilization of ADR if an agency finds that one or more policy considerations apply.[8]

In 1994 the Interior Department proposed an interim ADR policy and in 1995 it promulgated a Final Alternative Dispute Resolution Policy.[9] This policy implements the ADRA along with related legislation known as the Negotiated Rulemaking Act. In 2005, the Departmental Manual of the Interior Department was amended to include a new chapter that created the Office of Collaborative Action and Dispute Resolution.[10] According to this guidance, the office oversees implementation of the ADRA within the Department of

---

[2] Pub. L. No. 101-552, 104 Stat. 2736-48, *codified at*, 5 U.S.C. §§ 571-83 (1990). The ADRA was amended in 1996. Pub. L. No. 104-320 110 Stat. 3870-76 (1996). Sen. Stevens was one of the sponsors of the 1990 legislation.

[3] ADRA § 2, 104 Stat. 2736.

[4] 5 U.S.C. § 572(a); *see also, id.*, § 571(2) (definition of "administrative program").

[5] ADRA § 3(a), 104 Stat. 2736.

[6] 5 U.S.C. § 572(a).

[7] *Id.*, § 575.

[8] *Id.*, § 572(b).

[9] 59 Fed. Reg. 30368 (June 13, 1994) (interim policy); 61 Fed. Reg. 40424 (Aug. 2, 1996) (final policy).

[10] U.S. Dept. of Interior, Departmental Manual, 112 DM Ch. 21 (effective Oct. 7, 2005).

Interior. Presently, the Interior Department has an Office of Collaborative Action and Dispute Resolution domiciled in Washington, D.C. along with a website detailing its program.[11]

Application of ADR to Property Acquisition or Valuation

Prior to NWE's submission to the Appraisal Service Directorate in December 2009, I attempted to determine whether ADR had been applied to federal property acquisition or valuation in conjunction with acquisition. I could not find any cases arising under the ADRA, however, my research was limited to online queries only followed by a few telephone calls. I did not submit a FOIA request to Interior's Office of Collaborative Dispute Resolution. I did talk to a staff person in that office and he was unaware of any application to property acquisition or valuation.

I did became aware of 1988 legislation that addressed ADR in context of public land exchanges with property owners.[12] Public lands legislation typically includes a provision authorizing property acquisition "by purchase, donation, exchange or otherwise." ANILCA contains such a provision and so does FLPMA.[13] Land exchanges with the federal government generally require a determination of equivalent value,[14] which through implementing regulations, involves appraisal on the subject properties.

Prior to the 1988 legislation, FLPMA authorized the Secretaries of Interior and Agriculture to engage in land exchanges.[15] The Federal Land Exchange Facilitation Act (FLEFA) amended FLPMA to authorize resolution of appraisal disputes on proposed land exchanges.[16] With regard to exchanges on lands administered by Interior, FLELA authorizes the Secretary to arbitrate or utilize other ADR if the parties disagree on valuation.[17] If arbitration is utilized, this is not binding as the legislation authorizes either party to withdraw from the land exchange.[18]

---

11 *See* www.doi.gov/pmb/cadr/index.cfm (last visited Jan. 5, 2012).

12 Pub. L. No. 100-409, 102 Stat. 1086-94 (1988).

13 ANILCA § 1302(a), 16 U.S.C. § 3192(a); FLPMA § 205(a), 43 U.S.C. § 1715(a).

14 ANILCA § 1302(h), 16 U.S.C. § 3192(h); FLPMA § 206(b), 43 U.S.C. § 1716(b).

15 FLPMA § 206, 43 U.S.C. § 1716.

16 FLELA § 3(a), 102 Stat. 1087, *codified at* 43 U.S.C. § 1716(d).

17 *Id.*

18 43 U.S.C. § 1716(d)(3).

It appears that Interior and BLM have experience applying the ADR provisions in the federal land exchange legislation. In 1998, a House Committee conducted a hearing on implementation of FLELA.[19] The hearing focused on lands in Utah and appraisal difficulties to effectuate the exchanges. In discussing disagreements on valuation, witnesses mentioned use of the ADR provision in particular instances.[20] The BLM Director described the usage of ADR generally in land exchanges,[21] and a land exchange facilitator mentioned its application in a particular case.[22] There may be further instances of ADR under FLELA that were not disclosed at the 1998 hearing.

I have not initiated a FOIA request as to application of the ADR provision in the public land exchange legislation. My limited review of materials regarding FLELA suggests that valuation of proposed exchanges was controversial and there are one or more governmental reports evaluating its effectiveness.[23] The controversy relates to the difficulties of concluding land exchanges for large numbers of disparate parcels, private lands offered for exchange being subject of environmental restrictions, BLM officials being pressured to achieve results, and serious disputes about valuation. The controversy with land exchanges under FLELA does not apparently pertain to its ADR features.

Evaluating the Bona Fides of NPS Objections to ADR

Thus far, the NPS has identified two objections to utilizing ADR on valuation of the Orange Hill for acquisition: first, ADR would compromise the integrity of the Interior Department's appraisal process,[24] and second, no precedent for its application exists.[25] These objections are conclusory and lack merit for the following reasons:

---

[19] *See Hearing on Bureau of Land Management Realty and Appraisal Issues,* before the Subcomm. on Nat'l Parks & Pub. Lands, Comm. on Resources, 105th Cong., 2d Sess (1998) (Serial No. 105-86).

[20] *Id.* at 5-6, 13-14, 24.

[21] *Id.* at 5-6 (testimony of Pat Shea, BLM Director).

[22] *Id.* at 24 (testimony of Tom Glass, Western Public Land Group, Inc.).

[23] *See* Appraisal Foundation, *Evaluation of the Appraisal Organization of the Department of Interior, Bureau of Land Management,* prepared for U.S. BLM Asst. Director, Minerals, Realty & Resources Protection (2002); U.S. Dept. of Interior, Office of Inspector General, *Land Exchanges and Acquisitions, Bureau of Land Management, Utah State Office,* Report No. 2001-I-413 (2001).

[24] Letter from Helen L. Honse, Regional Appraiser, U.S. Dept. Interior, Appraisal Service Directorate, to Lawrence V. Albert, dated April 27, 2010.

[25] Letter from Pat Pourchot, Special Asst. for Alaska Affairs, U.S. Dept. of Interior, Office of the Secretary, to Lawrence V. Albert, dated June 22, 2010.

As to the integrity of the Interior Department's appraisal process, the premise seems to be this is infallible and always produces proper results. Otherwise, an administrative process that yields flawed and improper results cannot be defended as having integrity. That the Interior Department's appraisal process is fallible and has yielded unsatisfactory results has been reported numerous times over the last thirty years through investigations of the General Accounting Office and the Interior Department's Office of Inspector General, among other organizations.[26]

As a former BLM Director stated before a House Committee reviewing FLELA, "different forms of mediation or dispute resolution techniques may be used to resolve the disagreement [as to valuation]. The process is premised on the theory that reasonable people can reasonably disagree with the appraiser's analysis." Thus, as a sister agency in the Department of the Interior, the BLM apparently disagrees with the NPS' view that the integrity of its appraisal process bars ADR.

A presumption of integrity in Interior's appraisal process does not readily fit any of the policy exceptions Congress recognized in the ADRA, and the NPS has not couched its objection in context of the policy grounds for not applying ADR under the legislation.

The NPS' concern for preserving the integrity of the appraisal process may be grounded on the Uniform Standards of Professional Appraisal Practice (USPAP).[27] However, nothing in NWE's request for ADR suggests that established appraisal standards be disregarded. To the contrary, NWE's December 2009 submission to Interior's Appraisal Services Directorate contends that its valuation of Orange Hill violated the USPAP standards. The crux of the valuation issue is interpretation and application of established appraisal standards.

As to the objection regarding a lack of precedent, this is a poor excuse for not

---

[26] *See, e.g.,* U.S. General Accounting Office, *Interior's Land Appraisal Services: Actions Need to Improve Compliance with Appraisal Standards, Increase Efficiency and Broaden Oversight,* Report No. GAO-06-1050 (2006); U.S. Dept. of Interior, Office of Inspector General, *Audit Report: Land Acquisition Activities, National Park Service*, Report No. 99-I-518 (1999); U.S. Dept. of Interior, Office of Inspector General, *Land Acquisitions Conducted with Assistance of Nonprofit Organizations,* Report No. 92-I-833 (1992); U.S. General Accounting Office, Report to the Chairman, Subcomm. on Mines & Mining, House Comm. on Interior & Insular Affairs, *Mining on National Park Service Lands: What Is at Stake?,* Report No. EMD-81-119 (1981); U.S. Dept. of Interior, Office of Inspector General, *Special Review of Land Acquisition Policies and Practices in the National Park Service*, Report No. E-FW-NPS-5-81(a) (1981).

[27] *See* Helen Honse letter to Lawrence V. Albert, *supra* note (13), referencing the USPAP standards along with the Uniform Appraisal Standards for Federal Land Acquisition.

applying ADR to property valuation and acquisition. Clearly, the absence of a precedent should not bar an Executive Branch agency from implementing the policy objectives set forth in the ADRA. Rather, Congress counselled otherwise in finding ADR "can lead to more creative, efficient and sensible outcomes." Furthermore, my limited investigation indicates BLM has had experience applying ADR to valuation disputes associated with public land exchanges under the FLELA.

Conclusion

Valuation of the Orange Hill property using ADR is legitimate. This can be accomplished according to the ADRA legislation and implemented through the Interior Department's Office of Collaborative Action and Dispute Resolution. There are sound public policy reasons for applying ADR to Orange Hill by comparison to a condemnation action. These include fairness for the affected property owner, efficiency for the public land manager and fiscal economy for the taxpayer.

This letter has documented authority for ADR in the federal government. I have not analyzed ADR practice in the Interior Department nor property valuation specifically because this would be quite an undertaking. A review of ADR applied to property valuation under FLELA suggests a point of departure for such project. If the NPS's objections continue to be a concern, I suggest the Congressional Research Service investigate the matter A thorough, independent investigation that commands NPS' attention would be welcome.

Please feel free to contact Northwest Explorations, myself or its consultants if you have further questions regarding application of ADR to valuation of the Orange Hill property.

Sincerely,

Lawrence V. Albert
Attorney at Law

cc: Northwest Exploration JV
Tim Olson
Chris Carlson, Carlson Strategies
J. P. Tangen, Esq.

GEO-ENTERPRISES, INC.
1212 N. Washington St. Ste. 132
Spokane, WA 99201

January 31, 2012

The Honorable Ken Salazar
Secretary of the U. S. Department of the Interior
1849 C Street West
Washington, D. C. 20240

Re: Orange Hill Taking

Dear Secretary Salazar:

Reference is made to former Interior Secretary and Idaho Governor Cecil D. Andrus' letter dated September 19, 2010 in which he stated, "By the simple act of following the letter and intent of the law, justice will be served and the taking of the Orange Hill Property will be brought to closure." In so stating the purpose for action, Governor Andrus succinctly defined his request to you in terms of Constitutional law that states "nor shall private property be taken for public use, without just compensation."

A bit of history will be helpful to an understanding of the need to bring the Orange Hill Taking to closure. Northwest Explorations Joint Venture was organized in 1970. By 1977, after seven years of extensive exploration by core drilling, the deposit was determined to have a reserve estimated to be 165 million tons at a copper equivalent grade of 0. 4%. A study conducted in 2009 by the National Park Service, drew the same remarkable conclusion with an estimate of the resource at 172.2 million tons with a copper equivalent grade of 0. 42%. Thus, there is no disagreement on the magnitude of the deposit. Based upon US Geological Survey criteria, the Orange Hill deposit is among the top 15% of the largest copper deposits in the world. As such it is categorized as a World Class copper deposit.

A fact for further consideration is that at the time of the enactment of ANILCA in 1980, the property was in the fourth year of a five year term Exploration and Option to Purchase Agreement with U.S. Borax and Chemical Co. Thus, at the time of the Taking, the venture was within two years of reaping the benefits of it's decade long investment in the exploration of Orange Hill. As evidence of the interest of U.S. Borax and Chemical Co. in acquiring the property, the Purchase Agreement was extended to 1994 on the premise that ultimately mining would be allowed.

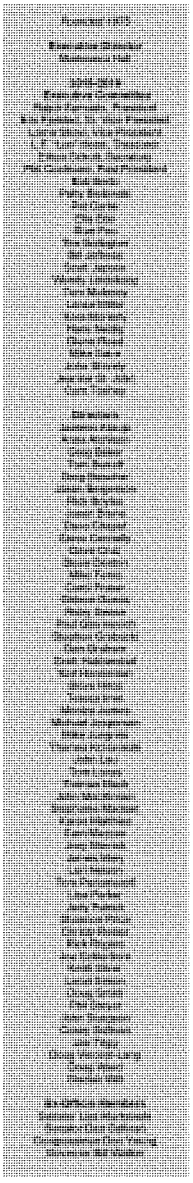
When the WRST General Management Land Protection Plan was published in 1986 identifying the Orange Hill property as a major threat to the Park the parties terminated the agreement by mutual agreement. Northwest Explorations' management thereafter took and has maintained the position of accepting the intent of Congress and has sought solely to convey the property to the National Park Service for a fair and equitable compensation.

Let it be said that the history of NPS refusal to consider attributing a value to the mineral estate and thereby, to deny compensation, stands as a record of a serious abrogation of a basic Constitutional Right. The Taking has impacted a broad spectrum of citizens, the shareholders of all the joint Venture partners. In the case of the Geo-Enterprise shareholders, most have passed on. Let it be said that I am determined to pass as a free citizen, not one to be mourned for his loss of an essential Constitutional Right.

I close, therefore, with a request. In making your decision regarding the recommendation of Governor Andrus, I ask only that your decision be determined by abiding by the terms of Amendment V of the Bill of Rights.

Sincerely yours,

Wallace McGregor
President
CC: Cecil Andrus
Senator Mark Begich
Senator Lisa Murkowski
Senator Patty Murray
Senator Maria Cantwell
Rep. Cathy McMorris-Rodgers
Rep. Mike Simpson
Rep. Don Young
Rep. Norm Dicks



RESOURCE DEVELOPMENT COUNCIL

Growing Alaska Through Responsible Resource Development

January 15, 2016

U.S. Senator Lisa Murkowski
Chair, Senate Energy & Natural Resources Committee
304 Dirksen Senate Building
Washington, D.C. 20510

Dear Senator Murkowski:

The Resource Development Council for Alaska, Inc.(RDC) is writing to offer the Senate Energy & Natural Resources Committee our perspective on the Alaska National Interest Lands Conservation Act (ANILCA) and suggestions for improvements to this landmark act. The 35th anniversary of ANILCA's passage is also an excellent occasion to address implementation of the law and its impact on Alaska.

RDC is an Alaska-based business association comprised of individuals and companies from Alaska's oil and gas, mining, forest products, tourism and fisheries industries. RDC's membership includes Alaska Native Corporations, local communities, organized labor, and industry support firms. RDC's purpose is to encourage a strong, diversified private sector in Alaska and expand the state's economic base through the responsible development of our natural resources.

In 1980, after nine years of debate and struggle, Congress passed ANILCA, setting aside more than 104 million acres of federal lands in Alaska in conservation system units (CSUs). This sweeping law enlarged the federal acreage dedicated to conservation purposes in the state to 148 million acres, constituting 70 percent of all national park lands in America, 80 percent of wildlife refuge acreage, and 53 percent of designated Wilderness in the National Wilderness Preservation System. Federal Wilderness in Alaska, if combined into one block, would make the 11th largest state in the U.S. To put the 49th state's federal Wilderness into another light, it is larger than each of the following states: Florida, Illinois, Minnesota, New York and Washington. It is bigger than the combined size of Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut, New Jersey, Delaware and Maryland.

The passage of ANILCA had significant impacts on Alaska and its local communities that still cannot be fully quantified. For example, it placed known mineral deposits and mineral belts within conservation unit systems, and drew boundaries that blocked natural transportation routes, essentially foreclosing development of deposits on Bureau of Land Management (BLM) land, state, and Native-owned lands. Specifically, some of the best state-owned mineral lands in the southern Brooks Range will only have value if transportation corridors are permitted through federal units.

Ironically, twenty-plus years before the passage of ANILCA, Alaska statehood was won on the expectation that development of the state's vast natural resources would build and sustain a healthy economy in the north. In early statehood debates, many politicians in Washington, D.C. doubted Alaska could build an economy and contribute to the union. Alaskans prevailed in its statehood aspirations after the discovery of oil.

121 West Fireweed Lane, Suite 250, Anchorage, Alaska 99503
Phone: 907-276-0700 • Fax: 907-276-3887 • Email: resources@akrdc.org • Website: akrdc.org

However, Alaskans feared then, as many still do today, that if future development were blocked, the state could lose its ability to support itself. Since statehood in 1959, Alaska's economy has grown immensely, largely due to the development of the North Slope's oil fields, which are located on state land. Oil and gas production in the Cook Inlet region of Southcentral Alaska, as well as the development of major metal mines across the state, and the development of a sustainable timber based economy in southeast Alaska underpinned local economies, sustaining thousands of Alaskan families. Likewise, responsible development of coal and world-class fisheries contributed to the economy.

Alaska's vast national parks and open lands have also attracted millions of visitors to the state, building tourism into a major seasonal industry. While giving credit to the state's parks and refuges, many Alaskans do believe federal management is too restrictive and has held back potential growth in other industries, including tourism.

For example, unlike Lower 48 parks and refuges, the vast majority of the Alaska units have no road access and few facilities such as campgrounds and visitor centers. Alaska's limited road system reaches only five of 17 National Park Service areas in the state. Access to those five areas is extremely limited. To get to the other 12 parks, visitors must fly in at a high cost. With the exception of high-end private lodges, there are no public facilities such as campgrounds and hotels in those parks.

Aside from the narrow Trans-Alaska Pipeline System (TAPS) corridor, it is impossible to cross the vast Alaska mainland from north to south or east to west without entering a restrictive CSU. While the extensive network of conservation units has preserved a great portion of Alaska, the cumulative overlay of federal land withdrawals has posed a challenge to reach natural resources on lands surrounded by these units, despite a provision in ANILCA addressing access corridors inside CSUs. These units also pose a challenge to the future construction of surface transportation corridors and power grids to connect Alaska's towns and villages, most of which remain isolated and accessible only by air, which itself is often unreliable due to poor weather.

ANILCA Special Provisions

In addition to adding more than 104 million acres to existing CSUs in Alaska, ANILCA contained numerous unique provisions to address Alaska's needs for economic development on state and private lands, for transportation and utility infrastructure, and to protect continued uses of federal lands by Alaskans for subsistence, recreation, and commercial opportunities. As President Carter said upon signing ANILCA, "*[this] strikes a balance between protecting areas of great beauty and value and allowing development of Alaska's vital oil and gas and mineral and timber resources.*"

ANILCA's special provisions included ensuring the ability of all non-federal landowners to develop and access their lands outside and within the CSU boundaries, ended the use of the Antiquities Act for large federal land withdrawals, and confirmed state management of its fish, wildlife, and water resources on all lands in the state. ANILCA required management plans for each of the CSUs that the federal agencies completed with extensive consultation with the public, state, and Native corporations in the 1980s. These plans and related rulemaking memorialized 'the deal'; i.e., recognized federal management authority only applied to federal lands, established a process to authorize transportation and other infrastructure, and confirmed the state's primacy in management of fish, wildlife, and waters. The Alaska Land Use Council, composed of heads in Alaska of the federal and state agencies and Native interests, reviewed all such management plans and regulations for consistency with ANILCA and sat at a common table to resolve issues.

The 'deal' under siege

Now, 35 years after passage of ANILCA, inventive federal agency and judicial interpretations are incrementally and individually acting to diminish these unique provisions. Regulations and policies technically cannot trump

law, but, since the Alaska Land Use Council sunset in 1990, no forum provides a mechanism to address resolution except those rare instances Congress steps in. Judicial review is lengthy, expensive, and often gives deference to the federal agencies without recognizing the balance of interwoven ANILCA provisions. This vacuum in oversight leaves the agencies to reinterpretations through policy and regulatory changes that erode ANILCA's protections. The following illustrate some current examples:

- ***In 1996 rulemaking, the National Park Service (NPS) expanded its authority to state waterways:*** In ANILCA, Congress limited application of federal rules to federal lands, and the 1980s Alaska park and refuge management plans reflected this understanding. In 1996, NPS revised its nationwide regulations to broadly expand their authority onto state-owned navigable waters based on reinterpretation of a 1976 Act. NPS began enforcing its national regulations on state-owned lakes and rivers: e.g., limiting Alaska residents from using state-authorized subsistence fishing methods (nets in Lake Clark, fish wheels in the Copper River), required permits for commercial dog team tours on the frozen Yukon River; threatened to cite state officers for using personal watercraft to conduct enforcement on the state-owned Naknek River; regulating boat storage and mooring buoys in Lake Clark; and threatened to cite a hunter on a state waterway for use of a state-authorized airboat to access traditional hunt areas outside the park – he later sued.

  The Ninth Circuit Court of Appeals in *Sturgeon v. Masica* dramatically expanded NPS authority to non-federal lands, including state and Native corporation lands. Amicus briefs filed by Alaska Native corporations, State of Alaska, and many others believe Congress through ANILCA exempted non-federal lands from park and refuge unit regulations to assure state and Native corporations full rights to develop their lands under the Statehood Act and Alaska Native Claims Settlement Act (ANCSA). Nationwide park regulations now applying to mining and oil and gas development on Alaska inholdings essentially renders the protection of ANILCA Section 103 meaningless. The federal court's decision is contrary to the plain language of ANILCA, ignores the context under which Section 103(c) was enacted, undermines the congressional promises of ANILCA, and will have wide ranging consequences for interests that depend on the development and use of inholdings in Alaska. After nine years and great expense, this hunter's suit will be heard January 20, 2016 by the U.S. Supreme Court. We are hopeful the Supreme Court will reverse the Ninth Circuit Court's decision.

- ***Based on the 2014 Ninth Circuit Court decision in Sturgeon v. Masica (above), on October 26, 2015, NPS proposed regulations that eliminate the exemption for oil and gas operations in Alaska, thus applying the national Part 9 mining regulations to development on non-federal lands***: NPS proposes [80 FR 206, 65572] to apply its national mining regulations to any oil and gas development of the two million acres of non-federal lands and subsurface estate in national park units in Alaska, which have been exempt under ANILCA for 35 years. The rulemaking recognizes the ANILCA guarantee of access to inholdings under Alaska-specific regulations at 43 CFR Part 36, but that guarantee may be hollow if the Supreme Court upholds NPS regulation of activities on non-federal land.

- ***ANILCA struck a balance between preservation of land and allowing development of Alaska's vital oil, gas, mineral, and timber resources to sustain the economy, yet a wave of new land withdrawals threaten to destroy this balance.*** Despite the fact that most federal lands in Alaska are either closed to development or severely restrict such activity, federal policymakers are moving to close millions of additional onshore and offshore acres in Alaska to resource development. In just a two-week period in early 2015, the federal government converted 12.2 million acres within the Arctic National Wildlife Refuge (ANWR) into *de facto* wilderness and permanently withdrew 9.8 million additional acres in the offshore Arctic from energy development. This came after the U.S. Department of the Interior removed approximately half of the National Petroleum Reserve-Alaska (NPR-A) from oil and gas leasing.

- ***BLM is in the process of designating Areas of Critical Environmental Concern (ACEC) across Alaska, including 685,000 acres in the Eastern Interior's Fortymile Mining District, curtailing or prohibiting future access and development.*** ACECs can be managed more restrictively than CSUs under ANILCA, including wilderness. The designation and application of ACECs has been highly subjective and unjustified, especially considering the BLM's mandate to manage lands for multiple uses. ACECs designations have occurred without the incorporation of sound science or a compelling body of research and information to justify the need for such closures, especially given the sharp decreased availability of public lands available for responsible resource development. As noted in the December 3, 2015 testimony of the Citizens Advisory Commission on Federal Areas (CACFA), "this overly unilateral and overly employed approach to land use designation ignores the ecological, social and legal context in Alaska, and is strongly reminiscent of 'land freezes' which prompted Congress to require significant restraint."

  Overall, ACECs in Alaska can be hundreds of thousands to over a million acres in size, set in place through a designation process lacking serious consideration of scale or scope. RDC believes use of ACECs in Alaska is occurring well beyond congressional intent under the Federal Land Management Policy Act (FLMPA). This and more has occurred in conjunction with a series of major federal rules – from significant expansion of "Waters of the United States" to the Environmental Protection Agency's climate regulations that will bring additional costs and severe consequences for future energy and mining development in Alaska.

- ***The implementation of the Roadless Rule in the Tongass and Chugach National Forests clearly violates the spirit and intent of the 'no more' withdrawal intent of ANILCA.*** The Roadless Rule circumvents the spirit and intent of ANILCA by not explicitly calling roadless areas a new CSU, but in essence achieving the same outcome of limiting virtually any activities. Application of the Roadless Rule in Alaska completely obliterated one of ANILCA's cherished promises: that Congress' careful balance between the national interest in conservation and Alaska's social and economic needs should not be disturbed. The loss of this foundational premise has resulted in severe economic impacts to local communities in Southeast Alaska and has sharply curtailed responsible and sustainable timber harvests in the nation's largest national forest. Before the Roadless Rule was put in place in 2001, the forest products industry in Alaska provided thousands of well-paying jobs to local residents. Today the industry accounts for only several hundred.

- ***Federal agency study and recommendation for new wild and scenic rivers designations in Alaska violates ANILCA's 'no more clause.'*** Federal land managers have routinely ignored Section 1326(b), a key provision of ANILCA which states that "no further studies of federal lands in the State of Alaska for the single purpose of considering the establishment of a conservation system unit ... or for related or similar purposes shall be conducted unless authorized by this Act or further Act of Congress." Federal agencies have commonly navigated around Section 1326(b) by conducting wilderness and wild and scenic river reviews in conjunction with updating land management plans. The agencies claim that because the studies are conducted in conjunction with management plan revisions, they are not conducted "for the single purpose" of establishing a new conservation system unit. Moreover, area and rivers reviewed and recommended for designation are protectively managed until Congress acts, or indefinitely if Congress does not act. BLM has been conducting wild and scenic river reviews in all of its land management plans in Alaska and the number of rivers involved is astonishing. RDC agrees with CACFA that these and similar reviews violate ANLICA. Wild and scenic rivers and wilderness areas are conservation system units, and Section 1326(b) prohibits studies, which consider the establishment of conservation system units unless authorized by ANILCA or Congress. Federal agencies claim Section (d)(1) of the Wild and Scenic Rivers Act provides the authority to conduct "agency-identified" reviews,

but Section 1326(b) requires congressional authorization. Moreover, internal agency policies require any rivers studied for potential recommendation are protected indefinitely.

Added on top of previous land withdrawals, the federal government is now either blocking or making it most difficult for responsible development to move forward on most resource-rich lands in Alaska. New withdrawals and a number of additional federal rules are hindering the ability of Alaskans to produce energy, minerals, and timber for America. Such actions also undercut Alaska's economy and deprives the state of much needed revenue. It also deprives Alaskans of jobs to support their families.

New federal land withdrawals violate Alaska protections under ANILCA

The new wave of federal land withdrawals is in direct conflict with special protections afforded to Alaska under ANILCA. In exchange for withdrawing so much of Alaska from multiple-use management, Congress attempted to accommodate the unique characteristics of Alaska and the Alaskan way of life in writing ANILCA. Congress included numerous exemptions for Alaskans, known as the "Alaska Protections." As noted earlier, these provisions were for access and continued use of valid existing rights, lands and resources. These special provisions were to allow access to inholdings and provide continued use of federal lands for recreation, hunting, and the pursuit of economic prosperity.

More than 20 million acres of combined private and state lands are located within the boundaries of CSUs in Alaska, and millions more acres can only be accessed by crossing these units. The private lands include surface and subsurface land conveyed to Alaska Natives under ANCSA. As noted, recognizing these and other unique circumstances, Congress wrote the Alaska protections to provide for traditional uses and ensure that the state and Native corporations could use and develop their lands under ANCSA and the Statehood Act to sustain the economy and for the *economic benefit* of the Alaska Native people.

Access was at the core of the protections – access to Native corporation lands, access to Native allotments, access to homesteads, and access to state-owned lands. Access was such a big issue that one major section of the act, Title XI, focused entirely on new access routes where none existed before. ANILCA also reaffirmed valid existing rights to access historic trails, private in-holdings, and existing cabins.

To some, the most important special protection in ANILCA was the 'no more' clause, which stated that no more land in Alaska shall be withdrawn for conservation purposes without the approval of Congress. As noted earlier, the clause was included in the law to protect Alaska from additional land withdrawals in the future. Section 101(d) of the act states that the need for more parks, preserves, monuments, wild and scenic rivers, and refuges in Alaska has been met.

Additional protections in ANILCA covered subsistence activities, including hunting and fishing, and allowing for motorized travel on federal lands for subsistence and traditional activities. Additionally, miners with existing claims could continue to develop and mine their claims if they could meet all the necessary requirements. Yet in the four decades ANILCA has been in place, the state, as well as miners and others have clashed with federal land agencies, claiming managers have broken promises granted under the act to preserve access and valid existing rights. They contend access and resource development have been challenged, and in some cases, outright stifled by a constricting tangle of federal restrictions, policies, and regulations. Unfortunately, many of the promises and protections have not been kept.

As noted, more than 40 million acres of Alaska have been withdrawn or proposed for protection over the past seven years, including half of NPR-A and almost all of ANWR through proposed wilderness designations, clearly undercutting the 'no more' clause. Nearly 15 million acres have been removed from the timber base in Alaska's two national forests, leading to the demise of the forest products industry.

Clearly, there has been a lack of balance in ANILCA's implementation, especially with regard to land withdrawals and access to CSUs. The most glaring example is Section 1002 of ANILCA, which outlined a process by which the state could extract petroleum from the coastal plain of ANWR, an area comprising only eight percent of the refuge. Today, the state is seeking access to only half of the 1002 area, or just four percent of the refuge. However, the state has been consistently denied access to the 1002 area to responsibly develop a potential of 10 billion barrels of oil, which could refill TAPS, Alaska's economic lifeline. This area is approximately 60 miles east TAPS, which is currently running at three-quarters empty. TAPS low throughput, which is a big contributing factor to a current $3.5 billion state budget deficit, is not for a lack of resources, but a lack of access to the resource. To sustain their livelihoods and prosper, Alaskans need access to the resources that ushered in statehood more than 50 years ago – resources such as oil, gas, minerals, and timber.

Federal Rulemaking eroding ANILCA provisions

RDC is concerned with the broad range of issues and potential consequences of recent federal rulemaking, including rules by the National Park Service, the Forest Service and the Fish and Wildlife Service that will essentially undo many of the ANILCA protections for public uses of federal lands, inholdings and adjacent lands, and waterways on a much larger scale than is evident by reviewing each rulemaking independently. The NPS rulemaking on wildlife changes the closure process for all public uses and grants discretion to superintendents to restrict activities without the public process envisioned by Congress in ANILCA. Combined that and other actions with the expansive interpretation of the Ninth circuit court on Park Service authority to regulate activities under its national regulations on private and state lands within exterior boundaries of the park units, virtually no current development activities would be allowed in the future on non-park lands within the park boundaries.

General Recommendations

RDC appreciates the willingness of the Committee to review ANILCA, and encourages the Committee, through legislation, to take whatever steps it can to make clear that ANILCA must be implemented as intended by Congress, not as federal agency personnel wish it were written. Federal land managers must restore balance in the implementation of laws and stop changing the interpretation of ANILCA to achieve their own agenda. The following steps should be taken to restore balance and Congressional intent:

- National regulations and policies, including Resource Management Plans and Areas of Critical Environmental Concern, must recognize and comply with ANILCA's unique provisions and the Alaska Protections. The implementation of FLMPA and other agency organic acts should be considered amended by ANILCA and should be interpreted consistently with the Congressional intent of ANILCA.

- Federal authorities must adhere to the 'no more' clause, which prohibits the President from using the Antiquities Act to create new monuments in Alaska without congressional approval. There should be no additional land withdrawals in Alaska since ANILCA already struck a balance between preservation and the multiple use of lands for commercial and economy-sustaining activities.

- The word 'withdrawal' in Section 1326 of ANILCA should be defined as specifically recommended by the Alaska Miners Association in its January 15, 2016 letter to the committee:

  Section 1326 of ANILCA is amended by adding a new subparagraph (c) to read: Consistent with the Congressional intent expressed in Section 101 (d) and notwithstanding 16 U.S.C. 1702(j), for the purposes of Section 1326 (a) the terms "withdraw," "withdraws" and "withdrawal" shall mean any agency action or inaction that has the effect of designating public land in Alaska as: a Wilderness Study Area; a Wild and Scenic River; an Endangered Species Act habitat area; or any

land use designation, made pursuant to the Federal Land Policy Management Act or the National Forest Management Act or any other planning statute, that has the effect of prohibiting or limiting resource uses allowed before the day of passage of this Amendment or impeding access to or inhibiting the development of: renewable energy projects (including hydropower), mining (including exploration), oil and gas (including exploration), or timber harvest.

- Federal agencies shall expend no funds to apply conservation system unit regulations to management of navigable waters, which are under the jurisdiction of the State of Alaska.
- All existing logging roads, public trails, and historic access roads and trails established by public use prior the 1960s land freeze should be recognized on federal lands, including those asserted as RS2477s by the State of Alaska.
- Access to inholdings must be allowed as guaranteed under the law.
- The federal government must provide continued use of federal lands for recreation, hunting, subsistence and traditional use, and the pursuit of responsible resource development to sustain the Alaska economy.
- The Mining in the Parks Act should not apply in Alaska.
- The Alaska Land Use Council as described in ANILCA Title XII should be re-established and charged with the responsibility of ensuring that the promises of ANILCA are kept.
- ANILCA education opportunities should be expanded to systematically inform and educate federal land managers and others in Alaska and Washington, D.C. about the law, including historical context and current relevancy.

Conclusion

In review, the success of Alaska's resource industries, including Alaska Native corporations, the bedrock of Alaska's economy, is dependent on a series of promises and protections made by Congress that provide access to natural resources. These promises started with the Alaska Statehood Act, continued with ANCSA, and culminated with ANILCA. These acts collectively allow the state and Native corporations to identify, select, and receive lands that provide the resources necessary to build the state's economy and serve the interests of Alaskans.

More than just confirming access, ANILCA ensures that state, Native corporations, and other private owners will have adequate and feasible access to their lands across federal units. Moreover, ANILCA Section 103(c) ensures that any state, Native corporation, or other private lands, including selected lands within reserved federal CSUs, will not be treated as part of those units and will not be subject to the regulations applicable solely to public lands within those units.

Federal agencies are re-interpreting various Acts and drafting revised management policies to justify pursuit of federal regulations that undermine ANILCA's special provisions and protections with wide-ranging consequences for not only business and economic interests, but the states' abilities to fulfill its fish and wildlife conservation responsibilities.

Thank you for the opportunity to offer RDC's perspective and reflections on ANILCA and suggestions for improvements to the law.

Sincerely,

Carl Portman
Deputy Director

Cc: U.S. Senator Dan Sullivan
Congressman Don Young
Governor Bill Walker

Alaska Chapter SCI
PO Box 770511
Eagle River, AK 99577
(907) 980-9018

January 14, 2016

U.S. Senator Lisa Murkowski, Chair
Senate Energy & Natural Resources Committee
709 Senate Hart Bldg
Washington DC 20510

RE: Senate Hearing on Implementation of Alaska National Interest Lands Conservation Act (ANILCA), and Recommendations

Chairman Murkowski and members of the Committee:

The Alaska Chapter of Safari Club International's core mission supports wildlife conservation, outdoor education related to our hunting heritage, and preserving the freedom to hunt. We offer these comments in support of testimony provided at your hearing on December 3, 2015, by Anna Seidman, Director of Litigation, Safari Club International and to supplement that testimony with additional information. Our members hunt for many purposes, both subsistence and non-subsistence, and all are impacted by the implementation of ANILCA as it affects our hunting and the conservation of wildlife resources that provide those hunting opportunities.

The 'deal' in 1980: Passage of the Alaska National Interest Lands Conservation Act (ANILCA) in 1980 resolved the issues surrounding land ownership in Alaska. The federal land transfers to the State authorized by the Alaska Statehood Act in 1958 and to the Alaska Native corporations authorized by the Alaska Native Claims Settlement Act in 1971 could finally proceed. In addition to adding 104+ million acres to the existing 40+ million acres in conservation system units, ANILCA contained numerous unique provisions to ensure non-federal landowners could develop and access their lands, confirmed state management of fish and wildlife (an important component of the Statehood Act), required public involvement and cooperation between state and federal agencies in all decisions affecting each other, assured access on federal lands for traditional activities, and established an Alaska-based cooperative decision process. ANILCA Title XII established the Alaska Land Use Council (ALUC) and provided its members (heads of federal and state agencies and Native corporations) authority to review all ANILCA-related management plans, policies, regulations, and related conflicts to assure consistency with ANILCA and to cooperatively resolve issues in Alaska.

ANILCA up-ended: Creative federal agency and judicial interpretations are incrementally diminishing the unique provisions provided by Congress. The ALUC was not renewed by Congress after 1990. The Courts repeatedly give deference to interpretation by federal agencies without adequately recognizing the balancing of conservation and uses in the unique ANILCA provisions. As a consequence, the agencies are increasing their administrative authority through reinterpreting national policy in ways that reduce the congressional protections in ANILCA and diminish the consultation role of the public and

state that Congress mandated in decisions. The following are current examples that directly affect our hunters:

National Park Service (NPS) adopted regulations in 1996, despite objections by the 50 state fish and wildlife agencies and State of Alaska, that grant itself authority to apply NPS regulations to Alaska's navigable waterways:
These regulations contradict clear language of ANILCA Sections 103(c) and 906(o), which limit application of federal rules for conservation system units in Alaska to federal lands. Alaska park and refuge management plans adopted under ALUC review according to ANILCA in the 1980s reflected this understanding. In 1996 NPS revised their regulations to include state-owned navigable waters. NPS based this expansion of authority on their reinterpretation of a 1976 amendment to the National Park Organic Act (which would have been superseded by ANILCA in 1980). NPS began enforcing their national regulations on state-owned lakes and rivers, impacting fishing, hunting, trapping and enforcement on state waterways. The federal District and Appeals Courts in *Sturgeon v. Masica* upheld NPS authority over navigable waterways and further expanded NPS authority to nonfederal lands, including state and Native corporation lands. This case is being heard by the US Supreme Court on January 20, 2016. If the Court does not uphold the balance struck in ANILCA that excluded nonfederal land from conservation system unit regulations, then Congress will need to take further action to uphold 'the deal' struck in ANILCA.

NPS adopted final regulations on October 23, 2015, that reduce public involvement in hunting closure decisions, eliminated consultation with the State (even though required by ANILCA), and close all preserves in Alaska to hunting for subsistence purposes under State regulations: Beginning in 2010, NPS implemented temporary closures on park/preserve lands that prevented hunters from harvesting wildlife under certain state regulations, claiming inconsistencies with the 2006 NPS management policies and Organic Act. Justifications repeatedly misrepresented the basis of the state's regulations despite a clear public record. Over the next five years, NPS threatened the Alaska Board of Game and Alaska Department of Fish and Game dozens of times to either revise certain state regulations or NPS would continue closing preserves to state authorized harvests. Such diktats had no biological basis, impacted traditional hunting practices by rural and non-rural residents, and made no effort to pursue genuine consultation. The impacts of such closures extend to state and nonfederal lands within and beyond the park units due to the range of wildlife populations and checkerboard land status. Despite objections by the federal Regional Advisory Councils, Subsistence Resource Commissions, Native corporations, State of Alaska, and many rural and non-rural residents, NPS adopted the final rulemaking. The final rulemaking added additional closures and criteria that were not included in the proposed rulemaking; e.g., prohibit long-standing traditional caribou hunting from boats on state waterways within nonfederal lands in Northwest Alaska, because NPS determined, without assessment metrics or criteria, that such access is not 'fair chase'. The regulations are bad enough, but one can only imagine the far-ranging impact on Alaskans hunting for subsistence and recreational purposes, guiding, local

communities, and state management for sustainability of wildlife if the Supreme Court upholds NPS' authority to extend jurisdiction off park lands.

Acquisition and retention of state management of sustainable populations of fish and wildlife on all lands in Alaska was a founding principle in the pursuit of statehood and in final negotiations leading to Congress' passage of ANILCA. Throughout ANILCA, Congress requires federal agencies to give considerable deference to cooperation and consultation with the State of Alaska in management of fish and wildlife on all lands and requires cooperation with adjacent landowners and managers, Native corporations, and the state. Department of the Interior's policy on relationship with state wildlife agencies (43 CFR Part 24) reflects recognition of the states as primary fish and wildlife managers. The NPS's 2006 Management Policies mandate cooperation with state resource managers. Despite these policies' deference to ANILCA in Alaska park units and ANILCA's confirmation of state management authority, the NPS final rulemaking provides park superintendents broad discretion to supersede state regulations by deciding what type or method of hunting is 'appropriate' without defined criteria or consultation and with no basis in conservation of wildlife.

The regulations limit the public's ability to participate in decisions and rulemaking by replacing hearings in affected areas that are required by ANILCA with holding meetings near the affected park unit (most of which are millions of acres). This change nullifies many rural residents' participation in the rulemaking process. The process is modified in favor of internet-based comments instead of genuine opportunities to consult with affected users; notice of intent to restrict is published online and the public can request an opportunity to comment. With the limited availability of the internet and numerous other communication difficulties in rural Alaska, this is not 'equivalent' public participation as provided under current regulations.

The regulations codify "consultation" with the state as notifying the state 'prior to or after' taking action. The superintendents are given unrestricted authority to close or limit legal hunting activities based on personal opinion of the state's reasoning for its regulation. The superintendent simply publishes a notice online each year of any state wildlife laws that are preempted due to his opinion that they are inconsistent with broad park policies and values. Such notice is not subject to rulemaking and can be extended indefinitely.

Hunting and trapping are an important part of the social and economic fabric of Alaska. Throughout this rulemaking process, NPS refused to acknowledge that the state's authority to regulate harvest on preserves includes persons who hunt, fish, or trap for subsistence purposes. While ANILCA Title VIII granted an authority for federal regulation to assure a reasonable opportunity for subsistence uses by rural residents on federal land (in consultation with the state), ANILCA also confirmed continuation of state management, including regulation of harvests for subsistence and other purposes, on preserves except under specific closure criteria in ANILCA. These regulations are effectively a statewide closure to hunting on preserves for many residents of Alaska. Such closure is not necessary to provide the federal

subsistence priority under Title VIII and not necessary to assure conservation of wildlife. Furthermore, the regulations trump state management that will impact the sustainability of wildlife populations on all lands—wildlife do not recognize political boundaries and the checkerboard of land ownership will complicate participation by Alaskans for subsistence and other purposes, as well as the state's ability to assure sustainability and use of all wildlife populations.

Fish and Wildlife Service (FWS) implemented numerous temporary closures to state-authorized wildlife harvests on Kenai National Wildlife Refuge, then on May 21, 2015, proposed regulations that unnecessarily restrict camping, hunting, and other public uses and permanently give refuge managers authority to trump State management:
Despite Congress' direction in the 1997 Refuge Improvement Act to manage refuges for wildlife-dependent recreation (including hunting as a priority use and ANILCA's establishment of recreation as a purpose of Kenai refuge), these regulations continue a three-decade progression of refuge management that incrementally reduces recreation on the two-million acre refuge. Also, despite ANILCA's confirmation of state management of fish and wildlife, these regulations supersede state hunting and trapping regulations without a conservation basis and unnecessary to assure natural diversity of wildlife or wildlife viewing management objectives in the Skilak Wildlife Recreation Area.

FWS adoption of dissimilar refuge-based wildlife harvest regulations complicates the state's management for sustainable populations of wildlife on the Kenai Peninsula, thus affecting wildlife and related recreation activities beyond Kenai refuge lands. FWS established this precedent to preempt state-authorized harvest regulations over three years by enacting its own regulations on refuges, using an expansive interpretation of law that negates Congressional direction in ANILCA and the Refuge Improvement Act. In 2013-2014 alone, FWS preempted six state-regulated hunting or trapping seasons that were authorized by the Alaska Board of Game through its extensive public process under the sustained yield directive in the Alaska Constitution. Congress has not granted authority to FWS to trump state regulations except where necessary for conservation of wildlife populations and their habitat, under specific administrative conditions, and as specifically provided in other Acts.

FWS' continuation of a Kenai Refuge-wide aircraft closure, which were not based on criteria in the ANILCA access regulations (43 CFR Part 36), combined with proposing new camping prohibitions and firearm closures, results in unnecessary reductions of opportunities for recreational uses of the refuge. FWS has repeatedly promised to re-evaluate the aircraft closures since their adoption in 1986, but after 30 years, the original unsupported restrictions on public recreation remain and will be compounded by the FWS' proposal to foreclose certain harvest methods, means, and seasons for hunting without a justifiable basis in law.

FWS proposed regulations on January 8, 2016, that affect all 72 million acres of refuges in Alaska by codifying its national Biological Integrity Policy, which preempts state management of wildlife, expanding criteria to trump state-authorized methods and means, and changing the public

participation and closure procedures: FWS has made presentations to the federal subsistence Regional Advisory Committees and others concerning content of the anticipated rulemaking for about a year. The national policy was adopted in 2001 over the objection of all state fish and wildlife agencies; the policy reflects a contorted reading of the Refuge Improvement Act of 1997 to authorize FWS intervention in state management of fish and wildlife without specific authority by Congress. Discussions between the states and FWS resulted in agreement that adoption of the policy was conditional on FWS also adopting Director Directives to cooperate with the states and continue state use of long-established active management practices.

Instead, the FWS proposes to codify the 'biological integrity and natural diversity' policy in regulations that authorize refuge managers to unilaterally curtail hunting and override state wildlife management decisions. The FWS does this by adding another criteria to those listed in ANILCA and the current regulations under which a Refuge Manager may close an area or restrict activities—that criteria is: "conservation of natural and biological diversity, biological integrity, and environmental health". This criteria is not in ANILCA and not criteria authorized by the Refuge Improvement Act to preempt state wildlife management. It is FWS reinterpreting law and policy to grant itself authority to diminish state wildlife management without specific authority from Congress.

These draft regulations will have the following additional results:

- All refuges will be closed to Alaskans hunting and trapping for subsistence purposes under state regulations.
- Refuges will be closed to all state harvest regulations of predators—including season extensions or methods and means that would enhance the conservation of sustainable wildlife population and are requested by rural residents for traditional purposes.
- The duration of federal temporary closures of refuges to harvests is changed from "not to exceed or be extended beyond 12 months" to "so long as necessary" but reviewed every 3 years, if review is requested.
- Authorizes refuge managers to close refuge land to harvest methods found "particularly effective."

In the Kenai rulemaking (above) and in these statewide proposed regulations, FWS incorrectly claims that predator harvest regulations are actually predator control efforts, which it believes are incompatible with the 'natural diversity' mandate in ANILCA and incompatible with the Refuge Improvement Act. To the contrary, ANILCA legislative history entered into the record on December 1, 1980, by Senator Stevens just before passage of the Act, confirms that predator control and state management are authorized on national wildlife refuges. No federal law or regulation disallows the state's management of predators on a sustained yield basis that ensures population viability. In fact, the Refuge Improvement Act states that if there is any conflict between that law and ANILCA, then ANILCA prevails. Yet the FWS states on its website that "predator control is not allowed on refuges in Alaska" and proposes no definition or criteria to prohibit "particularly effective methods and means" of harvest.

On December 3, 2015, the Governor objected to FWS' Contingency Plan for Operations (published September 2015) that will close national wildlife refuges in Alaska in event of a lapse in appropriations:

> *Given that FWS does not anticipate a reduction in public safety or enforcement personnel, there is no public safety or administrative basis for the proposed restrictions. Nor is there any scientific basis, shortage of resources, or concern for wildlife that justifies application of the plan in Alaska.*

The Governor further noted that "*FWS adopted the plan without consultation with the state and failed to follow the rulemaking procedures required for closures or restrictions under ANILCA.*" In fact, ANILCA (e.g., Sections 1110(a) and (b), 811) and its implementing regulations (43 CFR Part 36) clearly direct that refuge lands are open to the public until closed for specific reasons under specific closure procedures. The criteria and process proposed by FWS in this Plan are simply not legal. Furthermore, based on the experience gained in the 2013 shutdown, prohibiting access on wildlife refuges shuts down many legitimate regulated uses such as hunting, fishing, trapping, commercial guiding, transporters, air taxi operators, research, state management activities, and access by inholders. These closures will significantly, adversely impact the economies and social well-being of local communities and many Alaskans.

On January 13, 2016, NPS published rulemaking to further restrict use of nonedible fish and wildlife parts, prohibit such use except by rural residents, and further limit methods used to harvest wildlife.
This rulemaking is just off the press so we have not had an opportunity to review or comment. We note, however, that they further restrict uses by Alaskan residents on preserve land and prohibit methods of harvest authorized by state regulations that are adopted under an extensive public involvement process and are consistent with sustainable management of populations. As such, these regulations will likely have similar impacts as described for the regulations discussed above.

Conclusion:
NPS and FWS rulemaking is incrementally undoing ANILCA's unique provisions, by eliminating the required consultation with Alaska fish and wildlife managers, preempting state harvest regulations, reducing the required involvement of the public in decisions, expanding discretionary authority of federal managers to restrict activities, and eliminating public notice and hearing except under specified criteria. In addition, these regulations will affect the ability of all state fish and wildlife agencies to manage wildlife for sustainability and hunting, as follows:

The 50 states entered the Union on equal footing, responsible for the conservation and sustainability of fish, wildlife, and water. That responsibility can only be diminished by specific acts of Congress, such as detailed in the Migratory Bird Treaty Act, Marine Mammal Protection Act, and Bald Eagle Protection Act. In contrast, federal agencies are re-interpreting various Acts and drafting revised management policies to justify pursuit of

federal regulations that thwart the states' abilities to fulfill their fish and wildlife conservation responsibilities. As discussed above, regulations under development and adoption by NPS and FWS directly interfere in the State of Alaska's ability to fulfill its constitutional responsibility to assure the conservation and sustainability of fish and wildlife within its boundaries by applying undefined values to prohibit methods and means and levels of harvests by the public and state. Once these regulations are adopted in Alaska, the environmental community will sue to assure the same interpretation of national policies will be applied nationwide. Thus, these federal land management agencies' policy interpretations of their authorities in Alaska jeopardize the ability of all 50 states to engage in fulfillment of their sovereign responsibilities for conservation and sustainability of fish and wildlife, including opportunities for hunting and fishing on public lands. Further, wildlife do not respect political boundaries, so these actions will nationally impact states' management for sustainability on a much broader scale than just the national wildlife refuge lands and will impact wildlife-dependent recreation activities by the public.

Recommendations:

- We ask the Energy Committee to take whatever steps it can to stop the FWS and NPS rulemaking (above) which preempt state management of fish and wildlife that is so clearly confirmed by Congress in ANILCA and the Refuge Improvement Act. Such regulations are not necessary to assure conservation of fish and wildlife on federal lands. They are an attempt to interpret national policy so as to diminish state management authority without Congressional authorization. In fact, the Committee should take steps to assure that no funds be used to implement, administer, or enforce federal management policies and regulations related to state-authorized harvests of fish and wildlife on public lands administered by NPS and FWS in Alaska, except as and until specifically authorized according to criteria established by Congress, such as Title VIII of ANILCA and Marine Mammal Protection Act.
- NPS and FWS should be prevented from closing all park and refuge lands in Alaska, as proposed in these regulations, to Alaskan residents who hunt and fish under state regulations for subsistence purposes. ANILCA Title VIII (as administered by the federal subsistence board) allows closing federal lands to hunting by non-rural residents only when necessary for conservation or to facilitate the federal priority for subsistence by rural residents. ANILCA Section 815 specifies such closure cannot unnecessarily impact non-subsistence uses.
- We urge action that prohibits NPS and FWS from regulating methods and means, seasons, bag limits, and eligibility to participate in harvests on park and refuge lands unless necessary to implement federal laws such as the Endangered Species Act, Marine Mammal Protection Act, and other Congressional actions that specifically and clearly authorize federal regulations that diminish state authority over fish and wildlife within state boundaries. In addition, we suggest the Committee implement mechanisms to reinforce state management authority can only be diminished by specific acts of Congress – not by inventive agency reinterpretations of policies.
- We ask the committee to block implementation and prevent further agency actions (e.g., prohibit expenditure of any funds) that would: enact NPS regulations on "Hunting and Trapping on National Preserves in Alaska" (80 FR 64325, October 23, 2015); finalize FWS proposed regulations "Refuge-Specific Regulations; Public Use: Kenai National Wildlife Refuge" (80 FR 29277) published May 21, 2015; finalize the January 8, 2016, FWS regulations on "Non-Subsistence Take of Wildlife and Public Participation and

Closure Procedures on National Wildlife Regulations in Alaska;" and finalize the January 13, 2016, NPS regulations. The authorities promulgated in these regulations are a significant diminishment of state management authority without specific authorization by Congress and will result in an inability of the state to assure sustainability of all fish and wildlife populations on most lands in Alaska.

- We recommend reinstatement of the Alaska Land Use Council under ANILCA Title XII to provide oversight and a mechanism in Alaska for resolution of issues in the implementation of ANILCA. The Council would assure that ANILCA is implemented as directed by Congress, not as federal agencies and special interest groups wish ANILCA had been written. Congressional oversight is also needed of national regulations and federal agency policies, such as the Bureau of Land Management Resource Management Plans and Areas of Critical Environmental Concern, which bypass ANILCA's unique provisions for access and other public uses.

Thank you for the opportunity to provide comments on the implementation of ANILCA.

Sincerely,

Bethany L. Marcum
President
Alaska Chapter Safari Club International

cc: Governor Walker, State of Alaska
Attorney General Richards, Department of Law
Commissioner Cotten, ADF&G
Nathan Butzlaff, Office of the Governor, Washington, DC
Michael Johnson, Special Assistant for Alaska, Office of the Secretary of the Interior
Senator Murkowski
Senator Sullivan
Congressman Young

Testimony of
J. P. Tangen, Attorney at Law
Before the Energy and Natural Resources Committee
Of the United States Senate
December 3, 2015

SUPPLEMENT FOR THE RECORD

The RECOMMENDATIONS set forth in the testimony of J. P. Tangen delivered on December 3, 2015 are hereby supplemented as follows:

RECOMMENDATIONS

Congress should prepare legislation that makes it clear:

1. That (in accordance with the recommendation of the Alaska Miners Association), the following new language be added to Section 1326 of ANILCA:

> (c) Consistent with the Congressional intent expressed in Section 101(d) and notwithstanding 16 U.S.C. 1702(j), for the purposes of Section 1326(a) the terms "withdraw," "withdraws" and "withdrawal" shall mean any agency action or inaction that has the effect of designating public land in Alaska as: a Wilderness Study Area; a Wild and Scenic River; an Endangered Species Act habitat area; or any land use designation, made pursuant to the Federal Land Policy Management Act or the National Forest Management Act or any other planning statute, that has the effect of prohibiting or limiting resource uses allowed before the day of passage of this Amendment or impeding access to or inhibiting the development of: renewable energy projects (including hydropower), mining (including exploration), oil and gas (including exploration), or timber harvest.

2. That ANILCA should be identified as an action-forcing statute similar to the National Environment Protection Act, the Clean Water Act and the Clean Air Act.

3. That FLPMA and other agency organic acts are deemed to have been amended by ANILCA and are to be interpreted consistently with the legislative intent of ANILCA, facilitating access across and resource development on federal lands in Alaska managed by the USFS, the BLM, the NPS and the FWS;

4. That notwithstanding the Administrative Procedures Act, the federal courts are directed to exercise plenary authority over the land managing agencies and to consider applications for review of decisions that deny private citizens access through and across Conservation System Units (often called "CSUs") created or enlarged by ANILCA, *de novo* and upon request;

Proposed:

A new subsection (e) should be added to Section 101 of ANILCA that provides:

> All land managing agencies of the United States that exercise jurisdiction over federal land in Alaska shall certify in every proposal initiated under the authority of the Federal Land Management and Policy Act, as amended; the National Park Service Organic Act of 1916, as amended; the Fish and Wildlife Service Act of 1956, as amended; the Forest

> Service Organic Administration Act of 1987, as amended; and every other statute, proclamation, Executive Order or directive that nothing contained in such proposal or initiative is inconsistent with the express language or legislative intent of Section 101(a) through (d) of Public Law 96-487, as amended.
>
> "The Circuit Court of Appeals for the Ninth Circuit or the District of Columbia Circuit shall have original jurisdiction to adjudicate all applications by any citizen claiming to be aggrieved by a violation of this section."

Comment: The purpose of this section is to ensure that the land managing agencies in Alaska acknowledge that ANILCA amends their respective organic acts and that the protection of federal lands in Alaska is settled for all time.

Although granting *de novo* jurisdiction to the federal district courts to consider appeals from individuals and other entities claiming to be aggrieved by an initiative emanating from a land managing agency without being fettered by jurisdictional barriers such as the Administrative Procedures Act, which has been interpreted to mean that the affected agencies are best qualified to interpret their own mandates, the Circuit Court is a preferable forum in order to avoid delays in resolving conflicts between agencies and aggrieved potential users of Alaska land.

5. That all waters, rivers, streams and lakes in Alaska are reputably presumed navigable and subject to the exclusive jurisdiction of the State of Alaska, unless the affected land managing agency can prove by a preponderance of the evidence in federal district court that a specific reach or impoundment is not navigable;

ANILCA should be amended by adding a new language at the end of Section 906(d)(1) as follows:

> In furtherance of the State's entitlement to submerged lands under section 6(m) of the Alaska Statehood Act, the United States hereby conveys to the State of Alaska, subject only to valid existing rights and Native selection rights under the Alaska Native Claims Settlement Act, all right, title and interest of the United States in and to all lands within the boundaries of the State of Alaska which are covered by nontidal waters up to the ordinary high water mark as heretofore or hereafter modified by accretion, erosion, and reliction; and all lands permanently or periodically covered by tidal waters up to but not above the line of mean high tide and seaward to a line three geographical miles distant from the coast line of each such State and to the boundary line of each such State where in any case such boundary as it existed at the time such State became a member of the Union, or as heretofore approved by Congress, extends seaward (or into the Gulf of Mexico) beyond three geographical miles, and all filled in, made, or reclaimed lands as hereinabove defined unless such lands can be shown to have not been navigable as of July 7, 1958.

6. That all existing logging roads and all historic RS 2477 rights-of-way already identified by statute by the State of Alaska across federal public lands in Alaska are hereby deemed granted, including alternative routes dictated by weather and topographic conditions, and including a 50-foot-from-the-centerline width and such borrow pits of sufficient proximity and size as may be required by the builder to ensure economic maintenance;

7. That permits, environmental impact statements and all other studies and documentation required by an agency shall be paid for exclusively by the lead agency out of appropriated funds;

8. That applications and amendments to applications for access or development activities on inholdings shall be deemed approved unless denied for cause within one year after having been initially filed;

9. That all Public Land Orders issued under the authority, in whole or in part, of ANCSA or ANILCA or related to ANCSA or ANILCA are revoked effective one year after the passage of this legislation unless renewed by reference to other authority;

10. That all wetlands within CSUs and Wilderness Areas in Alaska be deemed sufficient to fully satisfy the Clean Water Act's mitigation requirements in lieu of replacement or monetary compensation for any resource development projects regardless of federal, state, local, or private ownership.

11. That the Alaska Land Use Council as described in ANILCA Title XII is re-established and charged with the responsibility of ensuring that the promises of ANILCA are kept;

12. That the Quiet Title Act shall not apply to the transfer to the State of public lands in Alaska; and

13. That the Mining in the Parks Act shall not apply to CSUs in Alaska.

14. Federal Lands in Alaska should not be considered for World Heritage Sites or any binational or multi-national land management system that restricts the use of the land by Alaskans,

Supplemental testimony submitted by The Wilderness Society
Senate Energy & Natural Resource Committee
Hearing to receive testimony on implementation of the Alaska National Interest Lands Conservation Act of 1980, including perspectives on the Act's impacts in Alaska and suggestions for improvements to the Act.
December 3, 2015

This statement is supplemental to the testimony The Wilderness Society submitted for the ANILCA hearing on behalf of sixteen other conservation organizations.

At the recent ANILCA oversight hearing Senator Murkowski asked Governor Walker what would happen to Alaska if the Trans Alaska Pipeline System (TAPS) were no longer in operation. As we detail in the attached document (Attachment A), absent some catastrophic problem with TAPS itself, TAPS will remain operational for decades into the future. The real economic challenge facing the state at this time is its unhealthy reliance on one aspect of our economy (namely, oil revenues) to substantially fund state government. The answer to this problem would be to transition to a more diverse and sustainable economy sooner rather than later.

No one asked at the hearing the question about the threat posed by unabated climate change – caused as we know by the burning of fossil fuels – to the State of Alaska. Unlike the risk of a TAPS catastrophe or shut down due to low oil flow far in the future, the impacts of climate change on Alaska are felt today, particularly in the Arctic, where the effects of climate change are accelerated. Ironically, Alaska's Arctic is also where the majority of Alaska's oil and gas development occurs.

The National Oceanic Atmospheric Administration just released its 10th annual Arctic Report Card, the 2015 Arctic Report Card[1], which was authored by 72 scientists from 11 nations. The report finds that surface air temperature has increased in the Arctic by 5.2 degrees Fahrenheit since the start of the twentieth century. According to NOAA scientists, we have already passed critical warming thresholds in the Arctic. If and/or when the earth's surface warms by 2-degrees, the Arctic region will have warmed by 4 or 5 degrees. Given our current warming trajectory, this could happen by 2040 – 2050.[2]

[1] http://www.arctic.noaa.gov/reportcard/exec_summary.html;
[2] *The Arctic is now warmer than its been since 1900*, Yereth Rosen, Anchorage Daily News, December 15, 2015; http://www.adn.com/article/20151215/arctic-now-warmer-its-been-1900.

ALASKA REGION
705 CHRISTENSEN DR., ANCHORAGE, AK 99501
TEL. (907) 272-9453 FAX (907)272-1670
www.wilderness.org

Alaska's Arctic is at a critical point, and human caused climate change is already threatening Arctic communities that have depended upon Arctic resources for their subsistence and cultural livelihoods for thousands of years. With significant shifts occurring to these resources brought on by climate change, such as the thawing of sea ice, Arctic communities are *already* facing the lack of food security and safety they require to ensure their futures. It is imperative that the State of Alaska take these threats seriously, and work to diversify its economy to create a sustainable future for the state and reduce fossil fuel emissions. Reducing fossil fuel emissions will benefit the state, the country and the globe, and will help achieve the climate goal recently agreed to in Paris by 195 nations, including the United States, to curb global warming to no more than 1.5-degrees Celsius.[3] Alaska needs to do its part to reach this international goal.

Discussions of ANILCA, and the future of Alaska's economy, are not complete without addressing this central issue. Thus we encourage the Alaska Congressional delegation, should there be further hearings on this topic, to address climate change head on – one of the defining issues of our time.

Please see the attached document clarifying that TAPS is in no danger of imminent operating problems or a shutdown due to low throughput, which cites the state court decision that determined that the pipeline is likely to operate 50 or more years, or until at least 2065.

[3] http://www.nytimes.com/interactive/2015/12/12/science/document-final-cop21-draft.html?_r=0

ALASKA REGION
705 CHRISTENSEN DR., ANCHORAGE, AK 99501
TEL. (907) 272-9453 FAX (907)272-1670
www.wilderness.org

Attachment A:

Trans-Alaska Pipeline System Throughput: Facts, Data, and their Implications

Throughput
The 800 mile Trans-Alaska Pipeline System (TAPS, operated by Alyeska Pipeline Service Company) began operation in 1977. At peak flow in 1988, the pipeline transported 2.1 million barrels of oil a day. Throughput in 2014 averaged approximately 513,000 barrels a day.

Implication: Pipelines are designed to carry less than peak flow, so the fact that TAPS currently moves roughly ¼ of its oil capacity does not have great significance.

Ownership
The three largest owners of TAPS - BP, ConocoPhillips, and ExxonMobil - have a combined 99% ownership interest in TAPS and are expected to produce 88% of the oil in the pipeline through 2050.[1]

Implications: Because of the money they have invested in North Slope oil production and in keeping it going, BP, ConocoPhillips, and ExxonMobil each have an interest in TAPS operating as long as the production is profitable. Alyeska Pipeline and its owners are exploring multiple means to keep TAPS operating including adding heat along the pipeline, utilizing insulation, etc.

Projected Longevity
A state court decision between the pipeline owners and the state involving property taxes determined that the pipeline is likely to operate 50 more years, i.e., until at least 2065.[2] This decision was affirmed by the state Supreme Court. Similar arguments were made for later tax years, however the approach used by the state court was fully affirmed by the state Supreme Court in 2015.[3]

According to a study by economic consultants for the Natural Resources Defense Council, the life of TAPS can be extended at least three decades through modest improvements which would yield profits of over ten times the upgrade costs. The study's authors show the improvements would require $539-$721 million in investment but would result in $12 billion in additional profits and an equal amount to Alaska's state coffers in the form of added royalties and tax revenues.[4]

Implications: TAPS is in no danger of imminent operating problems or a shutdown due to low throughput. Existing and future production on state lands and waters is likely to keep TAPS operating for several decades. To say otherwise is merely a means to advocate for new drilling on environmentally-sensitive federal lands and waters in the Arctic National Wildlife Refuge, in all portions of the (poorly-named) National Petroleum Reserve – Alaska, and in the Arctic Ocean. ***The sky is not falling regarding TAPS throughput.***

Contact:
Lois Epstein, P.E., Engineer and Arctic Program Director (lois_epstein@tws.org, 907.272.9453)
The Wilderness Society, Anchorage, Alaska, and, Board President for the Pipeline Safety Trust (www.pstrust.org)

---

[1] Case No. 3AN-06-8446 CI [Consolidated], p. 41.
[2] *Judge pegs pipeline life at 50 more years,* Anchorage Daily News, January 5, 2012, http://www.adn.com/2012/01/04/2246015/pipeline-life-at-least-50-more.html
[3] See http://www.courtrecords.alaska.gov/webdocs/opinions/ops/sp-7039.pdf
[4] *Is the Trans Alaska Pipeline System in Danger of Being Shut Down?*, Innovation & Information Consultants, Inc. Concord, MA, Orlando, FL, Sept. 2011, 30 pp., http://docs.nrdc.org/energy/files/ene_11092001a.pdf.

P.O. Box 9175, Missoula, MT 59807 • (P) 406.542.2048 • wild@wildernesswatch.org • www.wildernesswatch.org

Board of Directors

Louise Lasley
President, WY

Howie Wolke
Vice-President, MT

Jerome Walker
Secretary/Treasurer, MT

Marty Almquist, MT

Janine Blaeloch, WA

Talasi Brooks, ID

Franz Camenzind, WY

Fran Mauer, AK

Senior Advisor
Stewart M. Brandborg

Executive Director
George Nickas

Advisory Council
Magalen Bryant
Dr. Derek Craighead
Dr. M. Rupert Cutler
Michael Frome
Dr. Roderick Nash

Minneapolis, MN Office
2833 43rd Avenue South
Minneapolis, MN 55406
(P) 612.201.9266

Moscow, ID Office
P.O. Box 9623
Moscow, ID 83843
(P) 208.310.7003

Senate Energy and Natural Resources Committee:
Testimony Prepared by Wilderness Watch for 3 December 2015
Hearing on the Alaska National Interest Lands Conservation Act of 1980

This statement is provided by Wilderness Watch. It supplements our comments that were submitted previously along with sixteen other conservation organizations.

Introduction: Thirty-five years ago President Carter signed the Alaska National Interest Lands Conservation Act (ANILCA), which constituted the largest legislative set aside of public lands for conservation purposes in our nation's history. Strong support for protection of key wild lands in Alaska was expressed nationwide through citizen action on a scale unsurpassed by any conservation legislation before or since. A majority of the American people wanted the most important wild areas in Alaska to be preserved in their original condition. The thought was, that in Alaska we still have a chance to avoid the mistakes that have occurred across the rest of the nation where protection came too late, and areas set aside are woefully too small. In Alaska, we still had an opportunity to do things right, and preserve entire ecological areas.

While ANILCA is widely heralded as a great accomplishment, it is important to realize that the bill that was enacted did not constitute the best possible measure for conservation. A far more optimal version of the Alaska lands bill was passed twice by overwhelming votes in the House of Representatives. For example, the House bill would have designated 67 million acres of Wilderness, including the Arctic Refuge coastal plain, while ANILCA designated only 56 million acres of Wilderness, and excluded the coastal plain. Furthermore, the House version would have added about 81 million acres to the National Wildlife Refuge System in Alaska, however, ANILCA added only 54 million acres. It was the Senate version, however, that was ultimately enacted without the benefit of improvements that normally occur through a conference committee process. Thus, from a conservation stand point, ANILCA is far less than ideal. Throughout the protracted legislative process the bill's sponsors went the extra mile to accommodate numerous demands made by the State of Alaska, the Alaska congressional delegation, Alaska native corporations and other development interests. Many significant compromises harmful to conservation were incorporated in the final legislation.

To develop an appropriate evaluation of ANILCA after 35 years, it is essential to review how the statute has been implemented. The following examples are provided to illustrate in only a limited way how the conservation objectives of this landmark law have been compromised.

Off on the Wrong Foot: Starting in 1981, implementation of the most sweeping land conservation law in history fell to the newly elected Reagan administration,

which was openly hostile to protection of public lands. Top officials quickly became involved in influencing ANILCA implementation in a manner that did not reflect the intent and spirit of the Act. This posture continued for the next 12 years and set the stage for many of the problems that today plague ANILCA conservation system units and other public lands in Alaska. For example, by March of 1981, Secretary James Watt directed that the U.S. Geological Survey, rather than the Fish and Wildlife Service, lead a resource assessment of the coastal plain of the Arctic National Wildlife Refuge that was required in Section 1002 of ANILCA. The motive for this decision was to increase emphasis of oil and gas potential at the expense of wildlife considerations. This directive was overturned by a U.S. District Court that found that Secretary Watt had violated the National Wildlife Refuge Administration Act which requires that management activities on refuges can only be conducted by the Fish and Wildlife Service.[1] The development of regulations for implementing other provisions of ANILCA also came under the political influence of the new administration, and resulted in less than optimal rules for administering and protecting the new conservation areas in Alaska.

Abuse of Land Exchange Authority: Several major land exchange schemes were pursued during the 1980's by the Reagan administration's Interior Department and various Alaska native corporations. These schemes posed major threats to the integrity of conservation system units. For example, in 1983, Deputy Under Secretary of Interior, William P. Horn entered into a land exchange agreement which transferred lands on St. Matthew Island to three regional native corporations who intended to lease these lands to oil companies for exploration and developments in the Bering Sea. St. Matthew Island is in the Alaska Maritime National Wildlife Refuge and is also designated as Wilderness. The St. Matthew Island land trade was construed to be consistent with Section 1302 of ANILCA which allows for land acquisitions to further conservation objectives. In 1984 a U.S. District Court invalidated this exchange finding that "*the Secretary's Public Interest Determination...suffers from serious errors of judgement and misapplication of law...*"[2]

Other land swap schemes involved exchange of native corporation lands in an attempt to pressure Congress to open the coastal plain of the Arctic National Wildlife Refuge for oil development. One of these actions resulted in transferring the subsurface estate of Kaktovik village lands to the Arctic Slope regional corporation for surface lands within the Gates of the Arctic National Park. This exchange enabled drilling an exploration well within the Refuge boundary during 1985-86, and remains a serious threat to the integrity of the Arctic Refuge. A 1989 GAO Report identified numerous flaws and inappropriate procedures used to carry out this agreement.[3] A second land exchange was planned during the mid-1980's to trade other lands in the Arctic Refuge coastal plain to some 18 various native corporations for the purpose of spurring oil development in the Refuge. This effort was also heavily laden with inappropriate process and procedures.[4] It was stopped by Congressional action prohibiting land exchanges within the Arctic Refuge. A similar land exchange scheme was again developed during 2004-08, with the motive to enable oil development in the Yukon Flats National Wildlife Refuge. It was dropped when village tribes of the Yukon Flats exerted strong opposition out of concern for severe consequences to the Refuge's environmental integrity and to their subsistence culture.

---

[1] *Trustees for Alaska v. Watt*, 524 F. Supp. 1303 (D. Alaska, 1981).

[2] *National Audubon Society v. Clark*, 606 F. Supp. 825 (D. Alaska 1984).

[3] GAO/RCED-90-6 Chandalar Lake Land Exchange Not in the Government's Best Interest (1989).

[4] GAO/RCED- 88-179 Consideration of Proposed Alaska Land Exchanges Should be Discontinued (1988).

Wilderness Reviews Shortchanged Wilderness: Section 1317 of ANILCA required the Secretary of Interior to review all lands within units of the national park and national wildlife refuge systems in Alaska for their suitability for preservation as wilderness in accordance with section 3(d) of the Wilderness Act, and to make recommendations according to section 3(c) of the Wilderness Act. In 1985, the Director of the U.S. Fish and Wildlife Service issued an order requiring that overly restrictive criteria be used in the review process. This order severely limited the amount of lands that were recommended for wilderness designation.[5] The review of refuge lands identified about 52.6 million acres as suitable for wilderness, however, only 3.4 million acres were recommended for designation. Large areas of non-designated lands in the national parks were also found to be suitable for Wilderness, however, relatively small amounts of suitable lands have been recommended for designation. More than 100 million acres of refuge and park lands in Alaska have been determined to qualify for Wilderness, very little of which have been recommended for designation. We are pleased to note that in 2015, President Obama recommended Congress pass legislation designating 12.28 million acres of the Arctic National Wildlife Refuge as Wilderness. We urge Congress to swiftly enact the President's recommendation.

Use of All Terrain Vehicles (ATVs): Following passage of ANILCA, the National Park Service failed to prohibit the use of ATV's in several park units in Alaska. The most egregious example is at the Wrangell-St Elias National Park and Preserve. While ANILCA granted access to lands in all conservation system units using snowmobiles, motorboats and airplanes, there is no specific language in ANILCA requiring the NPS to permit the public use of ATVs on park lands. In addition, NPS general regulations regarding use of off road vehicles specify that special regulations be developed before these uses may be authorized in parks. Rather than develop the required regulations, the NPS regional office unilaterally decided to address access management at Wrangell-St Elias NP by inserting guidelines in the General Management Plan to authorize the use of ATVs for subsistence purposes by permits that restrict use to designated trails. No designated trails had been identified twenty years after passage of AN ILCA, however "ATVs for subsistence purposes [have been] allowed throughout the park without regard to permits, routes, trails, sensitive wildlife habitat or wilderness designation."[6] In addition, ATV's are also allowed for recreational use within Wrangell-St Elias National Park and Preserve. This obvious failure to properly implement ANILCA and follow other National Park Service policies regarding ATV's has resulted in significant impacts to soils, vegetation, waters, wildlife habitat, and wilderness resources (please see photos on pages 15, 28 & 29 of the attached file for graphic illustrations of impacts in Wrangell-St Elias National Park and Preserve). ATV impacts resulting from inappropriate implementation of ANILCA and other regulations and policies at other national parks, wildlife refuges, and Bureau of Land Management administered areas in Alaska have also been documented (see Bane 2001).

Other Stewardship Failures: While Section 1110(a) of ANILCA provides for access to conservation system lands in Alaska by snowmobiles, motorboats and airplanes, for traditional activities, the statue also provides that "*Such use shall be subject to reasonable regulations by the Secretary to protect resources and other values....*" The failure of federal agencies to implement such regulations, when coupled with technological improvements in snowmobiles

[5] GAO/RCED-89-155 Restrictive Criteria Used to Recommend Additional Wilderness (1989).

[6] Bane, G.R. 2001, Shredded Wildlands: All-Terrain Vehicle Management in Alaska.

and other motorized vehicles have combined to cause significant degradation of wilderness values in many conservation units. In the absence of regulations, the landing of airplanes on sensitive tundra surfaces within conservation units, such as the Arctic National Wildlife Refuge Wilderness, has resulted in a growing proliferation of visual scars, loss of vegetation, and in some cases erosion of soils. Similarly, technological changes to snowmobiles have made previously unreachable areas susceptible to substantial amounts of snowmobile use. As a result the wilderness character of some of Alaska's most remote wildlands has been and continues to be degraded.

There is also a growing trend in the use of helicopters by federal agency personnel, further contributing to degradation of wilderness character in nearly every conservation system unit. The use of helicopters in Wilderness areas in Alaska should be limited to only that which is necessary to administer and protect the Wildernesses according to the Wilderness Act.

There is a growing number of permanent structures and installations being placed in the Alaska Wilderness areas that have little or nothing to do with protecting the Wildernesses. The Wilderness Act prohibits installations with the exception that only if it is required to administer the area as Wilderness. Most of these installations fail to meet this strict standard and should be removed. Moreover, helicopters are often used in the placement, operation and maintenance of many of these structures, further eroding the areas' wilderness character.

Clearly, the federal agencies have neglected their responsibility to preserve wilderness character in ANILCA conservation units, including failing to exercise the authority to control motor vehicle access under Section1110 (a) of ANILCA.

Conclusion: ANILCA is heralded as one of our nation's greatest accomplishments for preservation of public lands, and deservedly so. Its promise remains unfulfilled, however, due to the large amount of wildlands that didn't receive protection under ANILCA, and the sub-par management of the conservation units that has compromised the wilderness character of ANILCA's designated Wildernesses. ANILCA was compromised too much to accommodate State of Alaska interests, and its implementation has been seriously hampered by inappropriate and inadequate policies. This situation has prevented achievement of the conservation goals of ANILCA and other pertinent statutes such as the Wilderness Act. It certainly has not met the expectations of the many American citizens who worked so hard to pass the Alaska National Interest Conservation Act of 1980, or of those who rely on it to preserve America's last great Wilderness.

ATTACHMENT: "Shredded Wildlands: All Terrain Vehicle Management in Alaska. 2001"

ALL TERRAIN VEHICLE MANAGEMENT IN ALASKA

G. Ray Bane

Jointly Sponsored By
The Alaska Sierra Club Alaska Task Force, Sierra Club Alaska Chapter and The Alaska Conservation Foundation

Author Bio: G. Ray Bane came to Alaska in 1960. He and his wife Barbara served as teachers in Sitka and the northern rural communities of Barrow, Wainwright, Huslia and Hughes. Ray studied cultural anthropology at the University of Wisconsin, Madison. In 1966, he carried out research into the subsistence lifestyle of the Eskimos of Wainwright, Alaska. Ray traveled extensively throughout Alaska via light aircraft, dog team, boat and foot. In the winter of 1974, Ray and Barbara carried out a dog team trip expedition across northern Alaska while studying the winter travel techniques of Native Alaskans. He coauthored two pioneer studies into Alaska subsistence lifestyles, Kuvungmuit and Tracks in the Wildland. Ray joined the National Park Service and worked in such parks as Gates of the Arctic, Northwest Alaska Areas, Katmai and Aniakchak. He served as superintendent of Katmai and Aniakchak from 1987 through 1990. His travels took him to every national park in Alaska as well as many other conservation units. He worked in the Alaska Regional Office of the NPS specializing in cultural and subsistence issues. He completed two special assignments to Washington, D.C. to work in legislative affairs and as a special assistant in the office of the Assistant Secretary of Interior for Fish, Wildlife and Parks. Ray retired from the National Park Service in 1998.

Shredded Wildlands

All-Terrain Vehicle Management in Alaska

ATV Crossing Marshland

Prologue

In his book, Alaska, Promises to Keep, Robert Weeden wrote, "Alaska's special vulnerability to damage by all-terrain vehicles is well known. ... The implications of high vulnerability and slow recovery of vegetation are especially important in wild areas. Wilderness is a valuable land characteristic, and it is becoming more valuable yearly. The cost of destroying or damaging wilderness, however hard it may be to calculate, is increasing. It is highest where the degree of change is greatest and where recovery times are longest. Public-land-use policies have not yet reflected the values of wildness fully even in designated wilderness areas, and scarcely at all in undesignated areas that are wild simply because they have been left alone." (Weeden, 1978).

Written more than two decades ago, Bob Weeden's prophetic words ring truer today than when first put to paper. The wild character of the 49th state is undergoing dramatic and far-reaching change. The use of increasingly versatile and powerful machines to penetrate once remote and pristine regions is creating a

wake of environmental consequences that have the potential to forever alter those natural attributes which Alaskans and the nation hold dear.

During the summer of 2000, the Sierra Club Alaska and the Alaska Conservation Foundation commissioned a review of ATV issues affecting public lands in Alaska. The purpose was not to initiate new research into environmental impacts, for there is a wealth of such information readily available. Rather, the primary goal of this work is to present a general picture of how responsible land managing agencies are coping with the challenges of ATV access. The vastness of Alaska, scope of ATV use and logistical support limitations made it necessary to select examples of ATV uses and management as representative of the broader picture. It is hoped that this overview will encourage greater cooperative effort by federal and state agencies, the conservation community, Native organizations, ATV user community and other interested stakeholders to develop a truly comprehensive review of statewide ATV uses and issues and to seek solutions to serious problems.

In the course of carrying out the research, the writer encountered a range of responses from representatives of various land managing agencies. Some openly shared concerns and displayed a willingness to candidly discuss issues. Others were more guarded and less inclined to volunteer information. In general, state agencies, such as the Alaska Dept. of Fish and Game, Department of Natural Resources and Alaska State Parks, were among the most cooperative and forthcoming. It was observed that when working with some agencies, the further down the chain of command one went the greater was the willingness to discuss ATV concerns and issues.

The writer is indebted to many who encouraged and materially assisted in producing this report. These include Jack Hession, who was instrumental in turning an idea into a project; Deborah Williams, who lent her considerable support and influence to back the project; Ogden Williams, a wilderness friend who enthusiastically gathered important data on ATV technology; Page Spencer, who volunteered her airplane to fly the writer over ATV impacted wild lands, Lou Waller, who has inspired through his unwavering faith in the principles of ANILCA and to my wife, Barbara, who's love of Alaska's wildlands is only matched by her boundless support and encouragement to continue the fight for their preservation. There are many others without whom this work would not have been possible. These include individuals within land managing agencies who voluntarily came forward to share information and insights regarding ATV uses. Some requested that their contribution remain anonymous. To all, thank you.

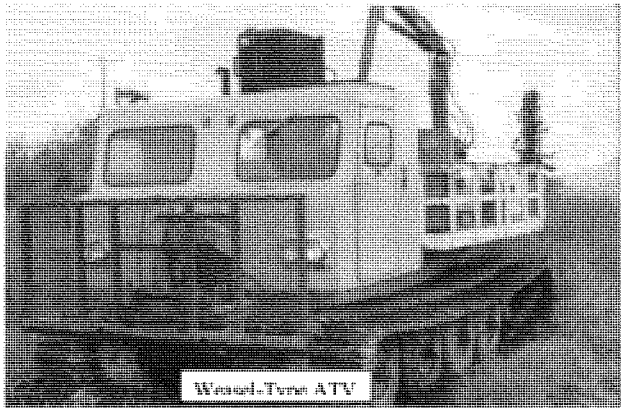
Note: There are several terms to describe motorized off-road vehicles. These include OHV (off-highway vehicle), ATC (all-terrain cycle), ORV (off-road vehicle) and ATV (all-terrain vehicle). For the purposes of this study, all these terms are interchangeable, with a preference for ATV. While snowmobiles are legitimately all-terrain vehicles, this study focuses primarily on machines that are useable in all seasons, particularly snow-free months. The issue of snowmobile use on public lands in Alaska deserves a separate study.

Introduction

All-Terrain Vehicle (ATV) access results in greater negative physical impact to Alaska wildlands than any other human use. ATV travel off established roads has expanded exponentially over the past two decades invading once pristine regions. Fragile ecosystems and critical wildlife habitat are being extensively altered. Wilderness areas, both designated and de facto, are increasingly degraded. This paper will examine the response of land managing agencies to these challenges.

Historical All-Terrain Vehicle Travel in Alaska

1940 – 1960: Following World War II, military surplus tracked vehicles and heavy duty 4-wheel drive trucks were purchased and put into use by hunting guides, prospectors, and a relatively small number of private residents for off-road travel. Dog teams continued to be the primary mode of winter surface travel throughout the northern sections of the state.



Backcountry surface travel during snow-free months was dominated by foot travel, pack dogs and boats. The outboard motor gained wide acceptance during the early to mid 1950s, although in many rural areas dogs continued to pull boats up inland waterways and along ocean shorelines well into first half of the decade. The use of paddles and makeshift sails for travel through shallow and ice-clogged waters

supplemented outboard motor travel. The hunters of Anaktuvuk Pass and Arctic Village were renowned for extended summer treks by foot throughout much of the Brooks Range well into the 1960s. It was not until the early 1950s that Kuvungmuit hunters of the Kobuk River Valley ceased to spend entire summers traveling by foot, pack dog and raft throughout the drainages of the upper Noatak and Kobuk Rivers. (Anderson et al, 1977).

1960 – 1980: Snowmachines: The modern snowmachine revolutionized winter cross-country travel throughout rural Alaska. Although primitive versions of snowmachines were manufactured several years earlier, the first truly modern snowmobiles appeared on the scene in the early 1960s. These machines were fast, light, highly maneuverable, and simple to operate. This technology first swept through relatively affluent communities and later made inroads into more remote settlements. By 1968, the community of Huslia on the Koyukuk River had converted entirely from dog teams to snowmachines. Three hundred miles to the east, the village of Chalkyitsik on the Black River had only three or four such machines. (Nelson, 1973). In 1965, there were only three snowmachines in Shungnak, an Inupiat village on the Kobuk River. (Foote 1966). By 1975, the number increased ninefold to twenty-six. (Anderson et al, 1977).

ATVs: The all-terrain vehicle became a significant mode of overland travel in Alaska in the late 1970s. Various types of motor driven vehicles used for off-road purposes were in use prior to this time. However, their availability, cost, limited maneuverability, size, and maintenance requirements prevented widespread use by the general public. "Little more than a decade ago, motorized off-road travel during snow-free season depended primarily on aircraft and boats. A few hunters used tracked vehicles and 4-wheel-drive trucks. Today, ORVs are common in the backcountry." (Sinnott, 1990). The land-locked village of Anaktuvuk Pass in the central Brooks Range was one of the first truly remote rural Alaska communities to become heavily dependent on ATVs. In 1970, there were two tracked ATVs in the village. By 1977, there were nine ATVs, and in 1987, there were 22 all-terrain vehicles (Sinnott 1990, Kuntz and Troxel 1988, Hall et al 1985). The widespread adoption of ATVs coincided with the economic boom and increased cash flow into rural Alaska during the construction of the Trans Alaska Pipeline.

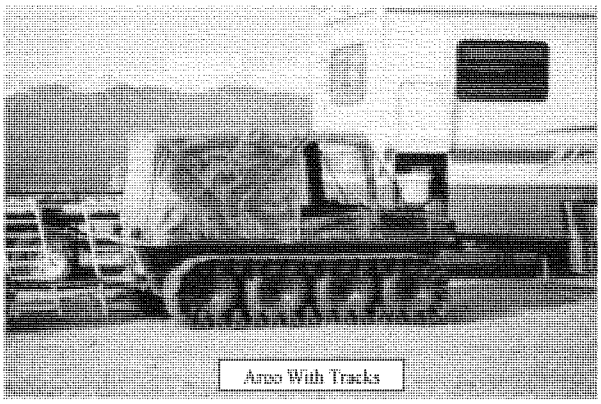
In 1970, Honda Corporation introduced the Honda 90, a lightweight three-wheel all-terrain cycle (ATC) riding on low-pressure tires. Relatively inexpensive, simple to maintain and easy to operate, the so-called three-wheeler quickly gained popularity throughout rural Alaska. It was particularly convenient for travel within communities and on local unimproved roads and relatively smooth beaches. More powerful

versions of this machine appeared in the mid 1970s. However, the design had inherent shortcomings. It was notoriously unstable, had limited traction, and the tricycle configuration made crossing tussocks and other rough ground extremely uncomfortable. The manufacture of 3-wheelers ceased in the 1980s due, in part, to safety and liability concerns.

1980 – 2000: It was the advent of the 4-wheel drive all-terrain cycle in 1981 that truly revolutionized ATV travel in Alaska. Commonly referred to as the four-wheeler or four track, the early versions were somewhat underpowered and lacked the versatility of later models. However, it quickly became the most popularly used ATV in Alaska and the nation.

The four-wheeler consists of a compact engine, four-wheel drive transmission, deep lug tread tires and sturdy frame. It has a relatively short turning radius enhanced by a reverse gear. It is able to ascend steep slopes, clamber over large rocks and deadfalls, and churn through soft sand and mud and traverse through waist deep water. The four-wheeler gained rapid acceptance by both rural and urban residents as a means to access and exploit roadless wildlands throughout Alaska.

ATV technology has proven to be highly dynamic with significant improvements taking place each year. A report by the ADF&G to the Board of Game in 1990 noted, "(S)mall all-terrain vehicles with 4-wheel drive are fast becoming the most popular ORV in Alaska due to their affordability (compared to 4-wheel drive trucks and large tracked vehicles), mobility, and the ease of operation. Increasing power is also a factor. If current trends continue, ORVs may eventually outnumber snowmachines in Alaska." (Sinnott, 1990) (emphasis added). A 1991 National Park Service survey concurred. "Modern ATVs are technologically far superior to machines manufactured five or ten years ago.... All modern ATVs have significantly improved reliability and low

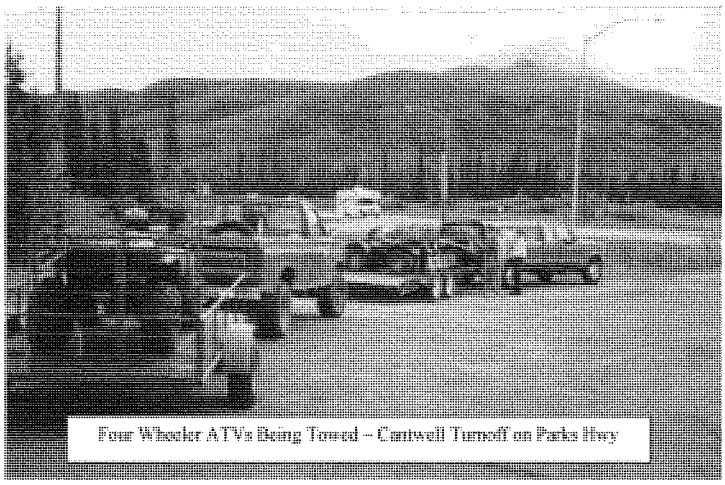

Arctic With Tracks

maintenance.... The ATV market is highly competitive resulting in pressures for on-going technological improvements and affordability." (Bane, 1991). The ADF&G in 1996 observed, "Improvements in the design, reliability, and affordability of ORVs between 1990 and 1995 led to greatly expanded uses of ORVs for travel and recreational activities in Alaska." (Alaska Department of Fish and Game 1996). On-going advancements in ATV technology, increasing numbers of users, and expanding incursions into ever more remote rural lands continue unabated.

Current (2000) ATV Technology.

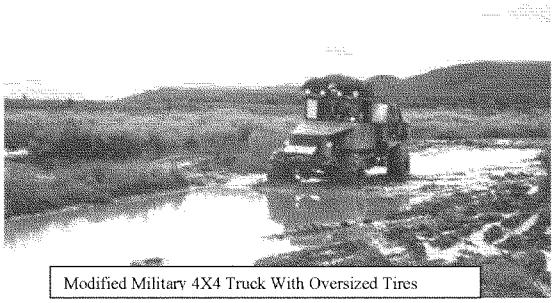
All-terrain vehicles range from large dual tracked vehicles to small two-wheel dirt bikes. This includes specialized vehicles such as dune buggies, swamp buggies and machines designed for competitive racing. This report will focus on the more commonly used machines for off-road travel in Alaska.

The most popular ATV now in use in Alaska is the "4-trac" or "quad." These compact vehicles will accommodate a driver and a passenger straddling a motorcycle-type seat. The more robust models weigh roughly 600 pounds. With driver, full fuel tanks, and maximum recommended rack loads, the total gross weight can exceed 1000 pounds. Engines range up to 600 cc delivering roughly 30.5-ft. lbs. of torque. This provides ample power to tow other vehicles of 1000 lbs., ascend steep inclines and force their way through relatively heavy vegetation. Deep lug tire treads are designed to aggressively grip the surface and claw their way up steep slopes and over rocks, logs and other natural obstacles. An optional power winch enhances the ability of the machine to overcome obstructions. Engine, transmission and other internal mechanisms are sealed in waterproof housings. A snorkel-type air intake allows these vehicles to ride through mud and water up to three feet deep. On smooth surfaces, 4-tracs can attain speeds exceeding 50 mph. The basic purchase price ranges from $6000 to $9000.



Four Wheeler ATVs Being Towed – Cantwell Turnoff on Parks Hwy

Argo and Max type ATVs are amphibious six-to-eight wheel-drive vehicles. The driver and three to five passengers sit side by side in a shallow basin type body. The machine rides on wheels mounted to fixed axles. Steering involves "skidding" in which brakes are applied to one side of the vehicle while the opposite bank of wheels continues to turn. Compact 4-cycle engines ranging up to 25-hp propel these machines. The engine is mounted inside the amphibious housing, and other internal machinery is waterproofed. These machines weigh between 750 and 1000 lbs. Larger versions have a load capacity rating of 1000 lbs. for a total gross weight of approximately 2000 lbs. On smooth terrain, the vehicles are capable of speeds up to 25 mph. Optional tracks can be added over the tires giving the vehicle exceptional traction. One dealer referred to the Max IV as a "tank-ette." The price of these vehicles ranges from $7000 to $11,000, excluding shipping expenses.



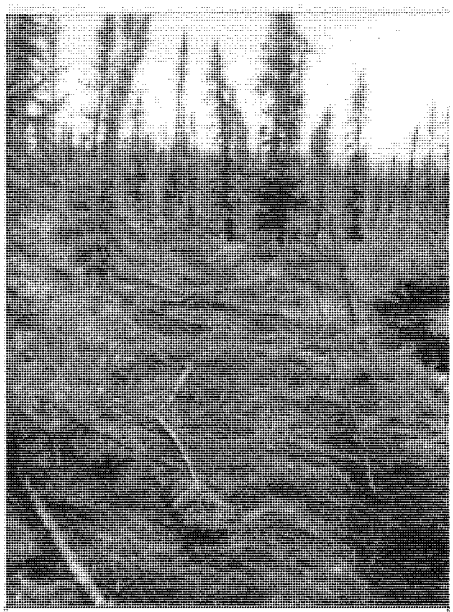
Modified Military 4X4 Truck With Oversized Tires

Other ATV vehicle types in use in Alaska include heavy-duty 4X4 trucks and utility vehicles, amphibious tracked vehicles, ground-effect (air cushion) vehicles,

homemade "monster trucks" and airboats. 4X4 trucks and utility vehicles are generally most commonly found in areas accessible by road. Tracked vehicles tend to be relatively expensive to purchase and difficult to maintain. Airboats are increasingly popular in areas with shallow streams and expanses of marshy wetlands. The so-called monster trucks are often heavy duty military surplus vehicles with specially modified suspension systems and oversized tires designed to bull their way through heavy brush, ford deep streams and ascend steep inclines.

Contemporary ATV Use Patterns.

The utilization of ATVs reflects their increasing versatility and the growing user sophistication. ATVs are transported by highway vehicles, boats and light aircraft to remote locations throughout Alaska. Each summer and fall, pick up trucks, RVs and auto trailers carrying or towing ATVs are common sights on state highways and secondary roads. The writer observed hundreds of highway vehicles ranging from passenger cars to full-sized flatbed semi trucks transporting ATVs into rural areas of the state. It is common for ATV users to tow, fly or ferry their machines several hundred miles in order to access desired use areas. Shallow-draft riverboats, including airboats, are employed to move ATVs over interior waterways. Larger, deeper draft boats off-load small ATVs along ocean beaches. This method has been used to gain access to coastal lands of Katmai National Park, Aniakchak National Monument, Lake Clark National Park, Glacier Bay National Preserve and other conservation lands with ocean frontage. Compact 4-wheelers are partially dismantled and carried in light, single engine aircraft to distant lakes, rivers, tidelands, and unimproved landing strips throughout the state.



Newly pioneered ATV trail – Wrangell-St. Elias

A recent innovation in ATV use involves combining large and small machines to increase logistical efficiency. This convoy strategy

includes using a large tracked vehicle or heavy 4-wheel drive truck to transport fuel, camp equipment, and other bulky supplies deep into a remote area. Smaller ATVs accompany the larger vehicle. A base camp is established, and the lighter, more maneuverable machines then range out into the surrounding countryside. If necessary, the larger vehicle can ferry disabled machines to where they can be repaired while also maintaining a supply line for on-going operations. (Alaska Department of Fish and Game, 1996).

ATV Hunting Convoy – Talkeetna Mts.

Hunting. Prior to the widespread adoption of personal ATVs, most hunting during snow-free months was carried out by auto, foot, boat and light aircraft. Hunters rarely stray more than two miles from their vehicle, regardless of type (Sinnott 1990). Thus, hunting pressures were concentrated along relatively narrow corridors of lands fringing the sides of roads, rivers, lakes and coastlines. This left large sections of more remote lands with relatively light or negligible hunting pressures. Those willing to undergo the rigors of extended hikes and the chore of packing out game could often find excellent hunting opportunities.

The widespread adoption of ATVs dramatically altered hunting patterns. ATV mounted hunters now cover great distances to reach and exploit remote game areas with relative ease. Entire hunts may be accomplished with the hunter needing to

dismount only after an animal had been taken. The ease with which hunters may travel and pack out harvested game increases pressure on areas once avoided due to distance and terrain features. Where a person afoot may cover two to five miles a day while hunting, a hunter using an ATV may travel fifteen miles or more seeking game.

As more hunters acquire ATVs, competition for finite wildlife resources increases. Hunters are encouraged to range ever further afield in search of pockets of undisturbed game. "ORV use frequently follows a pattern. First, a new road or trail is pioneered into an area previously inaccessible to hunters using other types of ground transportation. This initial expansion usually disperses hunting pressure. In subsequent years, however, as more ORV users become aware of the new trail, ORV use of the road or trail increases, often dramatically. Meanwhile, the trail is extended and branched and the process continues." (Sinnott 1990). ATVs are now common in areas where they were totally absent just a few years ago. The effect is to continuously shrink areas of wildlife refugia.

While ATVs have substantially increased the mobility and efficiency of many hunters, they have conversely reduced opportunities and experiences for those preferring non-mechanical means of hunting or who cannot afford such machines. A hunter on foot is at distinct disadvantage when attempting to compete with ATV users for limited game resources. The noise and visual intrusion of motorized vehicles makes wildlife increasingly wary or forces it to move to less accessible areas. A hunter traveling on foot may attempt to stalk or to attract game that is beyond effective firearm range only to have an ATV hunter preempt his efforts.

Non-Hunting ATV Recreation. While hunting and sport fishing are major uses for ATVs, recreational riding probably exceeds both. It is difficult to quantify recreational ATV use, because few records are kept on this activity. However, there is ample qualitative evidence of recreational ATV use throughout the state. Driving ATVs into undeveloped areas is a popular means of family and group recreation and socialization. Recreational ATV use is particularly common near communities and along the state road system.

Group recreational ATV activities tend to encourage competitive and aggressive driving. This is particularly true with younger participants. Drivers are tempted to test themselves and their machines against natural obstacles and one another. Fording streams, climbing steep inclines, forcing ones way through heavy underbrush, crossing stretches of swampy ground, and pioneering new trails becomes part of the ATV experience. This type of use is especially damaging to the

environment. Aggressive ATV uses also expose riders and others to potential hazards. Recreational ATV use has become a major source of accidental injury and fatalities in the state of Alaska. (Dr. S. Tower, personal communication).

Recreational ATV use tends to displace non-mechanized recreational activities. ATV users often travel the same trails as hikers, bicyclists, nature photographers and those seeking natural solitude. Non-mechanized users generally value the relative peace and unaltered ambiance of natural areas. This includes observing undisturbed wildlife and temporarily escaping the mechanical intrusions of modern civilization. The presence of ATV traffic can substantially reduce the opportunities for traditional recreational users to enjoy natural areas. ATV use often damages foot and bike trails, making them unattractive or impassible for other users. The potential for injury resulting from contact with ATV users further discourages pedestrians and bicyclists.

Environmental Issues

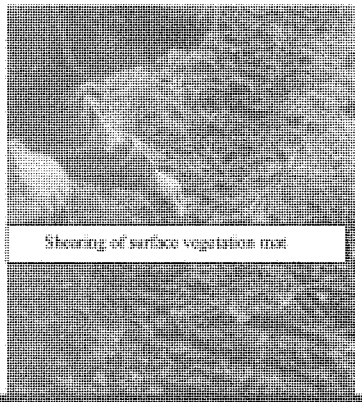
Concern over the environmental impacts of all-terrain vehicles has spawned a multitude of studies spanning several decades and encompassing environments ranging from the subtropical marshes of Florida to the permafrost regions of the high arctic. Results of ATV access have been exhaustively measured in arid deserts, rainforests, open grasslands, sand dunes, ocean beaches, wetlands and virtually every other natural ecosystem where these machines are driven. ATV influence on a broad range of animal life has been carefully documented. The overwhelming conclusion of virtually all studies is that ATV access results in significant negative impacts to natural ecosystems. The degree of the impact is influenced by such variables as soil composition, topography, vegetation, moisture, weather, seasons, machine type, frequency of use, etc. "In states with many ORVs, their use has damaged soils and vegetation; stressed, displaced, and killed wildlife; and conflicted with other outdoor users. Increasing public complaints and observations of resource managers indicate that Alaska is no exception." (Sinnott 1990)

Natural Setting. Contrary to popular perception, Alaska is not a cornucopia of boundless renewable natural resources and endless resilient wilderness. Both the coastal plain/alpine tundra regions and the boreal forests of the interior of the state have extremely low productivity when compared to the more hearty temperate and semi-tropical regions to the south. (Pruitt 1960, Weeden 1978, Lopez 1986). An arctic meadow has roughly 3% the productivity of good temperate lowland meadow. (Kauffmann 1992). The illusion of bounty and resilience is fostered, in part, by the relative sparseness of human population, brief seasonal congregations of wildlife, and sense that any human impact is insignificant in comparison to the scale of affected wild areas. The impression of size probably contributes most to the cavalier attitude evident in the way many interact with the land.

The productive soils of northern regions are exceptionally thin and fragile in comparison to those in more temperate regions. Soils underlain by permafrost are slow to warm. The shallow angle of the sun's rays limits the sun's ability to nourish plant growth. What may appear as lush grasslands or expanses of productive forest are often the culmination of centuries of uninterrupted growth. Once damaged, recovery to an original state may require the span of several human lifetimes. Disturbance to ice and moisture rich soils frequently results in extensive erosion, further retarding recovery.

(Weeden, 1978). Even when revegetation takes place, the plant communities are usually different from those of the surrounding terrain, creating a visual intrusion. (Alstrand et al, 1974). "Once one is accustomed to looking at the world in terms of ecosystems it is easier to see how all living things are inextricably tied together. We can also see why the northern ecosystems are less productive than those of the tropical or temperate zones. Less energy input, less plant output; less plant input, less animal output." (Pruitt 1960).

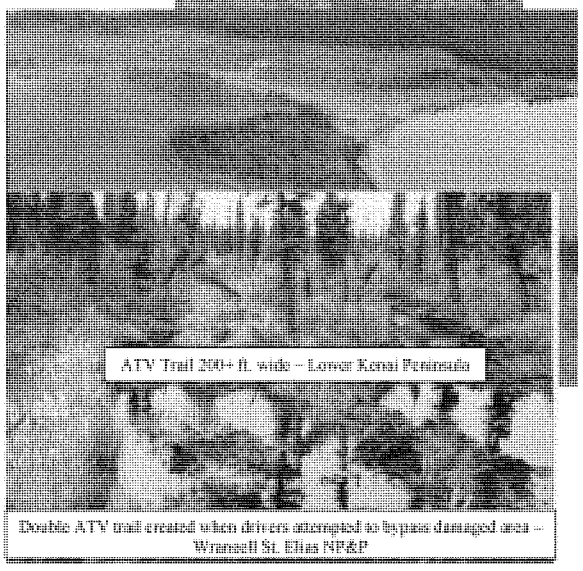
Wildlife in Alaska exists within a narrow envelope of reproduction and growth. Short summers provide a brief window of opportunity to have and rear young, build critical body reserves and begin the next cycle of life. Any significant disturbance that interferes with or increases the difficulty of carrying out these processes can have dramatic consequences on affected wildlife. "Current research ... indicates that, unlike their temperate-zone counterparts, arctic animals are generally unable to tolerate both the inherent stress to which, in an evolutionary sense, they are accustomed and the new stresses of man-made origin..... They are therefore probably more vulnerable to man-made intrusions than the populations of any animals we have ever dealt with." (Lopez 1986). "The taiga is, in fact, quite poor in terms of meat production per acre. Not only is it poor, but the ability of plants and animals to withstand exploitation is very low." (Pruitt 1960).



Shearing of surface vegetation mat

All-Terrain Vehicle Impacts.

ATVs stress the environment directly and indirectly. The most obvious impacts result from the exertion of weight and the passage of wheels or tracks over vegetation and soil. "ATVs damage vegetation and soil by abrading, compressing and shearing it, and in ice-rich soils, by subsidence. Several recent studies of lightweight ORVs in western, northern, and eastern Alaska have documented many of the same impacts. Damage is often evident even at very low levels of use." (Sinnott, 1990). The single passage of an ATV over dry lichens will virtually eliminate them. (Ahlstrand et al, 1988). The shearing of the organic mat can lead to subsidence and erosion, eliminating the opportunity for revegetation. (Gersper & Challinor, 1975; Abele et al., 1984). Research conducted in Wrangell-St. Elias National Park and Preserve found, "The passage of but one ATV through some landscapes can leave an indelible imprint. ... Continued use of ATVs over the same path will result in disturbance that is irreversible in terms of the human life span. Recovery in some cases will be impossible to achieve and only a functional recovery can be expected for much of the remaining trail network within the park and preserve if the trails are abandoned." (Ahlstrand 1985).



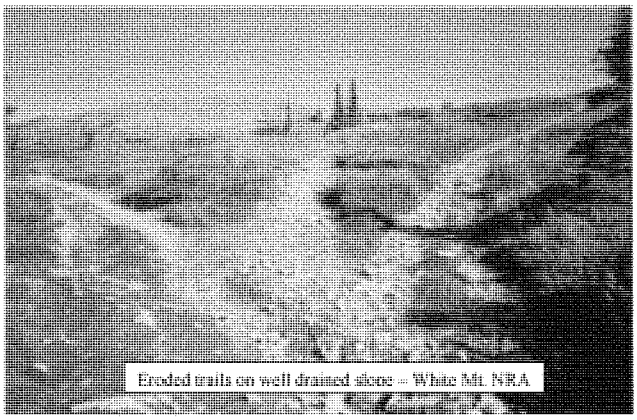
ATV Trail 200+ ft. wide – Lower Kenai Peninsula

Double ATV trail created when drivers attempted to bypass damaged area – Wrangell St. Elias NP&P

ATV trails are increasingly ubiquitous throughout Alaska. Each year webs of

trails radiating from roadside trailheads, rural settlements, individual homesteads, lodges, hunting camps, remote landing strips and other points of access expand ever further into previously unaffected lands. By conservative estimates, each mile of well-used ATV trail averaging six feet in width effectively alters 3/4 acres of natural vegetation. During overflights of south-central Alaska, the author observed and photographed heavily used trails in excess of 600 feet in width crossing wetlands thus altering upwards of 75 acres of natural habitat per mile. Ground-based observations, available literature and interviews with persons knowledgeable of ATV uses in other regions of the state indicate that trails in excess of three hundred feet (37.5 acres per mile) are not unusual. (Sinnott, 1990).

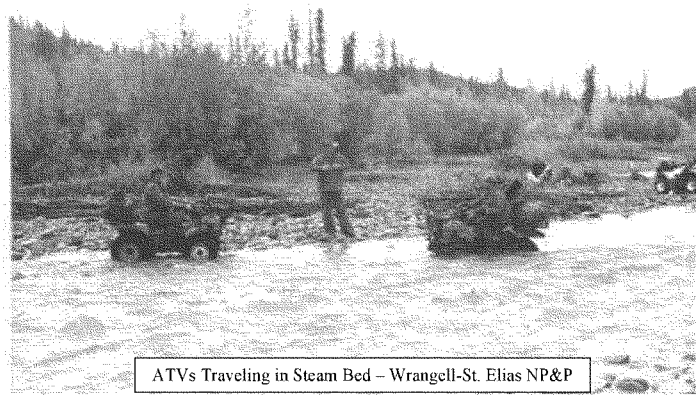
When crossing wet areas, ATVs churn the surface, creating a viscous mixture of mud, shredded vegetation and stagnant water. Other drivers try to avoid such spots by going around them. This only exacerbates the situation, further expanding the width of the trail. ATV trails crossing wetlands interfere with the natural hydraulics. This can result in partial draining, interdicting the flow of nutrients, hampering the filtering of suspended solids from the water column, and generally degrading habitat making it less suitable for dependent wildlife. ATVs expel fuel and lubricating oils, contaminating affected ecosystems.


Eroded trails on well drained slope – White Mt. NRA

ATV trails traversing drier areas are generally narrower. However, the damage can be equally severe and long lasting. ATV users tend to branch out over drier terrain. Vegetation is often fragile and slow to recover. Slopes are particularly vulnerable to erosion once the vegetation and organic soil have been disturbed. This is especially true where machines traverse slopes at steep angles. Crushing and stripping insulating vegetation can result in permafrost thaw and the partial collapse of large sections of hillsides and valley slopes.

In addition to initiating erosion, ATV trails fragment natural habitat. They divide plant communities and interfere with vegetative processes. ATV tires and tracks carry the spores of alien weeds and other invasive plants, introducing them onto disturbed ground. Once established, these alien plants spread, crowding out indigenous species and upsetting and altering natural ecosystems.

ATV-generated erosion sluices away fertile topsoil, retarding revegetation. Lost soil and associated debris are washed into streams, lakes and marshes. Suspended particulates absorb the rays of the sun, increasing water temperature and reducing oxygen content. Sediments can smother gravel beds used by spawning fish and substantially alter aquatic ecosystems. Where ATV trails cross small streams they wear away the embankments and widen the streambed. This in turn spreads out the water column. Such shallow spots can impede the passage of anadromous fish, particularly during dry spells. Shallow areas tend to freeze faster than deeper waters, creating ice dams that further modify aquatic ecosystems.



ATVs Traveling in Steam Bed – Wrangell-St. Elias NP&P

ATV drivers often use shallow streambeds as natural thoroughfares through heavy brush and uneven terrain. The snorkel type air intake of an ATV allows travel through moderately deep water. Fully amphibious ATVs can boat through stretches of deep water. Larger 4X4 pickups and modified monster trucks with large, heavy tread tires can drive through water ranging from five feet to eight feet in depth. The act of fording and traveling in streams grinds up streambed components and crushes aquatic life. ATVs can substantially increase the mortality of fish eggs and fry and render stretches of such streams unsuitable for spawning.

Both the visual and audio intrusions of ATVs stress and displace wildlife to less desirable habitats. (Alstrand et al, 1974). Wildlife are especially vulnerable during seasonal concentrations and when experiencing the stress of reproduction, rearing young, preparing for winter, contending with severe weather and reduced food availability. "In some parts of Alaska, ORV access is believed to be a significant factor in reducing moose bull: cow ratios, ... altering age structures by selective harvest of large bulls ... and loss of lightly hunted areas. ... The rapid expansion of off-road vehicle (ORV) use by hunters has caused increasing concern among wildlife managers in Alaska." (Sinnott 1990).

Depending upon topography, vegetation, vehicle type and sensitivity of affected wildlife, an ATV lays down an auditory footprint approximately two miles in diameter. "Thus, an ORV that can be heard a mile to either side and which travels 50 miles in a day may be heard over a 100 square mile area. Additional ORVs compound the problem." (Sinnott 1990, 30). Mechanical noise may interfere with the ability of wildlife to communicate, locate food, and detect predators. Wild animals particularly sensitive to noise may be forced to abandon productive feeding or nesting grounds. (Alstrand et al, 1974).

Areas of refugia are crucial to the viability of sensitive wildlife populations. "Refugia are areas, either difficult to access or protected by law, that support populations of animals with little or no hunting pressure." (Sinnott, 1990) One of the critical elements of refugia is the relative absence of unpredictable and disruptive intrusions. Such areas may serve as seasonal sanctuaries where wildlife can temporarily escape stressful disturbances. In northern regions, wildlife generally requires much larger areas of habitat, including refugia, than do animals in temperate regions. The Inupiat of northwest Alaska recognize the upper reaches of the Utukok River as one such area for the birthing of caribou calves in the spring. The Arctic Wildlife Refuge in northeastern Alaska is critical to the reproductive cycle of the Porcupine caribou herd. Other wildlife species also seek zones of refugia to replenish themselves in preparation for seasonal biological demands and environmental stresses. With the expanding mechanization of backcountry travel in Alaska, areas of refugia are becoming increasingly scarce. The long-term impacts on affected wildlife populations are yet to be determined.

Laws, Regulations and Policies.

In Alaska, federal and state laws, regulations and policies affect the operation of off-road vehicles. Local community and borough governments may also enact statutes regulating ATV use.

Executive Orders. The foundation for federal management of ATV access is found in Executive Order 11644, as amended by EO 11989: Use of Off-Road Vehicles on the Public Lands. These executive orders require federal land managing agencies to promulgate special regulations governing ATV access on public lands and to officially designate areas and trails where such use may occur. The EOs sets forth basic standards for the designation of ATV areas and trails, including minimizing impacts to soils, vegetation, wildlife, watersheds, and other users of the public lands. They prohibit ATV areas and trails in designated wilderness or primitive areas. The EOs direct that ATV areas and trails may be designated in national parks and national wildlife refuges only if the heads of the respective agencies determine such access will not adversely affect natural, aesthetic or scenic values. The executive orders further direct responsible agencies to seek cooperation with state and local agencies in the management of ATV access.

Alaska National Interest Lands Conservation Act. (ANILCA) provides special exceptions to general laws governing access on federal conservation units. The access provisions of this Act have profound implications as to the management of all-terrain vehicles within Alaska. The following is a brief summary of provisions with particular relevance to the issue of ATV access.

Sec. 205 provides for commercial fishing on national parklands in Cape Krusenstern National Monument, the Malaspina Glacier Forelands area of Wrangell-St. Elias National Preserve and the Dry Bay area of Glacier Bay National Preserve. It includes provisions permitting the on-going use of motorized vehicles "directly incident to such rights." General activities related to commercial fishing are not to be significantly expanded beyond the level of use occurring in 1979. This section implies that the NPS is to determine levels of motor vehiele access and other uses as of 1979 and to actively monitor commercial fishing activities to be certain that such uses do not significantly expand beyond the baseline date. Sec. 304 (d) establishes the same conditions for commercial fishing activities on national wildlife refuge lands.

Title VIII of ANILCA sets the basic guidelines for the management of subsistence on federal public lands in Alaska. Sec. 801 states, "The Congress finds and declares that ... continuation of the opportunity for subsistence uses of resources on public and other lands is threatened ... by increased accessibility of remote areas containing subsistence resources, and by taking of fish and wildlife in a manner inconsistent with recognized principles of fish and wildlife management." (emphasis added).

Sec. 811 (a) addresses subsistence access stating, "The Secretary shall ensure that rural residents engaged in subsistence uses shall have reasonable access to subsistence resources on the public land. Notwithstanding any other provision of this Aet, or other law, the Secretary shall permit on the public lands appropriate use for subsistenee purposes of snowmobiles, motorboats, and other means of surface transportation traditionally employed for such purposes by local residents, subject to reasonable regulation." (emphasis added).

Those who contend that ATVs were intended to be included in special subsistence access provisions often reference the above wording. The interpretation of "traditionally employed" would unquestionably include such long-standing modes of access as dog teams, pack dogs and non-motorized watercraft. These means of travel have a long history of use in Alaska, particularly in rural areas. The specific inclusion of snowmachines and motorboats in the wording implies that, although these modes of access do not have as great a depth of historic use, they are to be permitted as exceptions to "traditionally employed." "ANILCA does not define mechanized vehicles of any kind as traditional means of transportation. The use of snowmachines, motorboats and (under specific conditions) aircraft as methods of transportation in association with subsistence activities are specifically permitted by the act. Conversely, the act provides no explicit exception to existing park and wilderness regulations that would allow the use of ATVs in association with any subsistence activity." (Kunz and Troxel, 1988:) (Emphasis added). All permissible modes of subsistence access are to be subject to "reasonable regulations" to ensure that their use does not significantly impair the resources and character of affected public lands.

Sec. 1102, addresses transportation and utility systems that cross federal public lands. It states, in part, "For the purposes of this title ... The term "transportation or utility system" means.... Improved rights-of-way for snowmachines, air cushion vehicles, and other types of all-terrain vehicles." (Emphasis added). This is the only wording found in the act which specifically includes the term "all-terrain vehicles." Its absence elsewhere in the act is

significant and supports the contention that had Congress intended to permit widespread ATV use on public lands, it would have so specified in the Act

Sec. 1110 provides for special access across and within conservation units for reasonable travel to and from rural communities, homesites and other inholdings. This provision states, "The Secretary shall permit, ... the use of snowmachines (during periods of adequate snow cover, or frozen river conditions in the case of wild and scenic rivers), motorboats, airplanes and non-motorized surface transportation methods for traditional activities ... and for travel to and from villages and homesites.... Nothing in this section shall be construed as prohibiting the use of other methods of transportation for such travel and activities on conservation system lands where such use is permitted by this Act or other law." (Emphasis added). The above underlined text neither excludes nor includes "other methods of transportation." It may be argued that, unless otherwise specifically provided for in ANILCA or other law, ATV use is prohibited.

All of the above must be interpreted in light of the overriding purpose of the act as stated in Title I, "It is the intent of Congress in this Act to preserve unrivaled scenic and geological values associated with natural landscapes... to preserve in their natural state extensive unaltered arctic tundra, boreal forest, and coastal rainforest ecosystems; to protect the resources related to subsistence needs; to protect and preserve historic and archeological sites, rivers, lands, and to preserve wilderness resource values and related recreational opportunities... and to maintain opportunities for scientific research and undisturbed ecosystems." (Emphasis added). Regardless of whatever modes of access are permitted on public lands, such access must be managed so as not to compromise the basic purposes of the Act.

Regulations. Based on EO 11644 and 11989 plus relevant provisions of the Clean Air Act, Environmental Protection Act, Clean Waters Act, Endangered Species Act, Wilderness Act, ANILCA, and other applicable laws, federal land managing agencies are required to promulgate regulations and establish policies governing ATV access on public lands. In Alaska, 43 CFR Part 36 sets forth special multi-agency regulations designed, in part, to implement the special access related provisions of ANILCA. Each federal land management agency is expected to establish its own set of ATV access regulations tailored to its particular legal mandates.

43 CFR §36.11 carries out the intent of Section 1110(a) of ANILCA and covers non-subsistence use of snowmachines, motorboats, nonmotorized surface transportation and off-road vehicles. In regard to ATVs, the regulation complies with Executive Order 11644 as amended, specifically requiring that routes and areas for ATV access be officially designated. It also provides for agencies to issue permits for ATV use on existing off-road vehicle trails when it is determined that such use will be compatible with the purpose and values of the affected area. §36.10 and §36.12 provide for access to inholdings and temporary access across federal lands.

NATIONAL PARK SERVICE

NPS Organic Act. Of all federal land managing agencies, the National Park Service (NPS) operates under the most stringent resource protection mandates. The NPS Organic Act of 1916, as amended by the Redwood Act of 1972, states, in part, "The service ... shall promote and regulate the national parks, monuments, and reservations ... by such means and measures ... which purpose is to conserve the scenery and the natural and historic objects and the wild life therein and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations. Congress further reaffirms, declares, and directs that the ... regulation of the various areas of the National Park System ... shall be consistent with and founded in ... the common benefit of all people of the United States. The authorization of activities shall be construed and the protection, management, and administration of these areas shall be conducted in light of the high public value and integrity of the National Park System and shall not be exercised in derogation of the values and purposes for which these various areas have been established except as may have been or shall be directly and specifically provided by Congress." (Emphasis added).

Based on the above, the National Park Service cannot legitimately permit ATV access on parklands that violates the standard of "unimpaired" unless Congress specifically directs otherwise. With the exception of commercial fishing, there is no specific language in ANILCA, nor elsewhere, requiring the NPS to permit the use of ATVs on federally owned parklands in Alaska.

NPS Policy. National park management is required to adhere to established National Park Service policies unless specifically waived or modified by the Secretary of the Interior, Assistant Secretary or the Director of the National Park

Service. NPS policy includes numerous provisions relevant to the management of ATVs. Those having the most direct implications include, "General regulations addressing ... off-road vehicle use ... require that special regulations be developed before these uses may be authorized in parks." (emphasis added). NPS policy also directs, "Subsistence uses and access will be allowed only where such activities are specifically mandated by federal law ... Subsistence uses will be conducted in accordance with the provisions of law and consistent with sound management policies and managed so that the composition, condition, and distribution of native plant and animal communities and ecosystem dynamics are not significantly altered." (NPS Management Policies 1988, Chap. 8:4 & 8:16).

NPS policy clearly directs management to promulgate special regulations prior to permitting off-road vehicle access on parklands. To date, only two regulations specifically addressing off-road vehicle access on parklands in Alaska have been promulgated; the use of ATVs in support of commercial fishing and reindeer herding. Yet, the majority of national parks in Alaska experience ATV incursions clearly in violation of NPS management policies and the law.

Draft NPS Policies. The National Park Service drafted proposed changes to its manual of management policies. These changes reflect a growing awareness of the spirit of the NPS organic act and the realization that greater effort must be taken to effectively protect and preserve the national parks. The following excerpts from this draft have special relevance to the question of ATV management:

"The 1970 National Park System General Authorities Act, as amended, prohibits the Service from allowing any activities that would cause derogation of the values and purposes for which the parks have been established."

"When a use is authorized by law, but not mandated, and may cause impairment or derogation of park resources or values, *the Service will mitigate the impacts to the point where they will cause neither impairment nor derogation, nor significant adverse effects; or, if necessary, the Service will eliminate the activity*." (emphasis added).

"*Unless an activity is mandated by statute, the Service will not allow activities that cause injury or damage to park resources*;" (emphasis added).

"*Service-wide regulations addressing ...off-road vehicle use ... require that special, park-specific regulations be developed before these uses may be allowed in parks*." (emphasis added)

"(An) off-road vehicle (is) any motorized vehicle designed for or capable of cross-country travel on or immediately over, land, water, sand, snow, ice, marsh, swampland, or other natural terrain... Any time there is a proposal to allow a motor vehicle meeting this description to be used in a park, the provisions of Executive Order must be applied. *Within the national park system, routes and areas may be designated for off-road vehicle use only by special regulation,* and only in national preserves, national seashores, national lakeshores, and national recreational areas. *Routes and areas may be designated only in locations in which there will be no adverse impacts on the area's natural, cultural, scenic, and esthetic values, and in consideration of other park uses*." (Emphasis added).

The draft changes to NPS Policies make it abundantly clear the agency intends that the use of ATVs within park boundaries meet strict standards of resource protection and be subject to the regulatory process.

NPS Regulations. The Organic Act, enabling legislation for individual park units and NPS policies serve as touchstones for the promulgation of NPS regulations. The Park Service is called to a very high standard of stewardship to prevent deterioration of park values and resources. The reference to "future generations" implies that Congress intended park protection sufficient to maintain and perpetuate the resources, character and integrity of the parks beyond the immediate needs and desires of present-day users. The Redwood Act further clarifies this intent stating that only Congress should "specifically and directly" make exclusions to the basic protection mandate of the organic act.

Regulations specifically designed for the National Park System are found at 36 CFR Chapter I. Those relevant to the management of ATVs occur throughout this chapter. §4.10 Travel on park roads and designated routes, serves as the basic reference for off-road vehicle use. This regulation directs, in part, that "routes and areas shall be promulgated as special regulations." (Emphasis added). The regulation also establishes basic parameters for ATV use. §4.11 provides for limits on the type of vehicle that may be used.

The seriousness with which the Park Service generally views ATVs is reflected in a number of park-specific regulations. Where ATV access is permitted in parks outside of Alaska, the NPS sets forth detailed limits and guidelines to minimize negative impacts to park resources and visitors. This includes clearly designating use areas; specifying standards for acceptable types of vehicles; establishing restrictions as to speeds, seasons and hours of use; and identifying areas off-limits to ATV access. NPS regulations require ATV users to travel on clearly marked trails and routes, carry certain basic equipment, obtain permits, refrain from towing trailers, repair trail or road damage resulting from such use, and avoid conflicts with other park users.

Considering the exhaustive nature of regulations governing the use of ATVs on parklands outside of Alaska, it is striking that only two references to off-road vehicle access are found in the special regulations for Alaska parks. These occur at §13.61 (a) "*Off-Road Vehicles.* The use of off-road vehicles (in Bering Land Bridge National Preserve) for purposes of reindeer grazing may be permitted in accordance with a permit issued by the Superintendent." §13.21(c), *Commercial Fishing*, states, in part, "The exercise of valid commercial fishing rights or privileges ... in Cape Krusenstern National Monument, the Malaspina Glacier Forelands of Wrangell-St. Elias National Preserve, and the Dry Bay area of Glacier Bay National Preserve, including the use of these park areas for ... motorized vehicles ... may continue provided that all such use is directly incident to the exercise of those privileges." These regulation sets forth conditions under which the superintendent may restrict uses based on the protection of park resources.

The only other Alaska specific regulation with a possible indirect reference to off-road vehicle travel occurs at §13.46 *Use of snowmobiles, motorboats, dog teams, and other means of surface transportation traditionally employed by local rural residents engaged in subsistence uses.* This regulation addresses access for subsistence purposes, specifically snowmobiles and motorboats as directed by Title VIII of ANILCA. It does not specify what is included under the term "other means of surface transportation traditionally employed." As noted earlier, there is no convincing evidence to support the inclusion of ATVs as being "traditionally employed." There is no provision in law to treat ATVs as an exception to the "traditionally employed" requirement. Thus, with the exception of reindeer grazing in Bering Land Bridge National Preserve and commercial fishing in three park units, the general use of ATVs off established roads and parking areas is contrary to federal law and regulations.

The brevity of NPS regulations governing ATV use in national parks in Alaska is particularly remarkable considering that the total acreage of parklands impacted by such access undoubtedly exceeds the combined total of all other national parks.

Examples of National Park ATV Management: The following are examples of NPS access management on a unit-by-unit basis.

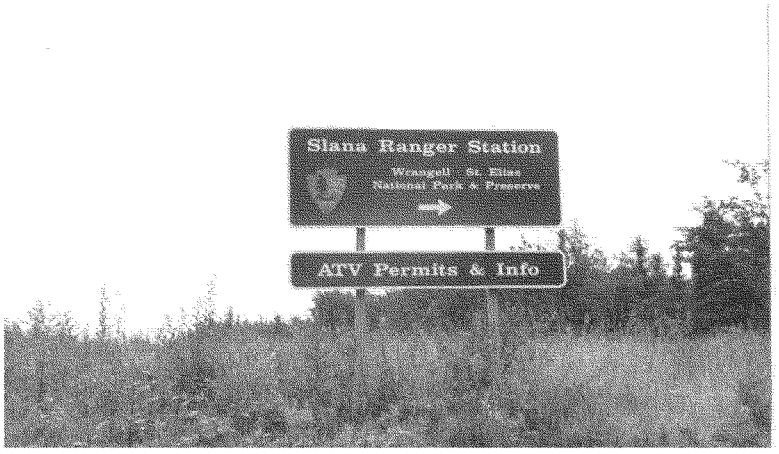
Wrangell-St. Elias National Park and Preserve

ANILCA Sec 201 (9) states, in part, "The park and preserve shall be managed ....To maintain unimpaired the scenic beauty and quality of the high mountain peaks, foothills, glacial systems, lakes, and streams, valleys, and coastal landscapes in their natural state; to protect habitat for, and populations of fish and wildlife..."

Wrangell-St. Elias National Park and Preserve permits the use of ATVs for both subsistence and recreational purposes, despite the fact that no park-specific ATV access regulations have been promulgated. The NPS Alaska Regional Office

Wrangell-St. Elias National Park & Preserve Visitor Contact Station

unilaterally decided to forgo the standard process of codifying access regulations. Instead, it inserted language in the



park's General Management Plan (GMP) outlining access management.

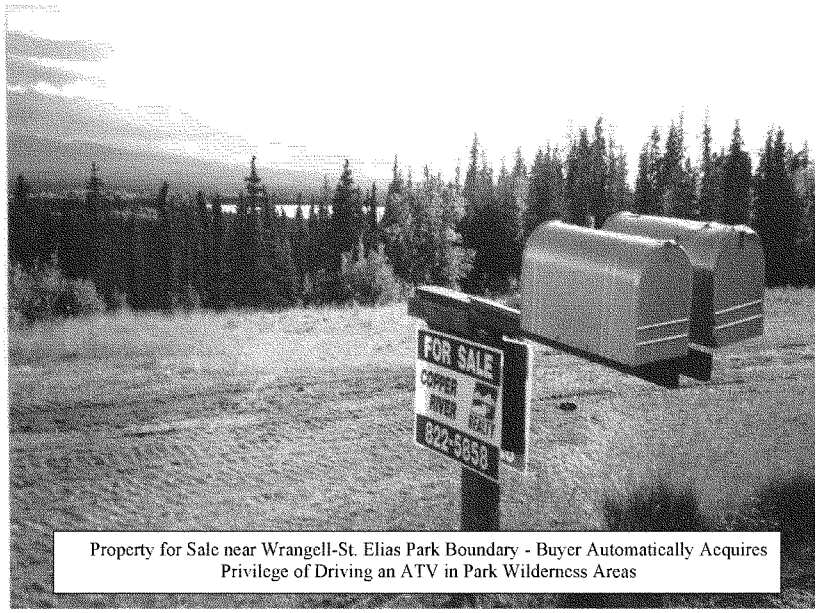
Subsistence Access: The GMP states, "The use of ORVs/ATVs by local residents for subsistence purposes may be permitted on designated routes, where the use is customary and traditional under a permit system ... The superintendent will designate routes in accordance with 36 CFR 13.46. Currently, ORV use is limited to existing routes under permits issued by the superintendent." (Wrangell-St. Elias General Management Plan, 1986) (Emphasis added).

Fourteen years have passed since the publication of the park GMP. Park management has yet to take action to designate subsistence ATV routes or to confine such use to trails and routes existing prior to the passage of ANILCA. Despite GMP language to the contrary, local residents are not required to obtain ATV use permits. ATVs for subsistence purposes are allowed throughout the park without regard to permits, routes, trails, sensitive wildlife habitat or wilderness designation. An ATV user found to be crossing an area previously unmarked by such use will unlikely be stopped if it is determined he resides in a designated subsistence resident zone. In effect, none of the ATV management guidelines established by the GMP have been implemented.

As originally intended, the term "subsistence resident zone" was to identify significant concentrations of persons having a historic pattern of subsistence use of the lands in the park before its establishment. It was believed this approach would reduce the burden of issuing large numbers of individual subsistence use permits. Thus, residents of small, isolated rural communities consisting primarily of historic users would be given blanket coverage. Those with a demonstrated subsistence history living outside such zones would be assigned special subsistence use permits. Descendents of historic users would assume subsistence privileges so long as they continued to reside in the general area of the park.

Wrangell-St. Elias management opted for a broad interpretation of a subsistence resident zone. This was done, in part, to avoid the politically sensitive issue of identifying eligible users residing outside more restricted zones. Had the NPS chosen to use a narrower definition, numerous local residents would have been ineligible for subsistence privileges. The effect of the NPS liberal approach was to open the park to a far greater number of resident users whose ranks continue to grow.

As implemented by the park, the term "resident zone community" encompasses areas extending well over a dozen



Property for Sale near Wrangell-St. Elias Park Boundary - Buyer Automatically Acquires Privilege of Driving an ATV in Park Wilderness Areas

miles, including sparsely settled lands. The park has been receptive to demands for subsistence zone status from communities and individuals as far away as the Alaska Highway. Resident zone boundaries are broadly drawn embracing large numbers of residents with no established history of subsistence activity. Anyone relocating into one of these broadly defined zones automatically becomes eligible for subsistence privileges within the park, including unrestricted use of ATVs on parklands.

Residents entering the park for the purpose of hunting during the summer and early fall months use a variety of ATVs. These include so-called monster trucks with oversized tires, heavy dual track Weasels, amphibious Argos and quads. Some residents drive their vehicles across the frozen Copper River during the winter months and cache them within the park boundary for later use in the summer and fall.

Recreational Access: The Wrangell-St. Elias general management plan acknowledges that ATVs use off established roads and parking areas results in significant resource damage contrary to existing laws and policies. The GMP goes on to state, "Limited recreational use by motorized vehicles of designated primitive park roads will be subject to permits and restrictions necessary to prevent resource damage." (Emphasis added). NPS policy directs, "Park roads will be well constructed, reflect the highest principles of park design, enhance the visitor experience, and be sensitive to environmental factors..." (NPS Policies, U.S. Dept. of the Interior 1988, Chap. 9.8). The majority of ATV routes found in Wrangell-St. Elias fall far short of these standards.

Trail Conditions: This writer spent a total of five days walking and examining ATV trails radiating off the Nabesna Road in the northern region of the park. In truth, these so-called primitive roads were more often troughs than trails, filled with a viscous quagmire of shredded vegetation, pulverized organic soil and stagnant water. Where they ascend

relatively well-drained slopes, rapid runoff of melting snow and rain has sluiced away the organic soil exposing sterile rock and gravel. Natural drainage patterns have been altered. Lightly impacted and less fragile lands may recover to a reasonable facsimile of their original natural state within several years when use ceases. However, large areas of more fragile or heavily used lands may not achieve full recovery for decades and likely much longer.

Were the above conditions confined to single narrow lanes, the impact would still be unacceptable under existing laws and policy. However, trails are more webs of crisscrossing tracks with side trails branching off into adjacent terrain. In terms of affected acreage, damage severity and slow recovery, Wrangell-St. Elias National Park and Preserve is undoubtedly one of the nation's most heavily ATV-impacted parks.

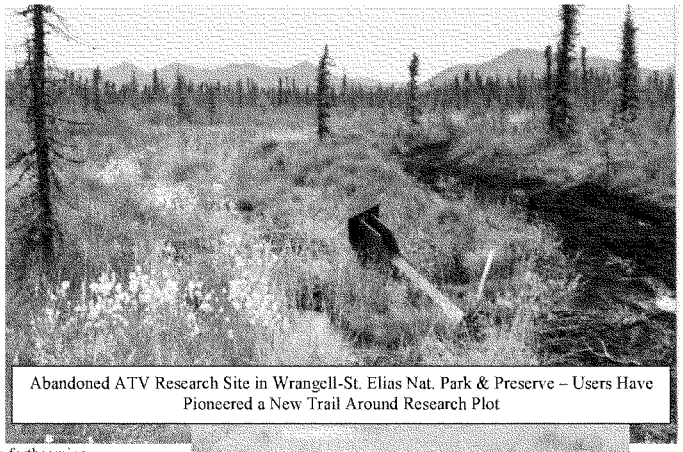
The Park Service's contention that ATV use occurs only on established park roads is contradicted by its own publication, "Wrangell-St. Elias National Park and Preserve Hiking, Biking & *ATV Trails* in the Areas." The terms, "trailhead" and "trail" are found throughout the text. Trails are described as beginning at the end of unimproved access roads, including the following: "... find the BLM T[illegible] the road north *until it becomes a trail*." "This *trail* is [illegible] vehicles. ... The *trail* may be traveled for miles o[illegible]S references impact studies and mitigation research on ATV trails and encourages driver cooperation. The document also states, "Past research has shown that ATV use degrades soil and vegetative resources ..."(Wrangell-St. Elias National Park and Preserve ATV Permits). Despite the fact that management acknowledges the existence of recreational ATV trails within the park, the National Park Service has taken no action to officially sanction these trails as mandated by law and policy.

Severely Impacted ATV Trail – Wrangell-St. Elias NP&P

Park ATV Research: Concern over ATV access led the Park Service to initiate research into ATV impacts in Wrangell-St. Elias soon after the passage of ANILCA. Research efforts focused primarily on physical impacts to park soils and did not examine possible impacts to waterways, wildlife and other park users. Experiments included driving several types of all-terrain vehicles across test plots to determine levels of impact. The park GMP referenced the study then in progress asserting that research results would be employed to fashion guidelines for the management of ATV access.

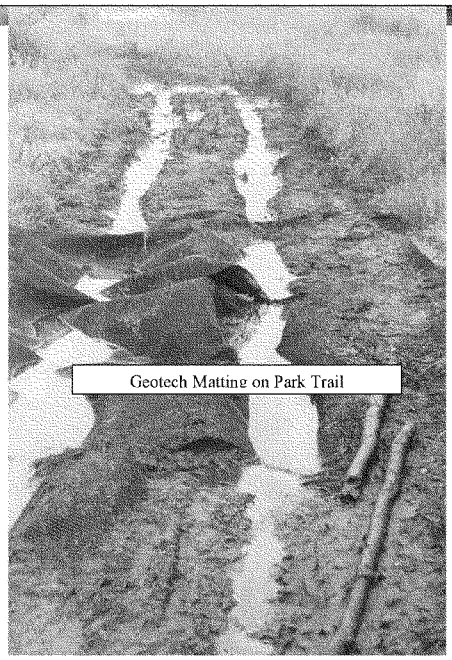
In 1985, the findings of the Wrangell-Saint Elias ATV research were published. In part, the report concluded that ATVs cause significant and long-lasting environmental damage. It proposed, as a first step, that a formally designated trail system for legal ATV uses be established and a total ban of ATV use be placed on trails not part of the system. The study also recommended actions to mitigate environmental damage. (Racine & Ahlstrand 1985)

Rather than using the ATV research results as directed by the park GMP, the NPS chose to initiate another study. This follow-up research did not begin until 1995, a full decade after the publication of the original report. When questioned in August of 2000, regarding the status of this follow up work, park management indicated that the study had not been productive and was largely inactive. NPS regional officials provided the same assessment. At a later date, this response was modified to indicate that research was ongoing and a report would eventually be forthcoming.



Abandoned ATV Research Site in Wrangell-St. Elias Nat. Park & Preserve – Users Have Pioneered a New Trail Around Research Plot

The writer visited three ATV research test sites in the park. The plots consisted of synthetic matting secured to the surface of ATV trails. Markers were placed alongside the trails leading to the test plots. Signs directed drivers to remain on the trail while crossing the test plots. The condition of the test plots indicated that monitoring and maintenance had been inactive for two or more years. Signs and stakes had fallen. Test materials were partially or fully submerged in standing water. ATV users had bypassed test areas due to trail deterioration pioneering new routes around them. A park employee confided that research funding had been withdrawn to avoid "throwing good money after bad."



Geotech Matting on Park Trail

Katmai National Park and Preserve:

ATV Management Program: In 1987, Katmai National Park and Preserve initiated a program to reduce illegal ATV incursions. Individuals residing in the King Salmon/Naknek area, including the King Salmon Air Force Base, regularly entered the western boundary of the park on ATVs for the purpose of hunting, trapping and recreational riding. Based on NPS regulations and the park general management plan, ATV use on parklands off established roads is illegal and poses a threat to park resources. Katmai National Park is legislatively closed to subsistence as

well as sport hunting. Aerial and surface patrols discovered ATV trails extending well into the former Katmai National Monument.

The park staff devised an ATV management strategy emphasizing public outreach. Boundary maps and literature on access regulations and park resource concerns were provided to local residents. Park representatives organized and attended public meetings to explain and respond to ATV access questions and concerns. Boundary markers were erected in areas of particularly heavy use. The park worked closely with the U.S. Fish and Wildlife Service, King Salmon Air Force Base command, local Native organizations and the regional Fish and Game Advisory Council. Rangers contacted individuals entering the park on ATVs requesting their cooperation. Aerial patrols were carried out to determine the full extent of ATV incursions throughout the park.

The Katmai ATV management program initially encountered local resistance and criticism, although some residents expressed support. Pressure to terminate the program was applied at local, state and Congressional levels. Over a period of two years of effort, public sentiment gradually shifted as evidenced by a formal resolution of support by the local Fish and Game Advisory Council. Additionally, the King Salmon Air Force Base formed a volunteer Wildlife Ethics Committee to assist park personnel in preventing illegal ATV incursions and protecting park resources. The group became a source of volunteer labor in maintaining park trails and facilities. Illegal ATV incursions into the park declined significantly over the life of the program.

In early 1990, the Katmai ATV management program was discontinued. Based on information provided by local residents and park personnel, incursions into the park rapidly increased quickly returning to and eventually exceeding the levels encountered in 1987.

Subsistence ATV Access: In the mid 1990s, the community of Kakhanok on the south sbore of Lake Iliamna petitioned the Park Service to permit subsistence ATV access to Katmai National Preserve. Petitioners asserted a long-standing history of entering the preserve via ATV for the purpose of hunting. Park management initiated a study of these claims. Past park superintendents and other former park personnel familiar with local access patterns were questioned as their knowledge of the issue. All former park managers and other employees familiar with the area in question concurred that there was no prior evidence of regular ATV access in the northern preserve. A draft of the research report was submitted to the park in the summer of 2000. The writer was unable to obtain a copy of this document.

Based on input from park representatives, the writer infers the park practices an informal policy of not actively monitoring or enforcing restrictions on ATV incursions into the northern preserve section of Katmai. These incursions violate NPS regulations and agency policy.

It is politically difficult for the Park Service to deny subsistence ATV access to residents living north of the preserve boundary while illegal incursions continue to occur along the western boundary of the park. If the Park Service denies ATV access to an area open to subsistence and sport hunting, it must face the issue of illegal incursions along the western boundary where consumptive uses are prohibited.

Park management implied that residents living north of the preserve feel they are subject to unfair discrimination, because sport hunters may fly into the preserve to hunt game. This argument seems to resonate with some park staff. This rationale, however, is technically applicable to all national preserve lands in Alaska. If used as partial justification for opening Katmai Preserve to subsistence ATV access, it would set a precedent for opening all other NPS preserves in Alaska to subsistence ATV access.

Katmai National Park and Preserve is an ecologically diverse park with an impressive array of fish and wildlife resources. Large sections of Katmai consist of open dry tundra, wide coastal tidelands, and inland waterways that become solid surfaces for travel during winter months. As ATV technology evolves, these areas become increasingly attractive to those wishing to exploit untapped wildlife resources. The park is renowned for trophy-sized brown bears, moose and caribou as well as abundant furbearers. The fishing is world class. If ATV use is legitimized, it will be difficult to prevent incursions into pristine lands. The character of the park will be altered. Other communities will be encouraged to seek equal access privileges.

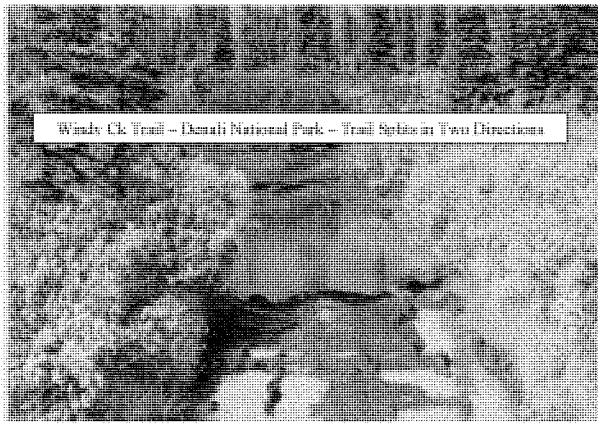
Denali National Park and Preserve

Denali National Park is the flagship for the National Park System in Alaska. Its central location, majestic scenery, viewable mega fauna, road and rail access and comfortable visitor accommodations have made Denali internationally famous. When Congress fashioned ANILCA, it expanded the park boundaries to encompass lands and resources integral to the character of the original Mt. McKinley National Park.

Prospecting and the development of mineral claims along the extremities of the former Mt. McKinley National Park included the moving of heavy equipment during winter months. This resulted in a number of bulldozed tracks known as cat trails. Some cat trails became winter routes for dog teams and later snowmobile users.

Subsistence research conducted prior to the passage of ANILCA determined that ATV use was not a traditional means of local subsistence access. The park General Management Plan states,"(T)he use of off-road vehicles in locations other than established roads or designated routes in units of the national park system is prohibited (E.O. 11644 and 11989 and 43 CFR 36.11(g)). Identification of possible rights-of-way does not constitute the designation of routes for off-road vehicle use."

Residents of Cantwell and other persons residing along the eastern boundary of the park have expressed a desire to use ATVs in addition to snowmachines as a means of subsistenee access within Denali National Park. No determination has been made as of the date of this report, although some park staff members have expressed sympathy with the request. Existing incursions violate NPS regulations and policy.


Windy Ck Trail – Denali National Park – Trail Splits in Two Directions

The Cantwell-Windy Creek Trail originates in Cantwell, near the eastern park boundary, and ascends a nearby low ridge. The first 1.5 miles consist of a single-lane jeep trail crossing relatively well-drained terrain. The trail descends into Windy Creek Valley where conditions markedly deteriorate. Boggy sections of the trail are in particularly poor condition. Heavy rutting, loss of topsoil, destruction of vegetation cover, ponding and braiding characterize wetter sections of the trail. At least two side trails branch off from the main route and ascend mountain slopes to the south. Bank erosion occurs where the trail crosses or parallels tributary streams. It was not possible for the writer to follow the trail to its end, but it appeared to extend into pre-ANILCA parklands and designated wilderness.

If the park accedes to the Cantwell ATV demands, it should be expected that other residents will seek similar privileges. Growing competition from non-local sport hunters on lands outside the park make the less hunted park wildlife increasingly attractive to local residents.

In addition to the Windy Creek Trail, other trails offer potential ATV access to Denali parklands. These include the Stampede Trail on the northeastern boundary, the Dunkle Mine Trail along the West Fork of the Chulitna River and the Peter's Creek Trail just outside the southeastern park boundary. Additionally, ATVs may he driven over frozen ground during winter months to remote access points along the park boundary and cached for later use. Machines may also be transported via boat and light aircraft to departure points near the park boundary. According to information provided by park representatives, there presently is no evidence of widespread ATV use on parklands outside the Windy Creek area. The potential, however, justifies active monitoring.

Glacier Bay National Park and Preserve:

ANILCA provides for the continuation of commercial fishing operations based at Dry Bay, including the use of motorized vehicles in support of fishing operations. However, the law directs the National Park Service to prevent significant expansion of such operations beyond the 1979 level and to protect park resources. (ANILCA Sec. 205).

Commercial fishermen utilize ATVs in logistical support of fishing activities. They also engage in recreational riding and sport hunting within the preserve. Vehicles in use include four wheelers, three wheelers, Jeeps, land cruisers, pickup trucks and tracked machines. The number of users varies from year-to-year and may be upwards of 200 in a given year.

The Park Service failed to carry out a detailed survey of equipment and facilities in place at the passage of ANILCA making it difficult to later establish limits. No ATV trails were designated nor effective limits established regarding vehicle size, weight or tread design. Commercial fishing permit holders have been allowed to import additional machines exceeding the numbers in use in 1979.

In 1980, there was an estimated 45 miles of primitive roads and seismic trails within the Dry Bay area. By 1990, the estimated total was 56 miles, a twenty percent increase. It seems safe to assume use continues to expand. In addition to primitive roads and seismic trails, there is a web of crisscrossing makeshift trails and paths. Use impacts extend southward down the beach well beyond the area of commercial fishing operations. There have been reports of ATVs crossing from preserve onto parklands.

Glacier Bay access concerns are not entirely limited to the northern preserve. ATVs are a popular means of travel in and around the community of Gustavus. These uses are largely on private or state owned lands, but adjacent parklands are potentially vulnerable. Additionally, Natives from nearby coastal villages have pressed demands for access to historic cultural sites within the park. This includes establishing subsistence fishing camps. It is likely that Native users will wish to employ ATVs in support of subsistence activities.

Lake Clark National Park and Preserve

Although not connected to a road system, Lake Clark NP&P is a popular destination for residents of south-central Alaska as well as many non-resident visitors to the state. Its close proximity to the population centers of Anchorage and the Kenai Peninsula combined with outstanding scenery; excellent fishing and abundant wildlife draw increasing numbers of visitors. The park boasts several private sport lodges and commercial guiding operations.

In 1991, ATV users were entering onto parklands in the vicinity of Port Alsworth on the south shore of Lake Clark. Local residents drove personal trucks and ATVs onto nearby parklands to harvest firewood. Although the park did not designate a route for this purpose, use was unofficially sanctioned. There were also indications of ATVs being used to travel from Port Alsworth to the western end of Kontrashibuna Lake over a non-designated trail.

Lake Clark proper is a navigable waterway under state management. During the winter months the lake usually freezes over becoming a smooth, hard-surface travel route for local residents driving trucks and personal ATVs. Some of this use branches off from the lake and enters onto federal parklands. Users harvest trees as firewood or building logs and engage in trapping and hunting. Where federal parklands are crossed, such use is in violation of federal regulations, unless the user asserts access to private inholdings.

Recent information indicates that ATV use within Lake Clark NP&P has significantly expanded since the 1991 survey. ATVs reportedly access lands in the Chinitna Bay area from Silver Salmon Creek to Shelter Cove. These are used in support of commercial fishing operations. ATV trails follow the upper shoreline benches crossing adjacent coastal meadows. Trails extend northward from the shoreline of Lake Iliamna up the Tazimina River crossing the park boundary. Hovercrafts reportedly have worked their way up Big River to Big River Lakes just outside the park boundary, and airboats have ascended the Stoney River into the park. Resource development on private lands in the Crescent River area on the east side of the park has resulted in the development of primitive roads. Residents of the Kenai Peninsula ferry ATVs across Cook Inlet to the park shoreline for recreational purposes.

Despite its rugged terrain, Lake Clark NP&P has an abundance of land suitable for ATV travel. As ATV technology evolves, local residents will likely wish to extend their subsistence activities further into parklands. Reportedly, the park, at one time, entertained the possibility of designating an ATV trail running northward from Lake Clark into the nearby open foothills as a convenient overland route for residents to carry out caribou hunting. Had such a route been established, ATV uses and impacts would undoubtedly have expanded. The several villages in and around the park coupled with the nearby population concentration of the Kenai Peninsula and the urban area of Anchorage will continue to exert pressures for increased access.

Lake Clark NP&P serves as a unique testing ground for the National Park Service in ATV management. Except for an overland transportation system, Lake Clark would likely rival Denali as a premier visitor destination. The combination of local and non-local users, sport and subsistence hunting, commercial fishing, internally based commercial operators, mixture of land status, and a rich array of mega fauna places the park in the center of the debate over how national parks in Alaska should be managed. Access management will play a major role in determining how adept the Park Service will be in meeting this challenge.

Gates of the Arctic National Park and Preserve

Gates of the Arctic National Park and Preserve was envisioned as a place where a major, pristine segment of the central Brooks Range wilderness would be preserved in perpetuity. Except for traditional, non-damaging subsistence use by a few scattered villages, the park would be maintained as the place where visitors could immerse themselves in an arctic alpine wilderness setting.

For all its austere, rugged beauty the Gates of the Arctic it is a fragile land with a paper-thin organic membrane covering permanently frozen sub soils. The growing season is measured in weeks offering little leeway for native plants and animals to carry out life's essential processes. As has been clearly documented in other arctic regions, human generated disturbances can have long lasting and far reaching environmental consequences.

Anaktuvuk Pass: The Inupiaq community of Anaktuvuk Pass is situated just inside the north central boundary of the park. It is surrounded on three sides by a combination of federal parklands and lands owned by the Arctic Slope Regional Corporation (ASRC), of which it is a part, and village corporation lands. When the park was created, the ASRC possessed lands extending outward from the village as far as Chandler Lake, approximately 25 miles west. The villagers of Anaktuvuk Pass historically utilized these lands for subsistence purposes and consider them an integral part of their cultural landscape. As Anaktuvuk Pass villagers acquired ATVs, they used them to travel overland to exploit lands and resources owned by their regional corporation. ATV incursions onto federal lands were relatively minor at the time.

Land Exchange: Shortly after Gates of the Arctic National Park was established, the Arctic Slope Regional Corporation approached the Department of the Interior with a proposal to exchange lands it owned in the Chandler Lake area for other federal lands holding greater promise of mineral resources. With the support of the Alaska Congressional Delegation, the exchange was consummated.

After the fact, the residents of Anaktuvuk Pass felt that they were not fully informed of the conditions of the land exchange. They came to realize that the former ASRC lands were now federally owned parklands subject to ATV access restrictions. Subsistence snowmachine access remained intact. After a long and occasionally contentious series of negotiations, the issue was settled, in part, through additional federal legislation. The Congress removed certain parklands from wilderness status. In exchange, the village corporation and ASRC provided for recreational non-motorized access across Native owned lands and agreed to forego the construction of roads or other permanent developments on much of the Native land within the park boundary. There was also an understanding that ATV access would not be granted the status as a customary and traditional means of subsistence access.

Research: In 1986, the National Park Service carried out a study of ATV impacts on lands and resources in the general area of Anaktuvuk Pass. This research was in response to expressed concerns by local residents that being restricted to a single corridor through non-wilderness parklands to Chandler Lake unduly constrained their access to subsistence resources. They alleged that limiting users to a narrow route concentrated impacts resulting in greater terrain damage. The study included the use of trail test sites, remote photo documentation, aerial surveys and on-site evaluations of

ATV uses. Local residents served as consultants and assistants for the project. Research efforts encountered some resistance from local residents, but compensating adjustments were made. (Kuntz and Troxel, 1988)

The research report published in 1988 states, "Use of all-terrain vehicles (ATV) by residents of Anaktuvuk Pass ... for access to traditional subsistence resources has increased rapidly over the past few years as vehicles have become more numerous in the village. The effects of this activity on vegetation and soils have become increasingly evident in all directions leading from the village. In only a few years time this has resulted in an extensive trail system that continues to evolve." (Ahlstrand et al, 1988) (Emphasis added).

Research determined that even light use by Argo ATVs has an adverse impact on native vegetation and soils. "Poorly drained wet terrain should always be avoided, especially fine textured soils, as a single pass by an ATV can leave a deeply rutted path with uprooted and abraded or broken plants. ... As rutted areas are subjected to additional use or subsidence, the ruts may deepen until the trail becomes impassable. Parallel trails become established to detour the impassable sections. Abandoned portions do not recover before the new parallel trails are also abandoned, consequently, the process repeats itself, resulting in an ever widening trail." (Alstrand et al, 1988) (Emphasis added).

In 1988, it was determined that ATV use originating in the community of Anaktuvuk Pass extended eastward to the headwaters of the Anaktuvuk River and westward into the drainage of Chandler Lake, a lateral distance of roughly fifty miles. Trails also stretched southward down the John River Valley for approximately twenty miles. Secondary trails radiated from these primary routes entering into side valleys and ascending lower mountain slopes. Additionally, ATV trails run both east and west along the north face of the Brooks Range. It is likely that this trail system has significantly expanded since 1988.

ATV Access Potential: The eastern region of the Gates has the potential for access incursions emanating from the Dalton Highway. On-going oil development on the North Slope may eventually link coastal communities to the road system. If this were to happen, it may encourage residents to transport ATVs via the highway to the foothills of the Brooks Range to hunt Dall sheep, caribou, and other wildlife.

In the past, ATV users from the communities of Wiseman and Nolan entered the eastern boundary of the park into the Glacier River Valley. Based on interviews with park representatives, this use has declined in recent years.

The upper Noatak River Valley within the Gates has the potential to experience ATV uses originating from communities along the upper Kobuk River and the Kotzebue Sound region. A low, relatively gentle pass north of the community of Ambler on the Redstone River allows easy snowmachine travel into the upper Noatak Valley. As ATV technology evolves and residents expand their use area, this route could eventually funnel ATV users into the upper Noatak.

During periods of moderately high water, the Noatak is navigable from its mouth by shallow draft outboard motorboats up to the boundary of Gates of the Arctic. Jet powered boats can easily ascend the river well beyond this point. Were such crafts to carry lightweight ATVs, the entire watershed of the upper Noatak River would be open to ATV travel. Relatively untouched wildlife populations, including Dall sheep, moose, and brown bears, make this an attractive region for ATV borne hunters.

Yukon-Charley Rivers National Preserve

ATV Use History: Prior to the 1980s, most off-road vehicle travel within the general region of Yukon-Charley Rivers National Preserve was associated with mineral prospecting and mining operations. Current use is primarily related to fishing and hunting activities. In 1991, one resident had a permit to operate an ATV in support of fish camp operations. It is unknown what authority was used to issue this permit.

Personal ATV use was virtually non-existent in Yukon Charley prior to 1985. After that time, access increased markedly. By the early '90s, it was not uncommon to see riverboats carrying one or two ATV traveling into the preserve. Most use originates in the villages of Eagle, Eagle Village and Circle. ATVs are off-loaded onto river bars, banks and dry sloughs to access nearby lowlands. Residents ferry ATVs to the Coal Creek landing and drive inland along the local mining road. In 1991, park personnel reported increasing ATV incursions and considered off-road vehicle access a serious concern.

Northwest Alaska Areas

Four national park units comprise the Northwest Alaska Areas; Kobuk Valley National Park, Cape Krusenstern National Monument, Noatak National Preserve and Bering Land Bridge National Preserve. Totaling over eleven million acres, these parks are a representative cross section of America's arctic wildlands. They encompass expansive sweeps of open tundra, sparsely forested river valleys, windswept coastlines, wide floodplains, long dormant lava flows, low mountains and broad valleys with major rivers twisting their way to the Chukchi Sea.

Cape Krusenstern National Monument:

Cape Krusenstern National Monument consists of a series of low beach ridges fronting the Chukchi Sea and backed by gentle rolling tundra hills. Shallow lagoons and marshlands are found just inland of the beach ridges. Cape Krusenstern NM is best known for ancient archeological sites scattered along the beach ridges. These chronicle some of the earliest human settlements of northwest Alaska. The monument hosts migratory birds, musk ox, caribou, wolves, wolverine and a small population of Dall sheep.

Private inholdings in the form of individual Native allotments and Native corporation lands fringe the southern coastline of the monument. Landowners are accorded reasonable access across monument lands to their properties so long as the use does not impair the resources and character of the monument. ANILCA also provides special access privileges for commercial fishing operations. A gravel road crosses the northern tip of the monument connecting the Red Dog open pit mine with a coastal pier for loading ore onto sea-going barges. These encumbrances complicate access management within the monument.

The writer was a member of the staff of Northwest Alaska Areas from 1984 through 1987. At the time, it was determined that ATV incursions and impacts were occurring along the entire coastal length of Cape Krusenstern National Monument. Secondary trails branched off from the primary coastal trail ascending the nearby highlands. The area of most intense ATV use took place along a 25-mile long section of coastal lands between the commercial fish camp of Sheshalik at the southeastern tip of the monument and Cape Krusenstern proper. A second heavily used trail extended between the community of Kivalina and the Red Dog Road in the northern section of the monument. ATV drivers used the road to gain access to nearby foothills.

Technically, travel above the beach line must be for the purpose of accessing private inholdings or in support of commercial fishing operations. Overland travel requires that the Park Service designate access routes. No such designations have been made. Other ATV travel on federally owned parklands violates NPS regulations and policy. The Park Service does not actively enforce these restrictions.

ATV uses threaten fragile natural resources in Cape Krusenstern National Monument. Loss of insulating vegetation and topsoil exposes underlying permafrost to thawing and subsidence. Surface scarring remains visible for centuries. Wildlife habitat is adversely affected.

Archeological sites within the monument occur at or very near the surface. ATVs crossing beach dunes cut into these sites churning and scattering artifacts destroying the original cultural context. Pothunters are attracted to exposed archeological sites mining them for collectable artifacts. Some artifacts find their way into the commercial market. "The Zinck study of Tangle Lakes off-road vehicle impacts on archeological sites ... concluded that established off-road vehicle (ORV) trails had affected archeological sites in the area. ... Primary or direct disturbances included the destruction of vegetation, increased potential for erosion, exposure of archeological materials to breakage and displacement, and loss of archeological context." It was also found that the leakage of hydrocarbon fuels contaminated sites, making it difficult to obtain accurate C14 dating. (Alstrand et al, 1974).

In January 2001, park management acknowledged that some ATV access does occur along the beach region of the park with occasional incursions inland via the Red Dog mine road. However, these uses were characterized as relatively infrequent and not resulting in significant resource impact. Commercial fishing and related ATV access has declined in recent years due to suppressed fish prices. Such use is likely to rebound when fish prices increase. Based on past observations, it would seem a more thorough survey of current ATV access is warranted.

Noatak National Preserve:

The Noatak National Preserve and the western section of the Gates of the Arctic National Park encompass all but the lower watershed of one of the nation's premier wild and scenic rivers. ANILCA directs, "The preserve shall be managed ... (t)o maintain the environmental integrity of the Noatak River and adjacent uplands within the preserve in such a manner as to assure the continuation of geological and biological processes unimpaired by adverse human activity; to protect habitat for, and populations of, fish and wildlife ...." (Emphasis added).

The Noatak Valley is generally broad. Except for thinly forested lowlands at the western extremity of the preserve, the cover is low tundra vegetation. Fringing mountain slopes are relatively gentle. The Noatak River courses through a maze of wide, flat gravel bars. These are ideal conditions for ATV travel.

In the late 1980s, ATV use penetrated into the preserve along the Kelly River and the lower Nimiuktuk River. Residents from the communities of Noatak and Kotzebue began ferrying ATVs via shallow draft riverboats up the Noatak River for fall hunting of moose, dall sheep and caribou.

In recent years flat-bottomed aluminum boats driven by water jet motors have gained popularity in northwest Alaska. These craft are able to navigate waters less than a foot in depth opening up areas much too shallow for conventional prop driven outboard motors. Jet boats offer an efficient means of ferrying compact ATVs along the length of the Noatak from the mouth of the river into the western boundary of the Gates of the Arctic National Park.

In January of 2001, park management expressed the opinion that ATV use within the preserve was relatively infrequent and does not pose an immediate concern. It was felt that indications of scattered use do not constitute significant resource concerns. There was no indication that the park is addressing these incursions.

Kobuk Valley National Park:

Setting: Kobuk Valley National Park embraces the broad valley and adjacent uplands of the middle Kobuk River. It features large sand dunes, expanses of mixed boreal forest and open tundra grasslands, lowland marshes and relatively gentle mountains to the north and south. The park is a major route for the semiannual migration of the western arctic caribou herd. A portion of this herd winters within the park. Moose are plentiful along with a variety of furbearers and seasonal migratory birds. Onion Portage on the eastern border of the park contains a major complex of archeological sites including some of the earliest human habitation sites in northwest Alaska.

The park is used for subsistence hunting and fishing by five Inupiaq communities, including the city of Kotzebue. Use is particularly heavy during the early fall when hunters from throughout the region converge on the middle Kobuk River to harvest caribou as they stream southward in the thousands. Less intense use takes place during the summer months when local residents establish fish camps along the river within the park.

A designated RS 2477 winter trail traverses the park from west to east. It is part of a 200-mile-long winter trail easement connecting the coastal community of Kotzebue with upper Kobuk River communities. This 25 foot-wide right-of-way roughly parallels the north bank of the Kobuk. The easement permits the use of small ATVs under 3000 pounds gross vehicle weight. Winter use of ATVs on the trail is relatively infrequent. A second 50-foot wide RS 2477 trail connects a jade mining claim in the northern mountains to a barge-landing site on the Kobuk River. Both large and small ATVs may use this route during winter months. Summer use is restricted to small ATVs of less than 3000 pounds gross vehicle weight.

Park GMP: The Kobuk Valley General Management Plan states, "(T)he use of off-road vehicles, other than snowmachines, is generally prohibited ... The recreational use of ATVs off established roads, parking areas, or other designated routes is prohibited. Section 1110(a) of ANILCA provides for the use of snowmachines, but not for ORVs other than snowmachines. ... An exception to the general prohibition on the use of ATVs ... is access to inholdings allowed under section 1110 of ANILCA. Access is guaranteed to nonfederal land, subsurface rights, and valid mining claims, but such access is subject to reasonable regulations to protect the values of the public lands crossed. ... The use of ORVs for access to inholdings may be allowed under 43 CFR 36.10 by the superintendent on a case-by-case basis on designated routes." The GMP further states, "The use of ORVs for subsistence is not allowed because the use has not been shown to be a traditional means of access." (Emphasis added) Other than the two designated RS2477 rights-of-

way, no other ATV trails or routes have been designated within Kobuk Valley National Park. Regarding access to private inholdings, the great majority of such properties are located along the banks of the Kobuk River and are easily accessible by boat during the summers and snowmobiles during the winter months.

Current uses: ATVs do enter the park during the summer and fall for hunting and other purposes. Drivers do not confine their travels within the designated 25-foot width of the RS 2477 trail frequently branching off into adjacent parklands. ATVs are ferried into the park via riverboat for hunting and other activities. Park management considers these incursions to be infrequent and a minor resource concern.

Bering Land Bridge National Preserve:

Of all the national park units in Alaska, the Bering Land Bridge is probably the most complex in terms of access management. The Seward Peninsula has a long history of mining operations, including the movement of heavy equipment overland to mineral claim sites. Mining declined during the 1940s, resulting in the abandonment of many mining settlements and operations. Some mining continues, although far below historic levels.

Limited reindeer grazing occurs within Bering Land Bridge National Preserve. ANILCA provides for this activity subject to reasonable regulations. This includes the use of motorized vehicles. In 1991, park management reported only limited use of ATVs in support of reindeer herding.

ANILCA allows for recreational access to the Serpentine Hot Springs area, although it does not specify ATV access. 17(b) easements across parklands provide for winter access over a 50-foot-wide route paralleling the Pinnel River to public lands and three 25-foot-wide trails from the village of Shishmaref to nearby public lands. These routes are open to two-and-three wheel vehicles and other small ATVs. A 100-foot-wide winter access route connects the village of Deering with the Taylor Highway. All of the above are closed to overland ATV use during months of thaw.

Numerous private inholdings, mineral claims and state lands are scattered in and around Bering Land Bridge National Preserve. According to the preserve GMP, these lands may be accessed via designated routes. "The use of ORVs for access to inholdings will only be allowed upon a finding that other customary and traditional methods of access will not provide adequate and feasible access. All ORV use will be subject to applicable state and federal laws and to permits and restrictions where necessary to prevent resource damage." (Bering Land Bridge National Preserve General Management Plan) (Emphasis added).

In the Bering Land Bridge GMP, the National Park Service made a formal finding that ATVs are not a customary and traditional means of subsistence access. The nse of ATVs on parklands for hunting, trapping, fishing and gathering violates federal regulations.

In 1991, a Park Service study determined that ATVs were entering onto parklands from coastal beaches. ATVs were also being transported by truck from Nome and other communities to departure points along the Taylor Highway. These ATVs were used for hunting in the preserve. At the time, park staff considered ATVs to pose a significant management issue and felt that use was likely to increase. Park personnel expressed reservations about actively enforcing the ban on ATV access due to political sensitivities and the likelihood of minimal agency support.

In January of 2001, park management confirmed that ATV use continues in the preserve. However, management assured the writer that ATV use is relatively light and not a significant resource issue. This apparent discrepancy between reported uses and concerns between 1991 and 2000 would seem to warrant further clarification.

Aniakchak National Monument and Preserve

Aniakchak NM&P is one of the most isolated national park units in the U.S. The park's most prominent feature is a large volcanic caldera. The lands around the caldera consist of thinly vegetated ash fields. Thick growths of willows and alders occur in narrow bands alongside streams. In addition to volcanic features, Aniakchak hosts an impressive array of mega fauna, including coastal brown bears, trophy size moose and caribou.

The Aniakchak GMP states, "Current access to and within Aniakchak is by aircraft, snowmachine, watercraft, tracked vehicle, and foot. ... Some of these access methods have the potential for causing resource damage. Because of this

the National Park Service will take various steps to manage access in a manner consistent with the purposes of the unit and other laws and regulations." The GMP goes on to say that Sec. 1110(a) of ANILCA does not provide for ATV access and that ATVs are not considered to be a customary and traditional means of subsistence access. "The use of ATVs for access to inholdings will only be allowed upon a finding that other customary and traditional methods of access will not provide adequate and feasible access." (Aniakchak National Monument and Preserve General Management Plan).

ATVs are off-loaded from commercial fishing boats onto the shores of Aniakchak NM&P and employed in the pursuit of wildlife. Users drive overland from the community of Port Heiden into northern section of the park. ATVs have been observed parked next to fixed commercial hunting guide camps within the preserve.

The Other Parks: ATV use in smaller or particularly rugged park units tends to be less extensive than in the larger national parks in Alaska. However, some use does take place. Kenai Fiords National Park at the southern tip of the Kenai Peninsula is largely protected from extensive ATV due to its steep and rugged terrain. However, ATV incursions have occurred in the vicinity of Exit Glacier and limited use has been observed in and around private inholdings along the park coastline. Sitka National Historic Park is a small urban park in southeast Alaska. Small ATVs have entered the park, but their use has been infrequent posing minor resource concerns.

Klondike Gold Rush National Historic Park includes the historic area of Dyea. This is a relatively level expanse of tidal marshes and open forest. It is connected by road to the community of Skagway. The land is cooperatively managed by the State of Alaska and the National Park Service. In 1991, it was reported that local residents of Skagway were driving personal ATVs into the Dyea flats resulting in a maze of worn trails and potentially threatening fragile historic sites and resources.

NPS Alaska Regional Office: The National Park Service is, by tradition, a decentralized agency with substantial management authority delegated to individual park superintendents. This is in keeping with the fact that most units of the National Park System outside of Alaska are the products of separate acts of Congress or presidential proclamation. Prior to ANILCA, a national park usually came into existence with its own unique enabling legislation setting forth special exceptions to the basic standards of the NPS Organic Act.

ANILCA presented the National Park Service with major new challenges. In addition to more than doubling the total size of the National Park System, the act set forth broad mandates with universal application to millions of acres of new parklands. This is particularly true in regard to subsistence and access. This multi-park applicability argues for a degree of coordination and uniformity of management between parks exceeding historic NPS operating practices. The task of assuring continuity between parks is logically the responsibility of the NPS Alaska Regional Office.

In 1984, the National Park Service established a special Subsistence Division within the Alaska Regional Office. The purpose of this division was to orient new park personnel as to the complexities of subsistence management, coordinate park subsistence resource advisory councils, assist in the promulgation of special ANILCA-related regulations and advise park managers and senior level regional officials as to unique issues with regionwide applicability. While the division served primarily in an advisory capacity, its oversight role encouraged consistency between the parks in the interpretation and implementation of ANILCA.

In 1994, the Park Service disbanded the Subsistence Division and reverted to a more traditional decentralized park operation. Although the regional office continued to provide limited ANILCA-related assistance to the parks, regional oversight and coordination of subsistence and access management largely ceased.

Even prior to dissolving the Subsistence Division, the Park Service in Alaska displayed little enthusiasm for coordinating access management between individual parks. Managers were expected to become familiar with the provisions of ANILCA and to translate them on a park-by-park basis. While this approach encouraged a degree of flexibility, it resulted in differing and sometimes conflicting interpretations and application of laws, regulations and policies.

Absent regional coordination and guidance, individual park managers are hesitant to unilaterally tackle the highly sensitive and potentially volatile issue of ATV access. To do so could stir resentment by ATV users, particularly local

residents, and attract negative political attention at the local, state and Congressional Delegation levels. Potential career implications are daunting.

During an interview with senior NPS Alaska Regional officials, the writer was informed that the oversight and coordination role of the regional office has diminished markedly since the mid 1990s, following a servicewide reorganization. Individual park operations now have primary responsibility for determining management direction and issue resolution. The regional office functions primarily in a support capacity for park projects and programs. There is no regional program for tracking access issues, although regional office specialists do assist in trail mitigation and research. While statewide ATV use has increased significantly, the interview participants felt that use in the parks has probably not expanded over the past ten years. They offered no basis for this assumption. There is no clear comprehensive view of ATV access at the regional level.

Regional officials cited Denali National Park an example of ATV management at the park level. Park management informally designated a subsistence ATV route into the park from the community of Cantwell with the stipulation that users remain on the trail. When questioned as to the procedure followed in making this designation, including public participation, the regional respondents were unclear as to how it had been accomplished. No special regulations were promulgated. The park General Management Plan specifically states ATV use is not a traditional means of subsistence access. A change in this determination warrants a formal GMP amendment process, including public involvement. When this was pointed out, the informants seemed uncertain as to the need for a formal process.

According to available information, Denali National Park unilaterally took an informal action to permit a potentially adverse use of parklands. This action is contrary to applicable laws, regulations, policies and agency planning procedures. The writer later visited the Cantwell trail and discovered that use was indeed having a significant impact on surface resources, and users were not confining their travels to a single track.

Regional office interview participants expressed the opinion that access regulations promulgated in 1986 for Alaska parks are not in keeping with the intent of title XI of ANILCA, increasing management difficulty. It was suggested there is a need for the conservation community to work with the NPS to develop a coherent strategy for the management of ATVs. One participant expressed the concern that there is no uniform system for dealing with ATV issues resulting in differing and conflicting approaches between park units. This contributes to inefficiency in overall management. It is clear that the NPS Alaska Regional Office plays a minimal role in coordinating access management between park units.

BUREAU OF LAND MANAGEMENT

The BLM is generally considered the federal land managing agency most oriented to multiple and relatively liberal use of federal lands. Although governed by EO 11644, access regulations and management are typically less restrictive than those on lands managed by the National Park Service or the Fish and Wildlife Service.

Southwestern Alaska

With the exception of a small block of land surrounding the BLM office complex in Anchorage, all BLM lands in southwestern Alaska are open to the use of all-terrain vehicles. The Alaska office of the BLM is awaiting the completion of a national Off-Highway Vehicle Management Plan to set guidelines for local ATV management. This plan will allow for regional variations based on law and unique regional circumstances. Althongh the BLM has the authority to close lands to ATV access if damage is taking place, no such closures have been imposed in southwestern Alaska.

When asked if ATV use is damaging BLM lands in southwestern Alaska, an agency representative responded by saying that it is difficult to define "damage." The official initially expressed the belief that ATV use is relatively light, because the area is not connected to the state highway system. He was unable to provide information regarding ATV access originating in rural villages, although he acknowledged that such use occurs. The agency does not actively monitor ATV access nor enforce ATV restrictions in the district. There is no effort to coordinate ATV management with other land managing agencies.

The BLM representative discussed the practice of light, compact ATVs being transported in single engine aircraft to remote airstrips in southwestern Alaska. These machines are off-loaded and used in hunting operations. Landing strips suitable for Beaver type aircraft have webs of ATV trails radiating off into the surrounding countryside. Jet boat traffic is also on the increase in rural south central Alaska. On reflection, the BLM informant acknowledged ATV use is definitely expanding due to rapid improvements in the technology and an increasing user population.

Glenallen District

The Glenallen District Office oversees the management of BLM lands in south central Alaska. The district extends east of the George Parks Highway to the Canadian border and south of the Alaska Range to the Gulf of Alaska. It encompasses some of the most spectacular and popular recreational lands in the state.

The Denali Highway on the north and the Glenn Highway on the south provide ready access to some of Alaska's most attractive public lands. Well over half the population of Alaska is within a comfortable day's drive of the region. Rugged, glacier-clad mountain ranges are separated by broad expanses of low rolling hills, broad valleys and open tundra plains. The region attracts cross-country skiers and snowmobilers during winter months and hikers, boaters and off-road vehicle enthusiasts in the summer and fall. The greatest ATV use takes place in the fall in conjunction with the sport hunting of moose and caribou. ATVs are also used in sport and subsistence fishing efforts.

The writer interviewed three senior employees in the BLM Glenallen Office. The participants confirmed that ATV use in the region has increased substantially since the early 1980s. Prior to this time, most off-road vehicles consisted of a relatively few large, four-wheel drive trucks on oversized tires, Weasels, Nodwells and other sizeable vehicles. It was not until the advent of 4-wheelers and Argo-type machines in the 1980s that off-road vehicle use virtually exploded. ATV use continues to expand rapidly.

The majority of ATV users of the Glenallen District hail from the suburban complexes of Anchorage and Fairbanks. Local residents make up a relatively small but active fraction of the total user group. Non-Natives comprise the great bulk of ATV users. Most Natives tend to hunt and fish in the areas around their communities, whereas non-Natives are more inclined to travel longer distances to engage in ATV-related activities.

The BLM places no restrictions on access to private holdings. If a landowner makes frequent use of a given route, he may be requested to obtain a designated route permit. Approximately half a dozen commercial lodges located on leased BLM lands utilize ATVs in support of their operations. Mining access consists principally of the movement of heavy equipment overland to mineral claims. Mining related access is minor in comparison with recreational ATV use. Local businesses now rent all-terrain vehicles to visitors wishing to recreate in the general region.

The heaviest ATV traffic occurs during a 45-day period in association with sport and subsistence hunting. The Alaska Department of Fish and Game issues special subsistence hunting permits, referred to as Tier II hunts, for caribou harvest. An estimated 8000 Tier II hunters access BLM lands in the Glenallen District. An additional 2580 federal hunting permits were issued for the Delta area in the year 2000. At least 95% of hunters use ATVs in their hunts. Particularly heavy ATV use takes place in the Alphabet Hills south of the Denali Highway and in the Talkeetna Mountains off the Richardson Highway. There are countless trailheads along the local road system. Particularly heavily used trailheads are found near the Eureka Lodge, Chistochina, Butte Lake, Jack Lake and Little Delta.

The practice of combining heavy and light ATVs is a frequently used travel strategy in the Delta Region. Large ATVs, such as tracked Weasels or modified heavy military surplus trucks, pioneer trails through particularly thick brush. Once the larger machines break open a new route, smaller ATVs are able to access and exploit lands previously not impacted by ATV use. The writer found this same pattern common along both the Denali and Glenn Highways.

The only restrictions placed on ATV access in the region occur in the Tangle Lake Archeological District along the Denali Highway. The BLM designated and marked ATV trails through locations of known or suspected archeological site concentrations. These restrictions are removed when it is determined that an area is relatively clear of cultural remains

The BLM informants were not aware of agency-sponsored research into ATV access environmental impacts. Closures in response to environmental damage are rarely if ever imposed. At the time of the writer's visit, the Glenallen District

Office did not have a law-enforcement employee on staff. Active enforcement of ATV access regulations is minimal to nonexistent. Other than infrequent surveys of trail conditions along the road corridors and a few streams, there is no systematic ATV access-monitoring program.

The writer visited several sites of intense ATV activity along the Denali and Glenn Highways. This included camping and talking with ATV users, walking trails and recording impacts. Highway vehicles transporting off-road vehicles were common sights on the road. Vehicles ranging from small pickup trucks to freight size tractor trailers towed or carried 4-and-6 wheel ATVs, Argos, military surplus Weasels, Cushmans and custom-built 4-wheel drive trucks with huge tires. RVs, pickup trucks and vans crowded gravel pit pullouts along the side of the road. Parties of camouflage-clad hunters mounted on ATVs traveled at high speeds along the shoulder of the highway. Convoys of ATVs were observed winding their way cross-country. In many ways, the scene was reminiscent of a large-scale mechanized military operation.

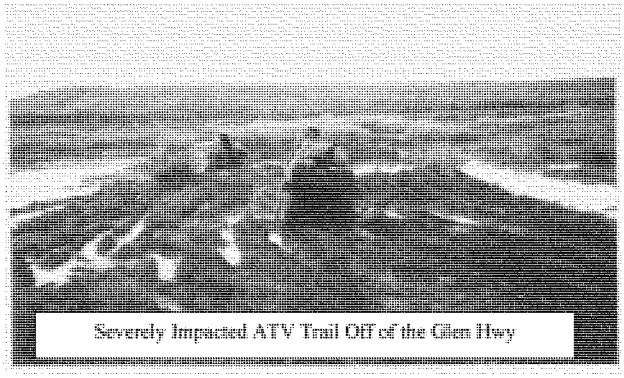
Semi Truck Hauling ATVs on Denali Hwy

ATV users told the writer of traveling in excess of twenty miles off the Denali Highway to reach hunting areas. Machines were equipped with global positioning systems and two-way radios. Treks usually involved several machines traveling in a convoy, often accompanied by one or two large tracked or wheeled vehicles. Many users established base camps at remote sites well in advance of the hunting season.

Some ATV users opt to stay in commercial lodg stations, markets, taverns and restaurants, contributing the local economy.

ATV trails radiate from either side of the Denali Highway, crisscrossing as they extend into the surrounding countryside. On many drier knolls and ridges the vegetation and topsoil have been worn away, exposing mineral soil and initiating erosion. Where trails traverse permafrost and wetland terrain, glistening dark scars contrast starkly with the natural green and rust colors of the tundra. Trails crossing wetlands are often in excess of thirty feet wide. Heavy rutting is common. These conditions substantially exceed the standards set forth in EO 11644 and applicable federal regulations.

Conditions along sections of the Glenn Highway mirror those of the Denali Highway although thicker vegetation and more topographical relief partially conceal the full extent of ATV impacts. Use is particularly heavy in the highlands and foothills fringing the eastern slopes of the Talkeetna Mountains.



Severely Impacted ATV Trail Off of the Glen Hwy

As with the Denali Highway, hunting season sees a large volume of ATV-related traffic, particularly on weekends and holidays. Pullout areas are populated with motor homes, vans, SUVs and pickup trucks. ATVs of various sizes and types depart the roadside sites in the early morning, coming and going throughout the day. Some drivers return to the parking areas in the evenings, while others remain in the field at remote camps.

Trails are so masticated and waterlogged in spots as to be virtually impassible by all but the largest vehicles. Users of smaller ATVs must drive off the sides of the trails in search of firmer ground. This further spreads the impact. Large ATVs were observed sinking two feet or more into trail bogs. An Alaska Fish and Game enforcement officer related driving her ATV roughly forty miles to the north with no end to the trail in sight. She described a latticework of side trails branching off from main routes.

The above conditions far exceed the most liberal interpretation of access laws and regulations. The on-going loss of environmental integrity can only be described as extreme.

White Mountains National Recreational Area (WMNRA)

The White Mountain NRA consists of approximately one million acres of mixed boreal forests and alpine tundra spread across a system of low mountains and rolling foothills. The southwestern boundary of the NRA is approximately 35 miles northeast of Fairbanks. The Elliot Highway skirts the western boundary of the NRA, and the Steese Highway parallels its southern boundary. Both of these roads draw heavy use from Fairbanks and satellite communities. The NRA's eastern boundary abuts the Steese National Conservation Area. Hunting, trapping, fishing, camping, ATV driving, snowmobiling and cross-country skiing are popular activities in the WMNRA.

In 1986, the BLM published a Record of Decision Resource Management Plan (RMP) for the White Mt. NRA. In part, this document establishes basic guidelines for the management of off-road vehicles. It sets forth ATV weight limits, guidelines for access to mineral claims and private inholdings and a program outline for monitoring uses and impacts. The RMP also establishes parameters for restricting ATV access based on environmental concerns. As an addendum to the RMP, the BLM published an Off Highway Vehicle Monitoring Plan for the WMNRA. The plan sets forth four main objectives: (1) document existing trails known to receive OHV use, (2) develop a methodology that, when implemented, will document trail conditions and new disturbances caused by OHVs, (3) establish a threshold as to when impacts are excessive, and (4) provide procedures for monitoring recovery when implementing rehabilitation projects, closures and restrictions.

The White Mountain NRA is divided into access management zones. The foothills along the western and southern segments of the NRA are open year-round to ATVs not exceeding 1500 pounds. The highlands, making up roughly 50% of the NRA are closed to summer ATV use. The Beaver Creek National Wild and Scenic River corridor is also closed to summer use of ATVs. Three relatively small segments of the NRA are closed year-round to all mechanical vehicle travel. The agency distributes to the general public and unit users maps and handouts of rules governing ATV use in the WMNRA.

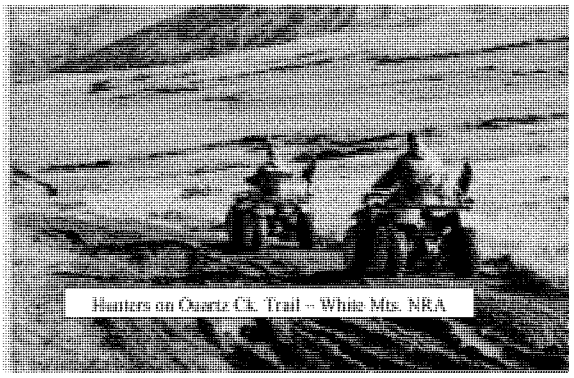
The BLM has constructed or designated hundreds of miles of winter snowmachine trails and a smaller number of ATV trails for summer use within the NRA. This development involved the use of a D-4 Cat and backhoe to construct drainage trenches, and runoff controls. These improvements are designed to encourage ATV users to remain on the established trails, although they are not required to comply.

Area Manager Lon Kelly described the NRA management philosophy as "people on the ground." He spoke of NRA employees as a team supporting one another in managing access, providing visitor services and protecting the resources and values of the unit. Every employee practices outreach to notify visitors of access rules and concerns. The NRA has a single law enforcement ranger. This ranger issues citations for ATV-related violations, particularly for incursions into closed areas. The writer had the opportunity to meet this ranger during a law enforcement patrol. Mr. Kelly spoke with obvious pride about the efforts of the staff to manage access. He said that there is a need for improved methods of trail construction and maintenance that reduce environmental impacts.

The writer visited the White Mountain NRA and hiked a portion of the Quartz Creek Trail. The trail begins in the upper reaches of Nome Creek where it ascends a long, relatively gentle slope. It then crosses alpine tundra highlands

before descending into Quartz Creek, an upper tributary of Beaver Creek. The lands to the east of this trail are closed to summer ATV use.

The initial two miles of Quartz Creek Trail are relatively well constructed with bales of hay placed in drainage ditches to control runoff. Despite these efforts, steeper sections of the trail suffer from erosion. Soil loss along more heavily eroded sections of the trail is in excess of eighteen inches in depth with trail width ranging from six to nine feet. Trail braiding occurs along the upper slopes where drivers detour around washouts. Conditions deteriorate as the trail crosses the rolling uplands, due primarily to increased soil moisture. Trail width here averages ten-to-12 feet. Mitigation through channeling of melting permafrost and some shoring with rocks has had mixed results. Numerous side trails branch off to the west to ascend nearby knolls or descend into the valley below. Some illegal access was evident to the west of the trail, although impacts are relatively light. Strategically placed signs identify lands closed to ATV access.



Hunters on Quartz Ck. Trail – White Mts. NRA

The writer's overall impression of ATV access management by the White Mountains National Recreational Area was generally positive, although serious impact is taking place. Management has identified sections of the unit particularly vulnerable to ATV impact, including highly sensitive natural areas. Basic planning early in the history of the unit established reasonable access management goals and procedures. The WMNRA is logically divided into access management zones. The staff appears to have a positive rapport with the ATV user community. There is an active enforcement program in place. Trails are planned and constructed to discourage the pioneering of new routes. It should be noted, however, that user compliance is mixed.

Dalton Highway Corridor

The BLM and the State of Alaska cooperatively manage a corridor of federal lands along the northern section of the Trans Alaska Pipeline. The corridor provides a secure route for the pipeline preventing conflicting uses and developments.

The BLM generally defers to the state in access management. Although the state has passed legislation governing ATV access, it has not promulgated regulations to implement the law. Recreational ATV access is not permitted. However, local residents in such communities as Coldfoot and Wiseman are not subject to this exclusion. These residents may travel via ATV and use firearms for hunting within the corridor. Any person, regardless of residency, engaging in trapping may use ATVs, as trapping is defined as a permitted commercial activity.

Airboats are permitted within the corridor. Persons transport airboats from as far south as the Matanuska Valley to the headwaters of the Kunuti River and the upper Middle Fork of the Koyukuk River. These crafts are launched into shallow streams to carry out moose hunting. Airboat users cross into the Kunuti Wildlife Refuge, where they compete with local Native residents for available game. The noisy, high profile passage of an airboat can drive sensitive wildlife

Airboat on Shallow Mountain Stream

away from the edges of the river and interfere with mating and migratory patterns.

It is likely that oil exploration and development within NPRA will eventually result in an all-weather road connection between the Dalton Highway and the Colville River and possibly further west. If this occurs, it should be anticipated that local residents will take advantage of the road to transport ATVs to areas along the Dalton Highway, including the Brooks Range, for the purpose of hunting. It is also likely that persons living outside the region will wish to bring jet boats, airboats and light ATVs into the North Slope to access the Colville River drainage and other public lands.

National Petroleum Reserve Alaska (NPRA)

The NPRA extends from the Colville River westward to the Arctic Ocean and from Point Barrow in the north to the north slopes of the Brooks Range in the south. It embraces some of North America's most critical summer habitat for migratory birds, some of which travel thousands of miles to nest and rear their young. The western section of the reserve includes the calving grounds for a large percentage of the western arctic caribou herd. Predominately a massive wetland, NPRA waters are important habitat for a variety of marine life. Ancient archeological sites are scattered along the ocean shoreline, major streams, and uplands. While NPRA is not as picturesque as the Arctic National Wildlife Refuge, it is equally important as wildlife habitat.

The writer interviewed BLM officials based in Fairbanks regarding the management of ATV access on NPRA but obtained little specific information. BLM's primary focus in access management is the use of relatively large vehicles in oil and mineral exploration. There is apparently no concerted effort to track the use and impacts of privately used all-terrain vehicles. The writer received vague responses to questions regarding ATV use patterns on BLM lands by local communities. Agency informants did agree that individual ATV use was probably increasing, but they seemed to consider it a relatively low management priority.

An Argo dealer in Anchorage told of doing brisk sales of Argo ATVs to North Slope residents. ATVs are also retailed locally at the village level. Air and jet powered boats are increasingly common on the shallow waterways of the North Slope. Informants familiar with the area spoke of the increasing use of shallow draft boats to move ATVs to distant locations and a growing network of ATV trails within the NPRA.

Based on information obtained, there is little effort on the part of the BLM to monitor personal ATV use or to work with local residents to minimize impacts to fragile ecosystems.

U.S. National Forest Service (NFS)

Although national forest lands in Alaska are generally steep rugged terrain and expanses of heavy tree cover, ATV use is widespread. ATV use takes place on forest roads, coastal beaches, alpine tundra, lowland meadows, river deltas and in shallow streams.

The 5.6 million acre Chugach National Forest incorporates the upper reaches of Turnagain Arm, the northern Seward Peninsula, Prince William Sound and the coastlands of the northeastern Gulf of Alaska. Approximately 95% of the forest is officially closed to recreational ATV access. The outwash plains of the Snow River and the Resurrection River are specifically designated as open to ATV access. Both areas have extensive gravel bars, sparse vegetation and lands subject to periodic flooding. The Forest Service considers ATV use on these lands to have minimal environmental impact. Other lands open to ATV access include the Barrier Islands off the mouth of the Copper River and the non-vegetated dunes on the extreme western end of Hinchinbrook Island. ATV use is permitted on the glacial outwash plains of the lower Copper River, particularly in the vicinity of the 27 Mile Bridge. The Forest Service is currently considering designating the northern tip of Hinchinbrook Island as an ATV use area. Airboats are permitted on the Twenty Mile River at the headwaters of Turnagain Arm. This area is also open to ATV use, although, to date, use there has been relatively light.

In 2000, the NFS was in the process of developing an updated Forest Management Plan (FMP) for the Chugach National Forest. The FMP will include a detailed access management plan. A draft of the Chugach plan includes an exhaustive list of all roads and trails within the forest indicating acceptable modes of access. All but a relatively small percentage of the trails and roads listed exclude recreational ATV access.

The NFS places no restrictions on the use of ATVs by eligible local residents for subsistence purposes. This is based on an agency interpretation that ATVs are automatically covered by the terms of Title VIII of ANILCA. The writer pointed out that this interpretation is at odds with other federal agencies. Sister federal land managing agencies require a formal finding of traditional ATV use prior to declaring an area open. The USFS representatives acknowledged a need for multi-agency uniformity in interpreting ANILCA ATV access provisions so as to reduce confusion. One official expressed his belief that all federal land managing agencies should have a uniform interpretation of "traditional" as it applies to access. The NFS informants agreed that ATV use will undoubtedly expand and increasingly become a management issue.

Tongass National Forest

Stretching some 400 miles from Yakutat Bay in the north to Prince of Wales Island at the southeastern tip of Alaska, the Tongass NF sprawls across an archipelago of rocky islands, deep fiords and rugged coastal lands. It is the nation's most productive rainforest both in terms of harvestable timber and wildlife habitat. The Tongass is also one of the nation's most scenic regions.

A common misperception of Southeast Alaska is that it is virtually roadless. In fact, there is an extensive land transportation system consisting of Forest Service roads, private logging roads and state-maintained public roads. Over 4000 miles of Forest Service roads crisscross many of the islands of Southeastern Alaska. These roads penetrate heavily forested lands, passing through open muskeg lowlands and ascending mountain slopes to alpine tundra. Constructed primarily for forest harvest and management, Forest Service roads have become popular ATV trails.

As is to be expected, the heaviest ATV use in the Tongass takes place in the vicinity of communities. ATVs are also transported by boat to distant islands and remote fiords to be off-loaded for travel on forest roads, beaches and coastal wetlands. ATVs are used in hunting, fishing, gathering, trapping and general recreational riding. In dense forests, users

are largely confined to established routes. However, they frequently break free of these roads to access marshlands, floodplains, tidelands, beaches, alpine meadows and streambeds. Soil erosion, altered vegetation communities, damaged fish spawning and tidal invertebrate habitat, wildlife harassment and a general deterioration of esthetic qualities result from such incursions. ATV use also contributes to the deterioration of forest roads and trails.

The Forest Service bans ATV travel on some forest roads in the Tongass. Barricades are placed across closed roads. These obstacles are easily bypassed, and effective enforcement over such a vast and rugged area is extremely difficult. The Forest Service has initiated legal action against some violators, although they admit that it represents, at best, an extremely tiny fraction of suspected illegal ATV activity.

Juneau District: The Forest Service found it necessary to close the Dredge Lakes area within Mendenhall Glacier Recreation Area after illegal ATV traffic resulted in extensive resource damage and interfered with non-motorized users. The report on this action states, "Approximately 14% of fish spawning areas in the Recreation Area are being negatively affected by ATV use. Shorebird habitat along Mendenhall Lake has been disturbed ... Vegetation is repeatedly damaged or destroyed by pioneer trails into both open and closed areas. As a result of this illegal ORV use, habitat has been degraded and continues to be in over 13% of the Recreational Area. Inadequate Forest Service presence and enforcement contributes to the ORV situation on the Juneau Ranger District."

Sitka Ranger District: Kruzof Island, a large uninhabited volcanic island on the outer Southeastern Alaska archipelago, is among the premier scenic attractions of Alaska. The island is popular for wilderness-related recreational activities, particularly by the residents of Sitka on nearby Baranof Island. Sitka residents cross the ten-mile wide channel by boat to Kruzof Island for hunting, trapping and general recreation. ATVs are ferried across the protected waterway to the island for travel on forest roads, trails, beaches and open meadows. Sections of the island are closed to ATVs, but illegal access is commonplace. Environmental damage is particularly evident in Iris Meadows on the western slope of the island. (Tongass Monitoring & Evaluation 1998 Report). ATV impacts to Kruzof Island are among the most serious in the Tongass NF.

Yakatat Ranger District: The Yakatat Forelands is a 25-mile wide, 35-mile long coastal plain separating the icy waters of the Gulf of Alaska and the glacier capped highlands of the St. Elias Mountains. This broad lowland is important habitat for migratory birds and resident wildlife. Local streams are prime spawning grounds and habitat for commercially important anadromous fish.

In 1998, the Forest Service estimated there were approximately 60 miles of undesignated ATV trails branching off the local Yakatat road system. Twenty-three thousand acres of wetlands were directly impacted by ATV access. Stream crossings diverted water out of streambeds into deep ATV ruts reducing flow volume and potentially damaging juvenile salmonoids. Trail erosion and damaged stream banks appeared to be generating increased turbidity in affected streams. ATVs crossing and driving in streams damaged spawning habitat for pink and coho salmon. "The hydrologic function of the wetlands may be impaired by deeply incised trails. ORV trails divert surface and groundwater flow from wetlands and act as drainage ditches. Long-term effects may result in altered plant communities and diminished wetlands." (Tongass Monitoring & Evaluation 1998 Report). Increased ATV use and trail formation results in disturbance to such big-game species as moose and bear. Hunters are extending their ATV operations into previously difficult to reach areas, placing increasing pressure on wildlife and further degrading natural habitat.

Wrangell Ranger District: According to a Forest Service report, ATV impacts in the Wrangell Ranger District are relatively minor. Damage to gravel surfaces has occurred at the Nemo Recreational sites on Wrangell Island. ATVs have impacted wetlands on Wrangell Island at the Upper Salamander Recreational site and Zarembo Island. (Tongass Monitoring & Evaluation 1998 Report).

Ketchikan Ranger District and Misty Fiords National Monument: "There has been a steady increase in the off-road vehicle use on the Ketchikan Ranger District and Misty Fiords N.M.; primarily snowmobile and ATV use in the winter and ATV and jet ski use in the summer. ... The wetlands in the Brown Mountain Area are receiving soil and vegetation damage as a result of ATV use. The extent of the damage of these resources is unknown. Monitoring the condition in the other areas has not taken place, so it is uncertain if these same impacts are occurring." (Tongass Monitoring & Evaluation 1998 Report). ATV damage to Misty Fiords National Monument is particularly troubling. Its designation as a national monument reflects its special natural character, which is being degraded by damaging access.

Evaluation of Results: "ORV usage on the Forest appears to be on the rise. Implementation of Standards and Guidelines to prevent resource damage may not occur in some cases and is therefore not effective due to lack of controls over ORV usage. Additional qualitative data is needed to substantiate qualitative observations of adverse impacts of ORV use on resources." (Tongass Monitoring and Evaluation 1998 Report) (Emphasis added). This passage of the report makes it clear that ATV access within the national forest is cause for concern, calling for more effective controls.

U.S. Fish and Wildlife Service (FWS)

The U.S. Fish and Wildlife Service (FWS) is charged with the protection and management of approximately 53.6 million acres of conservation lands in Alaska. National wildlife refuges are scattered throughout the state from the Forrester Island Alaska Maritime National Wildlife Refuge near the southern tip of southeastern Alaska to the Arctic National Wildlife Refuge in the eastern Alaska arctic. The Arctic National Wildlife Refuge (ANWR) is the most widely known, but there are many other lesser-known refuges equally important in terms of critical wildlife habitat.

Over a span of approximately four decades, the writer visited many of the wildlife refuges in Alaska. This included working closely with US Fish and Wildlife personnel on issues of mutual concern to the National Park Service and the FWS, including access. During this time it was evident that ATV access constitutes a major concern for many refuges. Refuge lands accessible by highway are particularly vulnerable to intensive ATV use. However, wildlife refuges in remote rural areas also experience substantial ATV related impacts. Rural residents generally make greater use of ATVs than do urban residents and are often willing to traverse lands most urban ATV users would avoid.

While most wildlife refuges in Alaska experience varying degrees of ATV impact, those of particular concern include portions of the Tetlin, Yukon Delta, Selewik, Becharof, Togiak, Kodiak, Yukon Flats, and Alaska Peninsula National Wildlife Refuges. The Arctic National Wildlife Refuge also experiences ATV incursions into its northern region from the community of Kaktovik and in the southern region from the community of Arctic Village.

The writer interviewed FWS regional officials regarding ATV access affecting wildlife refuges in Alaska. These representatives expressed the opinion that, while ATV use does take place on several refuges, the overall impact is relatively light. They acknowledged that concentrated heavy ATV access takes place in the vicinity of rural villages. They also recognized that ATV use in general is increasing. These officials informed the writer that the FWS does not have an active ATV monitoring program. The writer found it difficult to obtain detailed information regarding ATV uses on refuge lands in Alaska.

With the exception of Becharof NWR and Alaska Peninsula NWR, the USFWS determined that ATV access is not a traditional means of subsistence access. ATV use on other refuges, except on established roads or for permitted access to private inholdings, is in violation of EO 11644 and federal regulations.

Becharof NWR and Alaska Peninsula NWR

During a telephone interview with the manager of Becherof NWR and Alaska Peninsula NWR, the writer was informed that ATV use within these two refuges does not constitute a significant management issue. The refuge manager stated the heaviest use takes place along the King Salmon River. Some ATV use radiates out into the refuges from other coastal communities and extends onto refuge lands from remote coastal sites. When asked if the FWS actively monitors ATV access, the manager referred to a fieldtrip report written approximately seven years ago. The report chronicles a helicopter survey of widely spaced sites within both Becharof and the Alaska Peninsula NWRs. Only three and a half pages of the document are devoted to descriptions of sites visited and impacts observed.

Although the survey team discovered evidence of ATV use at a number of locations within the refuges, the report concludes that, overall, the impacts were relatively benign. The report does, however, include several pages of photos of locally significant ATV impact that appear to contradict this finding. The document concludes with the following recommendations:

1. Areas of perennially wet or seasonally wet soils during periods of heavy use, should be monitored with increased timing of visits and careful attention to noting locations where the vegetation mat shows damage by extensive breakage and/or death or lowered vitality of plants in the path of traffic. Where such conditions are noted, the area

in question should be either closed for a minimum of one season, or traffic patterns and methods of travel modified appropriately. The recovery of the vitality of the vegetation should be used as a primary decision factor in reopening impacting activities in affected areas.

2. There are several types of ecosystems that are extremely fragile and highly susceptible to disruption by even the slightest of improper activity. Such sites like the grass-covered sandy beach dunes on the ocean coast, the sandy-small gravel beaches and dunes on the shores of Becharof Lake (near the outlet), and the wet or moist sedge and graminoid prairies located mostly in the southern part of the refuge in all present examples where traffic should be either eliminated entirely or restricted to receive the very lightest usage, with the option for immediate closure if needed.
3. Many areas of the refuge where the ground cover is composed of well established dwarf ericaceous shrub or dwarf shrub/graminoid tundra can likely tolerate moderate regular surface impact. This assumption includes the caveats that traffic patterns do not increase substantially, and that traffic be dispersed over the surface unless established trails are to be used and existing impacts are acceptable. Management must be willing to accept the fact that exposure of mineral soils does not always mean that impacts are irreparable. Likewise, vegetation breakage of limited amounts may not be a cause for alarm when the long-term view is taken for an area.
4. The establishment of a regularly scheduled monitoring program, especially in areas of potential serious negative impacts, must be made a priority if current access levels are maintained for both the local and other publics. This program should include not only overflights, but also on-the-ground site visits and good photo-documentation to provide historical documentation of degrees of change. (Trip Report (and Comments): Habitat Impact Evaluation for Off Road Vehicle (ORV) Use at Selected Sites on Becharof and Alaska Peninsula Refuges, 1993) (Emphasis added).

The writer was unable to obtain additional follow-up reports of ATV use on the Becherof and Alaska Peninsula NWR. Based on information provided by the refuge manager, the FWS has not imposed ATV recommended access restrictions on refuge lands. There is no indication that the FWS has implemented the program recommendations of the report.

Kenai National Wildlife Refuge: The Kenai National Wildlife Refuge occupies the major portion of the Kenai Peninsula in south central Alaska. The refuge is habitat for moose, the Kenai caribou herd, migratory birds, wolves, lynx and a host of other wildlife. Streams and lakes within the refuge are important spawning habitat for anadromous fish populations. The Kenai is one of Alaska's most popular regions for recreational boating, nature viewing, hunting, trapping and sport fishing. Ringed by highways and secondary roads that snake deep into the refuge, the Kenai NWR is within less than a day's drive for the majority of Alaska's population. All factors considered, the Kenai NWR would seem a prime candidate for heavy ATV incursions.

The writer interviewed F&WS personnel at both the regional and refuge levels regarding ATV access within the Kenai NWR. The responses were somewhat conflicting. Regional officials expressed the impression that the Kenai NWR likely experiences greater ATV access related problems than most other refuges in Alaska. A refuge-based representative, however, offered a dissenting view asserting that the refuge has an effective ATV management. He proudly characterized the western boundary of the refuge as being easy to determine from the air, because it is where ATV trails outside the refuge come to a dead end.

The Kenai NWR, formally the Kenai National Moose Range, has a history of effective refuge managers. Its first manager, David L. Spenser, in 1948 initiated a program of proactive resource protection working with local residents to maintain the environmental integrity of the unit. He went on to become the Manager of all the Alaska Refuges. Mr. Spenser's dedication and accomplishments initiated a tradition of resource protection for the Kenai NWR that continues to endure.

The writer spent several hours in a light aircraft flying over much of the Kenai NWR noting and recording indications of ATV incursions. Based on these observations, some ATV incursions are indeed taking place along northern section of the refuge, particularly in areas with secondary road access. Some of these incursions may be related to access to private inholdings, although others appeared to extend into areas with no visible sign of human habitation. However, the description by the refuge representative largely held true in the greater southern region of the Kenai NWR.

Large areas of the western Kenai Peninsula exhibit extensive severe ATV impacts. Deeply rutted trails crisscross broad expanses of wetlands. Access damage in the Caribou Hills region is particularly dramatic. Most trails, however, end

abruptly at the refuge boundary. The lands on either side of the boundary are essentially the same. The only explanation for this relative absence of ATV trails within the refuge is an effective access control program. Considering the population of south central Alaska and associated recreational demands, this is no mean accomplishment. It serves as an example of how management can effectively control ATV use on conservation lands even under intense access pressures.

State of Alaska Conservation Lands:

The primary focus of this report is the management of all-terrain vehicle access on federal conservation lands in Alaska. Federal lands and responsible management agencies are governed by EO 11644, the Alaska National Interest Lands Conservation Act, the Wilderness Act, the Endangered Specie Act, the Clean Water Act, and other laws and federal regulations affecting ATV access. However, the management of ATV access on private and state owned lands directly impacts and influences the management of federal public lands. Large tracts of both state and private lands are wholly or partially encompassed within federal conservation units. Other state lands are adjacent to federal conservation lands. The same users access both federal and non-federal lands often crossing from one to the other. ATV users having relatively unrestricted use on state lands and private lands often resent being barred from adjacent federal lands.

The Alaska Department of Natural Resources (DNR) administers most rural state lands scattered throughout Alaska. State owned lands on the North Slope, located primarily between the Colville River and ANWR, are closed to the summer use of ATVs. Special devices are employed to determine when winter frost has penetrated the soil deep enough to allow for vehicle use. The agency, however, is concerned primarily with commercial ATV access, mostly related to mineral exploration and development. Although the closure to summer ATV use is universal, DNR does not enforce this closure on local residents. The agency largely ignores resident use due, in part, to political sensitivities.

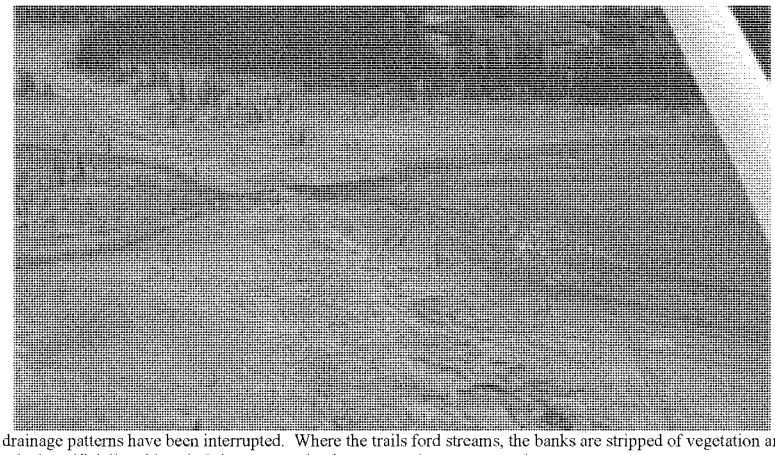
By statute, all state lands are open to ATVs unless specifically closed. The Alaska legislature has traditionally supported liberal access. Limiting access on lands particularly prone to ATV damage must overcome an ingrained bias against access restrictions. Some state parklands are partially closed to ATVs or use is restricted to designated trails.

The DNR Fairbanks Regional Office oversees approximately 40 million acres of state owned lands spread discontinuously across the vast interior of Alaska. The staff consists of seven individuals and does not include an assigned enforcement officer. It is functionally impossible for this small staff to effectively monitor ATV uses occurring on lands under its jurisdiction or to enforce state environmental protection statutes. The great majority of ATV use goes unreported.

The DNR is charged, in part, with assisting in the transfer of state owned lands to private owners. This includes remote rural parcels often unconnected to a road system. The disposal program tends to encourage the expansion of ATV access. As an example, state lands transferred to private ownership in the vicinity of Chandalar Lake in the central Brooks Range result in owners pioneering ATV trails across both state and federal lands. In one case, a hunting guide acquired state lands and then imported a number of ATVs to support his operations. A neighboring owner attempting to maintain the natural character of the land was unable to convince the DNR to restrict the expanding impact. Based on interviews of DNR personnel, it is difficult to gain the support of state solicitors in pursuing legal action against users who cause excessive environmental damage.

The southern Kenai Peninsula serves as a dramatic example of impacts generated by virtually uncontrolled ATV access on state and private lands. The cumulative environmental damage is, in many cases, severe. Page Spencer, long-time resident of the area and daughter of the former manager of the Kenai Wildlife Refuge, flew the writer over the Kenai Peninsula in her private small plane. The flight covered much of the western and southwestern sections of the peninsula between Turnagain Arm and the community of Homer. ATV impacts on the northern peninsula were concentrated primarily along secondary roads. However, as the flight progressed southward, impacts became increasingly widespread. ATV trails radiated out from logging trails on Native owned lands snaking cross country like dark varicose veins. Trails often connected with vacation properties on the shores of larger lakes.

In the vicinity of the Caribou Hills, ATV impact is virtually overwhelming. Glistening wet webs of heavily rutted trails sprawl across the rolling landscape. When crossing wetland areas, these trails often span several hundred feet briefly merging into a single, heavily worn track at stream crossings. The term "decimated" came to mind in describing the scene. On-the-ground inspections confirmed that impacted lands have, in places, been churned to depths of several feet.



Normal drainage patterns have been interrupted. Where the trails ford streams, the banks are stripped of vegetation and the streambeds artificially widened. It is apparent the damage continues to expand.

Conservation Organizations

Although environmental organizations have no direct land management authority, they serve as self-appointed ombudsman for the environment. It is their mission to advocate the full legal protection of public lands as provided by law and agency mandates. In many instances, environmental organizations compliment the efforts of land managing agencies by marshalling public and political support to achieve mutual conservation goals. However, when land managing agencies fail to live up to their resource protection responsibilities, conservation groups are expected to call them to task. This may include taking legal and political action to correct management shortcomings. Without this active oversight, there is a tendency for government agencies to follow the path of least resistance.

Most of the major conservation organizations have been exceptionally quiet regarding the issue of off-road vehicle access and impacts on public lands in Alaska. Considering the scope and severity of the problem, they have exerted surprisingly little pressure on responsible [illegible] ATV Trails Caribou Hills [illegible] s and mitigate adverse impacts. Even when conservation organization represent[illegible] results of ATV use on public lands, they seemed content to accept agency assurances that adequate actions are being taken to resolve the problem. Reticence to confront the ATV issue may be attributed, in part, to a desire to maintain positive relations with the Native community and to avert adverse potential backlash from many Alaskans resentful of any effort to constrain access.

The impacts of relatively unconstrained ATV access have become glaringly evident, encouraging some conservation groups to focus greater attention on the issue. The writer interviewed a number of representatives of the conservation community. All expressed a growing awareness and concern regarding ATV issues. Some shared pictures and anecdotal reports of uses and impacts occurring on public lands. However, there did not seem to be a concerted and coordinated effort within the general conservation community to address the issue of ATV access in a manner commensurate with its proven potential to significantly alter natural areas.

The environmental community must accept a portion of the responsibility for the ATV related deterioration of public wildlands in Alaska. Land-managing agencies are pressure sensitive. The past tendency of environmental organizations to treat this issue with benign neglect effectively removed a critical counterbalance to political forces favoring unrestricted access. Unless the environmental community becomes more assertive in working with land managing agencies on ATV access issues, it is likely environmental damage will continue unabated.

CONCLUSIONS AND RECOMMENDATIONS

With rare exceptions, the use of all-terrain vehicles on federal public lands in Alaska violates applicable federal laws, regulations and policies. The severity and extent of negative impacts generally exceeds established environmental protection standards. Responsible agencies fail to fully enforce regulations designed to protect public lands and resources. Guidelines for promulgating special regulations and processes for formally designating ATV trails are

frequently ignored. Land management officials knowingly permit ATV use that results in significant environmental deterioration.

There are no exact figures as to the full extent of ATV impacts on public lands in Alaska. However, it is safe to say that it is exceptionally widespread and expanding. ATV damage to public lands located in Alaska probably exceeds such damage in any other region of the nation. The ultimate loss in wilderness values and opportunities for public enjoyment of unspoiled public lands is incalculable. Each year, ATVs penetrate ever deeper into previously untouched lands. Pristine, trackless wilderness areas are shrinking at an alarming rate.

Intra Agency Management: In all-too-many instances, land managing agencies have substituted rationalization for mitigation. Land and resource management plans calling for ATV controls are frequently ignored. Research reports exposing excessive ATV impacts and advocating mitigative actions are shelved with the excuse that additional research is necessary. In effect, research is used to create the illusion of action. The monitoring of ATV access and impacts is haphazard or non-existent.

Absent a coherent agency access management strategy, individual unit managers must rely on their own interpretation of access regulations and policies. These managers, particularly those relatively new to Alaska, often have only a cursory understanding of ANILCA and other laws affecting access. They are understandably hesitant to break from past management practices and take a more assertive position on ATV controls. This results in internal confusion and conflicting approaches between units administered by the same agency. Instead of speaking with a unified voice on access management, there is bureaucratic babble and mixed messages.

Inter Agency Coordination: The general lack of internal agency coordination in regard to ATV management is mirrored at the interagency level. Access-related provisions of ANILCA, Executive Orders, generic federal access regulations, the Wilderness Act and other legal mandates have general applicability to all federal land managing agencies. There are, however, striking differences between agencies as to interpretation and implementation of these laws.

Neighboring conservation units often practice markedly different access management. As an example, the U.S. Forest Service permits local residents unlimited ATV access for subsistence purposes within Chugach National Forest. However, the U.S. Fish and Wildlife Service bans the use of ATVs for subsistence purposes on the adjacent Kenai National Wildlife Refuge. National Park Service regulations prohibit the use of ATVs for subsistence in all parks in Alaska with the exception of Wrangell-St. Elias. Federal lands abutting national parks in Alaska include national wildlife refuges, national forests and BLM lands. These non-park lands are open to subsistence ATV access. With the exception of Wrangell-St. Elias NP&P, recreational ATV access is prohibited in national parks in Alaska. Virtually all adjacent BLM lands and national forest lands are open to recreational ATV access.

Uses and impacts taking place on the land of one agency often spill over onto those of another. Shared problems of erosion, reduced water quality, habitat destruction, wildlife harassment and disturbance of other users take place even when political boundaries are not crossed. ATV users are frequently confused and frustrated by the lack of continuity between neighboring conservations system units. The degree of disparity between agencies transcends differences in agency mandates.

A notable exception to the general lack of coordination in access management is a cooperative effort between state and federal agencies to mitigate ATV trail impacts. The National Park Service, Alaska Department of Natural Resources, Alaska Department of Fish and Game and other agencies cooperate in field-testing various techniques and materials to harden ATV trails and reduce impact. A product of this cooperation is a draft document, An Introduction to the Management of Degraded ATV Trails on Wet, Unstable & Permafrost Environments in South Central & Interior Alaska by Kevin G. Meyer of the National Park Service (January 2001). This handbook-style report is an excellent example of the positive results attainable through cooperation between sister agencies in addressing access management issnes.

Trail Management: Attempts to mitigate ATV impacts through the construction of trails and use of artificial surface matting have had mixed results. The fragility of affected lands, tendency for users to pioneer new routes, agency reluctance to commit necessary resources to trail planning and maintenance and reticence to fully enforce access restrictions limit the success of trail development efforts. ATV trails stretch scores of miles into remote and rugged

areas. Trailheads are often located well away from the established road system and are accessible only by boat or aircraft. Moving equipment, materials and personnel required to construct and maintain an ATV trail is often expensive and logistically difficult. On average, it costs far more to construct and maintain a mile of ATV trail than several miles of pedestrian trails. Nevertheless, where ATV uses are permitted, trail development and management are essential to protecting public lands. In particularly sensitive areas a well-planned and designated trail system is crucial. Where the expense and difficulty of designating, constructing, maintaining and limiting use to trails and routes adequate to protect public lands is prohibitive, ATV use is inappropriate.

Public Outreach & Participation: Land management agencies are directed by law and policy to seek public involvement in the planning and care of public lands. The Bureau of Land Management in administering national recreation areas has been one of the more active agencies in this regard. However, on non-NRA lands, the BLM has been less effective. The U.S. Forest Service has also sought public involvement in the development of forest access plans. Both agencies maintain an active working relationship with the ATV user community.

The National Park Service and the U.S. Fish and Wildlife Service have been less effective in working with the public on ATV access issues. In part, this may be attributed to the fact that much of the use occurring on FWS and NPS lands violates federal laws, regulations and agency policies. Wrangell-St. Elias National Park and Preserve provides informational handouts on ATV access. However, the park has not carried out the appropriate process of designating ATV trails and promulgating regulations. The Park Service has failed to adequately inform the public of access-related concerns and has not followed established processes to encourage their participation in resolving access issues. The FWS has turned its back on illegal ATV access on refuge lands, thus avoiding the need to engage the public in seeking effective remedies. Where agencies bypass these procedures, the public is denied the opportunity to participate in decisions having significant impact on their interests in public lands.

In addition to effectively limiting general public involvement, land managing agencies often fail to work openly with the ATV user community. Users entering onto the public lands are often unaware that they may technically be in violation of federal regulations. The benign neglect of land managing agencies creates an impression that ATV uses and impacts are in keeping with agency goals and mandates. This makes it difficult for conscientious ATV users to work with land managing agencies in identifying problems and seeking workable solutions.

Political Challenges: Land managing agencies face daunting political obstacles in dealing with access issues. The Alaska Congressional Delegation supports liberal access on federal lands and is not hesitant to exert pressure on agency officials toward this end. State and local representatives generally share a negative view of limits placed on access to public lands. Local residents, particularly in rural areas, often resent government controls that run counter to the classic frontier image. Native organizations tend to be critical of any access restrictions affecting their members. These pressures, particularly at the state and local level, are often exerted directly on field based land management personnel. One park manager characterized access as the third rail of land management. Lacking agency encouragement and sufficient counterbalancing pressures from conservation organizations and other concerned stakeholders, responsible officials are often prone to look the other way.

Recommendations:

1. Use Assessment: The first step toward an effective access management program is a comprehensive unit-by-unit review of ATV uses taking place on public lands. This includes aerial surveys, ground assessments, mapping, photo documentation, identification of user populations, and determination of primary resource issues. A standardized procedure for carrying out field assessments and reporting findings would greatly improve the ability to share data across agency lines and identify overlapping concerns. Field unit reports should be compiled and summarized by regional offices and made available for public review and comment.

2. Internal Coordination: In order to effectively deal with the complexities and political sensitivities surrounding ATV access, land managing agencies must exhibit much greater internal consistency and coordination. While this does not require conservation system units to march in lock step, it does mean reasonable conformity and continuity between units within the same agency as to the interpretation and implementation of access-related laws, regulations and policies. Individual unit managers need to have a clear understanding of access management guidelines and be confident of agency support when addressing access concerns.

The regional offices of the land managing agencies must accept the responsibility of coordinating access management between field units. This includes establishing guidelines for evaluating access issues, planning trail systems, formally designating trails and routes, promulgating access regulations, monitoring impacts and applying mitigation measures. Coordination could be facilitated through the formation of special regional workgroups consisting of both field and regional office representatives and specialists. Such workgroups would be tasked with drafting access management guidelines, devising management strategies, prioritizing concerns, reviewing reports and marshalling agency expertise and resources to address issues. Workgroups would network with other state and federal land managing agencies and other sources of ATV access expertise and information.

3. Interagency Coordination: Land managing agencies must reach beyond their bureaucratic boundaries and cooperate with others when dealing with access issues. There must be a forum for resolving differences in the interpretation and implementation of access laws and policies. A multi-agency workgroup should be formed to identify differences in legal interpretations, determine opportunities for cooperation and to help explain to the public reasons why individual agencies practice differing access management. Such a workgroup would encourage greater cooperation at both field and central office levels in addressing access concerns. This would include research, trail design and construction, public outreach and enforcement.

4. Public Outreach: The most glaring flaw in general ATV access and impact management has been a pattern of agencies bypassing or minimizing public involvement. Certain agencies have been particularly egregious in this regard. Public understanding and support are crucial to an effective access management program, particularly where political pressures come into play. Land managing agencies must let down their bureaucratic guard and actively encourage public input. In part, this means sharing information regarding ATV access and impacts on public lands and uses not in keeping with laws, regulations and policies. It requires engaging stakeholders and the general public in developing access plans. It also means ending the practice of bypassing procedures for officially designating ATV access trails and routes that require public involvement.

It is particularly important for agencies to reach out to ATV users apprising them of access regulations, policies and resource concerns and to seek their assistance in minimizing impacts. It requires managing agencies to be forthcoming with ATV users when access must be restricted.

5. Recreational Access: There is no justification, legal or otherwise, for permitting recreational ATV access resulting in significant negative impact to public lands and resources. Where recreational ATV access is permitted, it is incumbent on land managing agencies to assure that affected lands are accorded the full protection mandated by EO 11644, the Clean Waters Act, Wilderness Act, ANILCA and other applicable laws. In most cases, this requires the formal designation, construction and maintenance of trails and routes. An effective outreach program is essential. It also demands effective enforcement of regulations and prosecution of violations. An on-going program of monitoring and research is essential. Agencies must be willing to take appropriate mitigation actions, including the temporary restriction or long-term exclusion of ATV use, before impacts become severe.

Insufficient funding, lack of necessary personnel or other management deficits cannot be accepted as excuses for permitting damaging access. Indeed, if the responsible land managing agency is unable to prevent permitted ATV use from causing significant environmental damage, the appropriate action must be to impose restrictions.

6. Subsistence: The use of off-road vehicles in support of subsistence activities is a particularly complex and sensitive issue. Access to renewable natural resources is crucial to a subsistence-based economy and lifestyle. However, such access must not degrade the environment and resource base for the sake of short-term convenience. Ultimately, this imperils the opportunity for future generations to continue a subsistence lifestyle.

In most cases, the modes of transportation specifically provided by ANILCA are sufficient for subsistence purposes. ATVs may offer greater opportunity to access lands otherwise difficult to exploit by boat, snowmachine or foot, but that is not adequate justification for opening such lands to their use. As discussed in an earlier section of this report, ANILCA does not include language clearly supporting all-terrain vehicles as a means of subsistence access. It is also highly questionable for land managing agencies to grant such access to large numbers of rural residents having no pre-ANILCA personal or family history of subsistence on affected public lands.

Even where subsistence ATV access may be permitted, it must not be allowed to cause significant environmental impacts. Land managing agencies are required to take appropriate mitigative actions to prevent environmental damage. The use of all-terrain vehicles for subsistence purposes must be subject to the same standards of resource protection imposed on recreational ATV use

7. Other Access Purposes: ANILCA makes provisions for motorized access in support of commercial fishing, travel between communities, access to non-federal lands and in exercising a valid mining claim. Such access is to be "reasonable" or "directly incident" to the permitted activity. Where it can be shown that ATV use is covered by these provisions, the responsible land managing agencies must exercise its authorities to mitigate impacts. This requires the agencies to designate trails and routes and to take necessary actions to minimize environmental impacts.

Summary

This report began with a quote from Robert Weeden's book, Alaska Promises to Keep. It is appropriate that it end with another, "Now there is no "away" for wild things to go. ... Not that I foresee immediate doom for wildlife or near-term desolation of tundra and forest, but there is no denying the dramatic intensification of land uses, set in motion by wealth and human population growth. Much more of our wildlife will live in modified environments, in more frequent contact with people, than ever before. The survival of wild landscapes will be the result of human decisions, not accident." (Weeden, 1978). I can only add, indecisiveness on the part of land managing ageneies and those charged with environmental stewardship ultimately spells the end of wildness.

Bibliography

Alaska National Interest Conservation Act (ANILCA), PL 96-487. Dec. 2, 1980.

Alstrand, G.M. et al. 1984. Resource Impact Evaluation Proposed Closure Applications for Denali, Glacier Bay, and Katmai National Parks. Alaska Regional Office, National Park Service, Dep. of Interior, Anchorage.

Alstrand, G. M. et al. 1988. Effects of All-Terrain Vehicle Use in the Vicinity of Anaktuvuk Pass, Gates of the Arctic National Park. National Park Service, U.S. Dept. of the Interior.

Anderson, D., W. Anderson, R. Bane, R. Nelson, and N. Sheldon. 1976. Kuvungmiut Subsistence – Traditional Eskimo Life in the Latter Twentieth Century. Alaska Area Office, National Park Service, U. S. Dep. of the Interior.

Anderson, D. et al. 1981. The Kotzebue Basin. Alaska Geographic Vol. 8, No. 3. The Alaska Geographic Society, Anchorage.

Baird, P. D. 1964. The Polar World. McGill University, Montreal.

Bane, G. R. 1966. Environmental Exploitation by the Eskimos of Wainwright, Alaska. U.S. Air Force Contract No. 41(609)-3200, Arctic Aeromedical Laboratory, Seattle.

Bane, G. R. 1991. Draft Overview of ORV Issues and Concerns Facing Park Management in Alaska. Subsistence Division, Alaska Regional Office, National Park Service, U. S. Dep. of Interior, Anchorage.

Bishop, R.H. 1978. Subsistence Resource Use in the Proposed North Addition to Mt. McKinley National Park. Cooperative Park Studies Unit, University of Alaska, Fairbanks

Catton, T. 1997. Inhabited Wilderness, Indians, Eskimos and National Parks in Alaska. Univ. of New Mexico Press, Albuquerque.

Caulfield, R. A. 1979. Subsistence Use In and Around the Proposed Yukon-Charley National Rivers. Cooperative Park Studies Unit, University of Alaska, Fairbanks

Duever, M. J et. al. 1981. Off-road Vehicles and Their Impacts in the Big Cypress National Preserve. Final report t-614. Prepared by Ecosystem Research Unit, National Audubon Society, Naples, FL, for the National Park Service, Everglades National Park, Homestead.

Felix, N. & M. Raynolds. 1989. The Effects of Seismic Trails on Tundra Vegetation in Northeastern Alaska, U.S.A. Arctic and Alpine Research, Vol. 21, No. 2, pp 188-202. Arctic National Wildlife Refuge, U.S. Fish and Wildlife service, Fairbanks.

Hall, E.S., C. Gerlach and M. Blackman. 1985. In the National Interest: A Geographically Based Study of Anaktuvuk Pass Inupiat Subsistence Through Time. Technical Memorandum #17. North Slope Borough, Barrow, AK.

Hartzog, G. B. 1988. Battling for the National Parks. Moyer Bell LTD, New York

Kauffmann, J. M. 1992. Alaska's Brooks Range, The Ultimate Wilderness. The Mountaineers, Seattle.

Kirk, W. et al. June 22, 1993. Trip Report (and Comments): Habitat and Environmental Impact Evaluation for Off Road Vehicle (ORV) Use at Selected Sites on Becharof and Alaska Peninsula Refuges. U.S. Fish and Wildlife Service, Dep. of the Interior.

Kunz, M. and K. Troxel. 1988. The Anaktuvuk Pass All-Terrain Vehicle Study 1986 – 1988, A Narrative Report of Field Operations and Dispersed ATV Use. Alaska Regional Office, National Park Service, U. S. Dep. of the Interior

Lopez, B. 1986. Arctic Dreams, Imagination and Desire in a Northern Landscape. Bantam Books, N. Y.

Mantell, M. A. et al. 1990. Managing National Park System Resources, A Handbook on Legal Duties, Opportunities, and Tools. The Conservation Foundation, Washington, D.C.

McCay, B.M. & J.M. Acheson. 1987. The Question of the Commons, The Culture and Ecology of Communal Resources. Univ. of Arizona Press, Tucson.

Meyer, K.G. An Introduction to the Management of Degraded ATV Trails on Wet, Unstable and Permafrost Environments in South Central and Interior Alaska. Rivers, Trails and Conservation Assistance Program, National Park Service System Support Office, National Park Service, Dep. of the Interior, Anchorage.

Nelson, R., K. Mautner, R. Bane. 1982. Tracks in the Wildland, A Portrayal of Kuyukon and Nunamuit Subsistence. Anthropology and Historic Preservation Cooperative Park Studies Unit, Univ. of Alaska, Fairbanks

Nelson, R. K. 1973. Hunters of the Northern Forest. The University of Chicago Press, Chicago.

Norris, F. B. 1992. Tourism in Katmai Country. Alaska Regional Office, National Park Service, Dep. of the Interior, Anchorage.

North Slope Borough Contract Staff. 1979. Native Livelihood and Dependence, A Study of Land Use Values Through Time. National Petroleum Reserve in Alaska 105©, Field Study 1. U. S. Dep. of the Interior, Washington, D.C.

Pelto, P. J. 1973. The Snowmobile Revolution. Technology and Social Change in the Arctic. Cummings Publishing Co., Menlo Park, CA.

Pruitt, W. O. 1960. Animals of the North. Harper and Row, New York.

Racine, C. H. and G. M. Alstrand. 1985. Response of an Alaska Shrub-tussock community to selected all-terrain vehicle tests in Wrangell-St. Elias National Park and Preserve, Alaska. Progress Rep. Alaska Regional Office, National Park Service, U. S. Dep. of Interior. 60 pp.

Racine, C. H. 1979. Tundra Disturbance and Recovery Resulting From Off-Road Vehicle Use for Summer Reindeer Herd and a 1974-75 Winter Drilling Operation in the Northern Seward Peninsula, Alaska. National Park Service, Alaska Area Office, U.S. Dept. of the Interior.

Runte, A. 1979. National Parks, The American Experience. University of Nebraska Press, Lincoln.

Schambach, K. 1999. California Off-Highway Vehicles: In the Money and Out of Control. California Wilderness Coalition, Davis, CA.

Sheridan, D. 1979. Off-Road Vehicles on Public Lands. Council on Environmental Quality, U. S. Gov. Printing Office, Washington, D.C.

Sinnott, R. 1990. Off-Road Vehicles and Hunting in Alaska – A Report to the Alaska Board of Game. Alaska Department of Fish and Game.

Sparrow, S. D. et al. 1978. Effects of Off-Road Vehicle Traffic on Soils and Vegetation in the Denali Highway region of Alaska. J. Soil and Water Conservation 33:20-27.

Spearman, G. Anaktuvuk Pass, Land Values Through Time. Cooperative Park Studies Unit, University of Alaska, Fairbanks.

Weeden, R. B. 1978. Alaska Promises to Keep. Houghton Mifflin Co., Boston.

Willis, F. 1985. Administrative History: The National Park Service and the Alaska National Interest Lands Conservation Act of 1980. National Park Service, U. S. Dep. of the Interior.

Wright, G. R. 1992. Wildlife Research and Management in the National Parks. University of Illinois Press, Chicago

Uhl, William & Carrie. 1977. Tagiumsinaaqmiit, Ocean Beach Dwellers of the Cape Krusenstern Area: Subsistence Patterns. Cooperative Park Studies Unit, University of Alaska, Fairbanks.

---- 1972. Executive Order 11644, Use of Off-Road Vehicles on Public Lands. The White House, Washington, D.C.

---- 1977. Executive Order 11989. Off-Road Vehicles on Public Lands. The White House, Washington, D.C.

---- 1977. Preliminary Research Reports Subsistence Resource Use Proposed Alaskan Parklands. Alaska Area Office, National Park Service, Anchorage.

---. 1984. Dep. of the Interior Report on the Implementation of Title VIII of ANILCA – Subsistence Management and Use. Off. Of the Secretary, Dep. of the Interior, Washington, D.C.

----1980. Public Law 96-487 The Alaska National Interest Lands Conservation Act. U. S. Congress, Washington, D.C.

---- 1986. General Management Plan (Gates of the Arctic, Wrangell-St. Elias, Denali, Lake Clark, Katmai, Aniakchak, Glacier Bay, Yukon-Charley Rivers, Bering Land Bridge, Cape Krusenstern, Noatak, Kobuk Valley). National Park Service, U. S. Dep. of the Interior.

---- 1988. Management Policies, U. S. Department of the Interior, National Park Service. Washington, D.C.

---- 1990. The Alaska Lands Act: A Broken Promise. The Wilderness Society, VMW Printing, Hyattsville, PA.

---- 1991. Off Highway Vehicle Monitoring Plan for the White Mountains National Recreational Area. Bureau of Land Management, U.S. Dep. of Interior, Fairbanks.

---- 1992. Code of Federal Regulations, 36 Part 1 to 199. National Archives and Records Administration, Washington, D.C.

---- 1994. Ecosystem Management in the National Park Service, Discussion Draft. National Park Service, U. S. Dep. of the Interior, Washington, D.C.

---- 1994. Documentation of Traditional and Subsistence Access in the Wrangell-St. Elias National Park and Preserve: A review of Existing Source Materials. Alaska Department of Fish and Game, ANILCA Coordination Program, Anchorage.

----. 2000. Forest Service Roadless Area Conservation, Draft Environmental Impact Statement, Summary and Proposed Rule. U.S. Forest Service, U. S. Dep. of Agriculture.

---- 2000. Off-Road Vehicles: Fastest Growing Threat. The Wilderness Society, Washington, D.C.

○