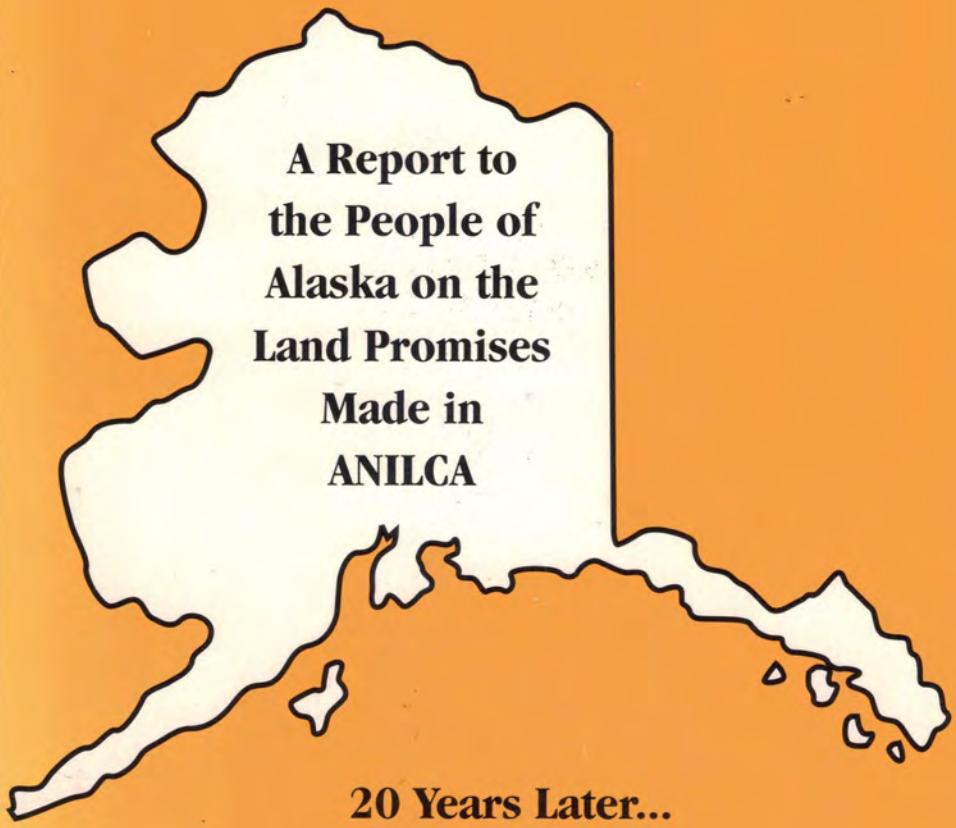
d(2), Part 2



20 Years Later...

Edited by J. P. Tangen

d(2), Part 2

A Report to the People of Alaska on the Land Promises Made in ANILCA

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Preface

Looking back over these past 20 years since the passage of the Alaska National Interest Lands Conservation Act, I recall what my good friend, Senator "Scoop" Jackson said in a Senate floor speech during the debate on ANILCA: After more than 58 markups and hearings over two years, that this proposal was a "Balanced and reasonable proposal; a proposal which protects the most outstanding natural and wildlife resources to be found in our country, while at the same time helping to insure that Alaska's vast timber, mineral and energy resources will not be placed 'off limits'."

Alaskans have continued to fight for what was agreed to in the Act. From the Arctic National Wildlife Refuge to Kantishna to Glacier Bay, wave after wave of assaults on the Act's protections have challenged the agreement.

The following pages highlight the history and some of the disappointments that Alaskans have witnessed over the past two decades.

U.S. Senator Ted Stevens

Promises Broken

By Steve Borell

On December 2, 1980 President Jimmy Carter signed the Alaska National Interest Lands Act (ANILCA), also known as the Alaska Lands Act, thereby placing more than 104,000,000 acres of Alaska into National Parks, Preserves, Refuges, Monuments, Wilderness, and Wild & Scenic Rivers.

This Act contained all manner of promises. These promises were for access and continued use of valid existing rights, lands and resources. However, just as the federal government broke and abused the promises and treaties it made with Native Americans all across the lower-48 states, the federal government is breaking the promises made in ANILCA.

Background History

The discovery of oil at Prudhoe Bay in 1968 meant that a pipeline to an all-year deep water port would be required. The Native People of Alaska filed legal claim to land required for the pipeline right of way. They had sought a just settlement of their land claims for decades and this provided a mechanism to force such a settlement. After nearly three years of negotiating, the U.S. Congress passed the Alaska Native Claims Settlement Act of 1971 (ANCSA). ANCSA established 13 Regional Native Corporations and over 200 village and other corporations. Based on historic living patterns and number of the shareholders, Regional Corporations were authorized to select approximately 44 million acres of land from the federal government-owned land base in Alaska.

During the ANCSA negotiations there was much discussion about designation of additional National Conservation System Units (CSUs) such as Parks, Preserves, Refuges, etc. However, an agreement could not be reached and the decision was made to pass ANCSA without more federal CSUs, but to include a statement that the Congress would revisit this issue. Section 17(d)(2) of ANCSA states this, and the subsequent discussion lasting more than 9 years became known as the d(2) Lands Debate.

In early discussions, the plan was to place 40 million acres in federal CSUs. That number then grew to 80 million acres. Because the appetite for increasing the amount of CSUs continued to grow, an agreement between Alaskans, the environmentalists and the U.S. Congress could not be reached. At each turn in the discussions the demands for more CSU land in Alaska continued to rise. Then, on December 1, 1978, President Carter, using an obscure law known as the Antiquities Act of 1906, administratively declared much of Alaska as a National Monument. This meant that Native Corporations could not continue selecting their 44 million acres promised by ANCSA; the State of Alaska could not continue selecting its 104 million acres promised at Statehood; homesteaders could no longer select lands promised to them; Native allotment holders could no longer ob-

tain lands promised to them; federal agencies such as the Bureau of Land Management and U.S. Forest Service could no longer lease timber for harvest; and mining companies could no longer stake mining claims.

Closure of Alaska through use of the Antiquities Act greatly increased the pressure to reach a solution to the d(2) issue and settle once and for all which lands would be placed in CSUs. The primary parties involved included the Department of Interior under Secretary Cecil Andrus, environmentalists, the Alaska Congressional Delegation, the State of Alaska, Alaska industries, Native Corporations, the general public and Congressman Morris (Mo) Udall, Chairman of the House Natural Resources Committee, who was also the prime sponsor of H.R.39, the Alaska National Interest Lands Conservation Act (ANILCA).

These negotiations were heated and extended from 1978 right up to the signing of ANILCA by President Carter on December 2, 1980. During the process the mining, logging, and oil and gas industries were told to go out and find and define the areas of highest potential for development and that these would be excluded from future CSUs. However, the mining industry discovered that whenever new mineral deposits were found, the next map would move the boundary to include those deposits. In those days before e-mail and graphic information systems to update the maps, it was three or four months between the meeting and the next map. This pattern of deception continued throughout the process. In one instance, three Bureau of Land Management specialists were sent to Washington, D.C. to plot the most favorable recreation areas and the most favorable resource areas on the maps. In the end, all lands defined for each of these categories were withdrawn and placed in CSUs. In this instance the specialists were ordered to turn in all preliminary maps and notes, as well as the final copies. Being honest, they did just that and as a result there is no record of what took place. This kind of deception and trickery was not an isolated example, but a common occurrence. Due to the mistrust and concerns that existed, numerous promises were made in ANILCA to address these issues.

What were the Promises Made by ANILCA?

The promises made in ANILCA can be grouped into three general categories. The first promise was for the protection of valid existing rights where lands containing such rights were being withdrawn and placed in CSUs. In other words, activities previously allowed would be allowed to continue. This included such things as sport and subsistence hunting and fishing, guiding operations and mining. This promise also meant that miners with existing claims could continue to develop and mine those claims and if they could meet all the necessary requirements, they could still patent those claims, just as before the passage of ANILCA.

The second general promise was that access to private lands inside CSUs (inholdings) and across CSUs would be guaranteed. This was a major theme found throughout ANILCA. Access to Native Corporation lands; access to Native allotments; access to homesteads;

access to mining claims; access to State owned lands; access to guide and outfitter leases, etc. ANILCA addresses historic access routes, temporary access, as well as new access needs, both into and across CSUs. Access was such a big issue that one major section of the Act, Title XI, focuses entirely on new access routes where none existed before.

The third general promise, often called the "no more" clause, stated simply, says that Alaska has given its share of land for federal CSUs. Section 101(d) of ANILCA states that the need for more parks, preserves, monuments, wild and scenic rivers, etc. in Alaska has been met. Then, to make it even more clear, Section 1326(a) specifically states that administrative closures, including the Antiquities Act, of more than 5,000 acres can no longer be used in Alaska and that if a larger area is administratively withdrawn, "Such withdrawal shall terminate unless Congress passes a joint resolution of approval within one year after the notice of such withdrawal has been submitted to Congress."

To add even more emphasis and strength to the "no more" requirements, Section 1326(b) states that the federal agencies are not even allowed to study lands for consideration for set-asides unless Congress specifically authorizes the study. To quote this section (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 purposes shall be conducted unless authorized by this Act or further Act of Congress."

The Promises have been Broken

I will not try to list examples of how the promises of ANILCA have been broken. That discussion will occur as many others relate their personal experiences and horror stories. However, I will set the stage by discussing one of the most serious and most egregious examples of a promise that has been broken and continues to be broken today.

This example involves the "no more" clause and how some federal agencies have worked to get around the clear intent of Congress. In the previous section I quoted Section 1326(b). The U.S. Forest Service attorneys have reviewed this section and they have concluded that they can still study Forest Service lands for set-asides if the study is part of their normal review of forest management plans, as in the Tongass Land Management Plan (TLMP) completed a couple years ago, and the Chugach Land Management Plan (CLMP) that is now in progress. Their argument turns on the phrase "...for the single purpose of considering..." They argue that their evaluations are not for a "single purpose" and, therefore, studies for more "Wilderness" or Wild & Scenic Rivers are allowed. As a result the Forest Service continues full-speed-ahead studying and proposing more areas in Alaska for these special restrictions.

The Bureau of Land Management (BLM) took a very different approach until the Clinton Administration came into office. In the December 14, 1990 Instruction Memorandum No. 91-127 the Director of the BLM clarified that the agency was not allowed to study lands for the designation of new CSUs or other restrictive set-asides. Before that time it was clear to the BLM staff in

Alaska that such studies were simply not allowed. Memorandum 91-127 quoted ANILCA Sections 101(d) and 1326(d) as the legal reason why such studies were not allowed. However, once the Clinton Administration came into office this Memorandum was removed.

Finally

To quote a past author, "The price of freedom is eternal vigilance." The "no more" example given above is a serious reminder of this fact. As this quote applies to Alaska, being vigilant includes educating Alaskans about the d(2) process, the promises made, and the mineral deposits lost when ANILCA became law. This compilation comprises articles from many persons that were involved in the d(2) debate. We trust that all AMA members will benefit from this look at history and share these articles with others. We also hope to stop further erosion of the promises that were made and encourage new legislation that will strengthen the "NO MORE" clause!

Steve Borell is Executive Director of the Alaska Miners Association.

Background on ANILCA and Strategies that Alaskans Used to Combat the Lock-up of Public Lands in the State

C. C. Hawley and Vernon R. Wiggins [1]

In 1971, legislation was pending in the U.S. Congress to grant a permit for the construction of the Trans-Alaska Pipeline. Before the permit could be issued, however, a long-standing issue had to be settled. Alaska Native interests had convinced Congress to condition issuance of the pipeline construction permit on settlement of Native claims.

In that same year, the Alaska Congressional delegation asked the Alaska Miners Association (AMA) for its opinion on appropriate settlement terms for the issue. The association made a critical decision that would influence its relation with the native community for decades to come. Several options had been posed; one supported a moderate financial settlement, but little land; another favored a substantial financial settlement but also with little or no land. A third settlement proposal, however, called for payments of nearly one billion dollars and a substantial land package. This settlement package also carried with it radically different concepts on management and land ownership. Instead of living in tribal enclaves under the eye of the Bureau of Indian Affairs, Alaska Natives would own lands through village and regional corporations whose ultimate geographic roots were tribal. Individual natives would be the shareholders of the corporations.

Members of the AMA debated the issue statewide. A few favored no settlement, but when the dust cleared a clear majority of the AMA had endorsed a settlement involving extensive lands, a substantial financial settlement, and the new management options. Many other Alaskans responded as individuals and through their interest groups to these proposals; the delegation was bombarded from every corner with every conceivable settlement scheme. But to the credit of the delegation, they always asked. "Where do the miners stand?" Although the association then consisted of only a few hundred members, its opinion was worthy of special consideration. The miners had roots in both rural and urban Alaska; some had ties to the Native community by marriage and some, in fact, were Alaska Natives. Further, the AMA had a wider background on land issues than most other interest groups.

The settlement, the Alaska Native Claims Settlement Act (ANCSA), was

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[1] *During the lands debate Hawley served as Executive Director of the Miners Association, also as a director of CMAL, and as one of two private appointees to the state's "d-2 steering council." He also served on the post-ANILCA Land-Use Council advisory committee. Wiggins left his position with Tryck Nyman & Hayes in 1977 to become Executive Director of CMAL. He subsequently served as Federal Co-Chair of the Alaska Land-Use Council and in key posts in the Department of Interior.*

signed into law in December 1971. It brought several consequences, some not reasonably anticipated. Positively, it tended to align mining and native interests, enhancing communication between the AMA and Alaska Natives on natural resource issues. But other interests had used the act as a springboard towards an issue that ultimately proved more divisive: The land conservation issue.

Section 17(d)(2) of ANCSA allowed the Secretary of the Interior to withdraw up to 80 million acres of unreserved public lands for study as possible future conservation units. These lands were withdrawn not only with respect to the mining and mineral leasing laws, but also from State and Regional Native Corporation selection. Alaskans, who read 80 million acres as a maximum, subsequently learned that the action of one Congress does not bind another. The final conservation settlement was nearly twice that. Of Alaska's private resource sector, only the oil industry received an immediate benefit as the pipeline construction permit was issued. In the long term, however, their interests were not well served as the second best Alaska oil prospect was placed off limits, where it remains without final resolution today.

Coincident in time with the unfolding events in Alaska, other public land issues emerged or gained momentum nationally. Western states were faced with the first significant withdrawals under the Wilderness Act of 1964. There was increased pressure to formalize the role of the Bureau of Land Management on the Public Domain. Recommendations of the Public Land Review Commission called for management rather than gradual disposal of then unreserved public lands. The Commission also favored adoption of a leasing system in place of the General Mining Laws for mineral entry by discovery and location. But the Commission did recognize that mining had a special place in the public lands scheme. Because of the scarcity of rich mineral resources and their small geographic footprint, in most cases mining should still constitute highest and best use of public lands where a conflict existed.

There was an acknowledged caveat in these early debates that truly important scenic or scientifically valuable lands, the Yellowstones and Yosemites, should be set aside. But the traditional arguments of the miners, loggers, and ranchers, long protected by western Congressmen, ran into the new public lands advocates. These men and women preached that most public lands were instead to be regarded as some kind of commons most valuable for vicarious use by an increasingly urban population.

Initially, this sea change in public land philosophy was at first not perceived with alarm by many Westerners. It was more evident to primary user-groups. Miners, loggers, and ranchers understood the immediate, draconian effects of the new philosophy on their livelihoods and ultimately the long-term effects on national economic health. They began to fight back.

Meetings of the AMA during the early 1970's often had a workshop atmosphere, as miners endeavored to work with and educate new public land administrators. They also used their knowledge of the resources to advise State and emerging Native Corporations on lands to select for mineral value. Maps were drawn and knowledge

long held "close to the vest" was imparted. Charles "Chuck" F. Herbert, then Commissioner of Natural Resources and an experienced mining engineer, used this information to make the state's largest land selection in January 1972 during a selection window that existed in ANCSA. The action by the Department of Natural Resources took the federal bureaucrats by surprise. A substantial amount of the selection was dropped in an out-of-court settlement with the Department of Interior later that year, but the remaining selections were valuable.

In the years between 1972 and 1976, miners and other outdoor interests took advantage of the Federal-State Land Use Planning Commission (FLSLUP) created by ANCSA. The chief and most lasting function of the AMA was probably one of education. In one Commission-sponsored workshop on the federal mining law, miners made a strong case in favor of the location system. Again, miners furnished information about the state's mineral resources, information that contributed to views forwarded by the Commission. President Nixon's Secretary of the Interior, Rogers C. B. Morton, failed to gain Congressional support for the Commission's now seemingly moderate proposal. Environmentalists aimed much higher and their far-reaching proposals established a new norm for legislation. Locking up millions of acres in Alaska was seen as a cheap environmental vote by many congressmen—Easterners, Southerners, liberals, moderates, and conservatives alike. It cost nothing politically and most Alaskans were unaware of the importance to their future. Many were too busy working on the pipeline!

In October 1976, AMA held its first statewide convention in Anchorage. The question of Alaska's conservation lands, the so-called d(2) lands, was a major part of the convention. Continuing with the approach adopted in 1971, the association reached out to native leaders. Representatives of Bering Straits, Chugach, Calista, and Bristol Bay corporations and Emil Notti, for the Alaska Native Foundation, shared their views on mineral development on native lands.

Brochure from the AMA's first annual convention in 1976.

In anticipation of the next Congress, the AMA also invited environmental leaders to address the convention on *The Place of Mining in Alaska's Future.* Howard Banta, of the U.S. Forest Service, and Will Dare, of the Bureau of Mines, believed the future was positive. Jack Hession, the leader of the Alaska branch of the Sierra Club, accepted the challenge and expressed the view that there was little-or-no future for mining in Alaska. He proceeded, confidently, to outline H.R. 39, the environmentalists' hand-crafted conservation lands bill. The bill was to be introduced in January 1977. Hession was confident that the bill would pass Congress by late spring or summer of the same year. In effect, Jack used the opportunity to deliver mining's eulogy in Alaska. Tacit to Hession's discussion was the recognition of the potential effectiveness of the General Mining Laws, whereby a discovery by one individual could bring civilization to the wilderness, a thought abhorrent to the environmental community. The effectiveness of the mining law could be blunted by withdrawing large blocks of public lands from its use.

Miners were very aware of the dangers of ill-conceived withdrawals of public lands. They understood that, because of tremendous gains in productivity, modern mining is a small industry with little political clout. Although miners understood the issues and could foresee the larger effects on the state, they also knew that an effective lands organization must involve much more than mining.

Something had to be done. Chuck Hawley, then Chairman of the Anchorage Branch of the AMA, rented a meeting room at the Hotel Captain Cook in November, 1976 and invited a wide spectrum of Alaska interests and leaders to discuss the issue, "What will Alaska's future be if H.R. 39 becomes law?" The consensus was that state, native, and private interests would be affected adversely and that immediate action was necessary. The discussion was essentially the first meeting of the organization that became Citizens for the Management of Alaska Lands (CMAL).

The concept of the CMAL structure drew upon that of one of the first broad public land organizations in the Western states. That organization, Outdoors Unlimited, was especially strong at that time in Wyoming, Utah and Colorado. Basically, it was a coalition of individuals and interest-groups who favored multiple-use of Forest Service and Public Domain (BLM) lands.

But Alaska's needs were different. It needed an organization with muscle, and one that could reach towards the broader interests of the state and native corporations, thus gaining political stature. An organization that reached only the traditional industries and western delegations would be politically impotent in Washington, D.C. Two important additions to the "umbrella" of an Outdoors Unlimited structure were Alaska Natives and organized labor. Within that structure, miners would have to stand aside, a bit out of the spotlight. It was a necessary risk if mining was to survive in Alaska. A sufficiently large group of Alaska Natives was also ready to support a development group. Despite having been courted for years by the national environmental community, there was a strong element within the Alaska Native community that abhorred the basic pat-

rimonial concept of a subsistence-ONLY future which the environmentalists seemed to hold for Alaska's first citizens. One of the new leaders, Carl Marrs, was elected the first president of CMAL. Labor also came to the table. Bob Johnson, a spellbinding orator for the cause came from the Teamsters. Southeast's Greg O'Claray, from the Inland Boatmans Union, helped cement CMAL's ties to the powerful Port of Seattle and maritime interests in the Pacific Northwest. The AFL sent a steely-eyed gentleman, Vern Carlson, a consummate negotiator. The list of supporters and initial organizers is a long one.

Two organizations and two individuals moved CMAL from a research and debating group to a potent advocate for Alaska's cause. The organizations were the Alaska Chapter of the Associated General Contractors and the Alaska Lumber and Pulp Company. The men were, respectively, their leaders, Richard Pittenger and Clarence Kramer. These men and their organizations bankrolled the initial organization, but they also put their hearts into the battle. They were soon joined by the Alaska Loggers Association (ALA) and the oil industry. These organizations, the miners, loggers, oilmen, and labor increased and maintained their financial support to the very last day of the battle. At the same time, CMAL remained an individual membership organization supported by thousands of concerned Alaskans. The fact that the AMA had active chapters throughout Alaska, especially strong-ones in Anchorage, Fairbanks and Southeast, aided in the growth of the new organization.

With increased financial support came a full-time staff, legal counsel, and Washington representation. Fred Eastaugh, of the law firm Robertson, Monagle, Eastaugh and Bradley, brought his firm's legal talent to the table with counsel unequaled anywhere in the growing d(2) industry. Especially active were young attorneys for the firm, J. P. Tangen and Jim Clark. Tangen, who became statewide president of AMA in 1977, especially espoused the miner's cause, and Clark knew every aspect of the timber issues.

While CMAL never attained the financial status of the national environmental movement and its minority group within Alaska, it did become a major force in Washington, D.C. because it was a single purpose organization — it fought only one battle — and because of the dedication of the membership. Many individuals supported CMAL with their hard earned contributions of $10, $50, or $500 monthly over three long years.

Although well-organized and financially supported, CMAL's leaders realized that they needed dynamic and full-time lobbying leadership in Washington, D.C. The needs of the organization were met with the engagement of Tony Motley. CMAL persuaded Motley to leave his Alaska cabinet post as Commissioner of Commerce and Economic Development in the Hammond administration and sign on as CMAL's full-time Washington representative. Motley was an ideal and unanimous choice. He brought a broad background as a military staff officer, successful real estate developer, and state administrator. He was an excellent leader who could hold his own in the never-never land of Washington politics.

With the hiring of Motley, what began as a concept of the Alaska Miners had become a true, statewide umbrella movement. CMAL eventually had more than 5,800 individual members and more than 200 corporate or association interests on its membership role. Although CMAL was no longer "the miners group," it became the key base of operations for mining companies concerned about Alaska land issues, and it successfully enlisted the aid of the American Mining Congress.

During the spring of 1977, CMAL was woefully behind the power curve. It was playing catchup with a decade-long effort by environmentalists to subdivide Alaska. The backers of the key bill, H.R. 39, had planned a series of Congressional hearings in Chicago, Denver, San Francisco, and Seattle which they thought would sweep the bill through Congress by June 1977. In those early days, often only the miners were organized enough to counter the efforts. Hawley coordinated efforts with his Cessna 206, organizing in Chicago, Denver, and Seattle. (San Francisco was conceded.) Chicago was flooded by college students brought in by the backers of H.R. 39. Only Ted Van Zelst of Geneva-Pacific and Belden Copper, then active in the Wrangell Mountains, countered the environmentalist message in Chicago. By the date of the hearings in Denver, opposition was organized and substantial. In Seattle it was a standoff, perhaps a victory for CMAL. By the time that the little airplane arrived in Washington, Motley had arrived and CMAL had office space at George Cheek's Forest Products Association. Thanks to the efforts of miners, loggers, oilmen, and many Alaskans then living outside, the hearings in Washington were balanced. "The environmentalists went nuts," says Motley. Their plot was being spoiled.

Chuck Hawley with Rep. Don Young

In Washington, the main efforts were coordinated through the Alaska Congressional delegation's staff and through the Committee structure of the House of Representatives, where H.R. 39 was introduced. Perhaps the most effective strategy turned out to be Alaska itself, as presented through field trips for Committee members, their staff, and the media. Miners at Cache Creek and Kantishna discussed issues with Senator Howard Cannon (NV) and Representative Udall (AZ). Dave Heatwole finally had to show Representative Seiberling where the drill rigs were in the Brooks Range, otherwise they were nearly invisible. In Southeast, Gene Smith of U.S. Borax, and loggers held court to tell the truth about Alaska's resources and about Alaskans' abilities to produce these resources in an envi-

ronmentally responsible fashion. These Alaska-led field trips to every corner of the state, convinced most Congressmen that Alaskans were not 'blue-eyed Arabs' or were not poised to 'rip, rape and ruin' as Congressman John Seiberling (OH) was fond of saying in his floor speeches and public hearings. Perhaps the best message was that Alaska was truly a huge place of great beauty and complexity that deserved careful consideration instead of rushed legislation.

There was one missing link in the Alaska strategy — lack of political consensus. The state had four political leaders who went three separate directions. Senator Ted Stevens and Representative Don Young were in the trenches every day with CMAL for Alaskans. Senator Mike Gravel had the correct inclinations but often talked a better game in Alaska than he fought in Washington. Governor Hammond's concept of joint state-federal management of conservation lands in Alaska was creative and had merit but it was 'dead-on-arrival' in Washington, D.C. Congress would not yield its powers over the national public lands.

CMAL and its backers and founders fought the backers of H.R. 39 to a draw in the House committee structure. In fact, a failure to achieve passage of legislation was a loss for the environmentalists and a victory for CMAL and its supporters. But neither Alaskans, CMAL, the state, nor any industry group could combat the power of President Carter's imposition of the Antiquities Act upon Alaska when legislation failed to pass in 1978.

Given the Antiquities Act withdrawals, Alaska was forced in the next Congress to seek legislation to lift the withdrawal. It was a necessity, if only to obtain the rest of its land entitlement under the Statehood Act and its future economic development. A parliamentary maneuver executed largely for political gain in the 1978 Senate killed any hope of real victory for Alaska. Beginning with the next Congress, Alaskans simply negotiated the size of the truck that would run over them. Without legislation, the state would never receive its land entitlement. After two more years of fruitless battle, ANILCA was signed into law by President Carter on December 2, 1980, less than 45 days before his last day in office.

Epilogue

History will determine whether ANILCA was good or bad for Alaska. There seems little argument, however, that the bill that died in 1978 was better Alaska legislation than the one passed two years later. History will also render the verdict on public land-use doctrine in the United States: Is man part of the equation or only an observer? Who are the victors in this struggle, already engaged for more than twenty years? The final chapter is yet to be written.

The battle as fought had real physical casualties. Clarence Kramer became President of CMAL but died in a plane crash in December 1978 along with other CMAL workers and supporters. Kramer and others were returning to Anchorage from a meeting in Juneau. Five of seven people on the plane perished, among them were Ann Stevens, wife of the Senator; Joe Rudd, an attorney in CMAL's cause; and volunteer Dick Sykes, pilot of the aircraft. Senator Stevens and Tony Motley were seriously injured but survived.

An Interview with the Former Federal Co-Chairman of the Alaska Land Use Council

By J. P. Tangen, Esq.

The Alaska Land Use Council was established by Title XII of ANILCA in 1980. For the first two years of its existence it flourished as a forum for reasoned decision-making concerning federal land within the State. Thereafter it foundered and finally, when up for reauthorization, was allowed to die. In the following interview, former Deputy Under Secretary of the Department of the Interior, Vern Wiggins, discusses a little of the history of the Council, its successes, its failures, and whether it is time to try the idea again.

AMA Journal: First, Vern, please give us a little information about your background and role in the creation of the Alaska Land Use Council.

Wiggins: I have a BA degree in Political Science and Public Administration. I came to Alaska in 1967 and worked as Director of Planning for the Greater Anchorage Borough, the Municipality of Anchorage's predecessor. Following that, I worked for a civil engineering firm in Anchorage for several years. I was one of the founding members of the Citizens for Management of Alaska Lands, Inc. (CMAL) which led the fight in Alaska and DC against the Carter Administration's efforts to lock up all of the public lands in Alaska. After ANILCA was signed in 1980, I applied to the Reagan White House for the position of Federal Co-Chairman of the Alaska Land Use Council. I was nominated to the position by President Reagan in mid-1981 and confirmed by Congress in December 1981. I served in that capacity until 1989 when I accepted the position as Deputy Under Secretary for Alaska issues in the Department of the Interior. I left Interior in January 1992 when Clinton was sworn in as President.

AMAJ: The Alaska Land Use Council was a statutory outgrowth of the Alaska Land Use Planning Commission. Can you describe the organization a little and tell us what it accomplished.

Wiggins: The Land Use Council was composed of two senior officials as Co-Chairmen; by statute, the Governor was the State Co-Chairman, and a person appointed by the President served as Federal Co-Chairman. Other members were: the State Commissioners of Fish and Game, Natural Resources, Environmental Conservation, and Department of Transportation (DOT), and the Federal Regional Directors of the National Park Service, Fish and Wildlife Service, Forest Service, BLM, NOAA and the Federal DOT. Two representatives of the Alaska Native Peoples were also members of the Council. This composition was designed to support a forum to bring together all the players in managing the natural resources, wildlife and public lands in Alaska, plus representatives of the Native corporations which owned 44 million acres. The mission was to seek harmonious implementation of ANILCA by reducing the harmful rhetoric and conflict, which had characterized the relationship between the federal and state land and

wildlife management agencies prior to statehood. A major goal of the Council was to recognize and protect Alaska's historical use of the land, be it sport hunting, subsistence hunting and fishing, mountain climbing, wilderness hiking, mining, timber harvest, or just "enjoying" the outdoors.

AMAJ: What were the distinguishing characteristics of the Land Use Council, and what was its primary mission?

Wiggins: The Council was distinguished from previous similar efforts because it brought to the same table the Governor, a Presidentially appointed individual who had access to the various Federal Secretaries in Washington, the Native interests and the actual managers (State and Federal) of the public lands and natural resources in the state. For the first time in history, the State had an opportunity to directly influence federal land and resource management planning in Alaska. And the State had the assurance that its interests were to be given primary consideration in settling disputes. In every case where the state and federal interests clashed, absent a clear federal statutory mandate to the contrary, the Federal Co-Chairman was directed to give Alaska's interests priority.

AMAJ: Can you share with us a few of the more significant success stories which emerged from the Council during your tenure as Federal Co-Chairman?

Wiggins: During the first two years of the Council's existence the Council worked well. Governor Hammond's personal participation in the Council's activities and his willingness to work with the Federal Co-Chairman in resolving issues set the tone. Governor Hammond's prior history of having worked in the federal wildlife protection field gave him a unique perspective as the State's leader. A single issue, however, that of federal oil and gas leasing in outer Bristol Bay, remained a point of conflict. Governor Hammond, while remaining inalterably opposed to the prospect of leasing in Bristol Bay, and the Cochairman worked hard to not let that dispute taint other Council activities. In those early days, the Council set in place a mechanism for the State to have input into the planning activities of the federal agencies as they developed required land and resource management plans for the Parks, Refuges and BLM lands.

AMAJ: What problems did the Council encounter during the Reagan years?

Wiggins: There were numerous problems throughout the Council's existence. They became more and more contentious as time wore on. The ultimate breakdown came, however, when Governor Sheffield, enraged that the Interior Department would not accede to his demands on Bristol Bay, stopped coming to Council meetings. This signaled a return to the days when federal and state managers locked heads over every issue. Frankly, not much got done in that environment. Governor Cowper continued in this posture. Partisan politics became the motivating force and the Council's effectiveness was lost. Another problem that arose was the National Park Service's unwillingness to compromise with any other land or resource management agency on any issue, even on those which it had the statutory discretion to mold a management decision to fit unique situations. The Service "went

by the book" as it were. This produced a frequent air of tension and occasionally outright clashes, some of which were never resolved.

AMAJ: As you know, Alaska is under assault by the federal government again, and land use issues ranging from restrictive land use plans in the Chugach National Forest, to the risk of having ANWR named as an additional National Monument, to the creation of up to a dozen World Heritage Sites and Biosphere Reserves in Alaska. The idea is being surfaced to breathe new life into the Council. If that were to happen, what successes could be hoped for in the future?

Wiggins: A "new council" might have some potential to work. Of prime importance is that the Federal Co-Chairman must be sufficiently high up in the federal organization that the federal agencies understand that the Federal chair is speaking for that administration and is acting to implement the President's policies. Also, the Governor, not a designee or surrogate, has to take an active, personal and visible part in the Council's activities. While partisan politics in the Council's activities is undesirable, one must understand that Alaska is not going to win any such fights when it comes to its land and natural resources programs, so long as there is a Democratic President and Secretaries of the Interior and Agriculture aligned with and committed to granting the every wish of the national environmental organizations, whose mission in life is to lock up every last acre of land in Alaska. As the Native Regional Corporations broaden their activities on their lands, and as those activities affect neighboring federal and state lands, having the Native community represented on a new council and equally committed to cooperation would seem to be essential.

AMAJ: What warnings could you give us on how to proceed for the benefit of the resource development community in Alaska.

Wiggins: One word of warning: Alaskans need to understand that there are those forces at work in Washington that would just as soon see the Alaska Statehood legislation torn up and burned, thus moving the State government aside so those interests can achieve their ultimate goal; on the one hand, adding as much Alaska acreage as possible to the National Wilderness classification, and on the other hand, leasing every acre possible to oil and gas and hard rock mineral extraction along with timber harvesting to add income to the federal coffers. Alaskans need to settle the subsistence issue among themselves. Left unresolved, federal takeover of subsistence will encroach more and more deeply into the daily management of activities of land in Alaska. The Alaska Native community must commit to participate in a new council. Finally, Alaska must litigate in federal courts against the federal government over the so-called "no more" clause in ANILCA. The current administration is obviously ignoring it and Congress seems unable to hold the Clinton administration in check.

ANILCA'S EFFECT ON ALASKA'S MINERAL LANDS AND DEPOSITS

C. C. Hawley

The passage of the Alaska National Interest Lands Conservation Act (ANILCA) had drastic effects on Alaska's mineral lands that still cannot be fully quantified. It placed known deposits and mineral belts within conservation units, it withdrew geologically promising areas from any type of private appraisal, and by erecting boundaries that blocked natural transportation routes, it effectively foreclosed development of deposits on BLM, State, and Native-owned lands. The legislation placed a few deposits, perhaps four of significance, outside of conservation units, but in general, it seemed that identifying deposits rendered them, more, rather than less, likely to be placed within a conservation unit boundary. In Titles 10 and 15 of the Act, processes were set up for government appraisal of certain lands for minerals, however, Section 1010 of Title 10 has not been used to any significant degree, and nothing has been done to acquire the background that Title 15 would need, if it were to be of any practical effect. At the time of Statehood in 1959, Alaska's once important mineral industry was nearly dormant.

The rich copper mines of Kennecott closed in 1938; the A-J, Alaska's largest gold mine, closed during World War II; the large placer mines at Fairbanks and Nome were still in operation, but they were almost subeconomic. Only the facts of existing infrastructure and that ground had been prepared in advance enabled their continued operation. Only a very view prospectors combed the hills: Gold, the prospector's main stay, was fixed at $35.00 and only a few men, such as Reinhart Berg, pursued copper and more prosaic metals. That Alaska could hold great remaining mineral wealth was indicated by the discovery of a rich nickel-copper deposit in Glacier Bay National Monument in the late 1950's In general, however, America's mining companies were not looking at Alaska. Prospecting activity increased only slightly in the 1960's Kennecott acquired Berg's discovery at Bornite in the southern Brooks Range, but company-driven prospecting was still in its infancy in Alaska.

State selections of the 102 million acres promised at Statehood likewise moved slowly. By 1961, Alaska had selected only 1 million acres of its entitlement. By 1964, it had selected only 10 million acres. In 1967, Secretary of Interior Stewart Udall stopped all land selections until the native land claims were settled. Shortly after the passage of the Alaska Native Claims Settlement Act (ANCSA) in December 1971, Commissioner of Natural Resources C. F. Herbert selected 77 million acres, but in the fall of 1972, this selection was cut to 41 million acres to forestall the possibility of federal litigation. The amount of land actually granted to the state held at a plateau of less than 20 million acres until 1973; further large

transfers of lands to the state awaited the passage of ANILCA.

During the ANILCA debate, environmentalists stated that because of the state's generous land entitlement and freedom to select land from the Public Domain, the state had selected the best mineral lands, thus should not be discouraged by withdrawal of more federal lands from mining. The argument fails on two grounds. First the land process was never free and open; it was constrained by early acreage limitations, later by Udall's order and ANCSA. Second, neither the State, nor anyone else had a very good idea of the lands to select for minerals. How do you efficiently select the 1,000,000 acres that will contain most of Alaska's hard mineral wealth? Today, with much more knowledge of the geology, it still is a difficult question.

Other authors in this section will exemplify and amplify some of the specific problems. Some of the best state-owned mineral land is in the Southern Brooks Range. But these lands will only have value if there is transportation. Thus, the Battle of the Boot described by Dave Heatwole. Kantishna exemplifies another series of concerns. Kantishna had been mined almost continuously since 1905; further McKinley National Park, which was expanded to enclose Kantishna, was itself open for prospecting and mining. Several miners who have not been allowed to mine in Kantishna since 1985 still have not received compensation. Other concerns also exist. For example, the area is geologically very complex. Work done since the mid-1970's suggests that types of mineral deposits exist at Kantishna that were never sought by prospectors.

McKinley Park, now Denali National Park, and Wrangell-St. Elias National Park are additions to the Park System known to be mineralized. But the extent of mineralization in these two huge units is still not known. The mineral potential of new parks, such as Lake Clark and the expanded Katmai National Park, is virtually unknown.

Section 1010 of ANILCA that suggests the United States still has a vested interest in the mineral estate has only been barely opened. The section states, "The Secretary shall, to the full extent of his authority, assess the oil, gas, and other mineral potential on all public lands in the State of Alaska in order to expand the data base with respect to the mineral potential of such lands." Further, except on Park Service lands, the Secretary can even order drilling as a means of appraisal.

Recognizing the limitations of exploration carried out by relatively untrained scientists in the public sector, it would seem that such surveys would at least have great scientific value and would enlarge the database. They could, in theory, allow for a real use of Title 15 in a national emergency. Title 15 would operate on Public Domain (BLM) and Forest Service lands and would allow development in a national emergency. The process is long and cumbersome, but might work if a reasonable data base existed on such lands to identify them before the emergency started.

Conceding the loss of unappraised federal mineral lands as an intended consequence of ANILCA, perhaps the

most serious effect on other Alaskan sectors is the effective blockage of State and Native lands by Conservation Units whose extensions seemed to have been made solely for blocking the development of such lands. As an almost constant participant in the ANILCA process, I can attest that boundaries were changed to include, rather than exclude, known deposits; and further, that boundaries were adjusted to preclude economic development of many deposits. Quartz Hill, Greens Creek, Red Dog, and Golden Zone were excluded after the Carter exercise of the Antiquities Act, but many other deposits were enclosed. Of those deposits excluded, their development was rendered very difficult because of their location relative to conservation units.

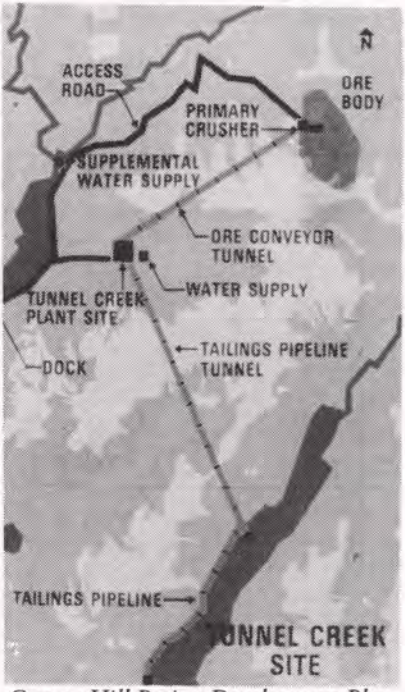
Resolving access to legitimate-rights on State and Native lands seems the largest challenge to operation within the framework of ANILCA. The intent of Section 1010 should be a rational one that could be endorsed by many. Thus far, gathering of scientific mineral data seems to have few advocates — except among the miners.

During the ANILCA debate, Chuck Hawley was Executive Director of the Alaska Miners Association, and was a founding director for CMAL. He served on the advisory commissions to both pre- and post-ANILCA Land Planning Commissions.

d(2), PART 2
THE QUARTZ HILL EXPERIENCE

By Chris Hesse [1] and Gene Smith [2]

In the fall of 1974, geologists from United States Borax & Chemical Corporation (now U.S. Borax Inc.) engaged in a regional geochemical reconnaissance of Southeast Alaska, discovered a large, low-grade molybdenum mineral deposit on the mainland approximately 45 miles east of Ketchikan. Located about equidistant from two important salmon streams flowing into Boca de Quadra and Wilson Arm fjords, the Quartz Hill Molybdenum Project soon became embroiled in a classic struggle between land rights advocates on one side and environmental preservationists on the other.



Quartz Hill Project Development Plan.

The Quartz Hill Project eventually came to figure prominently in the negotiations leading to the passage of the Alaska National Interest Lands Conservation Act (ANILCA) in 1980.

In the summer of 1971, U.S. Borax had gone to Southeast Alaska, in spite of its environmental sensitivity, because it knew the area had promising mineral potential. The company believed that if it took great care to protect the environment and meet all of its legal obligations, it would be treated fairly and justly. This was only a few months prior to the passage of the Alaska Natives Claims Settlement Act that contained Section 17(d)(2), from which the so-called d(2) legislation derived.

This Section states that the Secretary of the Interior is to withdraw *up to*, but *not to exceed*, 80 million acres of unreserved public lands that are suitable for additions to, or creation as, units of the National Parks, National Wildlife Refuge, National Wilderness and Wild and Scenic River systems. These lands were to be withdrawn within nine months of enactment. They were not to be lands in Southeast Alaska, as almost all

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[2] *Formerly Vice-President Government & Environmental Affairs, U.S. Borax Inc., Los Angeles*

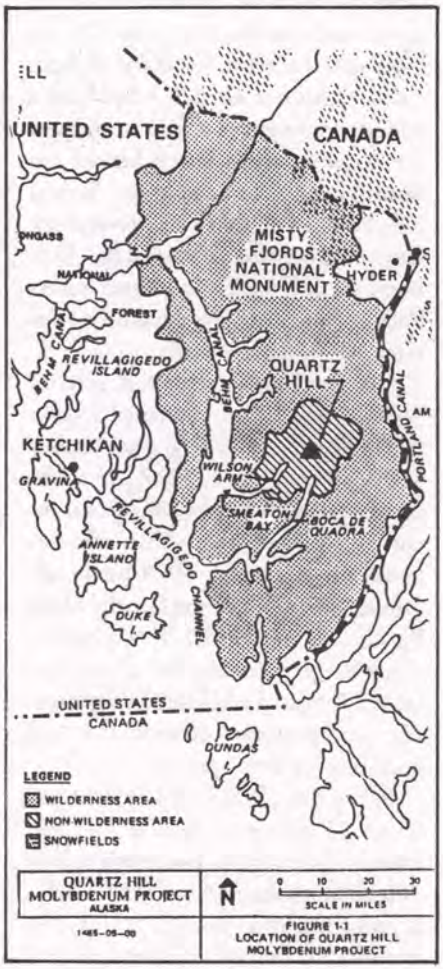
of Southeast was being studied under the Tongass Land Use Management Plan, a joint Forest Service/community land use study.

At Quartz Hill, initial test drilling in January of 1975 confirmed the continuity of the mineralization and a full-scale exploration program was commenced in the summer of 1975. By 1976, the existence of a huge, low-grade deposit of molybdenite mineralization had been established, and planning for development, environmental studies and permitting began. U.S. Borax announced the mineral discovery in March of 1976. Opposition to the project, organized by various environmental groups, began shortly thereafter.

In January of 1977, at the start of the 95th session of Congress, Congressman Morris Udall and others introduced H.R. 39, the original d(2) bill. This would have placed *146.5 million acres* into Wilderness, including the Misty Fjords area in which Quartz Hill is located. The "Alaska Coalition," a group of environmental organizations spearheaded by the Sierra Club, took credit for making Southeast Alaska part of H.R. 39.

Meanwhile, the exploration drilling program being conducted at Quartz Hill under Forest Service regulation, solely via helicopter access, was continuing to bear fruit. Results indicated that underground bulk sampling of the deposit, as part of a full-scale feasibility study, was warranted to prove up the deposit. U.S. Borax applied to the Forest Service in March of 1976 for a Special Use Permit to construct an access road up the Keta River Valley from Boca de Quadra for purposes of conducting the bulk sampling program and shipping out a sample of approximately 5,000 tons.

After an Environmental Impact Statement and a lengthy administrative process, the permit was granted in November of 1977. Subsequent appeals by the Sierra Club Legal Defense Fund and associated fishing groups were denied.



Location Map for the Quartz Hill Molybdenum Project.

Prompted by Congress' failure to pass H.R. 39, President Carter, by Presidential Proclamation on December 1, 1978, placed 56 million acres of Alaska into the Misty Fjords National Monument, including over 2 million acres in the Tongass National Forest around Quartz Hill. This was done under obscure provisions of the Antiquities Act. Carter's announced purpose was to preserve the land-use designation of the concerned areas for Congress. On the same day, Assistant Secretary of Agriculture, Rupert Cutler, employed a seldom-used right of review to overturn the decisions of his Forest Service administrators by canceling the Special Use Permit for the Keta River bulk sample access road. He ruled that U.S. Borax be limited to helicopter access until it had made the decision to develop the mineral deposit.

Also, on December 1, 1978, Interior Secretary Cecil D. Andrus used Section 204(b)(1) of the Federal Land Policy Management Act (FLPMA) to withdraw 11.2 million acres of Alaska, including Misty Fjords. This was followed on January 4, 1979 by an administrative proposal to place the Misty Fjords area into RARE II wilderness, completely ignoring the aforementioned Tongass Land Use Management Plan and the years of work that had gone into its development.

By this time, U.S. Borax had invested about $7 million in Quartz Hill and estimated the deposit to contain at least 700 million tons grading 0.15% MoS_2. It had a major, apparently world-class deposit, but one which was now encumbered by National Monument designation, proposed for Wilderness and closed to new mineral entry. The company was prohibited from continuing the drilling of those claims on which drilling had not been completed. This meant that the future, if any, would be limited to those claims on which there were already outcrops and/or drill hole intercepts constituting discovery of a valuable mineral, in accordance with the General Mining Law of 1872.

Borax was also stopped from acquisition of millsite claims or land use permits for mill and power plant sites, overburden and mill tailings disposal, utility rights-of- way and all the other land uses necessary for the development and exploitation of a major mineral deposit.

The company regarded these actions as a clear and significant threat to its ability to develop Quartz Hill and felt

A helicopter slings an exploration drill into place at Quartz Hill in 1975

that its legitimate rights under the Mining Law had been usurped by means of discriminatory and abusive use of power.

U.S. Borax could have initiated litigation in an attempt to recover its rights but chose instead to seek resolution during the 96th Congress. A difficult period followed for the Company, during which it was forced to assume a high-profile position in Washington as it argued its case. This attracted the further attentions of the national environmental groups.

After a two-year struggle to educate Congress as to the potential economic importance of the Quartz Hill deposit and to promote protection of the company's valid and existing rights, Congress passed H.R. 39, as amended in the Senate, as the Alaska National Interest Lands Conservation Act. President Carter signed ANILCA into law on December 2, 1980. U.S. Borax was specifically mentioned in the Act. (We believe that this may be the first time that a mining company was so singled out in an Act of Congress.)

The company was pleased with the passage of ANILCA because it removed the severe (if not impossible) burdens imposed by the previously mentioned administrative land designations and withdrawals. Development of Quartz Hill was allowed under special restrictions spelled out in Sections 503, 504 and 505 of ANILCA, which set aside from the surrounding Wilderness an area of 152,610 acres of land needed for development and established conditions which would assure protection of the fisheries and the environment. These conditions were the result of negotiations between members of the staffs of the U.S. Senate and House of Representatives, the Administration,

Collar of one of two bulk sampling adits, Quartz Hill molybdenum deposit (1981).

Bob Ellingson, Construction Manager, in front of the Quartz Hill camp cookery on May 10, 1982

Alaska environmental groups and U.S. Borax. The authors once again thank Senator Ted Stevens and the late Senator Scoop Jackson for arranging these negotiations.

U.S. Borax accepted the restrictions of ANILCA in order to be allowed to proceed with the project with security of tenure and under a reasonable time line. However, in the work which followed, the Alaska Coalition, even though it had been a party to the negotiations which produced the language of Sections 503, 504 and 505, continued to subject the Forest Service and the project to a series of appeals and litigative balks. Preparations for bulk sampling and access road construction had to be suspended in September of 1981 for over seven months to meet conditions imposed by an Order of the Federal Court in Anchorage, which required the preparation of an Environmental Impact Statement addressed specifically to these activities. Subsequently, the project suffered numerous additional delays, in spite of the Forest Service's earnest efforts to meet its obligations.

A full-scale feasibility study was commenced in late 1981 by Bechtel Civil & Minerals, Inc. The bulk sample access road to the deposit was finally constructed in 1982-83; this time from Wilson Arm where the concentrator would be located and up the Blossom River valley. This eleven-mile road, connecting to a three-mile section already existing at the campsite, was built through extremely rough mountain terrain in only seven construction months by flying in equipment to several remote headings along the route; an innovative technique at that time.

A 4,800 ton bulk sample mined by underground means was barged out in August of 1983 for process testing. Development drilling continued through 1983, eventually totaling over 268,000 feet, which outlined a massive mineral deposit about 5,000 by 7,000 feet in plan and up to 1,700 feet deep. Mineable tonnage was now estimated

Road construction through tough terrain in May, 1983

to be as much as 1.7 billion tons, depending on cutoff grade.

However, by the time the feasibility study was completed in mid-1984, the market price of molybdenum had sunk from a peak of over $8 per pound in 1980 to below $4. It became apparent that development of a mine would have to be delayed. Project activities were scaled back drastically, but U.S. Borax nevertheless continued to seek the principal permits in preparation for a later time when mine development could resume.

A controversy ensued between the Environmental Protection Agency on one hand, and Borax, the Forest Service and the State of Alaska on the other as to which of the two adjacent fjords would be permitted for submarine tailings disposal. An application was filed with EPA in January of 1985 for a National Pollutants Discharge Elimination System (NPDES) permit for Wilson Arm, the nearer of the two fjords and in the same watershed as most of the planned activities. EPA's Regional Administrator initially approved the application, but a later review by the EPA Inspector General resulted in a recommendation that his decision be reversed. Hearings were held in June of 1990 and the permit was finally denied a few months later.

In October of that year, U.S. Borax announced an indefinite suspension of the project. About a year later, the Company's interest in the deposit was sold to Cominco American because of changes in Borax's corporate strategy.

Although it would have preferred to work under regulations in effect prior to December of 1978, U.S. Borax found ANILCA to be beneficial because the Act brought an end to an unjust recision of existing rights and a land

Governor Bill Sheffield is assisted in the ribbon cutting during Quartz Hill Access Road opening ceremonies on August 12, 1983, by (L to R) John Sandor (USFS), Senator Frank Murkowski, Carl Randolph (USB), Governor Sheffield, Senator Ted Stevens, and Representative Don Young.

designation straight jacket within which it would have been impossible to operate. While ANILCA's restrictions were demanding, they were administered fairly and in good faith by the Forest Service. The company's problems at Quartz Hill were never with the State and Federal regulations with which it had to comply nor with the professionals who administered those regulations. Rather, they were with the environmental special interest groups who used their legislative influence, the complex regulatory process and legal maneuvers in attempts to delay or stop the project.

Overall, ANILCA has been considered a bad bill in some quarters because it was too large in scope to be properly evaluated by the parties it would impact, as well as the legislators who passed it. It is interesting to note that the passage of H.R. 39 in the Senate was the first time in the history of the U.S. Senate that a bill was passed over the objections of the two Senators from the State that the bill impacted solely.

ANICLA — The Battle of the Boot

by David Heatwole

In 1974, I was assigned by Anaconda Copper Company to initiate an exploration program in Alaska. As a young geologist, I was fresh from experiencing the expropriation of Anaconda's vast copper mines in Chile, by the communist government of Salvadore Allende. My experience in Chile had taught me that ore was defined, not only by tons and grade that could be mined at a profit, but also by politics. In Chile, Anaconda's ore became waste, not due to any technical factors, but due the politics of expropriation.

I was happy to be coming to Alaska, to the United States, where I thought I would not have to worry about any of our discoveries being expropriated by the government. I was very naive! In a few years I was back to fighting a government expropriation, this time it was the United States government. The taking of valid mineral rights by the government was not by outright expropriation, but by the indirect method of placing known deposits inside a national park or by denying access for developing the deposits.

The fight to save Anaconda's and other companies' mineral rights and access to the Ambler District of the southwestern Brooks Range, near Kobuk, became known as the "Battle of the Boot."

Preparing to sling drill collars from Shungnak camp in 1976. Generator shack is in background.

David Heatwole proudly displays a run of zinc-rich massive sulfide drill core, from the Sun Deposit in 1977.

I first became aware of the massive land withdrawals being proposed for Alaska during my initial visits to the state in 1974. Most land managers had a BLM map of Alaska on their walls showing the proposed checkerboard pattern of land ownership. Each township had a color denoting federal, state or native ownership. I remember the dark green color was proposed national parks and wildlife refuges and was referred to as "d(2) lands"; reflecting Section 17 (d)(2) of the Alaska Native Claims Settlement Act. I was appalled to learn that d(2) lands totaled 80 million acres, approximately 25% of Alaska was to be closed to mineral entry!

After Anaconda's initial reconnaissance of the state in the 1974 field season, I could see that vast areas of high-potential mineral terrain were covered by d(2) land classification and would never be explored if placed into federal conservation areas. I convinced Anaconda management that we needed to join the fight to keep Alaska lands open to mineral entry, and obtained permission to release our confidential assessment of high potential mineral areas. To release private mineral data was uncommon at this time. Most mining companies still believed their main competitors were other mining companies, not the federal government. However, Anaconda's Chilean experience had made them aware of the government's impact on their business. I sent a letter from our Tucson, Arizona headquarters to Alaska Senator Ted Stevens, detailing the company's assessment of Alaska mineral potential and the conflicts with proposed d(2) with-

UAF Professor Tom Smith, shows a map to Anaconda geologists in Ambler District in 1977. Looking on are John Proffet, Kit Marrs, Peter Herzberg and Murray Hitzman. "Loner," taking a compass bearing is W. T. "Bill" Ellis.

drawals. I was surprised when I received a personal acknowledgment signed by Senator Stevens thanking me and Anaconda for releasing the data.

Anaconda, working in partnership with Sunshine Mining Co., discovered two large massive sulfide deposits in the Ambler district. Because of prior work by the USGS, Alaska Department of Geology and Geophysics, and Kennecott Copper Co., the area known as the "schist belt" of the southwestern Brooks Range had been excluded from D2 withdrawals. However, this highly mineralized area was surrounded by the proposed Gates of the Arctic National Park on the north and east, the Noatak Wildlife Refuge on the west, and the Selawick and Koyukuk Wildlife Refuges on the south. In addition, the natural access corridor leading east to the pipeline haul road was blocked by a unique looking appendage on the south boundary of the proposed Gates of the Arctic National Park. This extension became known as the "boot". Access across the boot could provide a needed access corridor for the development of the Ambler district deposits.

In the 1977 field season, the House Interior Committee scheduled a summer visit to Alaska to visit the proposed parks and hear from the "locals" (no Washington "fact finders" ever came to Alaska during the winter!). The leaders of the delegation were Mo Udall, a democrat from Arizona and Chairman of the Interior Committee, and democrat John Siberling. Both were the "champions" of large parks in Alaska.

Panoramic view of the Sun Deposit, the hill in the foreground is dip slope surface trace of mineral zone. The deposit has been prospected by over 30 drill holes, showing a major massive sulfide deposit. Interior Secretary Andrus was shown this exact view in 1978. Camp is in lower left corner of picture.

The Park Service would escort the group around Alaska. The campsite for examining the proposed Gates of the Arctic Park, would be Selby Lake, a scenic area located inside the "boot".

Anaconda's Washington office had tried to get a visit to our prospects on the itinerary, while Udall was at Selby Lake. The Interior Committee majority staff said the congressmen would be too busy to visit mining operations, but a few of the minority staff said they would like to learn about Ambler's mineral potential.

On August 16, 1977, after all of our crews were in the field, I took the helicopter and headed for Selby Lake to pick up the minority staff. I was surprised to find Udall and Siberling in the camp. I guess it was some sort of "rest day" (so much for their reported "busy" schedule). Also in the camp were reporters from Time, US News and other national media, and when they heard about the mining activity, they wanted to go see it. Udall and Siberling also said they also wanted to see the mining activity. "You will see how miners are scarring the landscape," Siberling told the reporters.

Now I had a logistical problem. Instead of three people, I had a dozen to transport, not possible in a Hughes 500c helicopter and the Park Service's Huey was much too large to land at the Sun Camp where we were drilling. I radioed for assistance from the other mining companies operating in the district; they all cooperated and soon I had a fleet of Hughes 500 helicopters to transport my entourage.

Flying with Udall and some press in the lead chopper, we flew to the Sun Camp, where Anaconda, Sunshine,

The author with Interior Secretary Cecil Andrus at the Park Service's Selby Lake camp in the summer of 1978.

Kennecott and Noranda had all worked, drilling over thirty holes. Udall's Arizona district was centered on Tucson, I informed him that the camp cook at Sun, Joan Dusenberry Marrs, was the daughter of Katie Dusenberry, the Chairperson of the Pima County Board of Supervisors, an important political group in his district. Udall thanked me for the tip and made the comment, "I'll have to watch myself!"

Udall had only one eye and as we approached the site I explained to him how we had drilled out mineralization valued at several billion dollars. We had two drill rigs operating at the time I pointed to the approaching hillside and asked if he could see them. He peered hard through the one eye, as did the reporters in the back. No one could see a drill rig, not to mention the old sites. When we landed at the camp, I showed the group the drill rig which was located not far from the camp and the press got busy photographing the drilling operation.

Siberling arrived on the second chopper load. He jumped out and screamed above the rotor noise "Where are the scars?" I took him aside and pointed out the drill rig, explaining that we had multiple drill holes with no visual impact. The third helicopter laden with press was arriving. Siberling ran out and said "Don't stop here! This is not the place," but it was too late. I think Siberling had been fed some misinformation from the preservation groups that miners had bulldozers ripping up the countryside. He was truly shocked

Setting the tower: a Hughes 500c helicopter delicately inches the drill tower into position. Helicopter supported drilling allowed the Ambler deposits to be prospected with little surface disturbance.

at the lack of any surface disturbance by our activities.

The group met in the cook shack for coffee and warm cookies and engaged in what was referred to as the "great Sun kitchen debate." Everyone had to agree that our drilling activities had very little impact on the land. It could still be a park, even though we had drilled out a major mineral zone. If miners could prospect in this manner, why not let them identify mineral resources before land was withdrawn? Udall and Siberling argued that if mineral deposits were found they would be developed, destroying the chance for any parks. I countered that after all of the possible ore deposits were discovered and developed, mining would only impact 1% of the land. The rest of Alaska could be used for parks. The debate went on, the reporters loved it, and eventually we got some balanced articles in national publications.

Pulling the core barrel — Sprague and Henwood driller, Joe Elder used wire line to lift core barrel, Sun Deposit, 1977.

The Mining Law of 1872 was also discussed in the "kitchen debate." Udall, under pressure from Arizona small miners, had recently reversed his position to overturn the law. Siberling, whose family made its fortune in the tire business, was still attempting to change the law. Siberling pushed Udall in front of the press, noting all the "rip-offs" due to the 1872 law. "Why should mining companies get mineral rights for free?" Udall responded that he would continue to oppose any change to the mining law. He told Siberling that while he personally supported changing the law, it was clear that many of his constituents in Arizona were comfortable with the 1872 law and were very vocal about any change. "I have not seen the light, but I have felt the heat," Udall said.

Although the visit did not change Udall and Siberling's position on the bill, it did soften the rhetoric a little. Udall stopped using "the bulldozers are poised" phrase and Siberling in his report to congress said "we visited the camp of Anaconda Copper Co. and from what we observed they were doing a good job."

Later, Udall addressed a meeting of Commonwealth North in Anchorage. He did not mention his trip to Sun camp. He quipped, "I find all Alaskans so friendly, they all wave at me in that peculiar Alaskan way, with the middle finger extended!" Although I did not agree with Udall on anything, I liked him, he was a genuine person. We honored him the next year by staking a group of claims in Interior Alaska,

called "Mo Udall." Unfortunately these claims did not pan out, so Alaska will not have a Mo Udall memorial mine!

In January of 1978, I made my first trip to Washington D.C. to lobby for access. As a field geologist, I was really a "fish out of water," but Judy Baird of Anaconda's Washington team took me under her wing. It was my first time to see Don Young, then in the minority on the House Interior Committee, in action. I was proud of the way our lone Congressmen stood up for Alaska and fought for the Meeds bill, a much better bill than Udall's H.R. 39. We lost the committee vote to substitute the Meeds bill, 10-7, learning later that President Carter had personally called swing votes. I became aware of what a fight we had, a Democrat controlled congress and an environmental President whose agenda was to lock up Alaska.

One incident stands out in all the time I spent "pounding the halls of congress." We needed to make our case for Ambler access to a possible Democratic swing vote on the Interior Committee. This congressman's staff had more of a preservationist's lean and told us that their boss had no time to see us. After being refused an appointment, Judy Baird, in disgust, told me "Come on, we'll get the appointment." We walked over to the House Interior Committee hearing room where our target congressman was in a meeting. "He has to go to the bathroom," Judy explained to me. We waited for over an hour and sure enough as the meeting recessed the nervous congressman hurried towards the men's room. "Congressman," Judy called out in her sweetest voice, and explained how I had come from Alaska and would only be in D.C. for one day—we got our appointment and our vote!

In the summer of 1978 I was in the Ambler District and received a message from Judy in camp over the single side band radio. Interior Secretary Andrus was going to be at Selby Lake on July 9 and 10 and although visiting our properties was not on his agenda, if I could contact him, he would probably come.

At noon on July 9, I took the helicopter to the Park Service's Selby Lake camp. I will always remember walking up to the camp in time see the cook dump a skillet of bacon grease on the tundra. I hoped that there were no bears in the vicinity! The Secretary had gone earlier for a tour of the Arrigetch Peaks. His staff, openly hostile to mining, said they would tell him of my visit and request for him to visit our operations. I had a bad feeling about the "spin" the staff might put on my offer of a tour, so I decided to wait to speak to the Secretary personally. It was a lonely afternoon, no one in the camp, except two reporters, wanted to have anything to do with a miner.

Secretary Andrus returned to the camp at about 7:00 P.M.. After my chilly reception by his staff, he was warm and cordial. He invited me to stay for supper. I don't know who was more surprised, me or the Secretary's staff! Over supper I told Secretary Andrus about our activities and made arrangements to meet him the next day for a tour of our properties.

The next day I took Andrus and two reporters to the ridge crest immediately west of the Sun deposit. We had a

sweeping panoramic view of the deposit. One drill rig was operating and again neither Andrus nor the reporters could see the drill or any of the thirty plus drill sites. It was impressive to them that we could define several billion dollars of valuable mineralization and not leave a visible trace on the landscape. Although Andrus was complimentary about Anaconda's methods of exploration, he told me on the spot he would oppose any attempt to gain access across the "boot."

In December of 1978, disaster struck! When Congress failed to act on D-2 legislation, President Carter used the Antiquities Act and other executive orders to create over 100 million acres of new parks and wildlife refuges in Alaska. The Antiquities Act, which was passed to give the President authority to withdraw small tracts of land to protect American Indian burial sites, had been used to lock up almost a third of Alaska! A gross abuse of executive power, but it gave the preservationists a strong lever to push their agenda through the congress.

The Antiquities Act had enlarged the boundaries of the proposed Gates of the Arctic Park. The western boundary of the park had been expanded by one township to the west and Anaconda's Sun deposit was now inside a National Park. Our deposit had, in effect, been expropriated by the U.S. government. I always wondered if Secretary Andrus' visit to the Sun deposit had anything to do with this westward expansion of the Park.

In June of 1979 Anaconda struck back. To me it was the company's finest hour, I was very proud of my em-

Core shack at Shungnak Camp. Core from drilling at Sun Camp was slung by helicopter to Shungnak for logging and splitting.

ployer. The headlines in the June 16 issue of the Anchorage Times screamed, "MINING FIRM SUES CARTER."

Anaconda had sued the President of the United States, the Secretary of the Interior and the Secretary of Agriculture, claiming that they had greatly exceeded their authority by using executive orders to create parks and wildlife refuges in Alaska. The suit said the intent of their action was to create wilderness areas in Alaska, bypassing the expressed authority of the US Congress. Anaconda asked the court to declare all withdrawals invalid or to force the Carter Administration to greatly reduce the area of the withdrawals.

Anaconda's suit never got its "day in court." A series of legal maneuvers, and the eventual passage of ANILCA prevented the company from making its complete arguments. However, filing the suit put the preservationists on notice, that valid mineral rights were not going to be extinguished without a fight.

On February 7, 1979, I made my first testimony before the House Interior Committee in Washington D.C. I was on a panel with Chuck Hawley and Russ Babcock of Kennecott. My job was to tell the committee about the Sun deposit, located inside the Antiquities Act Park, and make the case for access across the boot. I was very nervous and hardly slept the night before. In addition, being seated with the congressmen on a dais looking down at me was quite intimidating. My voice quivered during my testimony, but I got my feet on the ground for the question-and-answer period, explaining our problem using specially prepared maps.

Anaconda geologists Mark Zedepski and Mike Jackson examine a ridge near Sun Deposit in early summer. Zedepeski did his UAF master's thesis on the Sun Deposit.

When the hearing ended, I went up to the dais to say hello to Udall and Siberling. They remembered me from their visit to Sun Camp. Siberling told me that moving the boundary of Gates of the Arctic Park to include the Sun deposit was a mistake and said, "we'll fix it." He was true to his word. H.R. 39, the bill that passed the House, was a terrible bill, but the boundary of Gates of Arctic Park had been moved back to the east and the Sun deposit was out of the park. To my knowledge this was the only pro-development action supported by Siberling in the whole d(2) debate.

Access to the Ambler District was woefully inadequate in H.R. 39, the bill that passed the House. We began to work in the Senate to see if we could get access across the boot. Judy Baird and I stayed up late one night and drafted the language on a yellow legal pad. We submitted the language to Senator Stevens' staff and worked very closely with them as a bill worked its way through the Senate. Other mining companies prospecting in the Ambler district thought that a western access route to Nome or Kotzebue might be a better alternative then east across the boot. The compromise language which was in the final Senate bill allowed for access from the east or west. Senator Stevens made access to the Ambler deposits, including across the boot, one of the "must haves" for the Senate bill.

Section 201(4)(b) of the bill that passed the Senate, says "Congress finds there is a need for access to the mineral deposits of the Ambler District" and goes on to say, that after a normal environmental review, "...the Secretary shall grant such access..." The preservationists screamed their concerns about access across the boot and other provisions of the Senate bill. Udall, the House negotiators and the Carter Administration said in conference committee that Ambler access was one of the provisions that had to go. We were not sure if we would be able to hold the language in the final bill. One proposed compromise was to remove the word "shall" from the access language, which would give the Secretary of the Interior more discretion over granting access. A future Secretary like Cecil Andrus would mean no access!

On November 1979, Ronald Reagan was elected President of the United States and Republicans captured a majority in the US Senate. A new dawn was beginning! Udall, knowing that the new congress would be much more friendly to the Alaska position, caved in and accepted the Senate bill which still locked up vast areas but was much more balanced than his H.R. 39.

The debate in Alaska was to accept the Senate bill or start the process all over again with a favorable administration and a republican majority in the Senate. Could we get a better bill? I was caught in a dilemma. From the viewpoint of my employer, Anaconda, we had everything we needed in the bill — access across the boot and the Sun deposit outside the park; but from my point of view as an Alaskan, it was a terrible bill — million of acres of high-potential mineral land locked up forever and access to open lands very complicated.

The bill passed both houses of Congress and was signed into law in the remaining days of the Carter Adminis-

tration. The battle of the boot was won, but the war exempting high-potential mineral lands from closure and reasonable access provisions was lost.

Twenty years later, the base/precious metal deposits of the Ambler District remain undeveloped. In addition to low metal prices, the lack of any kind of transportation system to the area is a major economic stumbling block for any mining activity. When development does take place, these large high-grade deposits will be developed at some time in the future and we will find out if the promise of ANILCA, for access to the Ambler District, is good enough to cross an established National Park.

David Heatwole was Alaska Exploration Manager of Anaconda Copper Co. from 1974 to 1985. He was President of the Alaska Miner's Association from 1978 to 1980.

ANILCA PROMISES BROKEN: THE DEMISE OF THE KANTISHNA MINING DISTRICT

by Lawrence V. Albert, Attorney at Law [4]

Background:

"d2" Proposed Addition for Kantishna.

The Kantishna Hills was an active mining district prior to enactment of ANILCA. In 1905, Territorial Judge James Wickersham made an unsuccessful ascent of Mt. McKinley. He descended the north side of the Alaska Range and arrived in the Kantishna Hills. He found gold there and triggered a minor gold rush through 1905-06. Hundreds of mining claims were located and relocated in the Kantishna Hills over the last century. The Kantishna Mining District was formed under the General Mining Law of 1872 prior to enactment of organic legislation for the National Park Service in 1916, as well as enabling legislation for Mt. McKinley National Park in 1917.

Section 17(d)(2) of the Alaska Native Claims Settlement Act ("ANCSA") directed the Secretary of Interior to identify suitable "national interest lands" in the public domain of Alaska. The Interior Department made various "d(2)" proposals, including additions to Mt. McKinley National Park. ANCSA authorized interim public withdrawals pending subsequent legislation on national interest lands. In 1975, the National Park Service ("NPS") commissioned Russell Chadwick, an economic geologist from Spokane, Washington, to prepare a gross mineral appraisal of mining claims located within the park as well as the Kantishna Hills. In 1977, Congressman Morris Udall, a principal author of ANILCA, visited the Kantishna Hills and observed mining operations on the Wielers' Glen Creek claims. In December 1978, President Jimmy Carter promulgated the "Denali National Monument" as an executive land withdrawal pursuant to the Antiquities Act of 1906 because ANCSA's temporary withdrawal authority had expired. The Denali National Monument included the Kantishna Mining District, and beginning in 1979, the NPS acquired surface management authority over Kantishna mining operations.

In the spring of 1979, then Alaska Representative Steve Cowper wrote an opinion column in the Fairbanks Daily News Miner on the pending d(2) legis-

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[4] *The views expressed herein are those of the author only. Footnotes and citations have been omitted for brevity. Portions of this article are condensed from a statement submitted before Subcomm. on Public Lands, Sen. Comm. on Energy & Nat. Resources, Mining Activities in Units of the National Park System, 103d Cong, 1st. Sess, Sen. Hearing Doct. 103-577 (1993). Evidence supporting this article is set forth in various condemnation cases pending before the U.S. District Court, District of Alaska.*

lation. He criticized proposed additions to National Park System units in Alaska. Cowper anticipated that in-holders created by new parks would have difficulties accessing their property and realizing their property rights. His words were to the effect that "you do not want the National Park Service as your neighbor." Cowper foresaw the outcome for Kantishna mining claimants if Mt. McKinley National Park were expanded.

ANILCA Treatment of Kantishna & Mining Operations Through 1985.

With passage of ANILCA, Congress incorporated the Kantishna Hills into an expanded national park, and designated the new park the Denali National Park and Preserve. As a consequence, Kantishna mining claims became subject to NPS surface management authority through the Mining in the Parks Act (MPA). ANILCA prohibited further mineral entry in the new park. However, Congress protected Kantishna mining claimants through a "valid existing rights" provision.

The average price of gold in December of 1980 was $623 per troy ounce. During the ensuing five years, the NPS routinely permitted Kantishna mining operations. A "Plan of Operations" was submitted on typewritten NPS form accompanied by a NPS typewritten "Environmental Report." Sometimes plans were submitted and approved on a printed form issued by the Alaska Dept. of Natural Resources for state mining claimants. In 1983, twenty-one plans were permitted for operations in eight different stream drainages in the Kantishna Hills. Larger operations were processing placer material at rates of 100 cubic yards per hour, working 200,000 cubic yards per year or more, and recovering in excess of 2,000 ounces of placer gold. Virtually all of the unpatented mining claims had no validity determination and the Park Service never challenged validity or initiated mineral examination of claims subject of plans of operation.

ANILCA directed the Secretary of Interior and the Alaska Land Use Council to study the mineral potential of the Kantishna and Dunkle Hills, estimate the costs for acquiring mineral properties, and examine the environmental consequences of further mineral development. The Alaska Land Use Council and U.S. Bureau of Mines contracted with two consulting firms to respond to ANILCA's study mandate. The result was the report "Mining Properties Acquisition Costs: Kantishna Hills and Dunkle Mine Study Area," authored by DOWL Engineers, and Plangraphics, Inc. (DOWL Report). According to the consultants, the cost of acquiring all the placer and lode claims in the Kantishna Hills and Dunkle Mine areas was $157 million in 1983. This estimate concerned 233 mining claims, and only 1% of the value was allocable to the Dunkle Mine area. The DOWL Report emphasized that its valuation only concerned existing mining claims and not the potential value of other mineral lands within the Kantishna study area.

1985 Court Injunction; Cumulative EIS Study & Suspension of Operations.

In 1985, various environmental groups sued the NPS for improperly permitting mining operations and failing to conduct cumulative environmental assessments under the National Environmental Policy Act. District Court Judge James von der Heydt ruled for the plaintiffs and entered an injunction in July of 1985 originally pertaining to the Wrangell St. Elias National Park. The court ordered a cessation of all permitted mining operations and required the NPS to engage in cumulative environmental impact assessment of mining. In December of 1985, the injunction was amended to include mining operations in Denali National Park. The amended injunction authorized individual mining claimants to apply for relief upon a showing that a proposed operation would not pose cumulative adverse effects on the park environment.

Upon entry of the 1985 court injunction, Kantishna mining claimants typically believed this was a temporary setback and they would eventually be allowed to operate when NPS completed its environmental assessment. The Park Service held out to the mining claimants that plans of operation could still be submitted and approved if no adverse effects were demonstrated. Several plans were submitted for the 1986 mining season in the Kantishna Hills. However, the Park Service consistently rejected the submittals because they did not provide sufficient information for regulatory and environmental review. The miners were undeterred and continued to submit supplemental plans and analyses far in excess of the documentation required prior to the 1985 court injunction. NPS nonetheless denied all the revised plan submittals.

The 1985 court injunction expanded to three national parks in Alaska—Denali, Wrangell-St. Elias, and Yukon Charley. The Park Service decided that significant staff expansion was necessary to undertake the cumulative environmental assessments. A variety of professional personnel were hired to review plans of operation, initiate mineral examinations, conduct resource surveys, and topographically map all the major claim groups at large scale. During the ensuing five-year period, NPS spent untold millions of taxpayer dollars scrutinizing the Kantishna Mining District. Finally, in August of 1990, the NPS issued its Final Environmental Impact Statement: Cumulative Impacts of Mining– Denali National Park and Preserve, Alaska. Later in the year, NPS moved to lift the court injunction, certifying that its record of NEPA compliance was complete. On January 2, 1991, Judge von der Heydt lifted his court injunction. In theory, the Park Service once again had authority to approve mining operations in the Kantishna Hills.

Between 1986-1990, the Kantishna Mining District was totally shut down. Not one plan of operation was approved in the Kantishna Hills, and commercial mining ceased to exist. Moreover, the Park Service refused to determine whether plan submittals were complete within the regulatory requirements. Kantishna miners were uniformly told to come again another day with more paperwork.

The single exception to this outcome was Sam Koppenberg. Koppenberg (d/b/a K.L.K., Inc.) held 5 1/2 association placer claims on middle Caribou Creek and acquired a reputation as an efficient and innovative placer miner. He developed a mining method that incorporated a mobile wash plant, rerouting of the stream channel, discharge of tailings into processed mining cuts, and design of wastewater retention ponds to eliminate stream turbidity. Koppenberg submitted the only plan of operations which NPS determined to be "administratively complete" in October of 1986. However, by April of 1987, the Park Service told Koppenberg it could not process his plan and determine approval due to the uncertainty of cumulative environmental effects. After completion and approval of the FEIS in May of 1991, the NPS finally denied Koppenberg's plan. The NPS reasoned his operation would generate surface disturbance, resulting in habitat destruction for various species, and therefore, the "Resource Protection Goals" established for cumulative effects assessment would be violated.

NPS Regulatory Practices.

Since 1986, Kantishna miners perceived that NPS was imposing onerous requirements in the review of mining plans. Moreover, the miners suspected NPS was not dealing in good faith and had a hidden agenda to frustrate their rights. Through litigation discovery years later, their suspicions are well substantiated. Illustrated here are the summary views of two former NPS employees. Both persons, Larry Brown and Tom Ford, were substantially involved in reviewing mining plans of operation for the Kantishna Hills between 1986 and 1992, when both left government service.

Brown, a geologist, had prior experience in validity examination, as well as practical experience operating a mine. After six months on the job with NPS in 1986, Brown formed the opinion that no mining operations would be permitted on Caribou Creek or anywhere else in the Kantishna Hills. Brown also believed that supervisory NPS personnel provided guidance that plan reviews should be as complicated and prolonged as much as possible. Brown was incensed with NPS' deception of Sam Koppenberg and thought that NPS had reached a foregone conclusion that Koppenberg's plan for middle Caribou Creek would never be approved, and yet Koppenberg was encouraged to spend additional money for naught.

Tom Ford's regulatory experience was remarkable. Ford was a NPS environmental specialist recruited from the Death Valley National Monument in California. When he came to NPS in Alaska, he already had six years experience with MPA permitting of mining operations in Death Valley. His experience was that some 50 plans of operation were all eventually approved, typically with conditions or stipulations. Ford could not recall single instance in which a mining plan of operation was denied on the merits at Death Valley National Monument.

After six years with NPS in Alaska, Ford could not identify a single plan of operations for the Kantishna Hills that was ever approved. Moreover, Ford in-

dicated that none of the several plans submitted was ever adjudicated on the merits with the single exception of Koppenberg's plan. Regarding Koppenberg's plan, Ford was responsible for drafting the environmental assessment and findings that supported plan denial. His intention, shared by the NPS staff, was that denial of Koppenberg's plan would mean denial of all future mining operations in Denali.

After Brown and Ford's departure in 1992, NPS continued its dilatory practices. From the period of the 1985 injunction until condemnation actions were filed in 1998, not one plan of operation for commercial mining operations was approved for Kantishna. Additionally, NPS refused to process plans for commercial operations on grounds that they were incomplete and required more information. NPS did approve a plan for George Bailey's Discovery claims on Eureka Creek. Bailey characterized his plan as "recreational mining" wherein he would process twelve cubic yards per day maximum. His plan involved only 0.75 acre surface disturbance on ground that had previously been worked near the confluence of Eureka and Moose Creeks. Bailey stated his plan was not economic and distinguished it from commercial operations existing in Kantishna prior to the injunction.

The Park Service also approved a plan in 1995 for appraisal sampling on Lower Caribou Creek, Friday Creek and Glacier Creek claims. Steve Hicks submitted a plan on behalf of Arnold Howard and co-owners for their Lower Caribou Howtay Assn.. claims, and on behalf of Milan Martinek for his Alder and Little Audrey claims. Hicks' request to use mechanized equipment on undisturbed ground was denied. NPS instead approved portable equipment known as a "Winky drill" and "Digger 50" if these items were helicoptered in. Since NPS did not permit sampling operations with mechanized equipment on previously undisturbed ground, any commercial mining operations on the claims would have been denied but for NPS' refusal to process incomplete plan submittals.

Interestingly, in current discovery disputes involving Martinek's claims in condemnation, the court authorized mechanized equipment for bulk sampling of his placer deposits. Martinek had a crew of four persons on his former claims for ten weeks during the 2000 field season. Approximately 80 sample sites (five cubic yards or greater) were tested with a 20 ton Mitsubishi excavator and a custom-built portable wash plant (modeled after a Goldfield "Alaskan 10"). When nuggets started to showing up in the sluice on Friday Creek sampling, NPS got nervous and decided to undertake its own "parallel sampling program." NPS contracted with Don Stevens, although he had only four weeks to do his work. With NPS' tactical decision to engage in mechanized sampling of Kantishna claims, its prior objections to surface disturbance and valuation enhancement were evidently abandoned.

The Mining Claimants' Impetus for Property Acquisition.

After a few years of the court injunction, Kantishna miners worried about their prospects. Complaints to Alaska's congressional delegation occurred regularly. In August 1988, Senator Ted Stevens arranged for congressional committee staff to visit Kantishna and assess the situation. Kantishna miners attended meetings at the North Face Lodge and Kantishna Roadhouse. Senator Stevens proposed funding for property acquisition if mining operations were not going to be approved. Sam Koppenberg proudly wore a polyester jacket to the meetings. On the back of his jacket, Koppenberg had silkscreened in large Gothic script "Thou Shalt Not Steal" followed with "The National Park Service Does Not Like Competition" in plain text. Koppenberg's jacket aptly expressed the frustration of Kantishna miners at the time.

Congress declined to approve Senator Stevens' funding request for Kantishna claims acquisition. Instead, the Interior appropriations bill for FY 1989 authorized another study on acquisition costs even though the 1984 DOWL Report had already done this pursuant to ANILCA. According to the legislation, NPS was to prepare a "Resource Management Plan" regarding acquisition costs and priorities for the Kantishna mining claims. Included in the legislation was guidance that "Resource protection by frustration is not an acceptable strategy. For example, if mining is clearly not permissible in certain areas or circumstances, then a speedy rejection is preferable to a protracted maze of administrative hurdles whose successful completion holds no likely benefit to the applicant." The Park Service's regulatory actions over the next several years ignored this congressional command.

The NPS completed its Kantishna Resource Management Plan (RMP) in July of 1990. Contemporaneous with RMP completion, NPS issued its FEIS in August 1990. In both documents NPS expressed an official policy that acquisition of all valid mining claims was the preferred management alternative. NPS also stated that "approvable plans of operation" would be permitted pending acquisition. The RMP estimated the total cost for acquisition of 244 mining claims to be $17,240,000. The EIS separately contained a "gross cost estimate" that valued all Kantishna claims at 16 to 21 million dollars (Nov. 1, 1988 valuation). In the Interior appropriations bill for FY 1991, Senator Stevens obtained a $6,000,000 appropriation for Kantishna mining claims acquisition.

The Failure of NPS' Mining Claim Acquisition Program.

The Mining in the Parks Act of 1976, as with other public lands legislation of that era, authorized property acquisition. ANILCA further authorized "hardship acquisition" of inholdings within conservation system units. But Congress never appropriated any funds. With the support of Alaska's congressional delegation, NPS received approximately $12,000,000 in appropriations for acquisition of Kantishna mining claims. The appropriations occurred in fiscal years 1991 through 1993. Despite this

support, NPS' acquisition program became a failure for several reasons:

First, acquisition of mining claims required a validity determination and an approved Mineral Report. When NPS embarked on its acquisition program in the summer of 1990, almost all Kantishna unpatented mining claims had yet to undergo validity examinations. The only claims to undergo validity examinations were those under patent application. It took the Park Service years to do mineral examinations on unpatented claim groups and finally arrive at validity determinations. Mineral examinations on upper Caribou Creek claims started as early as 1987 and were not completed until ten years later.

Second, the Park Service had no experience in mineral property valuation. In 1989, the chief of NPS lands acquisition in Anchorage wrote to one Kantishna mining claimant stating the NPS lacked experience in appraisal of mining claims and "the exact procedures and mechanisms for the purchases remains to be established." In response to a FOIA inquiry circa 1993, the NPS could not establish a single instance of voluntary acquisition of an unpatented mining claim even though the Mining in the Parks Act was enacted seventeen years earlier.

Third, the Park Service has a notorious history during at least half of the twentieth century for "low ball" property valuation. More than one report of the General Accounting Office or DOI office of Inspector General has criticized the NPS for its real property acquisition and valuation practices. In a reported court decision involving the Voyageurs National Park in Minnesota, a NPS lands acquisition officer is quoted as saying "my job is to acquire this land for the National Park Service. I hope to acquire it for about 30 cents on the dollar." Curiously, this NPS employee failed to appear at trial and testify on behalf of the United States.

Fourth, the NPS refused to apply the income approach to valuation of Kantishna mining claims. Its first contract appraiser for valuation of Kantishna mining claims was Luther Clemmer. He was an experienced appraiser of mineral property for the federal government. Clemmer drafted appraisals on the KLK and Gold King claims. Clemmer went through four draft appraisals on the Gold King claims with his initial opinion of value at 2.4 million dollars and his last draft at approximately $737,000. NPS would only consider income valuation of the owner's royalty interest although the Gold King claims were not leased on the date of valuation. Clemmer insisted the entire mineral estate should be appraised according to the income approach, and this is the preferred approach to valuation of mineral property. According to NPS, Clemmer's drafts did not comply with the government's Uniform Appraisal Standards for Federal Land Acquisitions. NPS never approved Clemmer's appraisals.

Fifth, NPS' approved appraisals for Kantishna unpatented claims are so ridiculously low that none of miners (with one exception) has accepted its valuations. After Clemmer's work became unacceptable to the Park Service, it hired a second contract appraiser, Onstream Resource Managers, Inc. (ORM). ORM has consistently applied

the comparable sales approach to several Kantishna claim groups from 1993 to present. Its valuations started out at approximately $1,000 an acre for the KLK and Gold King claims, and have gone down ever since.

At trial on just compensation for Kantishna Mining Company's claims (upper Caribou Creek), ORM valued 540 acres of association placer claims at approximately $100,000 ($185/acre). By comparison, the DOWL Report valued the same claims at over $18,000,000. ORM separately valued 11 placer claims held by Mick Martinek for $91,000. In 1984, Martinek recovered a 90 troy ounce nugget from his Glacier Creek claims that was appraised in 1987 for $150,000– more than ORM's valuation of 190 acres of placer ground.

The only mining claimant who voluntarily sold to the NPS is Louise Gallop. Gallop is a widow who owned the Discovery Claim on Friday Creek. Gallop accepted a valuation of $22,000 for her single placer claim, which included $12,000 for a cabin constructed on the claim. In 1981, Leonard Kragness and John Hayhurst mined 2,700 ounces of gold from Gallop's claim. Kragness believed significant placer deposits remained after the 1981 mining season, but Gallop didn't want her remaining ground disturbed. She had constructed a "nature walk" on her ground which John Hayhurst had offered $30,000 to mine. She declined his offer and preferred to sell her "nature walk" mining claim to the Park Service for $22,000.

By the summer of 1994, NPS had only been able to spend about 3 million of the 12 million dollars appropriated for Kantishna claims acquisition. All of NPS' purchases went to patented claims, notably the Kantishna Mines, Ltd. group of claims on Quigley Ridge and vicinity. Even with those claims, NPS' appraisals valued the surface only and disregarded the mineral interest. The best that a willing seller of patented mining claims could realize for mineral value was a tax deduction under Section 170(h) of the Internal Revenue Code. In one case, the IRS proved to be an additional adversary by contesting the deductible value of mining claims donated in the Wrangell-St. Elias National Park.

NPS' inability to negotiate acquisition of unpatented Kantishna claims resulted in rescission of over $6,000,000 in appropriated funds in August of 1994. During that fall, the Alaska Miners Association convened a working group to draft legislation for Kantishna. In the November 1994 election, the Republicans regained a majority in Congress and Senator Frank Murkowski became Chairman of the Senate Energy & Natural Resources Committee. Senator Murkowski introduced a comprehensive bill for remedying acquisition procedures and NPS valuation practices on Kantishna mining claims. Sensing trouble, NPS responded with an internal working group detailed to its Alaska Regional Office.

NPS' internal review resulted in the "Denali-Kantishna Task Group Report." Issued in May of 1995, the report acknowledged difficulties in NPS' acquisition program. Among the difficulties acknowledged were differences in opinion between NPS appraisers and

the mining claimants on valuation methodologies. The report recommended existing acquisition procedures be retained and discouraged legislative reform. Viewed critically, the Task Group Report was whitewash that didn't solve NPS' acquisition problems. By comparison, a report draft was more candid: "After ten years in limbo, the National Park Service should issue a clear policy position concerning whether mining will be allowed in Kantishna. . . . If the answer is that mining will not be allowed, then immediate acquisition should be initiated." A more cynical assessment is that NPS' "Kantishna Task Group" functioned to scuttle Senator Murkowski's proposed legislation. The Task Group achieved its objective.

1997 Legislation Authorizing Just Compensation — the Shift to the Courthouse.

By 1997, a stalemate had been reached between NPS and Kantishna mining claimants on voluntary acquisitions. Individual claimants were evaluating litigation options for achieving just compensation.

One approach is a declaration of taking (DT). When a condemnation action is accompanied by a DT, title is divested immediately to the United States. In exchange for immediate acquisition of title, the United States is required to deposit into court its estimate of just compensation. The advantage of this approach is that the property owner may withdraw the government's estimate of just compensation and use this for discretionary purposes, e.g. litigation expense.

During the summer of 1997, Kantishna counsel worked with Senator Stevens' office in drafting special legislation that would incorporate the declaration of taking procedure. The outcome was Section 120 of Pub. Law. No. 105-83, the Interior Appropriations Bill for FY 1998. This legislation allowed Kantishna mining claimants to consent to a taking within ninety days of enactment (November 12, 1997). If the claimant expressed his consent, then title to his claims vested in the United States ninety days after enactment (February 12, 1998). Thereafter, either party had the right to bring an action sounding in just compensation. Provisions of the Declaration of Taking Act were incorporated by reference into the Section 120 legislation. If a Kantishna miner opted not to participate under the Section 120 legislation, his existing rights were preserved.

Almost all of the Kantishna mining claimants, both patented and unpatented claimants, elected to participate in the Section 120 legislation. At last count, five Section 120 actions have been filed in the U.S. District Court for the District of Alaska. A sixth mining claimant, Milan Martinek, arranged for a condemnation under the Declaration of Taking Act due to prior litigation filed in the Court of Federal Claims. Approximately 50 mining claims are involved in the six actions. In 1995, Sam Koppenberg settled an inverse condemnation lawsuit filed in 1992 after his plan of operation was denied. Koppenberg received $662,5000 in settlement of his takings claim.

A survey of the pending litigation is beyond the scope of this article. Suffice it to say that Kantishna miners' just compensation claims will be resolved in a court of law rather than with the National Park Service. The lead case is *Kantishna Mining Co. v. Babbitt*, No. F98-0006 CV (JKS) (D-Alaska) (KMC). A stipulated date of taking of January 2, 1991, was established in that case prior to trial on taking issues. On that date, the 1985 court injunction was lifted. Trial on just compensation concluded on June 17, 2000, and the parties await a decision from Chief Judge James K. Singleton, Jr.

KMC concerns 14 1/2 upper Caribou Creek claims held by John Hayhurst and Leonard Kragness. The miners offered proof at trial that their claims were worth $5,990,000 in mineral value, and $2,000,000 in surface value due to the prospective patenting. The United States offered proof that the claims were worth approximately $100,000 in mineral value and zero in surface value. Any damage award for property taking refers to the fair market value on the date of taking. In addition, KMC will be entitled to accrued interest on the damage award from January 2, 1991 to the date of judgment. With compounding of accrued interest on a principal sum, the ultimate damage award could be two to three times greater than the value of the property taken.

Many of the issues presented in *KMC* will be revisited in subsequent condemnation litigation. Both counsel and the judge in *KMC* appreciate the importance of that case, and that it will be precedental to the subsequent cases. The trial went on for seventeen days. Between the parties, there were ten lawyers assigned to the case. John Hayhurst and Leonard Kragness, along with their counsel, Patton Boggs LLP, should be commended for their tremendous effort in advancing the cause of just compensation due Kantishna mining claimants.

CONCLUSION

In retrospect, ANILCA authorized condemnation of the Kantishna Mining District. Although Congress did not have this specific objective, the outcome became inevitable. Commercial mining is an anathema to the National Park Service and its mission function. Once the Kantishna Hills were incorporated within a national park, rigorous application of the Mining in the Parks Act precluded any profitable operations with mechanized equipment. Though the scientific basis of NPS' cumulative effects assessment can be criticized, the national environmental community would never tolerate mining within an Alaska National Park.

After the injunction was lifted in 1991, NPS' decisional standard in review of Kantishna mining plans turned on surface disturbance: If operations generated more than an acre of surface disturbance, then habitat protection goals would be violated, and mining must be disallowed. Ten years after the court injunction, NPS promulgated a policy statement indicating that only "minimal mining activity" would be allowed in Denali Park. In NPS' lexicon, "minimal mining activity" is a euphemism for no commercial mining. ANILCA's promise to protect the "valid existing rights" of Kantishna mining

claimants has been broken and plainly repudiated by the National Park Service.

As surface lands manager, NPS cannot be faulted for regulating mining activity pursuant to its statutory obligations. However, NPS should be castigated for refusing to timely adjudicate the rights of Kantishna mining claimants and proceed with just compensation. Though the agency was motivated to avoid takings, the public interest is not served by prolonged regulation that costs the taxpayers several millions of dollars before a dime in compensation is rendered.

The 1984 DOWL Report estimated the costs of mineral valuation of Kantishna claims at 16 to 20 million dollars. The consultants believed such expenditure was not warranted because the public interest is better served by allowing continued mining operations under special regulations. Whatever the wisdom of this policy recommendation, the Park Service probably spent 16 to 20 million dollars since the 1985 court injunction administering the demise of the Kantishna Mining District. To date, the only just compensation paid for Kantishna minerals is approximately $10,000 in acquisition of Louise Gallop's Discovery Claim, and $662,500 in settlement of Sam Koppenberg's taking case.

Whether total compensation paid for Kantishna minerals will match the public sector "transaction costs" remains to be seen. One would hope so. In this regard, taxpayers and property owners alike should be vigilant of conservation legislation authorizing billions of dollars for more land acquisition: Are the acquisitions in the public interest? If so, what is the most efficient means for conferring just compensation?

BLM Input to the d(2) Lands Debate

By George Schmidt, Retired BLM Mining Engineer

Section 17 of the Alaska Native Claims Settlement Act (ANCSA) established the Joint Federal - State Land Use Planning Commission, whose task was outlined in subsection (a)(7). In brief, the Commission was to plan uses of the public lands, including withdrawals and easements. This Commission was also to gather information for the benefit of the Native corporations so that they could make good choices in their selections, and to make recommendations concerning Alaska's future.

Prior to the commission established under ANCSA, Congress had authorized the Federal Field Committee for Development Planning in Alaska, best known as the Fitzgerald Committee, after its chairman. The Committee engaged the talents of about a dozen professionals of the many specialties necessary to come up with the finished product. There were, of course, a number of support personnel, e.g., draftsman and typists, making the total number impressive. Shortly after passage of the Act, the Committee had set up offices in a new building on Fourth Avenue in Anchorage, Alaska. The Committee worked hard, did excellent work, and was cooperative with all Federal and State offices. They did not encourage visits, they were a busy group, but recognized that they had information not elsewhere easily available. I believe their final reports were deposited in the Alaska Resources Library, now Alaska Resources Library and Information Services (ARLIS).

ANILCA, in Title XII established the Alaska Land Use Council, still somewhat alive today.

Subsection 17(2)(A) of ANCSA provided that the Secretary of Interior might withdraw "not to exceed 80 million acres of unreserved public lands for addition to or creation as units of the National Park, Forest, Wild Life Refuge, and Wild and Scenic Rivers Systems." However, in 1980 when Congress enacted the Alaska National Interest Lands Conservation Act (ANILCA), in defiance of section 17(2)(A) of ANCSA, over 100 million acres were withdrawn for National Conservation System Units (NCSU). ANILCA Section 101(d) states, that the Act provides sufficient protection for the good things in life, and the need for further NCSU's is obviated. This is the "No More" promise that is conveniently forgotten by many.

A great deal of study went into the proposed withdrawals after the Fitzgerald Committee was disbanded. The Secretary directed each of the "conservation" agencies to set up study teams. The Bureau of Land Management (BLM) offered its assistance but was told it wasn't necessary. The Forest Service, the National Park Service, and the Fish and Wildlife Service had study teams of different sizes, in Alaska. None of the teams was as helpful and cooperative as the Fitzgerald Committee. The National Park Service team operated in an air approaching war time secrecy! There were eight to a dozen people in a large room.

They were instructed to cover their work (maps, notes, typing) whenever strangers entered the room. One time some of us from BLM had to pass through the room. It was almost insulting the way everyone covered up, but the humor of childishness got the best of us. The wife of one of the BLM personnel worked there and told us about the rules. She did not give out any information, nor did anyone try to pry "secrets" from her. Those agencies, and in the Washington offices of the Geological Survey and the Bureau of Mines, had teams working on defining the areas of their interests. The two mineral agencies, of course, did not manage lands. In fact, they did not manage anything. Both were, and the Survey still is, research oriented. Which brings us up to the summer of 1977.

Although the BLM had offered to field a team of professionals, the Secretary had refused the offer. That had been in the early 1970's. But in 1977, on short notice, BLM-Alaska was asked to send a team of three to the Washington D.C. office for two weeks to do what the other agencies had been doing for the past few years. We knew we were good, but there are limits! Nevertheless, three of us, Jules Tileston, our branch chief, representing recreation and other land uses, Sal DeLeonardis, representing forest and wildlife resources (he has degrees in both studies) and me, the minerals representative, arrived in Washington, and were told to put what we knew of our specialties on E-size maps of Alaska. There was no time for library research, and certainly none for field checking.

John Mulligan of the Alaska office of the US Bureau of Mines was temporarily in Washington. I called him, and he graciously loaned me an E-size map of Alaska on which he had outlined what he felt were the best and poorest areas of possible mineral deposition, with two subcategories in between. The map agreed very well with my estimates (or vice-versa). It formed the basis for written estimates of the location of potential mineral lands.

We took our stuff back to Anchorage at the end of two weeks, tried to make the lines neater and a bit more accurate. Accumulated and incoming day-to-day work interfered a bit, but about two weeks later we were recalled for another two weeks. This time one of the professionals was replaced by Curtis McVee, the BLM State Director, on demand by the Secretary of the Interior! Again, we struggled with what we knew, working together, with overlapping knowledge and experience. I never had more knowledgeable or cooperative co-workers.

The afternoon of our last day, we were invited (read "ordered") to take our maps and writings to Assistant Secretary Guy Martin's office. Martin had been Alaska Commissioner of Natural Resources in the early 70's, so we felt comfortable with him. We spread out our maps, and explained what we had done. Martin asked a few questions, nothing awkward or difficult. As we were leaving, he said that we had to leave any copies of maps and descriptive material behind. Some of mine were already rolled in a tube, in my hotel room, ready to leave the next

morning. Being a naive fellow, I mailed it back, along with some copies I'd kept from the first trip. I'm sorry! This last act took place in August 1977. When ANILCA was eventually enacted, December 2, 1980, *all* of the high-potential mineral land was withdrawn in conservation units in spite of President Carter's statement that "....95% of potentially productive oil and mineral areas will be available for exploration or drilling." The Secretary of the Interior, Cecil Andrus, said that he had carefully avoided all the high-potential mineral lands. Not so!

A few months later each person who had anything to do with the overall project, and there must have been several hundred, received a certificate of commendation for excellent work. Mine is in the Anchorage landfill.

THE *REAL* ANILCA

by William P. Horn, Esq.

The Alaska National Interest Land Conservation Act of 1980 (ANILCA) was the product of an intense four year legislative battle. Enacted into law over the opposition of a vast majority of Alaskans, the Act contained dozens of unique provisions specifically designed to address the concerns of Alaskans and protect traditional uses on millions of acres of public lands. The primary architects of the Act also made repeated assurances that ANILCA would not adversely affect traditional uses and users and that access to the millions and millions of acres of set aside lands would not be curtailed. This is a crucial legal, historical, and political fact: the agreement that underlies ANILCA was that the "national interest" would get its 120 million acres of new Parks, Refuges and Wilderness areas, but Alaska would get unique special rules to enable a wide array of activities to continue in these vast new units.

Unfortunately, not all of these promises have been redeemed and honored. The federal agencies and their personnel — who were not present when the original promises were made — have not always fully appreciated the special provisions designed to fulfill the promises. Personnel with training and experience in the Lower 48 have not readily grasped how unique and different ANILCA can be compared to Park Refuge or Forest administration outside of Alaska.

The crucial access provisions enshrined in section 1110 are emblematic of the problems faced by many Alaskans. Experience with these sections provides ample evidence of the institutional difficulties the agencies have had in implementing a unique and often radically different law such as ANILCA.

Traditional Access

This crucial provision of ANILCA *guaranteed* access by floatplane, motorboat, and snowmachine to millions of acres within Parks, Refuges, Wilderness Areas, etc. for the purpose of engaging in traditional activities. It established an "open until closed" regime and constitutes a substantial departure from Lower 48 management practices. Without this guarantee, there would have been no acceptance of ANILCA among Alaskans. Moreover, without this provision, millions upon millions of acres of public land would be off limits, as a matter of fact, to all U.S. citizens.

The language does provide some latitude to the federal agencies. Areas can be closed if the access causes adverse impacts on unit resources and a public closure process is followed. Congress set the "bar" high for closures to ensure that the access guarantee was real.

In recent years, the Interior Department has attempted to repudiate this Congressional access commitment and taken actions which are systematically lowering the bar to closures. If uncorrected, the restrictions on closures will be dropped so low that the access guarantee will be gutted. Most notewor-

thy, the National Park Service first imposed an arbitrary blanket closure of two million acres to snowmachines based solely on completely unquantified effects, conjecture, speculation, and Lower 48 studies on species such as whitetail deer. Fortunately, the Alaska State Snowmobile Association fought back and a year ago the U.S. District Court in Anchorage invalidated the NPS closure for violating section 1110(a). Undaunted, NPS has come back with a second closure and the Alaska State Snowmobile Association has sued again. The critical issue is not snowmachines – it is the sanctity of the traditional access guarantee. Should NPS ultimately succeed, the assurances in section 1110(a) will be eviscerated with adverse consequences for airplane, motorboat and snowmachine users throughout Alaska.

Unfortunately, the National Park Service is not the only culprit. In the Kodiak Refuge, thousands of acres have been previously proposed for closure to aircraft landings even though the Fish and Wildlife Service (FWS) acknowledged that landings are causing no identifiable resource problems. Hunting and fishing guides have anxiously watched "quick and dirty" studies of the purported impacts of jet outboard units by NPS and FWS waiting for closures to follow.

The agencies clearly have authority to pursue site specific closures limited to the smallest practical area or limited to the smallest period of time to solve specific resource problems. However, proceeding with blanket closures (as in Denali) goes far beyond what is needed to solve any specifically identified problems. These actions represent the triumph of the Clinton-Gore Administration politics over the letter and spirit of the law.

Access to Inholdings

Section 1110(b) is another pillar of the promises rendered to Alaskans. When the vast conservation system units were established, over 10 million acres of Native, private, and state lands were included within the boundaries. These landowners needed assurances that they would have the RIGHT to access their lands to pursue both traditional activities and economic development. Congress provided that assurance with the extraordinary language of section 1110(b). It specifies that an inholder is ENTITLED to access including the form of access necessary to assure economic use of the property.

The Interior Department regulations — promulgated in the mid-1980's — reflect the strong promise of the statute; regulations that have been upheld in federal court. Nonetheless, the agencies have had a difficult time honoring the Congressional commitment. One inholder went to FWS and kept getting told to file for a traditional right-of-way using the lower 48 law and regulations. Despite repeated efforts, the agency simply wouldn't recognize that section 1110(b) was the law of the land in Alaska.

Other inholders went to NPS for an inholding access easement. In one case the agency acknowledged that the inholder was entitled to access but insisted that this small landowner had to pay $10,000 in processing costs for a permit that NPS was obligated to is-

sue! A statutory access guarantee means nothing when it can be ignored or an agency can erect an insurmountable fee barrier.

Yet others have been told that they must pay the costs of a full fledged environmental impact statement (EIS) in order for the inholder to realize his access entitlement. Please note, that EIS's are required only for discretionary agency decisions. In the case of section 1110(b) the agency action is NOT discretionary; the law directs that it SHALL grant the needed access.

Conclusion

When the agencies have a hard time honoring the legal promises regarding traditional access and access to inholdings, it is no wonder the problems are so much worse when it comes to development activities. ANILCA has created winners and losers during its 20 year tenure. Among the former are the federal agencies. Among the latter the small miners and loggers are most conspicuous.

It is critical that the basic agreement enshrined in ANILCA be clearly understood and recognized as the law enters its third decade. Only with understanding and recognition can Alaska insist that the promises be honored and redeemed. Only with understanding and recognition can the three branches of the federal government be informed and kept aware of these vital commitments. Alaska must continue to fight for its side of the bargain or it will simply slip into a constricting tangle of federal restrictions, requirements and regulations that will suck the life out of the Last Frontier.

ALASKA LAND USE BEFORE AND AFTER ANILCA

by Paula P. Easley, Public Policy Analyst

During statehood's first twenty years, most of Alaska's federal land was open to the public for a variety of uses. There were few land-use conflicts back then, and both the state and federal governments wanted Alaska to become self-supporting, no longer a drain on the nation's taxpayers.

Throughout the state, excitement abounded among its citizens for creating new Alaska industries and jobs, bright futures for our children in this grand environment. Never mind that our distance from markets and costs of doing business would deter about any sane person from investing in the Great Land. Numerous development proposals were hoisted up the flagpole, only to plummet back down when the studies were done—without infrastructure, projects could not be made economic. "Cockeyed optimists," the outsiders called us as we would advance yet another unrealistic idea. Still, our can-do spirit was envied by almost everyone who visited the Last Frontier or who met us on our many self-financed trips to Washington, D.C. Alaskans were definitely different from the folks back home.

Suddenly, it seemed, the mood changed. The 80 million acres of conservation lands called for in ANCSA skyrocketed to 150 million acres, and Alaskans feared they would no longer have power, little though it was, over their own destinies. The realization dawned that, if the national environmental groups ganged up on our small population, we were in a world of hurt.

As it turned out, Alaskans, who represented the view that economic development and environmental protection were both worthwhile human endeavors, lost the effort to keep strategic multiple use lands open for present and future needs. When the d(2) dust finally settled, our attitude was "let's make the best of what we have left." I think most of us truly believed that, if everyone played by the rules, the new law could work.

Twenty Years Later

Had federal agency employees and environmentalists insisted these past twenty years, that ANILCA be implemented as the 1980 Alaska Lands Act was intended, Alaskans would have few complaints. Today they have many. In most cases, ANILCA's language was clear. It said valid mining claims would be honored, traditional access and uses would be guaranteed, resource exploration and evaluation would continue, state and local governments would help draft regulations, Alaskans would not be subjected to unreasonable regulations, and there would be no more land withdrawals.

The New Environmentalist Agenda

The ink was hardly dry on the agreement when the Wilderness Society, a leader in the "fight to save wild Alaska," began drafting its agenda for the twenty-first century. The Society's strategy was, simply, to undo the agreement

and go after what it didn't get in the 1980 withdrawals. It, and other environmental groups in the Alaska Coalition, has achieved considerable success; the act is coming undone. Alaskans have seen a stream of proposals for locking up more land, one lawsuit after another, and an endless list of administrative restrictions.

Land Withdrawal Proposals

First, there was the congressional bill to create buffer zones around the huge conservation units. At first glance this didn't seem serious, but viewed on a map, it was easy to see that all of Alaska's land and coastal waters would be sucked into buffer zones, depending upon whether the zones were one, two or five miles deep. We had to remind Congress that buffer zones had already been provided for in the 1980 law. Fortunately, that proposal died a merciful death after enormous opposition by Alaskans.

Since then we've had marine sanctuary proposals (involving some 18 million acres strategically sited where any coastal development might someday occur), illegal wilderness studies, and proposals for establishing world heritage sites, international parks (Beringia) and biosphere reserves. These last three are United Nations designations, to be applied without state or federal approval, that cede jurisdiction to an international body.

Still unresolved are proposals for millions of acres of spectacled eider critical habitat areas and protected areas for the Steller sea lion and beluga whale. Rest assured there are handy lists of about-to-be endangered species in the precise areas where future projects might occur.

Then there is the environmentalist/Clinton Administration roadless area plan that would prohibit road building in most of the Tongass and Chugach National Forests.

The Wilderness Society also wants 100 million more acres of Alaska designated wilderness (not just "wild land," which describes more than 99% of Alaska, but big-W wilderness). Other preservation groups have their own agendas, all of which violate the "no more" agreement. They say redesignating existing federal and/or conservation lands to more restrictive classifications does not violate the "no more" agreement; common sense says it does.

Lawsuits have been filed to prohibit mining within Forest Service boundaries, over numerous subsistence issues, against timber harvesting on native and Forest Service land, against oil and gas leasing on submerged lands, against regulation of mining by USGS, against land exchanges, over navigability issues, over cumulative impacts of mining claims, over access to inholdings, over mining plans of operation, against commercial fishing in nonwilderness lands, against cruise ship and airplane activities, and over allotment claims. For the environmental groups, lawsuits are a major fundraising activity.

Testimony on ANILCA Impacts

Last year the U.S. Senate Energy and Natural Resources Committee held hearings regarding the impacts of ANILCA implementation on Alaskans. Numerous witnesses testified, with the following issues highlighted:

- The compromises and concessions made by Congress have been violated through judicial activism, bureaucratic manipulation and blatant disregard for the language of ANILCA, particularly with regard to native corporation lands.

- ANILCA provisions to accommodate valid existing uses have continually been violated by zealous bureaucrats determined to use every mechanism possible to restrict or eliminate these traditional uses.

- The promise that agencies would continue to assess the mining and oil and gas resources within conservation units was never fulfilled.

- The "no more" provision of Section 3101(d) has been ignored. Areas continue to be studied for placement into more restrictive classifications in spite of the law, or regulated to the extent that they might as well be officially declared off limits to humans.

- Left to the discretion of agency personnel, even the most benign activities have been found to be "incompatible" with the purposes of the conservation unit. As we know, the law did not define "compatible." While the legislative history shows it was to be liberally interpreted, it has not.

- Traditional motorized access, which was to be subject to reasonable regulation in certain instances, has been vehemently opposed by agency regulators, and often denied without justification.

- Public hearings, consultations and cooperative approaches to coordinating management decisions with state and local entities, as required by the law, are blatantly disregarded.

- The often-stated assurances that Alaskans would not be subjected to living a "permit lifestyle" turned out to be meaningless.

- To make certain that applicants for permits do not get them, federal agencies require reimbursement of costs associated with evaluating all alternative routes for proposed transportation and utility corridors. Assessments of costs have ranged from $10,000 to $200,000.

- The commitment that the oil and gas, mining and timber industries would be allowed orderly development has been meaningless.

- The rights of access to private lands within conservation units have been violated at every turn. Inholders face significant, infuriating obstructions to enjoying the land they own. Examples are permit requirements and limitations on times they can travel to and from their property.

- To further limit access, federal agency personnel define words according to their own dictionaries: helicopters are not aircraft, certain types of watercraft are not boats.

- Federal agency personnel have gone so far as to require permits of people using *state* navigable waters when the state had no such requirement and the federal agency had no such jurisdiction.
- Despite ANILCA's requirement that remote lakes with no alternate access be open to aircraft access, hundreds of lakes have been arbitrarily closed to such use.
- Agency personnel have used devious means of assuring that access roads would not be built, such as requiring that borrow material come from outside conservation units.

Conclusion

Due to the manner in which ANILCA has been interpreted, administered and attacked, amendments to the law are necessary. It is hoped that these can be accomplished with the election of a new U.S. President in November and a supportive Congress. Let us not think for a moment that amending the law will be easily achieved. Alaskans must unite in force for such an undertaking and be prepared to offer our talents, time and money for the cause.

ANILCA Promises Broken in Bering Land Bridge National Preserve

By Cheryl Jong

This is a story about the promises broken through ANILCA. It is from the perspective of a small placer mining family that has mined continuously in Alaska, on the Seward Peninsula, since 1899. Seventeen placer claims known as the Humboldt Group, owned by our family members are within the Bering Land Bridge National Preserve. All other mining claims, lode and placer, held by various people in the past have been closed by the National Park Service (NPS letter, May 11, 1992).

This story is important because it is about the only claims remaining within the Bering Land Bridge National Preserve as a result of ANILCA.

The real trouble began in 1985. A letter from the Regional Director of the Park Service conveyed the information that a validity examination would be conducted on the Humboldt Creek mining claims. Two geologists, Bill Nagle and Sid Covington, came from a Denver, Colorado office of the National Park Service to conduct the validity examination during the 1985 season. One was a coal specialist, the other, a geochemist. Neither knew how to pan for gold and neither had ever used a rocker. Yet that was the equipment that they brought on site to Humboldt and used for the validity exam. They took samples of surface material that would have naturally showed low values so the unique panning methods and rocker techniques were secondary to the samples. Two members of our family were on-site taking pictures and making notes. The validity results were challenged and a new exam with Alaskan geologists who did have experience with placer gold was scheduled in 1986 and 1987.

From the time of withdrawal until the Sierra Club sued the National Park Service in 1985, it was believed (hoped) that ANILCA's promises of reasonable access and being able to economically mine the ground that was now four miles inside the park would just take time to sort out and regulate. That has never happened.

Prior to the creation of Bering Land Bridge National Preserve, the ground was mined with mechanized equipment. In 1985 and over the next several years, there was an approved plan of operation for handwork by pick, pan and shovel. Many plan rejections and requests for additional information have come and gone. There have been very few approved plans of operation for mining in any of the parks in Alaska and even the Humboldt Group had an injunction against using a shovel one year. Concurrent with the injunction, and in the years afterward with the approved "#2 hand shovel" operation, the "cash only" bonds were excessive. During the last year of the approved hand operation the bond was reduced to $3,850. When the Humboldt Group finally did get an approved plan for a D-6 operation, with a pit size of 100' by 200' each year for a three-year dura-

tion, the "cash only" bond was over $40,000. The bond was for more money than the gold that could be mined from a pit of that size where the operation was approved. During these years of trying to work with the National Park Service, all other permits were approved and in place: NPDES, CZM, COE, Tri-Agency, etc. However, the National Park Service roadblock has remained.

By the early 1990's it was obvious that a small inholder could not compete with how the National Park Service believes it needs to manage mining claims. The claimants asked the National Park Service to buy the claims. The Park Service said that claim acquisition was restricted to claim purchases in Denali only. The National Park Service has spent tens of thousands of dollars doing environmental assessments and the like on the Humboldt Group. There must be some point where it is obvious to everyone that it is just a bad game of pushing paper. The National Park Service never says publicly that a miner can not get an approved plan of operation, but when individuals within the Park Service keep requesting information that is already on file; when bonds are more than the money that is in the ground; when they ask for a claimant to submit second and concurrent plans for non-mechanized work on a claim because they will not (cannot?) approve a mechanized plan that year; it is obvious to even the most stubborn claimant that the promises of ANILCA—reasonable access and the ability to responsibly extract ore—mean nothing to NPS.

Validity examinations and claim boundaries have been big issues with the National Park Service. The claim boundaries on the main fork of Humboldt Creek have been resolved with the main group undergoing the patenting process. The claimant and the National Park Service have signed off on the West Fork boundaries so it is thought that this issue is resolved.

The validity/patent examination has never been completed to the satisfaction of the National Park Service and the claimants have had limited access to what the Park Service has been working on from 1986-87 to these last approximately two years. The claimants are eager to review what the National Park Service includes in the validity/patent report. Only a shovel was used to show discovery and several claims required picking frost to get down to pay level. There has never been a question as to the validity of the claims. They have been mined economically at $35.00 an ounce. The flood plain is greater than 350 feet wide in most areas and the reserves are at least 300,000 BCY. It can be mined most economically with a bucket line dredge and D-9's. During the summer of 1999, an NPS geologist reexamined the mining claims to confirm the claim boundaries and to verify the mineral discovery sites. The claimant's understanding was that NPS would be completing the report because the Secretary of the Interior had set a deadline for reports to be due to him in the fall.

On September 17, 1999 the Secretary of the Interior signed the first half of the mineral entry final certificate for

eight of the placer mining claims in Bering Land Bridge National Preserve and the Bureau of Land Management contracted with a private engineering firm to rewrite (once again...) the validity report, updating the economic evaluation to meet current standards. As of the date of this story about ANILCA's broken promises (May 17, 2000) the report is not yet out. The claimants have been given a date for scheduled completion of June, 2000. If that deadline is met, the validity/patent report will have only taken fifteen years to write. If the claimants are not satisfied with the report, the claimants believe it would be only prudent to take in mechanized equipment during the winter across four miles of park land to assist the discoveries in remaining open.

In the fall of 1999, the claimants were amazed to learn of the Solicitor's Opinion, approved by Secretary of the Interior Babbitt on May 27, 1998, regarding the patenting of mining claims and mill sites in wilderness areas. Since the Humboldt claims are not in wilderness and portions have been mined, how can they fall under the Wilderness Act of 1964, which would allow patenting of the minerals only? This is a current issue.

For anyone that has been reading for detail in this story, there are nine claims of the original seventeen missing. Originally, maintenance fees ($100 per claim) were paid for all claims. Then, eight claims went to patent and the other nine claims were quit claimed to me. Maintenance fees continued to be paid but frustration grew as it became obvious that the National Park Service would not allow economic mining. I decided to file a small miner exception because the National Park Service regulations state they will not approve plans of operation for assessment. The waiver was filed. The National Park Service declared those claims null and void because the $900 was not paid. I took the case to the Interior Board of Land Appeals and after almost two years, the case was decided in my favor because the National Park Service had declared them void for the year that included the years when the money had been paid. National Park Service filed again and I have been continuing to file the waiver. IBLA has yet to make a decision.

It is important to be truthful and accurate in the chronology of events. It is difficult because it is the claimant's belief that National Park Service deliberately withholds information and uses their considerable resources to impede any project they may not like to come to closure.

Cheryl Jong is the granddaughter of N.B. Tweet who began mining at Taylor Alaska, in 1950, eighteen miles from the Humboldt Claims, which were mined by N.B. Tweet and sons in 1948 and 1949. Ms. Jong is currently teaching high school in the village of Buckland, Alaska on the north side of the Seward Peninsula, approximately eighty miles east of the Humboldt Claims.

RECARPETING ANILCA: Is it the carpet or the carpet layers that need replacing?

By Father J. Michael Hornick, J.C.L.

When Steve Borell first asked me to write an article on ANILCA, I declined. A couple weeks later, I had to pack up my office and move so it could be recarpeted. That meant packing up my book cases of Federal management plans and Land Use Council/Advisors records. Sorting files and reports served to remind me of how many controversies and experiences were related to ANILCA, now twenty years old.

Most Federal land agencies in Alaska have hired spokespersons to promote the accomplishments of their agency. Consequently, that is a task I will choose not to duplicate. I believe the other side of the story suffers from inadequate telling.

Flood of Tourists

At Thanksgiving of 1956, Bill Fickus was hired to fly supplies in to Pat Barkley's placer claims on Crevice Creek. Fickus eventually got hooked on mining, became sole owner of the claims, and began homesteading.

In July of 1963 Bill Fickus, his wife Lil, and two children established residence on their Crevice Creek homestead in the Brooks Range, fifty miles west of the Dalton Highway. There, they raised four children. In 1980 their family lifestyle was changed dramatically when ANILCA suddenly made them inholders in Gates of the Arctic National Park.

Suddenly Bill's big game hunting was prohibited in the park, seriously impairing his guiding business. He lost hunting in three river valleys which were choice guiding areas. Also gone was one-third of his traditional trapping area. They were permitted to do subsistence hunting but NPS officials claimed that family members were not "rural residents" so now they had to pay $25 for a special permit.

The geology crews who were regular summer visitors were no longer permitted to work in the area of the park so they stopped using his airstrip as a base camp. Pre-park visitors were not tourists and numbered maybe a dozen annually. But with the establishment of the Park, several hundred backpackers, floaters, and campers came through the area each season.

Bill's wife Lil, a Ft. Yukon Athabascan, complained: "They (the NPS) come here and tell us how we should live. Why should they tell me? I've been here a long time; they're the newcomers."

Gates of the Arctic was the same park where the NPS used Executive Order (11644) and the Wilderness Act to prohibit ATV access for subsistence and traditional activities for the residents of Anaktuvuk Pass. This took years to resolve and ultimately required a land trade.

Psychological Warfare

In 1980 ANILCA made an addition of 1,037,000 acres to Katmai Monument and an addition of 308,000 acres to the Preserve. ANILCA renamed this conservation unit as Katmai National Park.

For more than twenty-five years Palakia Melgenak fought with the NPS and Interior Officials over title to her land at the mouth of the Brooks River. She and her family used the site to harvest spawned out salmon. Melgenak was an Aleutian matriarch and spiritual leader who was born in 1879.

When Palakia was 39 (1918), federal officials first showed up at her Brooks River fish camp and staked out what became Katmai National Monument.

In 1950 the NPS granted concessionaire rights to Northern Consolidated Airlines to construct and operate a sports fishing camp on Melgenak's land on the north side of Brooks River. The concessionaire used her northside cabin as a gas storage shed. Concessionaire and NPS encroachments continued with the years. In 1950 the NPS tore down Melgenak's northside tent frames.

The NPS harassed the Melgenak grandchildren and accused them of being "eyesores to the tourists." The entire family was displaced from their campsite on the south side of the river, and placed into a fenced-in area, allegedly for their own protection.

In 1958 NPS officials acknowledged the existence of the Melgenak structures and their traditional use:

> "Though we are apt to think of their fishing camps more as a nuisance and cluttered junk pile than as something of value, we must admit that it is part of the local color of the Monument, and eventually will be of visitor interest."

The last time Palakia visited her fish camp was about 1963 at age 86. She had used her lands at Brooks River for at least seventy years. On her last trip she asked her eldest grandson to mark boundaries for her because the white men were coming and would take the lands. Ted and Ralph Angasan dutifully marked trees to identify her property boundaries that year.

In 1965 the NPS ordered the destruction of her cabin on the north side of the river but family members continued to use the site.

In anticipation of the Alaska Native Claims Settlement Act (1971), Rural CAP began advising Natives to apply for land under the 1906 Native Allotment Act. In March of 1971, after nearly a century of use and occupancy, Palakia filed a native allotment application for her lands on the both sides of the Brooks River.

In March of 1983 the BLM approved her allotment but the NPS and the concessionaire immediately appealed it. After years of legal bickering and several land board appeals, the case ended up in the U.S. District Court of Judge Singleton.

Over the years government attorneys raised some "interesting" arguments. They claimed the Native Allotment Act of 1906 applied to Indians and Eskimos but not Aleuts. They claimed that Melgenak's claim was void because she had "tacked" it to her husband's claim. They argued that Melgenak lacked evidence of continuous occupation of her fish camp though NPS records demonstrated otherwise. Best of all, the NPS, having burned down her cabin, then argued its absence as proof of nonuse.

Judge Singleton concluded: "In fact, the NPS people had knowledge of Melgenak and her family's presence, and did everything they could to discourage it."

With court proceedings still pending in July of 1996, the NPS announced they were closing the concessionaire headquarters on the north side of the river and moving to the south side. The NPS Concept Plan and EIS placed their planned facilities in direct conflict with the Melgenak allotment on the south parcel, according to Court records.

In his decision Judge Singleton concluded that the Melgenak heirs had valid claim to the south side parcel but not the north side parcel. Singleton's decision made reference to NPS treatment of the Melganak family as "psychological warfare." Government lawyers wanted this phrase removed from Singleton's decision but the comment remained.

Angasan, a grandson, speaking of Judge Singleton said "He is the only one who has recognized how we were treated all those years. It was just a dirty fight."

No More Firewood

Kenneth Owsichek was a hunting guide and lodge owner in Lake Clark National Park. His story was told in The Anchorage Times (8/4/90): "In 1980, when Lake Clark National Park was established we all cut wood, and no permits were required. This is my primary home out here, Port Alsworth. Now a couple of parkies out here decide I'm not a resident."

When the Park Service refused to grant him subsistence rights for thirty cords of firewood from Lake Clark Park/Preserve, he sued them because "I've had to buy wood from private property here for the past year."

Owsechek filed documents in U.S. District Court stating the he had lived in Port Alsworth on the south lake shore for the last fourteen years. He built his hunting lodge there in 1976.

Park Service spokesperson Quinley claimed. "We (the NPS) determined he did not qualify." Owsichek claimed in court papers that he travels to the Lower 48 two to three months of the year to promote his guiding business. Owsichek said he was aware that the NPS granted cutting permits to other Port Alsworth residents who were "physically present at their residences less than" he was.

The Park Service defined "local rural resident" as any person who has a primary permanent residence evidenced by a driver's license, fishing/hunting license, or location of voter registration. Owsichek stated in his court complaint that he has been a registered voter in Port Alsworth since 1982.

Then there was the flap between park officials and residents in late 1990. Port Alsworth residents (pop. 50) raised complaints against some park service employees ranging from misuse of government property—including aircraft—to alleged physical abuse of Kathy Painter. Painter said she was slapped in the face by Chief Ranger Hollis Twitchell. Painter's husband, an Alaska state trooper, considered pressing charges but reconsidered when the NPS promised to investigate. The NPS investigated but nothing ever happened, according to Trooper Painter.

Glen Alsworth, lifelong resident and mayor of the local borough, said conflicts with park administrators and local residents began in the 1970's after President Carter designated these lands for eventual park status.

Boyd Evenson, NPS Regional Director, claimed there were 25,000 visitors in the park the previous year (1990). Alsworth, who operates an air-taxi service, and other residents disputed that figure as grossly inflated. Alsworth claimed he transports several thousand people per summer but only 3 to 5% are park visitors. Evenson admitted NPS visitor numbers are inflated to justify maintenance and operations budgets.

We Don't Care How They Do It Outside

Federal managers would consider this maxim to be indicative of narrow minded Alaskans. I would suggest it ought to be applicable to the way Federal agencies manage Wilderness in Alaska.

In 1980, ANILCA added 56.7 million acres of Alaska to the Federal Wilderness system. This made Alaska's contribution equal to 62% of all Wilderness lands in the entire United States. More Wilderness designations were created by Congress in the late 1980's.

The Act defines Wilderness as "an area where the earth and its community of life are untrammeled by man, where man himself is a visitor who does not remain...." Notice that mankind is clearly not considered to be a part of "the community of natural life!"

The Act's prohibitions against roads, motorized vehicles, equipment and boats, the landing of aircraft and structures of any kind have caused considerable controversy among inholders, miners, loggers, oil and gas drillers, developers and others concerned about our Federal government locking up lands from multiple use.

Cognizant of Alaska's unique situation and what the Wilderness Act would do to traditional lifestyles, Vern Wiggins, former Federal Cochairman of the Alaska Land Use Council, noted that ANILCA created twenty-one special provisions which pertained to the administration of Wilderness lands in Alaska (8 of which modified or amended the Wilderness Act).

Far too many controversies of the past twenty years have resulted from the fact that Federal managers were either ignorant of ANILCA provisions/exemptions or just chose to ignore them. There have been conflicts as well because Federal managers insist on regulating/managing wilderness study areas or proposed areas as if they were already Wilderness designated by Congress.

Subject To Reasonable Regulation

Few other more irritable words have been heard in Alaska than the phrase "subject to reasonable regulation." The phrase is often cited in Federal law. Unfortunately, the experience of ANILCA has demonstrated that "reasonable regulation" often means bureaucratic hoops which never end. It's how to say "yes" when you really mean "no."

ANILCA promised to preserve access rights for inholders. While Federal agencies sanctimoniously acknowledge individual and State's rights of access in their management plans, in reality they obstruct any practical use of such access rights.

RS2477 is an 1866 statute which provided rights-of-way across undesignated Federal lands. It was repealed in 1976 but preserved already

existing rights-of-ways. ANILCA allegedly preserved existing rights-of-way.

In the fall of 1993 Paul Shultz filed suit in the Ninth Circuit Court vs. the U.S. Army over access to his homestead. The Army asserted unrestricted right to regulate access to the roads of Ft. Wainright. District Court Judge Andrew Kleinfeld determined in favor of the Army.

Shultz claimed he established a right-of-way to his homestead which he acquired in 1924. Judge Kleinfeld negated all six routes proposed by Shultz as RS2477 access routes or public easements.

The Ninth Circuit Court provided a sweeping reversal of Kleinfeld's decision. The Ninth Circuit judges determined that "in Alaska, more than most locations, the season dictates the nature and means of passage."

After developing the legal history of RS2477's, the Ninth Circuit Court concluded that "as long as the termini of the right of ways are fixed (the homesteaders cabin on one end, Fairbanks on the other) to establish a public right of way, the route in between need not be absolutely fixed (as it might be in other settings)."

The Department of the Interior was panic stricken. Secretary Babbitt reacted immediately to the potential threat of RS2477 access for Federal conservation units in Alaska. Babbitt issued new Federal RS2477 access regulations for the BLM, NPS and FWS in August of 1994. When that was opposed by Congress, Secretary Babbitt tried the back door route of issuing new "policy guidance" which would preclude Alaska from any practical use of the RS2477 rights-of-way Schultz Decision.

This was not the end of the story. The Shultz case bounced in and out of Ninth Circuit Court for another three years. In November of 1993, the Government was granted a rehearing of the opinion favoring Shultz. In September of 1996, the Ninth Circuit Court reversed its earlier decision and substituted a new decision affirming the District Court decision of Kleinfeld. The Ninth Circuit Court agreed that Shultz had not sustained his burden to factually establish a continuous RS2477 route or right of way under Alaska common law. Judge Alarcon, however, dissented.

This story suggests a question: how realistic is RS2477 access if you have to prove it in Court? And, in order to prove it, you have to fight the Federal government in several court actions?

Transportation? I Doubt It

Given the addition of millions of acres of Alaska to ANILCA conservation units, the need was recognized to provide for access in, across and into the new Federal conservation units. ANILCA Title XI was intended to safeguard such access for State, Native and private landholders blockaded by the new conservation units.

The past twenty years have proven Title XI access to be pretty useless. The first time I believe it was ever used was for the widening of the Sterling Highway through the Kenai National Wildlife Refuge—this was no new road.

When Cominco needed access from its Red Dog Mine to tidewater, it was easier to do a Congressional land trade than to get mired down pursuing a Title XI transportation corridor.

Another example of Title XI failure was for the people of King Cove who needed road access to the airport at Cold Bay for medical emergency evacuations. Unfortunately, Izembeck National Wildlife Refuge divides the two villages. Department of the Interior and environmentalists adamantly opposed any routing through the Refuge. Senator Stevens got $37.5 million in funding for alternate routing in 1998. Alternate plans routed the roadway on Native land parallel to the Refuge border. The Department of the Interior and environmental groups have opposed this as well because they claim hovercraft crossing of Kinzarof Lagoon would unduly disturb waterfowl.

Unusable as Title XI provisions have been, environmentalists aim to eliminate it from ANILCA. They fear the prospects of future access. Access requires roads and would likely bring development. The existence of roads or development would preclude the future nomination of such areas to Wilderness designation.

An Airplane Is An Airplane

In the late 1980's Senator Stevens carried on considerable negotiations with Federal managers over several aviation issues. Federal managers refused to recognize helicopters as having been included in ANILCA's term "airplanes;" and aircraft access was being managed too restively.

Regional Director Stieglitz of the USFWS responded to Stevens' challenge in a letter claiming their position was moderate and in line with Department of the Interior directives. However, Stieglitz did concede that the USFWS would no longer require permits first before helicopters could respond to medical emergencies or rescues within Wildlife Refuges. God forbid if you needed a helicopter permit for a rescue or emergency after 5:00 P.M. on a Friday night.

In November and December of 1993 the Magazine of the National Park and Conservation Association protested a proposed $600,000 FAA grant to the State of Alaska for "planning airports" in Denali and Wrangell-St. Elias Parks.

The NPS and the NPCA insisted that the FAA had no authority to issue such grants and "strongly opposes building state-owned commercial airports in the heart of two of the country's premier wilderness parks."

Chip Dennerlein, Alaska regional director of NPCA, complained: "The FAA has taken from the Park Service and given to the State the authority to control access to these parks." The NPCA claimed it was the NPS who operated a small airstrip in Kantishna and another in Chisana. In August of 1993, Dennerlein and Alaska Regional NPS Director Moorehead wrote the FAA asking the grants not be issued because the airstrips were on Park Service land. The FAA responded that Alaska held rights-of-way to both airstrips.

The duplicity of the NPS and NPCA becomes a bit more evident if you recall the battle of the Kantishna airstrip during the summer of 1990. In June of 1990, State DOT workers took a roadgrader, a loader and dump truck to Kantishna to maintain the road between the Wonder Lake Ranger Station and Kantishna. While there, they also undertook brush clearing and mainte-

nance of the gravel runway. Brush, last cleared by the State in 1974, was encroaching on the runway. NPS officials summoned a van-load of armed rangers who confronted and threatened the road crew as they worked on the airstrip. Work was temporarily halted until the Governor and the Commissioner of the Department of Transportation intervened, and the innocent maintenance was allowed to proceed. Ironically, DOT officials had notified the NPS of their intended work three weeks in advance.

The Chisana airstrip was not the only one at risk in Wrangell-St. Elias. Judy Miller and her family lived in the Wrangells long before the Park Service arrived. While living in McCarthy, she, at first, even obtained employment with the NPS. She suggested that the NPS should tread lightly while getting established in the Wrangells. "I suggested the Park personnel should not assume rights to trespass on private property, but was instructed to do so anyway." Her family became frustrated with the NPS' continuous creation of restrictive regulations. The family moved further back into the bush.

In May of 1995 Mrs. Miller came to Anchorage to testify at the Energy and Natural Resources Committee hearings hosted by Senator Murkowski. Mrs. Miller's testimony expressed concern: "There has been an ongoing effort to force this strip from the long existing lease into NPS control. The Park now claims it is theirs but I urge this committee to further investigate this."

For the Miller family the May Creek strip was their official mail address and passenger access. "Air-taxi operators have been told they cannot land at May Creek without a Park permit. Doesn't this infringe on our right of access?"

Antiquities Act vs. Private Property

President Carter tentatively locked up Alaska lands for ANILCA (D-2) by invoking the Antiquities Act of 1906. The National Natural Landmarks Program operates under the same Antiquities Act.

James Ridenour, Denver NPS Director, announced that he might want to "track down" advocates of private property rights and "punch 'em out." Ridenour made the outlandish comment in October of 1991 during the NPS Advisory Board meeting in Estes Park, Colorado. The discussion focused on the controversial Natural National and Historical Landmarks Program of the NPS. Alston Chase, national syndicated columnist, published a 1989 expose which prompted grassroots organizations to oppose the NPS designations. As much as 90 million acres of private property could have been affected by such designations.

James Richards of the Mountain States Legal Foundation, appealed to the Inspector General's Office, Department of the Interior, to determine if Ridenour's comments constituted an assault upon or an illegal use of office to intimidate private citizens.

In December of 1991 (report 92-I-204), the Inspector General concluded that the National Park Service may have infringed upon the property rights of as many as 2,800 private landowners. In many instances the evaluation, nomination, and designation processes

were conducted without the landowners knowledge or consent.

The Cabin Battle

In the mid-1980's Federal agencies began writing regulations to manage privately owned cabins captured by the new land additions of ANILCA. The Land Use Council became a forum within which these were to be formulated.

In April of 1984 the Department of the Interior/Park Service published draft regulations in the Federal Register, supposedly in accordance with ANILCA. The State of Alaska submitted its critique in August of 1984 and the Land Use Council reviewed the issues in November 1984. ANILCA required the Department of the Interior to respond to objections in writing. However, the NPS chose to go their own way, publishing final regulations in September of 1986, to be effective in October. Several days before the effective date, the State petitioned the Department of the Interior and was ignored.

On April 27, 1987 the State filed suit (J87-0012CIV) vs. the Department of the Interior/Park Service that they violated ANILCA in not responding to the Council's objections in writing. The State complained the regulations involved the following violations: phased out cabins more rapidly in Alaska than intended by Congress; improperly denied adequate and feasible access; inadequate protection of traditional and customary cabin use; unnecessarily burdened valid commercial fishing rights and permits; temporary facilities regulations substantially deviated from ANILCA 1316 (a); use of cabins in Wilderness for commercial activities were unnecessarily restrictive; unduly restricted subsistence use; and failed to provide complete, adequate, proper evaluation of the effects of these regulations on subsistence use.

Getting Rid of Miners

In 1985 the Sierra Club (and others) filed a friendly lawsuit against the NPS and successfully obtained an injunction. This precluded the NPS from approving any plans of operation until the NPS completed an environmental impact study on "the cumulative and synergistic" effects of mining. This effectively killed mining in Denali, Wrangell-St. Elias, and Yukon-Charley National Parks.

It was May of 1990 before the NPS finally completed their EIS'. A Record of Decision was not issued until August of 1990. The Sierra Club did not give up just yet. They tried to further delay possible approval of any plans of operation by attacking the EIS' in court as being flawed and incomplete. The years it took the NPS to complete their EIS' ensured that many of the claimholders and miners were destroyed financially.

Clarifying the Clarification

Evidence indicates that the NPS began targeting the miners years earlier. Through years of legal wrangling, the NPS discovered that a few claimholders had slipped through a hole in federal law. If a miner could access valid claims within a National Park by using a non-park access route, their plans of operation did not need NPS approval.

Mining in the Parks Act was passed in 1976. In 1977 it was implemented (36 CFR Part 9 Subpart A) to require an approved plan of operation as a condition for access to all mining inholdings.

ANILCA Sec 1110 (b) (1980) created a conflict with this because it guaranteed "adequate and feasible access" to all inholdings in Alaska NPS units.

In June of 1981 Mining in the Parks law was clarified by "interim access regulations" (36 CFR 13.10-15), which stated that in Alaska park units no plan of operations was required for patented claims where access is not across federally owned parklands. In October of 1986, the NPS, without any explanation, repealed the previous access "clarification."

In April of 1987, the Interior Department issued a draft amendment "clarifying" the original regulations of Mining in the Parks Act as applying throughout the National Park system to all claims, patented or unpatented, without regard to method or route of access.

Between the Mining in the Parks Act and the Sierra Clubs' friendly law suit , the last of the miners in Alaska National Parks were eliminated—something Congress had promised not to do when establishing these parks.

Promises, Promises!

Secretary of the Interior, Cecil Andrus explained in 1998 how he promoted the Alaska Lands Act with President Carter. He attributed some of that momentum, however, to the work of previous Secretary Udall.

Lowell Thomas, Jr. (Lieutenant governor under Hammond during D-2) also spoke praises of Udall: "He really cared about our extraordinary environment and, I think, carried the day (for ANILCA) with President Carter."

I mention this background because it highlights the significance of promises Udall made on behalf of Congress to the people of Alaska about the effects of ANILCA:

"We want to make it abundantly clear that it is our intention that those persons possessing valid existing mineral rights should be permitted access to those rights. Reasonable access should not mean access which is so hedged with burdensome restrictions as to render the exercise of his valid rights virtually infeasible...

"The bottom line of our position is that holders of valid existing claims *will not* be precluded by the Federal Government from the reasonable development of these claims." (emphasis added)

The past twenty years of ANILCA history have demonstrated that Federal land managers have provided their own interpretation of Congressional intent.

Each set of management plans is one step stricter than the previous. Each set of step-down plans is stricter than the previous. We have become victims of what has been called legislation by administration. Invariably each new set of regulations ends up being stricter than the original provisions of Congress in ANILCA.

On ANILCA's tenth anniversary (December 1990), I wrote former President Jimmy Carter a short note commending his humanitarian causes but also giving him credit for the ANILCA injustices inflicted upon inholders and users of federal lands in Alaska. Needless to say, there was no reply.

Federal Promises: Should They Just be Water Under the Bridge?

Jules V. Tileston

Excluding glaciers, Alaska has 40% of the total U.S. fresh water supply. This large amount of fresh water is distributed in about 3 million lakes and approximately 30,000 rivers, creeks and streams. *The Alaska Constitution* (Article VIII, Section 3) says "Wherever occurring in their natural state, fish, wildlife and waters re-reserved to the people for common use." Section 13 of our Constitution establishes the principal that water rights are created by prior appropriation (first in time = first in priority) for a specified amount and use.

About 60 % of Alaska is in various federal ownerships that range from small sites for federal administrative facilities to large military withdrawals, the vast majority of the total National Park System and National Wildlife Refuge System acreages, and the two largest National Forests in the nation. Under the *Alaska Statehood Act*, Alaska owns all inland waters that are navigable and not expressly reserved by the federal government at the time Alaska became a full and independent member of the Union. For example, the establishment of the Chugach National Forest, even though well before Statehood, did not expressly reserve water for the purposes of the national forest, while the creation of the Kenai National Moose Range (now called the Kenai National Wildlife Refuge) did.

Forty years after Statehood, State ownership of the water column and land between the ordinary high water mark remains essentially unresolved and more often than not is disputed by federal agencies. A good portion of the foot dragging by the federal government directly stems from the fact that a substantial number of State owned waterbodies are now within National Conservation System Units (CSUs) managed by the Bureau of land Management (BLM), Fish and Wildlife Service, Forest Service, and National Park Service. In other cases, such as the Fortymile River, and subsistence fishery management, the federal government has attempted to expand its restricted land management authorities to State owned navigable waters.

Prior to Alaska Statehood, the Congress passed the *McCarran Amendment* (1952, 43 USC 666a) that has bearing on the way the federal government acquires water rights. First, it accepts the basic concept that all states have clear authority to manage water rights, including water on federal lands within a state. These State Rights have been confirmed by the U.S. Supreme Court in at least two cases (U.S. v Eagle county, CO, 401 US 520 in 1971, and U.S. v New Mexico, 438 US 696 in 1978). The McCarran Amendment also recognizes that federal ownership of land creates an implied federal reserved water right. Priority for a federal reserved water right goes to the date the lands were withdrawn from the public domain. As opposed to other water rights acquired under State wa-

ter law, a reserved federal water right cannot be lost by non-use. The quantity of water claimed for a reserved federal water right cannot exceed the minimum amount necessary to fulfill the primary purpose of the withdrawal. Once a federal reserved water right has been granted by a state, it is incorporated into that state's water right system and has no greater rights than any other water right holder. Finally, a federal reserved water right is only implied until such time as there is an application and the application is adjudicated by the state.

The Alaska National Interest Land Conservation Act (*ANILCA*) in December of 1980 created new and expanded CSUs throughout Alaska. The creation of a CSU in 1980, regardless of the Congressional management directions, did not affect State water management and ownership or State ownership of submerged land for either marine and navigable inland waters granted in 1959 by the Alaska Statehood Act. Likewise, the Alaska Statehood Act did not affect express federal water reservations that were in effect at that time. Thus, the 1980 creation of four new National Wildlife Refuges and a unit of the National Park System along the Yukon River did not change the fact that the Yukon River and its interconnected sloughs are navigable and passed to complete State ownership in January of 1959. Yet the State does not have quiet title from the federal government for the Yukon River or its other tributaries such as the Porcupine or Tanana, rivers each with a long and clear documented factual history of use for travel, trade and commerce.

A precedent-setting federal court decision also has significant ramifications on State ownership and management of navigable inland waters. The *Katie John v. Babbit*, 72 F.3d 698 (9th Cir. 1996) decision says that the federal government has the right to manage subsistence fisheries in all navigable waters where the federal government has a reserved water right.

Kandik, Nation, Black Rivers — A Case History:

In determining ownerships for the purpose of conveying land to Alaska Native Corporations, BLM makes a determination on whether a water body in the pending title transfer from the federal government was or was not navigable since the federal government cannot issue title to land it does not own. The Kandik and Nation rivers flow southward from Canada into the Yukon River near Eagle; the Black flows westerly into the Porcupine River upstream from Fort Yukon. BLM determined that the headwaters of the Kandik were navigable as were the Nation and lower two-thirds of the Black River. The BLM decision was appealed and prior to a hearing the representatives of the federal and state government conducted a joint field investigation and agreed that the U.S. Geological Survey would collect scientific hydrologic data that could be used at the hearing. Historic documents also showed that the survey crew marking the boundary of the border between the U.S. and Canada were supplied by a motorized boat moving a ton of hay upstream on the Kandik. The hearing officer concluded the Kandik River was navigable in fact. BLM also

determined that a substantial portion of the Black River and its interconnected sloughs were navigable and therefore the State owned the land between ordinary high water marks. Based on these BLM determinations, the State has requested quiet title from the federal government. Since the Kandik and Nation rivers now flow through a unit of the National Park System, and the Black River flows through a National Wildlife Refuge created in ANILCA in 1980, the federal government has used a variety of stalling tactics to avoid confirming the fact that the State of Alaska got title to all or significant parts of these three rivers in January 1959. The hydrological facts collected by federal scientists for the Kandik River (non-glacial and without significant feeder lakes, total length slightly less than ninety river miles in a drainage basin that is under five miles wide at its widest with numerous shallow gravel bars and sweepers) means that most non-glacial rivers in Alaska are in State ownership. The Black River navigability determination is being stonewalled by the federal government because BLM made a determination that interconnected sloughs were also in State ownership and there is reluctance to apply this same standard to the Yukon, Porcupine, Tana, Kuskokwim, and other large meandering rivers that are in one or more CSUs.

The Fortymile River Story:

ANILCA established the Fortymile River and many of its tributaries as a unit of the National Wild and Scenic Rivers System. However, ANILCA also amended the way the Wild and Scenic Rivers System works in Alaska. First, it doubled the acreage of federal land that could be included within the boundaries of all Alaskan units. Secondly, it expressly prohibits inclusion of State and local government ownerships and prohibits the boundaries from effectively encompassing private land. This means that the navigable portions of the Fortymile and its principal tributaries are not a part of the National Wild and Scenic Rivers System and that no provisions of the Wild and Scenic Rivers Act applies, e.g. this CSU is almost totally comprised only of federal uplands (humorously referred to as wild and scenic bank lands). This same situation also applies to the Delta, Gulkana, Unalakleet rivers and Birch and Beaver creeks CSUs. The Fortymile River is within a mining district with more than a hundred years of almost continuous placer gold production that was recognized in the federal studies that lead to the inclusion of the river in ANILCA. ANILCA also recognized that the upper portions of the Fortymile River contained mineral deposits that could only be developed with road access. Accordingly, ANILCA provided for road access across portions designated as a Wild River Area which was a complete departure from the precedents set for Wild River Areas throughout the Nation. BLM has initially determined that significant parts of the Fortymile were navigable and in State ownership. That early ownership determination does not reflect the fact that it stopped well short of the launching site for BLM river rangers, a site also used by commercial and private recreationists, or that the State has formally asserted additional upstream parts of the Fortymile CSU

are navigable. In the past several years, BLM has consistently attempted to manage (read prohibit) suction dredging on State ownerships. This was done principally through the permitting of upland camps on federal land under BLM jurisdiction. The end result is that rather than having well-screened environmentally sensitive upland camps set back from the river bank, miners on State mining claims in the Wild River "bank lands" Area have been forced to establish and maintain camps on State land below the ordinary high water mark.

Innovative Expansion on the Wild and Scenic Rivers Act:

The National Forest administration in the Tongass Land Management Plan has determined that glaciers qualify as a free flowing river and are eligible for inclusion in the National Wild and Scenic Rivers System. This same concept has been adopted for the Chugach National Forest.

Federal Water Rights:

During the past forty years, the federal government has made no systematic attempt to comply with the McCarran Amendment in either applying for a water right or defining the extent, if any, of reserved federal water rights in Alaska. There are a few exceptions, like for federal hydropower sites and federal administrative sites. BLM has applied to the State for and has been granted an instream flow reservation for the Birch Creek CSU and applied for an instream flow reservation for the Gulkana River CSU. During the past few years the Fish and Wildlife Service has submitted applications to the State for most of the water within the Arctic Coastal Plain part of the Arctic National Wildlife Refuge where there are potential oil and gas deposits and has a systematic program to apply for the waters in other Alaskan refuges.

Promises Broken and Recommendations:

The federal government is loathe to fulfill the commitment of the Alaska Statehood Act on State ownership of navigable waters. The Alaska Legislature should fund an aggressive and systematic program to secure clear, unambiguous title to all navigable waters in Alaska that were granted in 1959. In addition to the Kandik, Nation and Black Rivers, which are types of rivers having wide application throughout Alaska, the State should carefully review the Katie John decision to determine if the underlying federal legal principle for federal subsistence fishery management is navigability. If so, the federal court should be immediately petitioned to quiet title to the State for all water bodies where the federal government asserts subsistence fishery management. This can be done simply on the basis that the federal government has formally determined each water body to be navigable. This petition should also include a request for quiet title to all glaciers based on the Forest Service innovative expansion of the Wild and Scenic Rivers Act. The recent discovery of the remains of a centuries old Indian in British Columbia documents the fact that glaciers from time immemorial have been used, or are susceptible to use for travel, trade and commerce.

No additional units of the National Wild and Scenic Rivers System should be established in Alaska where the federal government only owns the uplands ("bank lands") above ordinary high water. This would adopt the 1998 decision by Secretary Babbit that the Colville River should not designated a CSU because the federal government did not own the river together with the strong objection of the State and Native Corporation land owners along the Colville River.

Water, next to having reasonable access, is the key element for any significant resource development in Alaska. In 1980, ANILCA created a large number of implied, undefined reserved water rights. The federal government should sit down with the State, Native Corporations and resource users to develop a rational and systematic program to adjudicate the amounts and location of reserved federal water rights with priority to areas where resource development are foreseeable in the near future and then all water bodies where federal subsistence fishery management has been asserted.

Alaska National Interest Lands Conservation Act of 1980 — Promises Broken

By Steven C. Borell, P.E.

Editor's Note: This article was originally presented as testimony before the United States Senate Committee on Energy & Natural Resources at their hearing in Anchorage on August 10, 1999

Thank you Mr. Chairman.

My name is Steve Borell, I am the Executive Director of the Alaska Miners Association and I am testifying on behalf of the Association. We are very pleased that you are again holding a hearing on this issue. We are also pleased, Mr. Chairman, that you continue to take a personal interest in this topic that has had and continues to have such a huge impact on Alaska.

The Alaska Miners Association has a membership of approximately 1000 individual miners, prospectors, mining companies and vendors, many of which have been affected by passage of the Alaska National Interest Lands Conservation Act of 1980 (ANILCA). Our members, and indeed all Alaskans and all Americans, were promised many things in ANILCA. Many of these promises have been broken.

SUMMARY

The Alaska National Interest Lands Conservation Act of 1980 was the result of many years of review, debate and compromise. In order to reach a settlement, many specific promises and assurances were placed in the Act. These included promises for access and for continued use of valid existing rights, lands and resources. Mr. Chairman and members of the Committee, many of these promises have been broken. Several federal agencies have broken and continue to break the promises made in ANILCA.

COMMENT

The promises made in ANILCA that apply most directly to the mining industry can be grouped into four general categories:

1. That valid existing rights would be protected;
2. That existing access would continue and new access would be available when needed;
3. That the mineral potential of the State would continue to be assessed by the federal government.
4. That "no more" land in Alaska would be considered for set-aside into special, restrictive designations.

These promises were an integral part of ANILCA and each of these promises has been broken repeatedly. These promises continue to be broken today. It is time for ANILCA to be reviewed at the Congressional level and that consideration be given to changes that will ensure that the intent of the law is fulfilled, and that the offending federal agencies will be reigned-in and forced to follow the law.

1. **Protection of Valid Existing Rights.** The first promise was for the protection of valid existing rights where lands containing such rights were being withdrawn and placed in Conservation System Units (CSUs). Another way to say this is that activities previously allowed would continue to be allowed. This included such things as sport and subsistence hunting and fishing, guiding operations and mining. This promise meant that miners with existing claims could continue to develop and mine those claims and if they could meet all the necessary requirements, they could still patent those claims, just as before passage of ANILCA. All the rights they had before passage of ANILCA were to continue.

Promise Broken — Guarantees and assurances for the protection of valid existing rights appear throughout ANILCA. However, some agencies, most notably the National Park Service, have repeatedly and consistently violated this promise where mining claims have been involved.

The National Park Service has done everything possible to stop all mining activity within the boundaries of the park units. This has been a calculated, deliberate and illegal effort to deprive the miners of rights that were promised by ANILCA. Elements of the NPS strategy, especially regarding Kantishna (located inside Denali National Park and accessed by a 96 mile State-owned road that was constructed over fifty years ago to provide access for the miners) have included:

1) stringing miners along by continually asking for more data;
2) not approving any plans of operation for mechanized mines;
3) crafting an EIS such that mining could not be permitted;
4) not allowing sampling so miners could prove the value of the property "taken" by the actions of the NPS;
5) not allowing access to the claims;
6) ongoing harassment over use of the State-owned road to Kantishna;
7) delay, stonewalling and similar forms of harassment in the hope miners will give up and drop their claims;
8) waiting for the older mining claim holders to die so NPS will not have to deal with them.

Numerous examples can be cited to support each of the above points. In the case of one Kantishna miner, he was strung along for two years while he worked in good faith to get his plan of operation approved. During the process he was repeatedly asked to provide more data, rewrite the plan, redesign, etc. at a cost of over $30,000. In the end he was effectively told that a plan would never be approved at which point he filed suit for a taking. Even then, because of the unlimited time and legal resources available to the NPS, he eventually reached an out-of-court settlement that did not even cover his legal costs.

At least two major cases are now pending against the NPS for the "taking" of mining claims. Throughout the administrative process, and then during the legal proceedings, the NPS tactic is not to find an equitable settlement with the inholders (persons owning property that

became engulfed when the CSUs were established), but rather to devalue their property and to place every possible stumbling block in their path.

We very much appreciate what all three members of the Alaska Delegation have done to ensure fair treatment for the inholders. However, very few inholders have received any settlement and, to my knowledge, none have felt that they were treated fairly by the NPS.

2. **Access.** The second general promise was that access to private lands inside CSUs (inholdings) and across CSUs would be guaranteed. This was a major theme found throughout ANILCA. Access to Native Corporation lands; access to Native allotments; access to homesteads; access to mining claims; access to State-owned lands; access to guide and outfitter camps, etc. were all addressed in the Act. ANILCA addresses historic access routes, temporary access and new access needs, both into and across CSUs. Access was such a big issue that one major section of the Act, Title XI, focuses entirely on new access routes where none existed previously.

Promise Broken — ANILCA promised continued and new access but efforts to utilize these provisions have, in most cases, been blocked. In one instance, a specific Act of Congress was required to obtain access that was guaranteed by ANILCA. In the mid-1980's Cominco and the NANA Regional Corporation began two parallel efforts to gain road access across the Cape Krusenstern National Monument from the Red Dog zinc mine to the Bering Sea coast. One approach was to follow the requirements of ANILCA Title XI. The other approach was to get an Act of Congress. In the end it was easier to get an Act passed in the Congress and signed by the President than it was to use Title XI.

A recent example involves the request for access along Spruce Creek at Kantishna. In this case a historic road, very likely a right-of-way under RS-2477, has been in place since long before passage of ANILCA but the private property inholders want to upgrade the road so they can construct and operate a remote lodge. Even though a road exists, the NPS required and has now completed a Draft EIS that is one-and-a-half inches thick to see if it can approve an upgrade. This is for a 12 mile gravel road. The cost of the EIS may be more than the cost of the road.

3. **Continued Assessment of Mineral Resources.** Because only a small portion of Alaska has been explored and evaluated for its mineral potential, ANILCA included specific promises in Section 1010(a) that an "Alaska Mineral Resources Assessment Program" (AMRAP) would be used to do the assessment of the mineral resources:

> "(a) Mineral Assessments.-The Secretary shall, to the full extent of his authority, assess the oil, gas, and other mineral potential of all public lands in the State of Alaska in order to expand the data base with respect to the mineral potential of such lands..."

Promise Broken — AMRAP was funded and pursued immediately after ANILCA became law. However, within a few years the program began to receive less and less funding. Support for AMRAP at the USGS headquarters level and in the office of the Secretary of Interior waned and AMRAP was eliminated. Today, Alaska is not even listed as a budget line item for the USGS and the U.S. Bureau of Mines has been closed. The promise of continued assessment of mineral resources has been ignored by the agencies and it is only through the intervention of the Alaska Delegation that any work continues.

4. **No More Set-Asides.** The fourth general promise, often called the "no more" clause, simply says that Alaska has given its share of land for federal CSUs. Section 101(d) contains the general guideline and it states that the need for more parks, preserves, monuments, wild and scenic rivers, etc. in Alaska has been met:

> "(d) This act provides sufficient protection for the national interest in the scenic, natural, cultural and environmental values on the public lands in Alaska, and at the same time provides adequate opportunity for the satisfaction of the economic and social needs of the State of Alaska's 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.*" (Emphasis added)

ANILCA also specifically and individually addressed administrative closures and studies by federal agencies. Regarding administrative closures, Section 1326(a) states specifically that *administrative closures, including the Antiquities Act, of more than 5,000 acres can no longer be used* in Alaska and that if a larger area is administratively withdrawn:

> "Such withdrawal shall terminate unless Congress passes a joint resolution of approval within one year after the notice of such withdrawal has been submitted to Congress."

Regarding studies by federal agencies, Section 1326(b) states that the *federal agencies are not even allowed to study lands for consideration for CSUs* unless the Congress specifically authorizes the study:

> "(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 purposes shall be conducted unless authorized by this Act or further Act of Congress."

Another aspect of the promise of "no more" came from the fact that ANILCA not only designated key areas for segregation into restricted CSUs, but *also designated buffers as part of the CSUs.* Massive buffers had been included in the CSUs so there was no conceivable reason that areas not already designated would need to be studied by the agencies. The CSUs already include buffers that would ensure that the core areas would be protected.

Promises Broken — One example of the "no more" clause and how some federal agencies have worked to get around the clear intent of Congress comes from an "isolated and narrow interpretation" of the previous quote from Section 1326(b). The U.S. Forest Service attorneys have reviewed this section and have concluded that they can still study Forest Service lands for set-asides if the study is part of their normal review of forest management plans. This occurred in the Tongass Land Management Plan (TLMP) completed a few years ago and is occurring today in the Chugach Land Management Plan (CLMP) that is currently in progress. The USFS legal argument turns on the phrase "...for the *single purpose* of considering..." They disregard the legislative record and intent and argue that their evaluations are not for a "*single purpose*" and, therefore, studies for more "Wilderness" or Wild & Scenic Rivers are allowed. The Forest Service, therefore, continues full speed ahead studying and proposing more areas in Alaska for these special restrictions.

The Bureau of Land Management (BLM) took a very different approach...until the Clinton Administration came into office. In BLM Instruction Memorandum No. 91-127 (August 10, 1999) the Director of the BLM clarified that the agency was not allowed to study lands for the designation of new CSUs or other restrictive set-asides. It was clear to BLM that such studies were simply not allowed. Memorandum 91-127 quoted ANILCA Sections 101(d) and 1326(d) as the legal reason why such studies were not allowed. However, once the Clinton Administration came into office this Memorandum was disregarded.

Some of the examples where federal agencies have violated or continue to violate the "no more" clause of ANILCA include:

- The USFS in the Tongass Land Management Plan (TLMP) *recommended* more than thirty rivers be designated as Wild & Scenic Rivers;
- The USFS in the Chugach Land Management Plan (CLMP) *is now* studying areas outside the ANILCA-defined wilderness study area for Wilderness designation;
- The USFS in the CLMP *is now* considering rivers for designation as Wild & Scenic Rivers;
- The USFS in the CLMP *is now* considering management regimes that are even more restrictive than Wilderness designation;

- The USFS in the CLMP *is now* considering additional restrictions for ANILCA designated areas in the eastern portion of the Chugach National Forest;
- The BLM, in an out-of-court settlement *agreed to study* portions of the Koyukuk River, where it intersects the Trans-Alaska Pipeline, for designation as a Wild & Scenic River;
- The NPS *has studied and continues to study* and lobby for creation of a "Beringia" International Park, World Heritage Site and Marine Biosphere Reserve as an overlay to the existing CSUs in western Alaska, parts of the Russian Far East, and the waters between them.

RECOMMENDATIONS

It is the belief of the Alaska Miners Association that the intent of ANILCA toward valid existing rights, access, AMRAP, and "no more" was clear. However, the agencies responsible for carrying out the law have gone astray and it is time to reign them in before further damage is done to the promises made to the public. We, therefore, offer the following recommendations:

1. Enforce the "no more" clause. We believe the language and intent is clear and that the agencies have simply chosen to find a way around the law. If such enforcement is not possible, the words "single purpose" should be removed from Section 1326(b).
2. Areas of high-mineralized values, including Kantishna, should be returned to the public domain and reopened to mineral entry.
3. Title XI regarding access should be changed to provide a reasonable process for obtaining access as promised and intended.
4. Congress should provide statutory recognition of the State's RS-2477 rights-of-way.
5. Congress should designate a right-of-way across the existing Conservation System Units for a railroad from northwest Alaska to a deep water port area on Norton Sound to facilitate development of the coal and mineral deposits in that part of the state.
6. The Alaska Mineral Resource Assessment Program (AMRAP) should be restarted and funded.
7. Congress should amend the Quiet Title Act so that the State can establish title to navigable rivers.
8. The Alaska Land Use Council composed of State and Federal representatives should be reinstated to deal with federal land management disagreements, as was done before and after passage of ANILCA.

9. Consideration should be given to removing restrictive conservation designations from some of the lands now in conservation system units. There is too much land for the agencies to manage as CSUs. Much of these lands are not available for use by the general public. Huge amounts of federal lands are available for use only by the very limited portion of the public that is physically fit and independently wealthy.

Thank you for the opportunity to comment on ANILCA and the way it is being implemented by the federal agencies. Many of the promises made in ANILCA have been broken and continue to be broken on a day-to-day basis. We urge that this situation be corrected.

Steven C. Borell is the Executive Director of the Alaska Miners Association, a nonprofit membership organization with approximately 1,000 members and a registered professional engineer in Alaska, Colorado and North Dakota with over 25 years of mining experience in various states, Canada and South America.

ANILCA—Promises versus Performance

by James S. Burling

A prince never lacks legitimate reasons to break his promise.
—Niccolò Machiavelli, from THE PRINCE

THE PROMISES

Finality

Statute: ANILCA §101(d), 16 U.S.C. § 3101(d).:

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

Statute: ANILCA § 1326(b), 16 U.S.C. § 3213(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 purposes shall be conducted unless authorized by this Act or further Act of Congress" (emphasis added).

THE PERFORMANCE

In reality, ANILCA has proven not to be the last act in the struggle over Alaska's resources, but a starting point from which all further attempts to lock up more of Alaska begin.

For many years after ANILCA was adopted, this language was interpreted by the federal government as precluding wilderness studies. *See, e.g.,* BLM Memorandum 91-127. In more recent times, however, the federal government has avoided the intent of ANILCA by grafting wilderness studies onto other land management studies so that agencies can claim that the study does not have the "single purpose" of wilderness study.

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THE PROMISES

from the legislative history:

"[T]he delicate balance between competing interests which is struck in the present bill should not be upset in any significant way." Senate Report 96-413 at 136, *reproduced in* 1980 United States Code of Congressional and Administrative News (U.S.C.C.A.N.) 5070, 5080 (1980).

from the legislative history: an opposition opinion by Senators Metzenbaum and Tongass:

"The bill committee fails to provide wilderness studies for designated rivers, unlike the House bill, which requires wilderness studies of all conservation system units." Senate Report at 408, 1980 U.S.C.C.A.N. at 5349.

from Senator Gravel:

"The Committee bill contains two provision which I think are absolutely necessary to reassert Congress' authorities in the matter of land designations: . . . (2) the exemption of Alaska from the wilderness study provisions of FLPMA in the just belief that with passage of this bill 'enough is enough.' . . . Should this bill become law, we in Alaska must have some assurance that this represents a final settlement of the nation's conservation interests. We cannot continue to be exposed to the threats and intimidation of a zealous Executive which may feel in the future that the Congress did not meet the Administration's desires for land designations in Alaska." Senator Gravel's written remarks, Senate Report at 446, 1980 U.S.C.C.A.N. at 5385.

THE PERFORMANCE

BLM's policy against wilderness studies was attacked in 1991 by the environmental community in *American Rivers v. Babbitt,* Civ. No. J-91-023. Without much of a fight, the BLM settled the case, agreeing that it had the discretion to do whatever it wished and that it would embark on wilderness studies whenever it liked.

Since the *American Rivers* suit, rivers have been studied for wild and scenic river status, and the Forest Service is examining both the Tongass and the Chugach for wilderness additions.

THE PROMISES	THE PERFORMANCE
Access	
Statute: ANILCA § 811, 16 U.S.C. § 3121:	
"(a) The Secretary shall ensure that rural residents engaged in subsistence uses shall have reasonable access to subsistence resources on the public lands. "(b) . . . Notwithstanding any other provision of this Act or other law, the Secretary shall permit on the public lands appropriate use for subsistence purposes of snowmobiles, motorboats, and other means of surface transportation traditionally employed for such purposes by local residents, subject to reasonable regulation."	Native Alaskans have generally been able to obtain access in many areas; however, the antipathy from some federal agencies even towards native access has been the cause of some contention over the years.
ANILCA § 1105, 16 U.S.C. § 3165 states that the Secretary may authorize the creation of a Transportation Utility System upon determination that: "(1) such system would be compatible with the purposes for which the unit was established; and (2) there is no economically feasible and prudent alternative route for such system."	Title XI has proven to be a completely inadequate vehicle for obtaining new access routes in Alaska. For example, rather than utilizing the Title XI provisions for access, the Red Dog Mine developers found it more expedient to obtain access though a special act of Congress.

THE PROMISES

from the applicable regulations: 43 C.F.R. § 36.2(f):

"Compatible with the purposes for which the unit was established means that the system will not significantly interfere with or detract from the purposes for which the area was established.

"(h) Economically feasible and prudent alternative route means a route either within or outside an area that is based on sound engineering practices and is economically practicable, but does not necessarily mean the least costly alternative route.

from the former regulation (prior to November 7, 1997):

"(h) **Economically feasible and prudent alternate route means an alternate route must meet the requirements for being both economically feasible and prudent. To be economically feasible, the alternate route must be able to attract capital to finance its construction and an alternate route will be considered to be prudent only if the difference of its benefits minus its costs is equal to or greater than that of the benefits of the proposed TUS minus its cost.**" See 62 F.R. 52510 (1997) (here, bold text has been replaced.)

THE PERFORMANCE

In a legal fight that lasted over ten years, the Trustees for Alaska sued the Department of Interior alleging that its Title XI regulations were unlawful because they actually made, in theory, it reasonably possible to gain motorized access to inholdings. The suit was baseless, and most of it was thrown out on procedural grounds, and the remainder settled with the Clinton administration. The only change made after a ten year battle was the "clarification" to 43 C.F.R. § 36.2(h) shown on the left.

THE PROMISES

Statute: ANILCA § 1110, 16 U.S.C. § 3170(a):

"Notwithstanding any other provision of this Act or other law, the Secretary shall permit, on conservation system units, national recreation areas, and national conservation areas, and those public lands designated as wilderness study, 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 nonmotorized surface transportation methods for traditional activities (where such activities are permitted by this Act or other law) and for travel to and from villages and homesites. Such use shall be subject to reasonable regulations by the Secretary to protect the natural and other values of the conservation system units, national recreation areas, and national conservation areas, and shall not be prohibited unless, after notice and hearing in the vicinity of the affected unit or area, the Secretary finds that such use would be detrimental to the resource values of the unit or area. 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.

"(b) . . . Notwithstanding any other provisions of this Act or other law, in any case in which State owned or privately owned land, including subsurface rights of such owners underlying public lands, or a valid mining claim or other valid occupancy is within or is effectively surrounded by one or more conservation system units, national recreation areas, national conservation areas, or those public lands designated as wilderness study, the State or private owner or occupier shall be given by the Secretary such rights as may be necessary to assure adequate and feasible access for economic and other purposes to the concerned land by such State or private owner or occupier and their successors in interest. Such rights shall be subject to reasonable regulations issued by the Secretary to protect the natural and other values of such lands.

THE PERFORMANCE

The advocates of preservation and the federal agencies have shown a substantial antipathy toward motorized access. From restrictions on airplane landings in the National Forests to the closure of snowmobile access to a significant portion of Denali, Alaskans are slowly losing their traditional rights of access. The Denali closure has been particularly distressing to the Alaska Snowmobile Association, which has been forced to bring suit to regain their traditional access into Denali.

THE PROMISES

from the legislative history:

"This alters the traditional discretionary role of most existing law for conservation [system] units. . . .

"The Committee does not agree with the arguments that existing law is sufficient." Senate Report 96-413, Senate Report at 248, 1980 U.S.C.C.A.N. at 5189 (1980).

"Based on these considerations, the Committee adopted a procedure for future siting of transportation facilities which supersedes rather than supplements existing law." Id at 5190.

"The Committee recommends that traditional uses be allowed to continue in those areas where such activities are allowed. This is not a wilderness type pre-existing use test. Rather, if uses were generally occurring in the area prior to its designation, those uses shall be allowed to continue and no proof of pre-existing use will be required."

"The adverse environmental impacts associated with these transportation modes are not as significant . . . In order to prevent the land manager from using his discretion to unnecessarily limit such access, the Committee amendment provides that such ***access shall not be prohibited unless the Secretary finds after holding a hearing in the area that it would detrimental to the resource values of the unit.***" Senate Report at 248, 1980 U.S.C.C.A.N. at 5192 (emphasis added).

"The Committee believes that routes of access to inholdings should be practicable in an economic sense. Otherwise, an inholder could be denied any economic benefit resulting from land ownership." Senate Report at 249, 1980 U.S.C.C.A.N. at 5193.

"Rights for the ***general use*** of snowmobiles, motorboats, airplanes which may land on snow, ice, water or designated sites, are specifically provided for...

"These are rights subject to reasonable regulation by the Secretary to protect the values of the unit. ***This removes the discretion for allowing or not allowing use of these vehicles that currently exists.***" Senate Report at 299, 1980 U.S.C.C.A.N. at 5243 (emphasis added).

THE PERFORMANCE

For many years the environmental community has been decrying the fact that the lower 48 standards do not apply, in theory, to access into conservations system units. The decade-long battle over the Title XI regulations involved allegations that lower the 48 standards *should* be applied, the legislative history notwithstanding. As a practical matter, however, access is nearly as difficult in Alaska's conservation system units as it is in many parts of the lower 48.

THE PROMISES

Valid Existing Rights

Statute: *ANILCA § 206, 16 U.S.C. § 410hh-5*:

Subject to valid existing rights, *and except as explicitly provided otherwise in this Act, the Federal lands within units of the National Park System established or expanded by or pursuant to this Act are hereby withdrawn from all forms of appropriation or disposal under the public land laws, including location, entry, and patent under the United States mining laws, disposition under the mineral leasing laws, and from future selections by the State of Alaska and Native Corporations. (Emphasis added).*

from the legislative history (on valid existing rights and the right of access):

from Morris Udall:

"We want to make it abundantly clear that it is our intention that those persons possessing valid existing mineral rights should be permitted access to their claims to exercise those rights. Reasonable access should not mean access which is so hedged with burdensome restrictions as to render the exercise of his valid rights virtually infeasible. . .

"The bottom line of our position is that holders of valid existing claims will not be precluded by the Federal Government from the reasonable development of those claims. When conflicts arise between the essential needs of the holder of a valid claim for reasonable access to work or develop his claim and restrictions to minimize the adverse impact on the ecology of the conservation system unit, then if such conflicts cannot be resolved by agreement, the Federal Government must be prepared to accept the degree of environmental harm that is unavoidable if the holder's essential needs are to be met or be prepared to purchase the claim in question." Congressional Record at H2858 (1979) (Representative Udall, Congressional Hearings on ANILCA)

THE PERFORMANCE

Mining first began in the Kantishna district in 1903. In the summer of 1985, five years after ANILCA was adopted and the Kantishna and other active districts were surrounded by the newly expanded parks, Park Service employees invited the Sierra Club to sue the Park Service over the cumulative impacts of mining. The Sierra Club Legal Defense Fund happily took up the challenge, and the Park Service put up a minimal defense. The court enjoined all mining activities and the Park Service refused to process any significant mining plans during the five plus years it took to complete environmental impact statements. It has also refused to permit reasonable access, going so far as arresting—in Montana—a geologist who drove into the Park who was unable to obtain a permit under reasonable conditions. The EISs for the Parks recommended that no mining be allowed until the environment was returned to its pristine pre-1903 condition. The Park Service subsequently resisted all demands for compensation. It was only though several special acts of Congress that miners have been given any hope of compensation.

THE PROMISES

Timber

from the legislative history:

"In recommending wilderness designation for portions of Southeastern Alaska, the Committee attempted to ensure that such designation would not adversely impact the existing timber industry in the area. Specifically, the Committee attempted to develop a wilderness package for the Tongass which would maintain a potential average annual harvest and supply of 520 million board feet of timber." Senate Report at 228, 1980 U.S.C.C.A.N. at 5172.

"Thus, it appears that the Committee recommendations will indeed protect the existing timber industry in Southeast while providing wilderness designation for several key areas." Senate Report at 230, 1980 U.S.C.C.A.N. at 5174.

Oil

from the legislative history:

"In attempting to treat the North Slope in a comprehensive way, the Committee was also aware that unnecessary pressure to develop oil and gas could be brought to bear on the North Slope if the policy for oil and gas exploration on all Federal Lands in Alaska was not integrated with the North Slope Study. As a result, the Committee considered and approved a provision which directs the Secretary to develop a program for oil and gas leasing of other Federal lands in Alaska. These lands have, for all practical purposes, been closed to mineral leasing since 1966." Senate Report at 242, 1980 U.S.C.C.A.N. at 4185. *Lands with favorable potential are listed to include 1.8 million acres in National Parks, 6.0 million acres in National Wildlife Refuges, 0.5 million acres in National Forests, and 17.7 million acres in the National Petroleum Reserve, and 4.7 million acres of (d)(2) withdrawals.* Senate Report at 242, 1980 U.S.C.C.A.N. at 5186.

THE PERFORMANCE

In the past decade, 1,500 jobs have been lost in the Tongass due to timber harvest cutbacks. The latest administration revisions to the 1997 Tongass plan call for a cut of 157 million board feet, as compared to a meager 220 million board feet under the 1997 plan. Of the 10 million forested acres in the Tongass, only 7% was open to timber harvesting under the 1997 plan, and that has now been reduced by 15%.

Twenty years after the passage of ANILCA there has been no significant exploration of ANWR, no significant amounts of other federal onshore land have been opened to exploration, federal offshore exploration has ground to a halt with moratoria and changes in administration policy, and we are still debating the future of a mere portion of the NPRA.

THE PROMISES

A Prediction

"Many of the provisions . . . obviously can be read several ways. While we in the Congress may be reading the provisions one way now, the language ambiguities and regulatory tools are all laid out in the bill to give rise to a future bureaucratic nightmare for the people of Alaska. We do not know what future Administrations will do with the bill before us, but . . . [f]rankly, I am expecting the worst.

"The 'worst', as I see it, is the use of the massive conservation system designations to block any further exploration or development (including substantial recreational developments) of these lands and on non-federal adjacent lands. I see our State throttled down economically over the next decade.

. . . "[T]his legislation goes far beyond what is appropriate and proper to ensure this protection. It is a question of balance. This bill does not achieve that balance.

"I feel we are doing the State of Alaska great injustice, and ultimately we are doing the nation a great injustice, by not permitting the other resource contributions which Alaska lands could make in meeting the full spectrum of desires and demands of human existence."

Remarks of Senator Gravel in Senate Report at 447, 1980 U.S.C.C.A.N. at 5386.

(Jim Burling is an attorney with Pacific Legal Foundation. A portion of this paper was presented at the 1999 Alaska Miners Convention in Anchorage.)

THE PERFORMANCE

A promise kept.

Native Peoples Migrate to Alaska Across Bering Land Bridge — **c.12,000 BC**

1741 — Vitus Bering "Discovers" Alaska

Alaska Purchased From Russia — **1867**

1884 — Alaska Organic Act (Civil Law Comes to Alaska)

Territorial Organic Act — **1912**

1959 — Alaska Statehood Act

Alaska Native Claims Settlement Act — **1971**

1974 — Trans-Alaska Pipeline Act

Federal Land Policy and Management Act — **1976**

1980 — Alaska National Interest Lands Conservation Act (ANILCA)

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