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Wilderness, Minerals and M...

THE STORY OF THE
U.S. BORAX QUARTZ HILL
MOLYBDENUM PROJECT
IN SOUTHEAST ALASKA

Second Edition
March 1979



...in proper perspective

Wilderness, Minerals and Mines...in



DR. CARL L. RANDOLPH, *President*
United States Borax & Chemical Corporation

This brochure is about U.S.BORAX's "Quartz Hill" molybdenum deposit in Southeast Alaska. Quartz Hill is located 45 miles east of the city of Ketchikan. Our geologists discovered this deposit in 1974 before Southeast Alaska was part of the Alaska lands legislation (known as [d] [2]).

Early in 1978, we distributed our first brochure, "Wilderness, Minerals and Mines — in proper perspective" which described the mineral potential of Southeast Alaska and U.S.BORAX's role in the discovery of the Quartz Hill molybdenum deposit. We wished to express the "other" side of the Alaska (d) (2) lands issue. U.S.BORAX wanted to inform people about the mineral potential of Southeast Alaska. In fact, we believe it would have been irresponsible for us not to have made our evaluation of the area known. We also wanted the public to know the adverse impact of H.R. 39 (as originally introduced in the 95th Congress) on this mineral potential.

Congress did not pass an Alaska lands bill in 1978. This prompted the Secretary of Interior and the Secretary of Agriculture respectively to withdraw from entry 110 million and 11 million acres of public lands in Alaska under the Federal Land Policy Management Act. It also prompted the President to put 56 million acres of federal land in Alaska into National Monument status pending action by Congress. These actions closed these areas to mineral entry. Included in the 56 million acres, is the Misty Fjord National Monument in which Quartz Hill is located.

When the Alaska lands bill was originally considered in 1978, one of the main objectives of the Congress was to identify known mineral deposits in order that conflicts between environmental protection and orderly resource development could be properly addressed. Yet the presidential action in December 1978 that placed Quartz Hill in the Misty Fjords National Monument will prevent the Quartz Hill deposit from being mined.

Without corrective legislative action, Congress would serve notice that it no longer intends to allow multiple land use development in such areas of known claimed mineral discoveries. This would not only destroy the policy of multiple use of the public lands but would also greatly damage the mineral industry and any hope of developing a secure national non-fuels mineral policy.

If the intent of Congress is to balance pressing economic interests with the need

proper perspective...all can survive!

for environmental protection, it is important that the Quartz Hill area be returned to a multiple-use land classification that allows mining.

Based on our 1978 drilling program, the size of the Quartz Hill mineral deposit is now estimated at 700 million tons grading 0.15% MoS_2. This is equivalent to an in-place gross value of $7 billion.

It may be the second largest deposit of its kind in the world and we believe it has the potential to be a major worldwide mining enterprise of significant economic importance to Alaska and to our nation.

U.S.Borax estimates Quartz Hill could have annual gross sales of $150-200 million over a life of about 40 years. About 50% of the mine's production will be required by the domestic market with the balance being exported. Export sales of $75-100 million would help ease our balance of payment deficit, currently at a crisis level.

Quartz Hill would employ about 700 people during operations and 1,000 people during construction. The capital construction cost is now estimated in excess of $400 million. These sales and cost figures are based on the present value of molybdenum and the current value of the dollar.

The development and operation of Quartz Hill will not be detrimental to the environment. The long-term value of those areas designated for multiple-use will be protected under existing state and federal environmental regulations, contrary to the arguments of preservationist groups. Despite our rights under the Mining Law, we will only be allowed to proceed with the total project when it can demonstrate that Quartz Hill will be developed and operated in a manner that minimizes adverse impacts and assures the protection of the environment of the area. This includes the protection of fisheries.

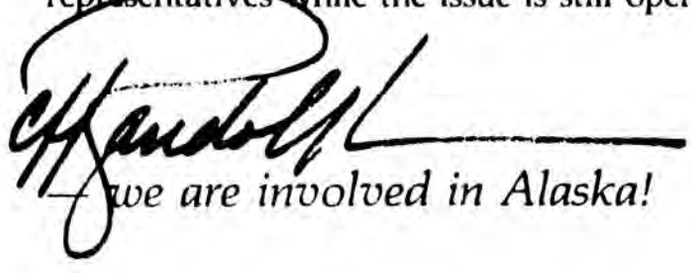
In the northern portion of the present Misty Fjords National Monument is an area of breathtaking beauty known as Granite Fjords. We join with many others in urging that this unique creation of nature be preserved in National Monument or wilderness status.

U.S.Borax respects and supports the desire of all citizens to see that qualified lands are preserved in National Parks, National Forests, and Wildlife Refuges. We advocate the dual need to develop minerals and protect unique wilderness areas.

We believe it is in the national interest that Congress pass an Alaska lands bill that balances the environmental and resource needs of the nation.

In the case of Quartz Hill, we believe that it is in the best interest of Alaska and the Nation that that portion of Misty Fjords required for the orderly development and operation of this deposit be returned to multiple-use managment by the U.S. Forest Service. Although scenic beauty is the dominant characteristic of many other parts of Alaska, including Granite Fjords described above, the most important feature of the Quartz Hill area is its mineral value.

If you agree that a mineral deposit of such size and economic importance cannot be ignored, I urge you to make your thoughts known to your Congressional representatives while the issue is still open.



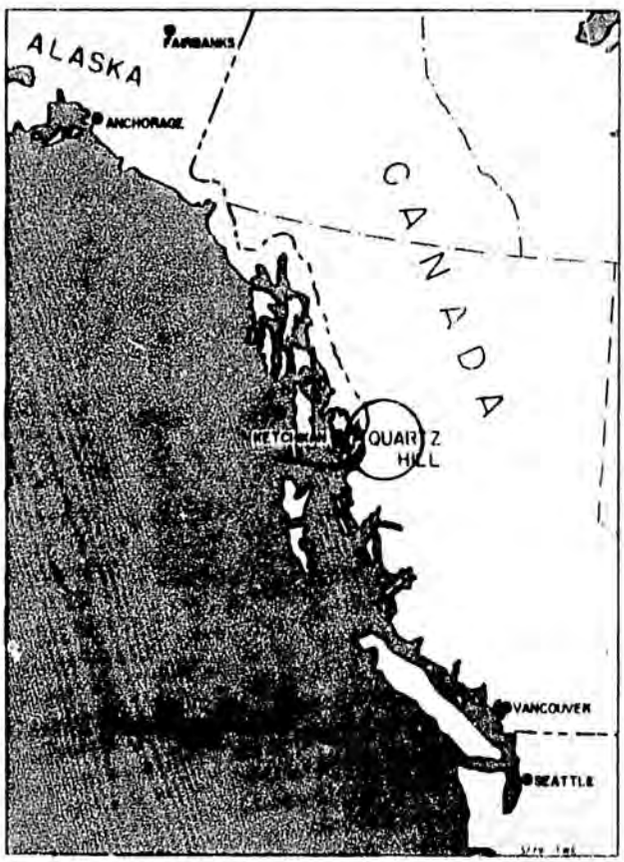
we are involved in Alaska!

Mineral Exploration & Trends...

Mineral Exploration

The American mining industry has given this nation self-sufficiency, export potential, and substantial reserve positions in most mineral resources. American geologists have a fine record of establishing mineral reserves for the future through long-term and continuous exploration activity.

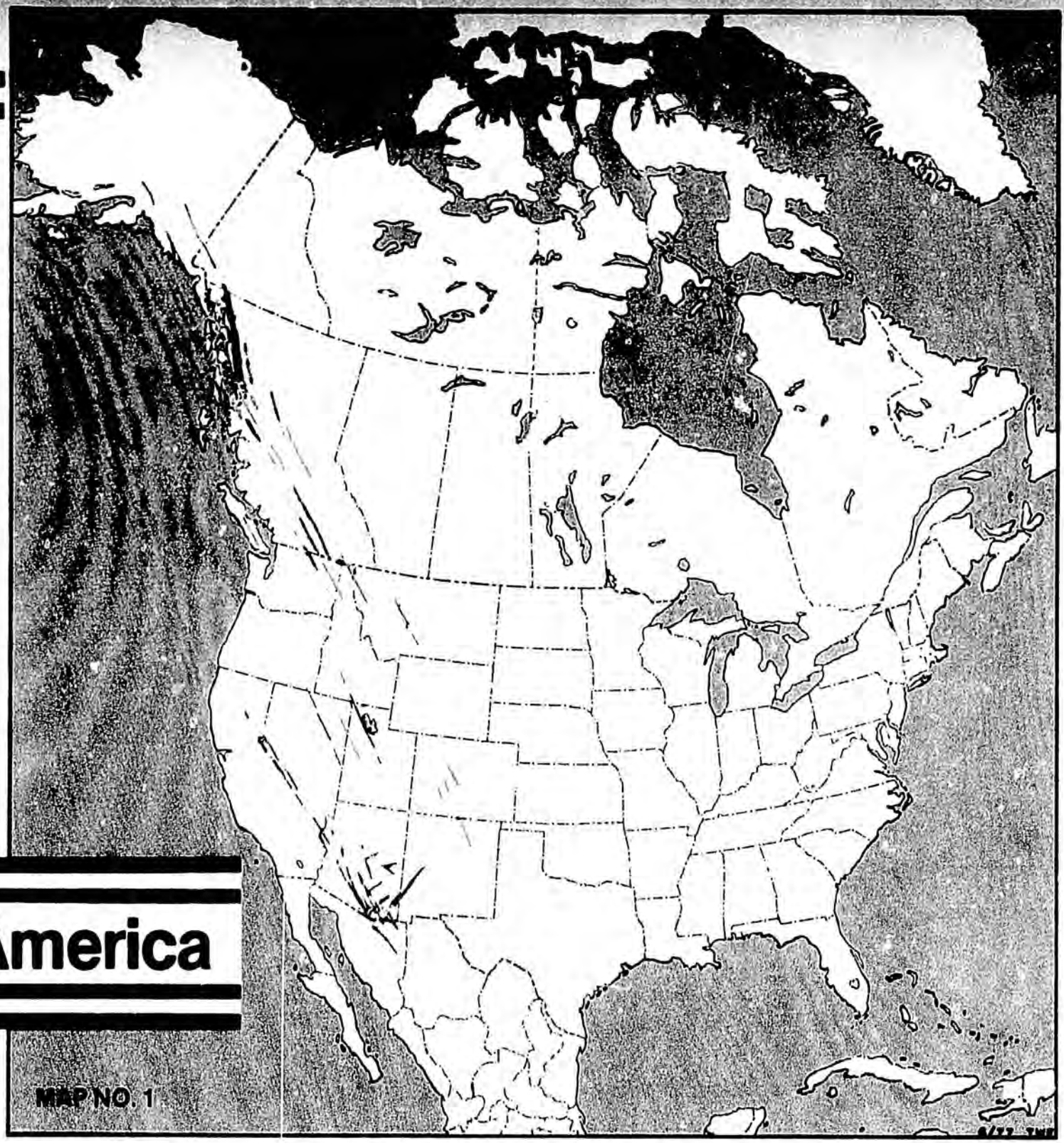
Their accomplishment is even more impressive when the basic problems of mineral exploration are recognized. The exploration geologist must seek out areas which have the potential for mineral deposits. He must then search these areas for clues to the presence of mineral occurrences. Only a few, or perhaps none, of these occurrences might eventually be considered prospects worthy of further work. In turn, thousands of propects are drilled and examined before a property with economic potential is encountered and even then there is only a "good chance" of locating that small area that would eventually support economic mineral production.



Mineral Trends

In the search, the geologist is aided by one major factor; mines and minerals do not occur randomly. In fact, those areas of potential for major mineralization are geologically limited to specific areas. This point is illustrated on Map No. 1, showing the major trends for porphyry (disseminated) copper and molybdenum mineralization in North America. It is within these rather limited areas that all the producing and potential mines are located, and it is within these areas that future exploration for porphyry-type deposits of copper and molybdenum will be carried out. It is worthy of note that these potentially favorable areas comprise a very small percentage of our continent's surface.

...in North



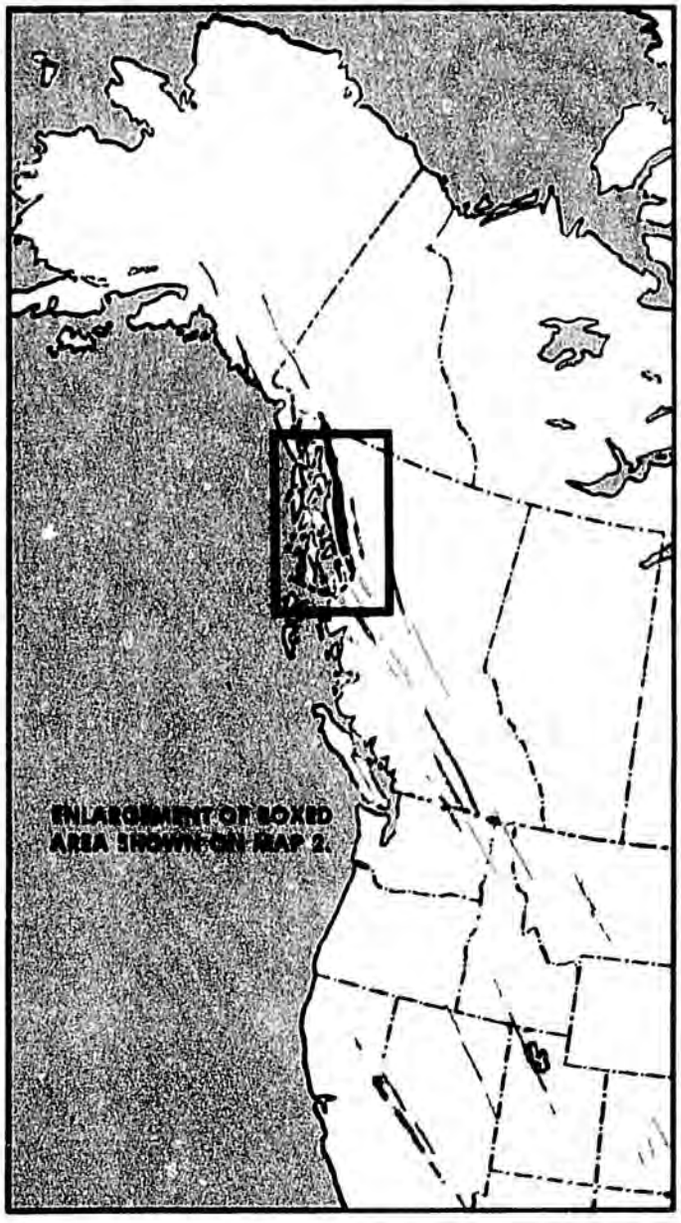
COPPER MOLYBDENUM

Trends of Copper-Molybdenum Mineralization in North America

Southeastern Alaska

Mineral Trends

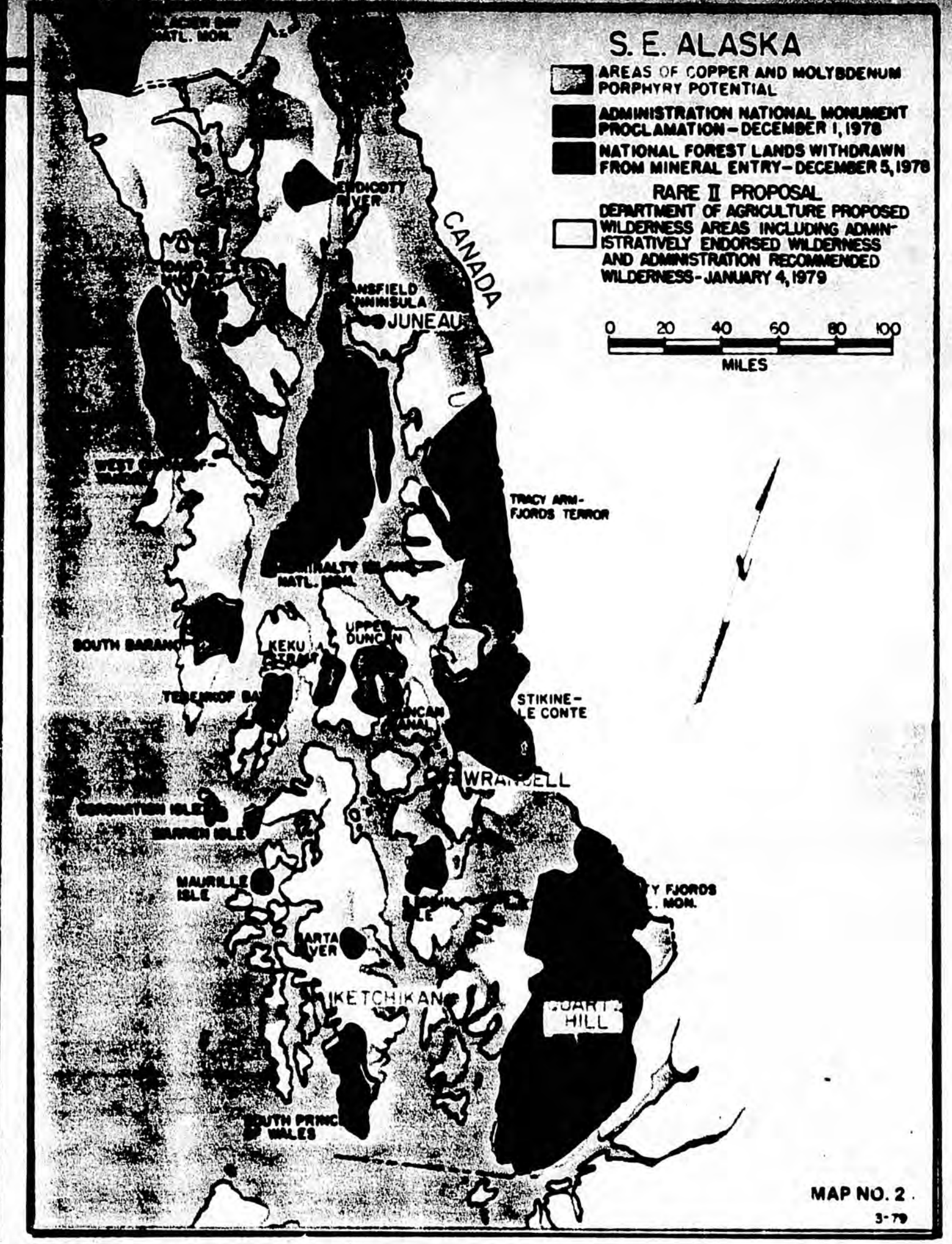
As shown on Map No. 1, the major copper/molybdenum trend intersects the panhandle of Southeast Alaska. Because of this basic fact, certain areas of Southeast Alaska must be considered unique and very valuable to the nation as source areas for these minerals.

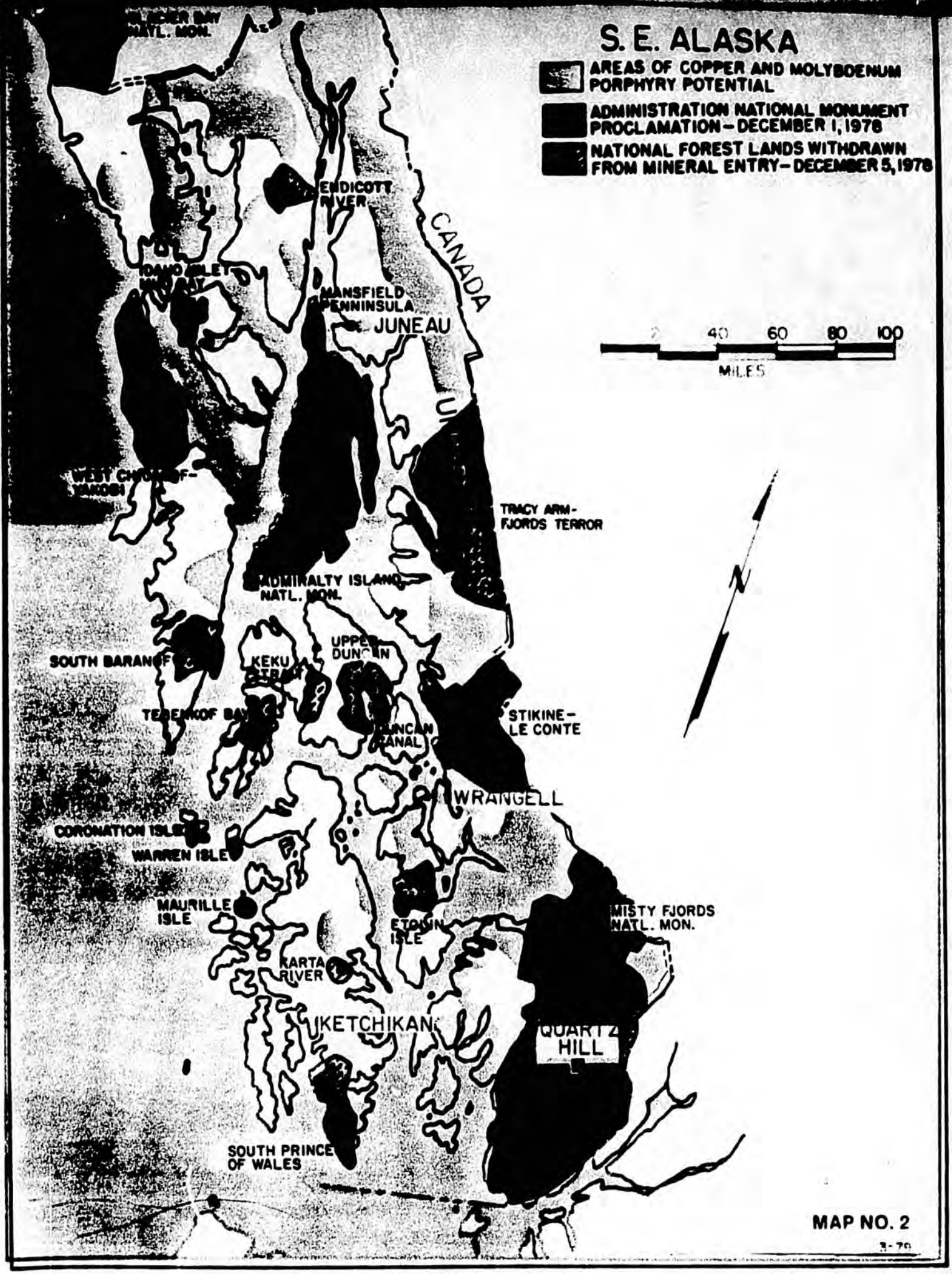


Map No. 2 is based on known geology and shows the limited areas of Southeast Alaska having the correct rock type and geology for mineral occurences of this type; that is, the source areas for those few mineral deposits that may have economic value. It was with this knowledge that U.S.Borax began exploration work in Southeast Alaska in 1971. Our Company was not alone; following this concept a number of corporations were exploring Southeast Alaska and several millions of dollars per year were being spent in the search. However the recent actions of President Carter and Secretaries Andrus and Bergland have caused many of these corporations to terminate or defer their Alaska programs.

The Potential

The potential for deposits of molybdenum and copper, as well as zinc, nickel and uranium, in Southeast Alaska is good but much remains to be done before any major development reaches the production stage. This does not mean to suggest that dozens of mines will be found. Based on the normal rate of discovery, one might expect two or three mining operations to evolve in the near term as the result of present programs.


S. E. ALASKA
AREAS OF COPPER AND MOLYBDENUM PORPHYRY POTENTIAL
ADMINISTRATION NATIONAL MONUMENT PROCLAMATION – DECEMBER 1, 1978
NATIONAL FOREST LANDS WITHDRAWN FROM MINERAL ENTRY – DECEMBER 5, 1978
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MAP NO. 2.
3-79


S. E. ALASKA
AREAS OF COPPER AND MOLYBDENUM PORPHYRY POTENTIAL
ADMINISTRATION NATIONAL MONUMENT PROCLAMATION – DECEMBER 1, 1978
NATIONAL FOREST LANDS WITHDRAWN FROM MINERAL ENTRY – DECEMBER 5, 1978
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KEKU STRAIT
UPPER DUNCAN
TEBENKOF BAY
DUNCAN CANAL
STIKINE-LE CONTE
WRANGELL
CORONATION ISLE
WARREN ISLE
MAURILLE ISLE
ETOLIN ISLE
MISTY FJORDS NATL. MON.
KARTA RIVER
KETCHIKAN
QUARTZ HILL
SOUTH PRINCE OF WALES

MAP NO. 2


S. E. ALASKA
AREAS OF COPPER AND MOLYBDENUM PORPHYRY POTENTIAL
CANADA
JUNEAU
UNITED STATES
0 20 40 60 80 100
MILES
WRANGELL
KETCHIKAN
QUARTZ HILL
MAP NO. 2
3-79

U.S. BORAX Quartz Hill Molybdenum





Our Company has proven the value of exploring mineral trends. The most significant find to date in Southeast Alaska is U.S. BORAX's discovery of Quartz Hill, a major deposit of molybdenum mineralization on the mainland about 45 air miles east of Ketchikan between Wilson Arm and Boca de Quadra. It is about five miles from tidewater.

Work to date indicates the rocks to be well mineralized and that the mineralization extends over an area of more than one square mile. The mineralization occurs near the surface which suggests it could be mined by open pit methods with a minimum of overburden removal.

U.S. BORAX's geologists discovered this deposit in late 1974, filed claims in accordance with the mining law, and during the period 1975 through 1978 conducted geological, geophysical and geochemical surveys and drilling programs.

By the end of 1978, 280 drill holes had been completed at a cost of about seven million dollars. This drilling, between depths of 100 feet and 2,000 feet, has defined a potential orebody of more than 700 million tons grading 0.15% MoS_2 (including substantial tonnages of material at higher grades) in an area that is certainly one of the world's largest known concentrations of molybdenite mineralization.

In keeping with corporate policy, U.S. BORAX has avoided leaving any permanent mark on the landscape while in the exploration stage. As with all of our programs, drill sites are policed and waste material is removed. Our policy requires minimum ground disturbance until economic mineralization is indicated.



The question of the future of Southeast Alaska is not an "either/or" situation. The domestic need for minerals requires that the exploration and eventual development of mineral deposits of economic value be considered as productive uses of land. Such uses need not be at the expense of the land or the environment. Mineral

ALASKA LANDS LEGISLATIVE UPDATE (March 1979)

95th CONGRESS

H.R. 39 as it passed the House in 95th Congress

It would have withdrawn the Misty Fjords area from mineral entry but would have retained the area in a multiple-use category under management of the U.S. Forest Service.

The Quartz Hill development would have been allowed.

Bill reported by the Senate Energy and Natural Resources Committee

It placed the northerly 2/3rds of the Misty Fjords area including Quartz Hill in a National Park Preserve.

The Quartz Hill development could not have proceeded under the restrictive regulation of the area.

It placed the southerly 1/3rd in a Special Management Area which was withdrawn from mineral entry.

Jackson – Udall attempted compromise bill

It placed the northerly 1/2 of the mainland portion of the Misty Fjords area including Granite Fjords in a National Park Preserve. The balance of Misty Fjords, including Quartz Hill, was placed in a Special Management Area.

The Special Management Area was withdrawn from mineral entry but the Quartz Hill development would have been allowed.

96th CONGRESS

H.R. 39 (new bill) as introduced by Congressman Udall

It leaves the Misty Fjords area including Quartz Hill in National Monument status and overlays it with Wilderness designation.

The restrictive regulation of this area would prevent the development of Quartz Hill.

It withdraws over 135 million acres (40% of state) from mineral entry. This is 70% of lands rated highly favorable for mineral occurrences by the U.S. Bureau of Mines.

S. 9 as introduced by Senator Jackson

It is identical to the bill reported by the Senate Energy Committee last year. We understand Senator Jackson proposes that the committee start its consideration with last year's Committee reported bill.

S. 222 as introduced by Senator Durkin

It is reported to be a companion bill to the new H.R. 39 except for several additional items. It would leave Quartz Hill in National Monument status with a Wilderness overlay and thereby prevent the development of Quartz Hill.

H.R. 2199 as introduced by Congressman Huckaby

This is H.R. 39 as amended and is the bill reported by the House Interior Committee for floor consideration. It is identical to the Jackson-Udall proposed compromise bill of last October. As previously indicated, the compromise bill would place the Quartz Hill deposit in a Special Management Area and development would be allowed.

While the Interior Committee chose H.R. 2199 as the bill to report to the floor, the House Merchant Marine and Fisheries Committee, which has joint jurisdiction over the Alaska Lands bill, may choose to report a modified version of the Huckaby bill or last year's House passed version of H.R. 39.

Discovery In S.E. Alaska









development requires relatively small land areas as compared to the total land area of Southeast Alaska. Those areas that are developed will be protected under State and Federal environmental regulations as well as the Forest Service regulations controlling mineral exploration and operation.

We believe known mineral deposits such as Quartz Hill should be returned to or kept in multiple-use land classification so that they can be developed under existing regulations. When developed, Quartz Hill will be of significant economic importance to Alaska and the Nation.

It is our opinion that failure to remove Quartz Hill from a National Monument will not only negate the development of this property but it will also negate the *Mining and Minerals Policy Act of 1970.*

Resources are the major factor in the economic well-being and security of our Nation. All the fuels, buildings, machinery, instruments, glass, vehicles and civil construction of modern society are based upon the materials, metals, minerals and chemicals produced by the resource industries. This fact demands that the mineral potential of Southeast Alaska be explored and those mineral deposits of economic value be developed.

Quartz Hill and the Environment

U.S.BORAX's environmental program at Quartz Hill is two-fold — a data collection program and a fisheries program.



Our environmental data gathering program began in 1975 when we initiated a reconnaissance water quality data collection effort in the Quartz Hill area. This program was expanded in 1978 to cover the streams of the project area and consists of monitoring the stream flow and volume, water quality, suspended sediments, and heavy metal concentrations.

Weather conditions in the area are monitored by four meteorological stations.

A comprehensive oceanographic program was initiated in 1978 to delineate the bottom profile and water chemistry of local fjords. Current movements, suspended sediment depositions and benthic (bottom) studies have been initiated. A marine and coastal biology reconnaissance survey was completed to characterize the biological communities in the fjords. A comprehensive evaluation of the marine environment will be done to determine the environmental soundness of facilities siting and possible marine disposal of mill tailings. The National Environmental Policy Act requires the study of all reasonable alternatives for the siting of facilities.



An extensive aquatic biology study is in process to measure the existing ecological conditions of the project area. A thorough study of the habitats, fish species and abundance, invertebrate populations, algae and macrophytes will be completed prior to any development activities.

Extensive environmental planning has been a part of the Quartz Hill molybdenum project since the initial discovery in 1974.



In 1978, U.S.BORAX announced its intentions to carry out a fisheries habitat program in the Keta River in conjunction with the construction of its access road. The fisheries program will consist of removing debris from the Keta River, constructing rearing ponds and improving salmon spawning areas. To assist in this project, Mr. Wally Noerenberg, past Commissioner of the Alaska Department of Fish and Game, joined U.S.BORAX as a fishery consultant on the Quartz Hill project.

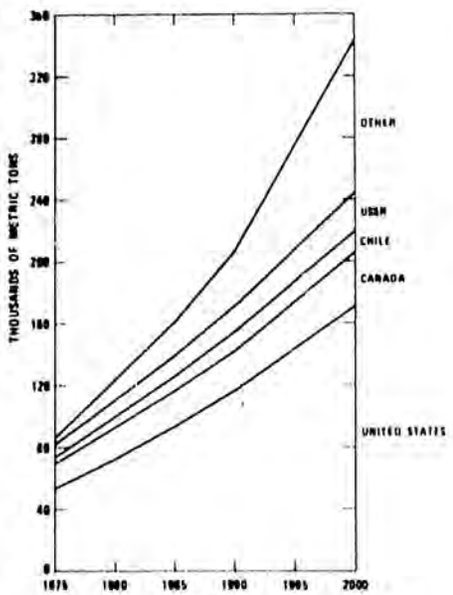


At the suggestion of U.S.BORAX, Governor Hammond has agreed to establish a fishery advisory group to help U.S.BORAX with its fisheries program. The fisheries group will consist of representatives of various State and Federal agencies, aquaculture organizations, fisheries associations and U.S.BORAX representatives.

The Importance of Molybdenum

Molybdenum is a relatively scarce metal produced in only a few places in the world. Although it is a by-product of some copper operations, the major share of molybdenum comes from primary deposits in which molybdenum is the dominant economic metal present. Quartz Hill is a primary molybdenum deposit and could prove to be a major deposit of significant benefit to the resource base of our Nation. Other than in the U.S.S.R., there are only four major primary molybdenum deposits in operation in the world (one in Canada and three in the United States).

PROJECTED WORLD MOLYBDENUM PRODUCTION TRENDS

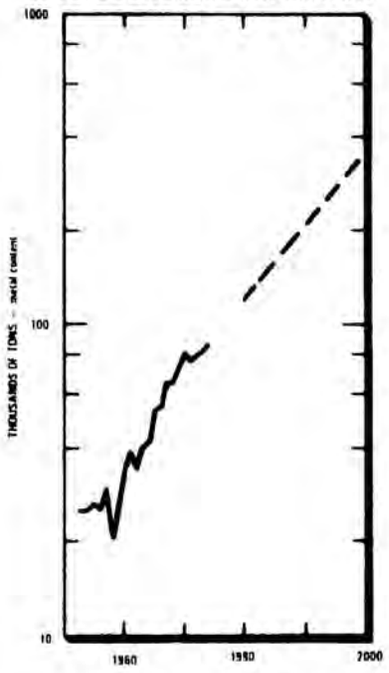


Molybdenum is used primarily as an alloy in steel. It is critical and without substitute in some specialty steels. Construction of the Alaskan Pipeline to bring much needed oil from the Arctic was made possible by the use of molybdenum alloy steel pipe. Seven million pounds of molybdenum went into this pipeline. When the pipeline for transmission of gas from Alaska to the United States is built it may require 40 million pounds of molybdenum. The use of high-strength alloy steel containing molybdenum is a part of the automobile manufacturers' efforts to improve gas mileage through reduced weight and thereby preserve our dwindling supply of oil. Molybdenum is essential for the preservation of our standard of living.

Western world consumption of molybdenum in 1978 was about 190 million pounds. Of this amount, the United States consumed 66 million pounds because of its preeminence in its production of specialty steels. In the last few years, consumption has been growing at the rate of 7% per year, well beyond the growth of the general economy. Production of molybdenum in the United States in 1978 was 133 million pounds; more than enough to supply our own requirements and to make us the major supplier to the rest of the world. The United States is blessed with the largest and best deposits of molybdenum in the world and the rest of the world depends on our production. Molybdenum exports accounted for almost $350 million in foreign trade during 1978. Based on present demand forecasts, this favorable balance will continue to increase as molybdenum production increases.

The positive effect of allowing Quartz Hill to continue development leading to production would be felt in the domestic economy and national energy picture. Furthermore, with worldwide demand for molybdenum increasing at the same time, production of what promises to be a $7 billion mineral deposit will do much to help change our balance of payment deficit, currently at an exorbitant level.

APPARENT WORLD MOLYBDENUM CONSUMPTION



There are many mineral resources, including oil, in which the United States is not self-sufficient. The price we pay to meet our needs through imports is high and places us in a dependent position. It is, therefore, imperative that the United States produce those minerals in which it has ample supply in order to maintain its bargaining position in world trade, its balance of payments, and its economic stability.

U.S.BORAX
A MEMBER OF THE RTZ GROUP

Mine & Mineral Policy Act of 1970

Public Law 91-631
91st Congress, S. 719
December 31, 1970

An Act

To establish a national mining and minerals policy.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Mining and Minerals Policy Act of 1970."

SEC. 2. The Congress declares that it is the continuing policy of the Federal Government in the national interest to foster and encourage private enterprise in (1) the development of economically sound and stable domestic mining, minerals, metal and mineral reclamation industries, (2) the orderly and economic development of domestic mineral resources, reserves, and reclamation of metals and minerals to help assure satisfaction of industrial, security and environmental needs, (3) mining, mineral, and metallurgical research, including the use and recycling of scrap to promote the wise and efficient use of our natural and reclaimable mineral resources, and (4) the study and development of methods for the disposal, control, and reclamation of mineral waste products, and the reclamation of mined land, so as to lessen any adverse impact of mineral extraction and processing upon the physical environment that may result from mining or mineral activities.

For the purpose of this Act "minerals" shall include all minerals and mineral fuels including oil, gas, coal, oil shale and uranium.

It shall be the responsibility of the Secretary of the Interior to carry out this policy when exercising his authority under such programs as may be authorized by law other than this Act. For this purpose the Secretary of the Interior shall include in his annual report to the Congress a report on the state of the domestic mining, minerals, and mineral reclamation industries, including a statement of the trend in utilization and depletion of these resources, together with such recommendations for legislative programs as may be necessary to implement the policy of this Act.

Approved December 31, 1970.

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April 19, 1979

The Honorable Mike Colletta
Pouch V
Juneau, Alaska 99811

Dear Mike:

Enclosed please find a copy of "Dear Colleague" letter written by Morris Udall regarding D-2. As you can see Mo has not given up. His characterization of the Huckaby Bill as well as Tom Kimball's is pure hype. Huckaby as well as the Dingell-Breaux Bill remain the largest single conservation measure ever undertaken in the United States.

Yours very truly,

James F. Clark

JFC/rm

Enclosure

copy to Shoemaker 4/21

MORRIS K. UDALL
3rd District of Arizona

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202/225-4065

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301 WEST CONGRESS
TUCSON, ARIZONA 85701
602/792-6404

APR 18 1978

INTERIOR AND INSULAR AFFAIRS
CHAIRMAN

POST OFFICE AND CIVIL SERVICE

CONGRESS OF THE UNITED STATES
HOUSE OF REPRESENTATIVES
WASHINGTON, D.C. 20515

Dear Colleague:

On February 28, the Alaska Lands Bill was reported by the Interior Committee. As you may know, by a margin of a single vote that bill was the "Huckaby Substitute", rather than the original H.R. 39 which more than 140 members of the House joined me in co-sponsoring.

As the author of H.R. 39, the substitute bill is absolutely unacceptable to me. Should it reach a vote on the floor, I will vote against it and would urge you to join me in opposing Mr. Huckaby's bill. If enacted into law, the Huckaby bill would represent the largest raid on National Parks and Wildlife Refuges in the history of this country!

RAIDING PARKS AND REFUGES THAT EXIST ONLY IN MO'S FANTASIES

Last year the Interior Committee approved a strong version of H.R. 39 by a very narrow margin, defeating a proposed "Meeds Substitute" 22 to 20. This year the Committee membership changed just enough to defeat my version of H.R. 39. I am not dismayed, however, and I know that the sentiment in the House as a whole is for a strenghtened version of H.R. 39, just as last year when attempts on the floor to weaken my bill were soundly defeated by margins of greater than 2 to 1.

The question in the Alaska Lands debate is not one of acreage. The critical issue is whether the lands which are classified are given adequate protection. This is the great distinction between my bill and the gutted version reported by the Interior Committee. That version contains no real protection for much of the land it claims to "classify".

MO'S IDEA IS NOT TO PROVIDE WILDERNESS.... BUT TO PREVENT DEVELOPMENT

So far as effective conservation of natural wonders, wildlife and its habitat, and wilderness, I have to agree with Tom Kimball, Executive Vice President of the 4-million-member National Wildlife Federation, who said of the Huckaby bill, "We find this bill to be a needless capitulation to development interests at the expense of sound resource management. Anything even partially like the Huckaby Substitute is a giant step backwards, so far as conservation is concerned."

A GIANT STEP FORWARD SO FAR AS ECONOMICS AND SECURITY ARE CONCERNED

I will appreciate your continuing support for a strong and well-balanced Alaska Lands bill and would welcome your joining me as a sponsor of H.R. 39. If I can provide further information, please give me or my staff a call.

Sincerely,

Morris K. Udall

March 6, 1979

The Honorable Terry Miller
Lieutenant Governor
State of Alaska
Pouch AA
Juneau, Alaska 99811

Dear Lieutenant Governor Miller:

Since the inception of the Alaska Land News Service as a part of the Steering Council for Alaska Lands in mid-1978, the quality and frequency of news feeds and actualities has increased to the level that all of the radio stations in the State now anticipate and expect these feeds on a regular basis.

The success of this program is directly attributable to the excellent work performed by Ed Bennett in the Anchorage office, and that of Terry Thomats in Washington.

The enclosed letters from various radio stations around the state attest to the quality performance of the Alaska Land News Service and those associated with it.

Sincerely,

Mike Colletta
Senate Majority Leader

MC/pjc
Enclosures

"

26 FEB 79 10:52

TELEGRAM

RCA Alaska Communications, Inc.

RECEIVED

FEB 26 1979

STEERING COUNCIL
FOR ALASKA LANDS

12006 FAIRBANKS ALASKA 71 02-26 1023A AST

PMS SHARON LONG 277-2415

02393

(2 LANDS 1016 WEST 6TH AVE SUITE 435

ANCH 99501

DEAR MS LONG,

IM TAKING THIS OPPORTUNITY TO COMPLIMENT THE WORK OF YOUR ORGANIZATION AND SPECIFICALLY YOUR STAFFER ED BENNETT. THE EFFECTIVENESS OF HIS NEWS RELEASES IS REFLECTED BY THEIR WIDE USE WITHIN OUR COMMUNITY. AS A NEWS DIRECTOR I ESPECIALLY APPRECIATE EDS UNDERSTANDING OF TIME REQUIREMENTS, BOTH DEADLINE TIMES AND LENGTH OF ACTUALITIES. MY COMPLIMENTS AND WISHES FOR A CONTINUED WORKING RELATIONSIP.

YOURS SINCERELY

C. DOWLING NEWS DIRECTOR KFAR TELEVISION AND RADIO FAIRBANKS AK

TELEGRAM
RCA Alaska Communications, Inc.

23 FEB 79 23 32

RECEIVED
FEB 26 1979
STEERING COUNCIL
FOR ALASKA LANDS

25002 WRANGELL ALASKA 52 02-23 420P PST

PMS SHARON LONG STERRING COUNCIL FOR ALASKA LANDS

02249

1016 WEST 6TH AVENUE SUITE 435

ANCH

ID LIKE TO TAKE THIS OPPORTUNITY TO CONGRATULATE YOU ON THE FINE JOB THE ALASKA LANDS NEWS SERVICE HAS DONE ED BENNETT HAS BEEN INSTUMENTAL IN PROVIDING KSTK NEWS WITH VITAL INFORMATION THAT CONCERNS ALL ALASKANS WITH INTERVIEWS IN WASHINGTON WITH THE NEWSMAKERS I SINCERELY HOPE YOU CONTINUE THIS FINE SERVICE

JIM MCCURDY GENERAL MANAGER KSTK MARK BYFORD NEWS DIRECTOR

nb

TELEGRAM
RCA Alaska Communications, Inc.

RECEIVED
FEB
STEERING COMMITTEE
FOR ALASKA LANDS

23 FEB 79 13 57

17003 KOTZEBUE ALASKA 100 02-23 1230P BST
PMS SHARON LONG 277-2415

02235

ALASKA LANDS NEWS SERVICE

1016 W 6TH AVENUE SUITE 435

ANCHORAGE ALASKA 99501

KOTZEBUE BROADCASTING INC. SUPPORTS CONTINUATION OF YOUR SERVICE ALNS PROVED TO BE OUR MOST VALUABLE SOURCE FOR COVERAGE OF CONGRESSIONAL ACTION ON ALASKA LANDS. THIS DUE TO TIMELY REPORTS AND EXCELLENT CONTENT AS WELL AS TECHNICAL QUALITY. CONGRESSIONAL, ADMINISTRATIVE, STATE ACTION DRASTICALLY CHANGED THE FACE OF THE NANA REGION. OUR DEPENDENCE ON ALNS AND YOUR PROMPT DELIVERY HAS BEEN AN ASSET RECOGNIZED BY OUR AUDIENCE. WITHOUT WE WOULD NOT HAVE BROUGHT STRAIGHT, UNBIASED FACTS TO REMOTE AREAS.

THERE IS UNQUESTIONABLY NO NEED TO CHANGE YOUR SERVICE..PLEASE CONTINUE AS USUAL.

NELLIE WARD, NEWS DIRECTOR KOTZ-AM APBC KOTZEBUE 99752

PH. 442-3371

KYAK RADIO 65
THE PROMOTION PEOPLE
2800 East Dowling Anchorage, AK 99507 / (907) 344-2522

23 February 1979

Sharon Long
d-2 Steering Council

Dear Ms Long,

Thank you and your staff for the excellent aid they have given to our stations. The actualities made available by your group have been very helpful in keeping our listeners up-to-date on the activities of the Washington and local "politicos" regarding d-2.

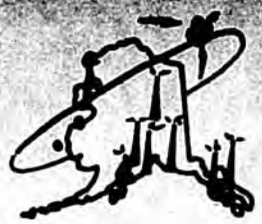
I want to particularly compliment Ed Bennett of your staff. He has an excellent feel for radio and radio needs. We have frequently disagreed on priorities but he has consistantly been helpful in providing the meaningful information we need.

Both News Director Barbara Whitman and myself are committed to increasing news coverage and timeliness. Speed is the key word, second only to an accureate story. Mr. Bennett has consistantly given both.

Thank you again for the good work—keep it up.

Sincerely,

Dan Coulter
Director of News and Programming



ALASKA RADIO NETWORK
2800 East Dowling Road
[redacted] Anchorage, Alaska [redacted] 99507
[redacted] (907) 344-9915

February 23, 1979

Ms. Sharon Long, Executive Director
Steering Council for Alaska Lands
1016 West 6th Avenue
Anchorage, Alaska 99501

Dear ~~Ms.~~ Sharon Long:

The Alaska Radio Network has just one complaint about your news service: the feeds don't come often enough! Seriously, Ed Bennett and your Washington correspondent are doing a terrific job of providing the Alaska radio media--and thus our listeners--with a balanced, comprehensive top-quality product. Our stations (we have nine affiliates that serve sixteen major Alaskan communities) are able to present the many facets of the d-2 picture through your news service.

Even as a network with our own Washington correspondent, we have found your feeds succinct, timely and definitely usable. The feeds from your news service give Alaskans a professional overview of who is saying what about our lands and us. Without such a balanced--the "Mo Udalls" AND the "Jay Hammonds"--approach, the public up here would get only part of a large and complicated picture...a picture that will greatly affect us and future generations. Being coldly practical about economics, the Alaska media would not be able to afford on our own the actualities you give us. And all Alaskans would be the losers.

Oftentimes, we're offered long feeds of comments by government officials. These are difficult for us and our stations to handle since our formats can't easily accomodate them. The Alaska Lands News Service packages actualities neatly and professionally for radio. And technical quality is a critical factor for us, since actualities are another generation removed from the source by the time our stations and then their listeners hear the news. Your quality is tops. Many government cod-a-phones are full of so much pop and crackle, the voices are unintelligible when they finally hit the listeners' ears.

In short: Don't let up! Keep Terry and Ed digging, recording, editing and sending us actualities. The public needs to know all it can about d-2.

Sincerely,

Hilary Hilsoher,
News Director/Program Manager

KFQD

February 23, 1979

Ed Bennett
Alaska Lands News Service
216 West 6th Avenue, Suite 435
Anchorage, Alaska 99501

Ed:

You asked for an analysis of the quality of your Alaska lands product. I've found it to be good, from both a journalistic and a technical standpoint.

The audio quality has improved steadily, and is far better than anything else coming out of Washington except for network feeds.

What I especially appreciate is your effort to inform the Alaskan public completely -- to show Alaskans that two sides do exist on this issue, and to present spokesmen for the other, so-called "non-Alaskan" point of view. No other service, whether run by a member of the Congressional delegation or by the Governor's office, makes any attempt to be even-handed.

As far as the needs of radio are concerned, your editing (without distortion of content) also is most appreciated.

I hope this answers your questions.

Regards,

Don Byron

Don Byron

KFQD Radio 750 KHZ, 50,000 Watts
9200 Lake Otis Parkway, Anchorage, Alaska 99507 ▫ 907-344-9622

KKLV & KHAR Sourdough Broadcasters Inc. 3900 Old Seward Hwy. Anchorage. Alaska 99503 (907) 272-9591

February 23, 1979

Senator Mike Colletta
D-2 Steering Council
Juneau, Alaska

Senator Colletta:

The news department at KHAR/KKLV has been aided during the past year by the efforts of the D-2 Steering Council's information service. We are a small staff and cannot begin to cover every story as it should be covered, and so we rely on information services such as the Steering Council's.

Since we do have to rely on outside sources for our information and actualities, it is important that we weigh the information carefully so we can present a balanced view to our listeners. I must commend the Council's information service in this regard. We were often given actualities of enviromentalists and congressmen who were not speaking the words most Alaskans wanted to hear. The availability of such information helped us present a balanced picture of the isse and also gave the news service credibility with the news media.

The quality of the actualities was generally good, although the cuts fed over the long distance telephone lines were understandably muffled. The actualities were presented in good form--good length, helpful intorduction and there were always several cuts from which to choose. I also appreciated the availability of the Council's staff to answer questions and explain happenings in Washington D.C.

Thank you for providing this service.

Sincerely,

Sherida Hughes

Sherida Hughes
News Director, KHAR/KKLV

REP. STEVE COWPER
CHAIRMAN
REP. ALVIN OSTERBACK
REP. JOE L. HAYES
SEN. CHANCY CROFT
SEN. MIKE COLLETTA
SEN. JOE ORSINI
WALTER PARKER
COMM. ROBERT LeRESCHE
CARL JACK
C. C. HAWLEY
DAVE CLINE

1016 WEST 6TH AVENUE, SUITE 435
ANCHORAGE, ALASKA 99501
(907) 277-2415/16
[POUCH V, JUNEAU, ALASKA 99811]

MEMORANDUM

TO: Senator Mike Colletta

FROM: Sharon Long

DATE: February 27, 1979

RE: News Service Performance

Per your request, enclosed are letters and telegrams from stations throughout the state, commenting on News Service Performance.

do not copy this

PLEASE NOTE: THE PRECEDING PAGES WERE TREATED AS A UNIT IN THE ORIGINAL DOCUMENT.

GOVERNOR

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

1016 W. Sixth, Suite 435
Anchorage, Alaska 99501
(907) 277-2415

received 4/9

MEMORANDUM

TO: House & Senate Legislative Oversite Group
Lt. Governor Terry Miller
Bob Clarke
Bob Waldrop

FROM: Sharon Long SL

DATE: April 4, 1979

RE: Production of Information Schedule

Pursuant to our meeting in Lt. Governor Miller's office on March 22, 1979, the following production schedule is being implemented. This is for the series of television and newspaper D-2 information pieces, for which you approved the $120,000.00 expenditure.

Week of 26 March: Complete copy for first phase of information pieces. Get Office of Governor approval from John Katz.

Week of 2 April:
a) Write TV copy (excerpted from longer copy approved week of 26 March)
b) Approval from Office of Governor and production house
c) Arrange production, including maps and special effects
d) Send copy for voice production on cassette.

Week of 9 April:
a) Edit spots
b) Make arrangements for post production and special effects
c) Set up state-wide time and space purchase.

Week of 16 April
a) Post production of TV spots
b) Have six (6) quad and eight (8) cassette duplicates made
c) Distribute spots and newspaper copy.

Week of 23 April: Commence run of spots and newspaper copy on one week rotation.

Memo to: Legislative Oversite Group
Lt. Governor Terry Miller
Bob Clarke
Bob Waldrop

From: Sharon Long
Date: April 4, 1979
Re: Production of Information Schedule

Your suggestion for cutting the number of pieces from 20 to 10 has been implemented. The ten pieces will include:

1. What is D-2
2. What is a National Monument
3. What is a National Park
4. What is a National Wildlife Refuge
5. What is a National Forest
6. What is Wilderness
7. What is Access
8. What are State Land Selections
9.
10.

Numbers 9 and 10 will be summary-type pieces explaining what the status of Alaska Land is after say the Conference committee, if there is one and after either Presidential vote or signing of a D-2 bill.

February 13, 1979

Warren Endicott, Director
Administrative Services
Legislative Affairs Agency
Pouch Y
Juneau, Alaska 99811

Dear Warren,

I hereby designate Ms. Sharon Long, executive director of the Steering Council for Alaska Lands, to authorize payment for travel and other routine Council expenses and to sign time sheets.

This authorization does not include contracts or retainer agreements which I will authorize Ms. Long to negotiate and sign on an individual basis.

Sincerely,

Senator Mike Colletta
Steering Council for Alaska Lands
Temporary Acting Vice-Chairman

MC/ms

cc: Pat Costello
Sharon Long

Representative Steve Cowper
Chairman
Steering Council for Alaska Lands
1016 West 6th Street, Suite C
Anchorage, Alaska 99501

July 29, 1977

Mr. Myrton Charney
Director
Administrative Services
Legislative Affairs Agency
Pouch Y
Juneau, Alaska 99811

Dear Myrt:

Thank you for transferring the bulk of the Council's funds to your office. However, as my aide discussed with you today, I think it would be best if your people handled the travel and per diem for the executive members of the Council, too. The latter would be in connection with our meetings, not work by any of the state agencies that are involved with the D-2 issue. To meet these expenses, and because of the likely need for additional representation in Washington, D.C., I would like the RSA to be adjusted to $250,000.

I have chosen Ms. Sharon Long to be our ~~administrative assistant~~, and we have agreed upon a salary of range 23, step B, $18.30 per hour. I hereby designate her to authorize payment for travel and other Council expenses and to sign time sheets. I have chosen Ms. Sharon Stoops to be our secretary, at a range 15, step A, $9.78 per hour.

As for the question of the per diem rate to use, I have decided to follow existing statutes and regulations.

Sincerely,

Representative Steve Cowper

This does not cover contracts or retainer agreements which will be authorized on an individual basis.

temp act Chair

January Thirty-first
1 9 7 9

Sharon Long, Executive Director
(d)(2) Steering Council
1016 West 6th Suite 435
Anchorage, Alaska 99501

Dear Sharon,

Please find enclosed a copy of a letter from Marilyn Rowley. I found her proposal very exciting and I would be interested in pursuing the idea. I would appreciate any feedback or suggestions you may have. Thank you for your prompt attention to this matter.

Best wishes,

Mike Colletta
Senate Majority Leader

MC/das

Enclosure

cc: Marilyn Dudley Rowley
KIAK Radio
Fairbanks, Alaska 99707

January Thirty-first
1 9 7 9

Marilyn Dudley Rowley
KUAC Radio
Fairbanks, Alaska 99707

Dear Marilyn,

Thank you for your letter concerning (d)(2). Your suggestion was excellent. Although the (d)(2) Steering Council has attempted to implement an informational campaign, it has not been as effective as we had hoped. I have taken the liberty of copying this letter to Sharon Long, Executive Director of the (d)(2) Steering Council. I think she will be the best person to coordinate a project such as this.

I appreciate hearing your views. If you have any other ideas concerning the (d)(2) issue, or any other issue, please feel free to call me.

Best wishes,

Mike Colletta
Senate Majority Leader

MC/das

28 Nov 78

coolsnake? Is it worth it?

Marilyn Dudley Rowley
KIAK Radio
Fairbanks, Alaska 99707

Mike

Dear Mike

Forgive me for using a form letter to communicate, but since I need to reach all of you at the same time, I must resort to this disagreeable method. My apologies.

As some of you are aware, there are those of us in the Alaskan media who are concerned with the lack of Alaskan issues in the national press.

Recently, I picked up an issue of NewTimes devoted entirely to Alaska lands. The massive article was written by a single writer and had an entirely environmental viewpoint.

I think we should do an article such as this. Only, we, in our diversity of thinking can be more objective. Also, regrettably, I can think of no one among us who can land an extensive article in a national coverage magazine by himself. I suggest we pool our resources. Each individual could briefly write on an Alaskan or Alaska lands topic which concerns him most. I propose to connect the topics - with approval of a selected group of fellow newspersons. I want to keep everything above board and honest in views. Then, we'll submit the finished product to a national coverage magazine.

I would love to hear from all of you, get your feedback on this endeavor. I know we're all busy, but I feel that Alaska is deserving of the nation's eye at this critical time if we are to become a significant state.

Please disseminate this letter to others in local, state, or federal government who would enhance this joint article.

Thank her for her efforts and concerns
Get her in touch with Sharon
Long - D-2 Ko attempted
something similar a little while ago
Ask her if she proposes this

Sincerely,
Marilyn Dudley Rowley
Marilyn Dudley Rowley

cc:

Jay Hammond, Governor of Alaska
Senator Mike Gravel
Senator Ted Stevens
Congressman Don Young
Commissioner Richard Burton, Alaska Public Safety
Dr. Foster Diebold, University of Alaska President
Frank Murkowski, Alaska National Bank of the North
Ed Rasmussen, National Bank of Alaska
Doug Capra, Seward High School
David Reaume, Division of Economic Enterprise
Commissioner Jake Johnson, Alaska Transportation
Dr. Ernie Wolfe, Alaska Placer Miners Association, Chairman, Fairbanks
Chuck Holley, Alaska Miners Association, Chairman, Anchorage
Avrum Gross, State Attorney General
Commissioner Ernest Mueller, Alaska Environmental Conservation
Commissioner Ronald Skoog, Alaska Fish and Game
Dr. Helen Beirne, Alaska Health and Social Services
Dr. Bob Le Resch, Commissioner, Alaska Natural Resources
Alan Linn, Director, Alaska Agriculture
Commissioner Edmund Orbeck, Alaska Labor
David Gale, Director, Employment Securities Division
President, State Senate
Jay Kertulla, State Senate Majority Leader
Mike Colletta, State Senate Floor Leader
State Senate Commerce Committe, Chairman
State Senate Community and Regional Affairs Committee, Chairman
State Senate Finance Committee, Chairman
State Senate Health, Education, and Social Services Committee, Chairman
State Senate Judiciary Committee, Chairman
State Senate Labor and Management Committee, Chairman
State Senate Resources Committee, Chairman
State Senate Rules Committee, Chairman
State Senate State Affairs, Chairman
State House Speaker, Hugh Malone
State House Majority Leader, Mike Miller
State House, Minority Leader
State House Commerce Committee, Chairman
State House Community and Regional Affairs Committee, Chairman
State House Finance Committee Chairman
State House Health, Education, and Social Services Committee, Chairman
State House Judiciary Committee, Chairman
State House Labor and Management Committee, Chairman
State House Resources Committee, Chairman
State House Rules Committee, Chairman
State House State Affairs Committee, Chairman
Colonel Fred Woldstad, Director, Alaska Fish and Wildlife
Organization for the Management of Alaska's Resources
Citizens for the Management of Alaska Lands
Skip Fletcher, President, KRXA Radio
Ronald Hendrie, Alaska Fire Marshall
Marty Hamstra, President, Prime Time, Inc.

cc:

Dr. Garth Jones, Dean, School of Business and Public Administration, University of Alaska at Anchorage
Auggie Hiebert, President, Northern Television, Inc.
Kay Fanning, Publisher, Anchorage Daily News
Bob Atwood, Publisher, Anchorage Times
C.W. Snedden, Publisher, Daily News Miner
Beverly Dunham, Publisher, The Phoenix Log
Tom Richards, Jr., The Tundra Times
Dr. Marvin Loflin, College of Arts and Sciences, University of Alaska at Anchorage
OPEC Minister c/o Dr. James Schlesinger, Energy Secretary
OPEC Desk Watch Director, State Department
Frank De Long, President, North Pole Refining
Joe Vogler
Bill Dorcy, General Manager, Alaska Railroad
Kathy Madison, Consultant, RCA Alascom
Dr. Joe Sonneman
Dr. Bob Booher, Alaska Skill Center
State D-2 Steering Council
CW2 Bob Spencer
Doyon Limited, "Spud" Williams, President
Tanana Chiefs Conference, Emil Notti, President
Ahtna, Inc., President
Cook Inlet Region, Inc., Roy Huhndorf, President
NANA Regional Corp., President
Calista Corp., Oscar Kawagley, President
The Aleut Corp., President
Bering Straits Native Corp., President
Chugach Natives, Inc., President
13th Regional Corp., President
Central Council of Tlingit and Haida Indians, Ray Paddock, President
SEalaska Regional Corp., Byron Mallot, Chairman
MG Necrason, Alaska National Guard
BG Theodore Jennes, Commander, 172d Inf Bde, Alaska

28 Nov 78

Marilyn Dudley Rowley
KIAK Radio
Fairbanks, Alaska 99707

Dear Chairman

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Please disseminate this letter to others in local, state, or federal government who would enhance this joint article.

Sincerely,

Marilyn Dudley Rowley

Marilyn Dudley Rowley

cc:

Jay Hammond, Governor of Alaska
Senator Mike Gravel
Senator Ted Stevens
Congressman Don Young
Commissioner Richard Burton, Alaska Public Safety
Dr. Foster Diebold, University of Alaska President
Frank Murkowski, Alaska National Bank of the North
Ed Rasmussen, National Bank of Alaska
Doug Capra, Seward High School
David Reaume, Division of Economic Enterprise
Commissioner Jake Johnson, Alaska Transportation
Dr. Ernie Wolfe, Alaska Placer Miners Association, Chairman, Fair
Chuck Holley, Alaska Miners Association, Chairman, Anchorage
Avrum Gross, State Attorney General
Commissioner Ernest Mueller, Alaska Environmental Conservation
Commissioner Ronald Skoog, Alaska Fish and Game
Dr. Helen Beirne, Alaska Health and Social Services
Dr. Bob Le Resch, Commissioner, Alaska Natural Resources
Alan Linn, Director, Alaska Agriculture
Commissioner Edmund Orbeck, Alaska Labor
David Gale, Director, Employment Securities Division
President, State Senate
Jay Kertulla, State Senate Majority Leader
Mike Colletta, State Senate Floor Leader
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cc:

Dr. Garth Jones, Dean, School of Business and Public Administration, University of Alaska at Anchorage
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Kay Fanning, Publisher, Anchorage Daily News
Bob Atwood, Publisher, Anchorage Times
C.W. Snedden, Publisher, Daily News Miner
Beverly Dunham, Publisher, The Phoenix Log
Tom Richards, Jr., The Tundra Times
Dr. Marvin Loflin, College of Arts and Sciences, University of Alaska at Anchorage
OPEC Minister c/o Dr. James Schlesinger, Energy Secretary
OPEC Desk Watch Director, State Department
Frank De Long, President, North Pole Refining
Joe Vogler
Bill Dorcy, General Manager, Alaska Railroad
Kathy Madison, Consultant, RCA Alascom
Dr. Joe Sonneman
Dr. Bob Booher, Alaska Skill Center
State D-2 Steering Council
CW2 Bob Spencer
Doyon Limited, "Spud" Williams, President
Tanana Chiefs Conference, Emil Notti, President
Ahtna, Inc., President
Cook Inlet Region, Inc., Roy Huhndorf, President
NANA Regional Corp., President
Calista Corp., Oscar Kawagley, President
The Aleut Corp., President
Bering Straits Native Corp., President
Chugach Natives, Inc., President
13th Regional Corp., President
Central Council of Tlingit and Haida Indians, Ray Paddock, President
SEalaska Regional Corp., Byron Mallot, Chairman
MG Necrason, Alaska National Guard
BG Theodore Jennes, Commander, 172d Inf Bde, Alaska

REP. STEVE GEORGE
CHAIRMAN
REP. ALVIN OSTERBACK
REP. JOE L. HAYES
SEN. CHANCY CROFT
SEN. MIKE COLLETTA
SEN. JOE ORSINI
WALTER PARKER
COMM. ROBERT LeRESCHE
CARL JACK
C. C. HAWLEY
DAVE CLINE

1016 WEST 6TH AVENUE, SUITE 425
ANCHORAGE, ALASKA 99501
(907) 277-2415/16
[POUCH V, JUNEAU, ALASKA 99811]

MEMORANDUM

TO: Becky Tischer

FROM: Sharon Long

DATE: January 18, 1979

RE: Employment Termination

Pursuant to our conversation this morning, this Memorandum is to confirm that your last day with this Council is two (2) weeks from this date.

cc: Pat Costello
Senator Colletta

Steering Council for Alaska Lands

REP. STEVE COWPER
CHAIRMAN
REP. ALVIN OSTERBACK
REP. JOE L. HAYES
SEN. CHANCY CROFT
SEN. MIKE COLLETTA
SEN. JOE ORSINI
WALTER PARKER
COMM. ROBERT LeRESCHE
CARL JACK
C. C. HAWLEY
DAVE CLINE

1016 WEST 6th AVENUE, SUITE 435
ANCHORAGE, ALASKA 99501
(907) 277-2415/16
[POUCH V, JUNEAU, ALASKA 99811]

MEMORANDUM

TO: ALL COUNCIL MEMBERS

FROM: EDWARD BENNETT
Communications Specialist

DATE: JANUARY 11, 1979

RE: "A TRAIL TO BREAK"

"A Trail to Break: a Story of Alaska Lands" has been completed and is being sent to television stations statewide. The film is a half-hour long, and is basically a history lesson. Final costs, including production , airtime purchase, and newspaper advertising, should come well under the $100,000.00 appropriation.

Preliminary reactions by Anchorage TV station managers and program directors has been very favorable.

The film will be shown at least twice in every town in Alaska which receives television, whether it be via cable, broadcast, or satellite. The TV buy is for a total of 45 airings on cable and broadcast outlets.

I have enclosed a copy of the press release which is being sent to every newspaper in the state.

At least one videotape cassette of the program will be sent to the Legislature.

Feel free to call me or Sharon with any comments you may have about the film.

Steering Council for Alaska Lands

REP. STEVE COWPER
CHAIRMAN
REP. ALVIN OSTERBACK
REP. JOE L. HAYES
SEN. CHANCY CROFT
SEN. MIKE COLLETTA
SEN. JOE ORSINI
WALTER PARKER
COMM. ROBERT LERESCHE
CARL JACK
C. C. HAWLEY
DAVE CLINE

1016 WEST 6TH AVENUE, SUITE 438
ANCHORAGE, ALASKA 99501
(907) 277-8418/19
[POUCH V, JUNEAU, ALASKA 99811]

Contact: Ed Bennett

PRESS RELEASE FOR RELEASE ON OR BEFORE AIRDATE BELOW 10 Jan 79

HALF-HOUR FILM ON HISTORY OF ALASKA'S LAND TO AIR ON LOCAL TV

The Legislature's Steering Council for Alaska Lands has released "A Trail to Break: a Story of Alaska's Land" for distribution statewide. Using animation, historical films, on-location photography and interviews, the half-hour movie traces the ways in which people have used and divided up the land in Alaska. Beginning with the first men crossing the Bering Land Bridge, the film describes the Russian occupation, the Gold Rush, the battle for statehood, the Alaska Native Claims Act, and helps set the stage for understanding the current battle over the Alaska National Interest Lands.

"A Trail to Break" airs locally on

The movie was produced by Juneau film-maker Lisle Hebert, and written by Steve Cowper, the former Fairbanks Representative and Chairman of the Steering Council, who was a Vietnam war correspondent.

"'A Trail to Break' attempts to avoid the current political controversy surrounding Alaska Lands", says Cowper. "Rather, it describes the history of our lands so that Alaskans everywhere can make better-informed judgments on the decisions we now face."

"A Trail to Break" will be shown at least twice in every community in Alaska which receives television. Later, film prints and videotape cassettes will be made available to the Alaska State Film Library, for use in the schools.

The Steering Council for Alaska Lands was created by the Alaska State Legislature to determine what issues Alaskans can agree are critical to any Congressional Alaska Lands Bill, and to attempt to have those views included in the legislation. The Steering Council is also charged with informing Americans and Alaskans about various issues as they develop. "A Trail to Break" is part of that effort.

Nevada Wants Its Own Land

CARSON CITY, Nev. (AP) — A solid majority of Nevada lawmakers today fired the first shots in a sagebrush rebellion aimed at wresting 53 million acres of land from federal to state control.

"We're going to have a head-on confrontation. We're going to arrest all the BLM," said Sen. Norm Glaser, D-Hallock, a principal sponsor of a bill being introduced in both houses of the Legislature.

The bills declare state sovereignty over most federal lands in the state, held mainly by the Bureau of Land Management. The measures create a 20-member Nevada Lands Commission to oversee the vast acreage.

Glaser was joined by 13 co-sponsors in the 20-member Senate while Assemblyman Dean Rhoads, R-Tuscarora, had signed up 26 of the 40 Assemblymen as co-sponsors of a matching measure in the lower house.

Indian, Department of Defense and federal reclamation lands would not be affected by the bill. That would leave about 46 million acres of BLM land and 5 million acres in national forests sought by the state.

The measures are designed to force a Supreme Court test of the federal government's right to control roughly 87 percent of Nevada's land mass, much of it arid and sagebrush-covered.

"In order to get into court, we'll probably have to arrest the state director of the BLM (Ed Rowland) or one of his agents," Glaser said.

The Nevada move is being watched "by all the western land states," said Sen. Rick Blakemore, D-Tonopah, head of a state Select Committee on Public Lands. "They've all been given a copy of this." He said Alaska and Utah were especially interested.

Glaser said he and Rhoads planned to meet with Gov. Bob List to discuss the plan. "We don't want him to veto it," Glaser added.

Previous sessions of the Legislature have approved resolutions calling on Congress to release federal lands. But the new proposals mark the first time a state set up a lands administration parallel to the federal government's, Blakemore said.

Any federal reaction to the measure "is going to come from Congress," BLM spokesman Bob Stewart said when contacted at the state BLM office in Reno.

Backers of the bill believe the state could administer the lands much more cheaply than the federal government. The BLM spent $18.9 million to administer its Nevada holdings in fiscal 1978, taking in $12.7 million in revenues from grazing fees, mineral leases and other charges. About $5 million was refunded to the state.

Glaser, who was passing out orange and black "Welcome to the West — Property: U.S. Govt." buttons to other legislators, said the bills are based on the equal footing doctrine of the U.S. Constitution.

The Constitution says all states must be admitted to the nation on an equal footing. But while the federal government was barred from owning vast tracts of land in the original 13 states, western states had to give vast portions of lands to federal control as a condition of entering the union.

Steering Council for Alaska Lands

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CHAIRMAN
REP. ALVIN OSTERBACK
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[POUCH V, JUNEAU, ALASKA 99811]

January 24, 1979

Avrum M. Gross
Attorney General
for the State of Alaska
Pouch K
Juneau, Alaska 99811

Dear Av:

I thought it might be helpful to outline on paper the items we discussed this morning over the telephone.

The legislature's problem with organization is obviously impacting the Administration's (d)(2) plans. In order to keep things moving until the legislature can act, I have extended Mr. H.A. "Red" Boucher's contract with this Council into February. He is to begin work on the "Western States Coalition" idea immediately.

THE TABLOID

Mr. Boucher has already begun to produce the second issue of "Alaska Lands." This issue will deal, exclusively, with the status of lands in the western states. It should be off the press during the third week in February.

THE (d)(2) RESOLUTION

Last year while travelling to the various states, our legislators were asked if there were specific resolutions Alaska wanted passed by other legislatures. Early on, we did not have specific recommendations because of the problems you will recall we had getting a resolution through our own legislature. Enclosed is a copy of one of the early drafts of our legislature's (d)(2) resolution. As I mentioned on the telephone, it might be simpler

to construct a resolution around the Governor's six point plan. If Red could have a resolution to carry with him on his travels, it may expedite the coalescing of a western states front. A letter of transmittal from the Governor and Lt. Governor to accompany the resolution would enhance other states' lawmakers' understanding of the issues, I'm sure.

THE TRAVEL SCHEDULE

Red can travel to key western states from February 5th through 16th. During this period, he will contact newspaper editors and, if you wish, begin contacting other Governors and legislative leaders. If this meets with your approval, a letter of introduction for Red from Governor Hammond may be in order. I shall attempt to acquire a similar letter of introduction jointly signed by Senator Tillion and Representative Gardner. Red will be in Juneau on February 2nd.

Very sincerely yours,

Sharon

SHARON J. LONG,
Executive Director

SJL:jl

cc: Lt. Governor Miller
Senator Colletta

Introduced: 1/21/77
Referred: Resources

BY ZIEGLER, MELAND AND POLAND

IN THE SENATE

SENATE JOINT RESOLUTION NO. 7

IN THE LEGISLATURE OF THE STATE OF ALASKA

TENTH LEGISLATURE - FIRST SESSION

Opposing H.R. 39, the "Alaska National Interest Lands Conservation Act."

BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:

WHEREAS the development of a wise national interest resource policy requires that public land be utilized on an enlightened multiple-use basis, accommodating all reasonable uses for which the land is suited; and

WHEREAS H.R. 39, designed to implement sec. 17(d)(2) of the Alaska Native Claims Settlement Act, unreasonably shifts the emphasis from multiple-use management of land in the general interest to exclusive resource management in the interests of a few; and

WHEREAS the thrust of H.R. 39 is illustrated by the creation of 56.0 million acres of national parks, monuments, and preserves, as well as adding 8.1 million acres to those already in existence, thereby precluding the use of that land for mineral development, hunting (except in limited zones yet to be designated), and overall multiple-use management; and

WHEREAS the overall designation of portions of the national interest areas in the bill as components of the National Wilderness Preservation System creates enclaves of land which will involve serious access problems, be entirely restrictive to any sort of conventional development, and ultimately against the best public interest of most Alaskans; and

WHEREAS provisions relating to Native subsistence rights are uncertain and imprecise, leaving most substantive questions to be answered by regulations to be adopted in the future; and

WHEREAS subject to valid existing rights, all the land designated as national interest land in H.R. 39 is withdrawn from all forms of appropria-

tion under the mining laws and from mineral leasing, thereby placing an untenable burden on the entire nation in this time of energy and raw materials shortage; and

WHEREAS sec. 704(b) of H.R. 39 arbitrarily revokes land selections by the state in the national interest land areas, granting the state equal acreage, but relegating it to the undesirable position of choosing lands of unspecified character and quality elsewhere; and

WHEREAS only 1.6 million acres are authorized to be designated as National Forest land, the only land category of those to be considered which approaches multiple-use management and considers diverse interests; and

WHEREAS Title V of H.R. 39 directs that the U. S. Fish and Wildlife Service exert primary interim management control of National Petroleum Reserve 4, representing an inappropriate shift of control considering the resource involved;

BE IT RESOLVED by the Alaska State Legislature that it strongly opposes H.R. 39, the "Alaska National Interest Lands Conservation Act", as against the best interest of the citizens of the state and the nation.

COPIES of this resolution shall be sent to the Honorable Jimmy Carter, President of the United States; the Honorable Cecil D. Andrus, Secretary-Designate of the Department of the Interior; the Honorable Robert S. Bergland, Secretary-Designate of the Department of Agriculture; the Honorable James O. Eastland, President Pro Tempore of the U. S. Senate; the Honorable Thomas P. O'Neill, Jr., Speaker of the U. S. House of Representatives; and to the Honorable Ted Stevens and the Honorable Mike Gravel, U. S. Senators, and the Honorable Don Young, U. S. Representative, members of the Alaska delegation in Congress.

PLEASE NOTE: THE FOLLOWING PAGES WERE TREATED AS A UNIT IN THE ORIGINAL DOCUMENT.

Steering Council for Alaska Lands

REP. STEVE COWPER
CHAIRMAN
REP. ALVIN OSTERBACK
REP. JOE L. HAYES
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File D-2

MEMORANDUM

TO: Senator Mike Colletta

FROM: Sharon Long SR

DATE: February 23, 1979 rec'd 2/26/79

RE: Joint Resolution 13 Briefing

At the request of Representative Miles, we prepared a briefing packet elaborating on SJR 13, preparatory to their trip to Washington, D.C., next week. Enclosed for your information is a copy of that packet.

POINT ONE

Notes:

To elaborate on the seven points in your resolution:

Point One: Congress should revoke each and all of the 1978 executive or administrative orders withdrawing lands in Alaska;

(1) The Executive withdrawals (creation of Monuments under the Antiquities Act) and Administrative withdrawals (under the BLM Organic Act) were made under questionable authority. SEE OUR OCTOBER 10 MEMO TO SENATOR STEVENS ATTACHED.

(2) These withdrawals close lands to state selection of land under the statehood act and actually overlap approximately 14-15 million acres of our state selections. Slightly less than one million acres of tentatively approved (t.a'd) and patented land lies within these combined withdrawals. Our ownership of patented, and t.a'd land is not jeopardized. Access may be a problem and will be dealt with further on in this briefing paper.

(3) It is clear through past legislation, i.e. ANCSA, that congress wanted to make the final determination on conservation system lands in Alaska.

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MEMORANDUM

To: Senator Stevens Date: October 10, 1978

from: The Steering Council for Alaska Lands;
Joseph M. Chomski, Constance E. Brooks, Counsel

ISSUE: Would an extension of the five-year deadline in §17(d)(2)(D) of ANCSA bar the President from using the Antiquities Act to proclaim Alaskan lands withdrawn by the Secretary under §17(d)(2)(A) to be National Monuments, absent specific language in the Extension legislation.

I. CONCLUSION

The Antiquities Act assigns authority to the President to permanently proclaim suitable sites or areas upon Government lands to be National Monuments. Such Presidental authority can be restricted only by the Congress and the Supreme Court.

In our opinion, Congress, by enacting ANCSA, revoked the applicability of the Antiquities Act and other public land appropriation laws to lands withdrawn by the Secretary under 17(d)(2) for as long as that subsection is in effect. This conclusion is supported primarily by the wording of subsection 17(d)(2)(D), and the legislative history of 17(d)(2), as found in the Conference Report 92-746, pp. 5-6 and 11, and House Report 92-523, p. 8.

Based on the above conclusion, we believe that an extension of the 17(d)(2)(D) deadline will continue the existing suspension of the President's Antiquities Act authority for the Secretarially recommended (d)(2) lands in question, even if no reference to the Antiquities Act or public land law appropriation authority is contained in the Extension legislation.

RECEIVED
OCT 16 19[illegible]
STEERING COUNCIL
FOR ALASKA LANDS

II. CONGRESSIONAL INTENT

An objective reading of §17(d)(2), as well as the legislative history, gives strong indication that Congress intended to be the sole decisionmaker as to the types of permanent withdrawals into the four conservation systems to be made from the unreserved public lands in Alaska that were recommended for withdrawal by the Secretary. The strongest indication of Congress' intent to be exclusively in control of the withdrawn lands may be found in 17(d)(2)(D) where the statute reads:

> "Areas recommended by the Secretary . . . shall remain withdrawn from any appropriation under the public land laws until such time as the Congress acts on the Secretary's recommendation, but not to exceed five years from the recommendation date." (emphasis added)

The legislative history supports the contention that any appropriation authority given to Federal administrative agencies or the President under prior public land laws were pre-empted by §17(d)(2). The Conference Report, No. 92-746, filed December 13, 1971, states that "the lands recommended for addition to the Federal Systems will remain withdrawn until Congress acts, but not to exceed five years" (pp. 5 and 6). At page 11, the Conference Report refers to the "classification" and "re-classification" authority in subsection 17(d)(1) as "new" legislative authority, and puts the word "new" in italics. It goes on to state that "the authority is limited to Alaska and to the purposes provided for in subsection 17(d)". The reference to the "new" legislative authority created in subsection 17(d)(1) for Alaska lends additional credence to the theory that Congress chose to deal with Alaska's unreserved public lands in a manner separate from other such lands in the U.S. and did repeal the applicability of prior public land law to the lands withdrawn in Alaska pursuant to this subsection.

In the House Report, 92-523, filed September 28, 1971, at page 8, the legislative history refers to the committee amendment that was later to be converted into §17(d)(2) by saying that "the withdrawal is from all forms of appropriation under the public land laws". Furthermore, the House Report goes on to state that "the Secretary may terminate the withdrawal at any time with respect to a particular tract of land when he determines that it should be open to disposition and use under the public land laws". This language infers that the House intended that Alaskan lands recommended for

withdrawal under §17(d)(2) become eligible for disposition under other public land laws only when the (or a) withdrawal is lifted. This would indicate a policy on the part of the House of Representatives conforming with the theory that extension of the current five-year deadline would continue exclusion of other public land laws -- including the Antiquities Act -- from applicability to the Secretarially withdrawn (d)(2) lands, since the withdrawal of those lands would not terminate until the conclusion of the extension period.

It is noteworthy that nowhere in the legislative history that we have surveyed does any reference to Presidential authority under public land laws appear. Without such a reference, public land laws creating Presidential land withdrawal authority must be lumped with all other public land laws. As a result, it is difficult to contend that the Antiquities Act -- which is certainly a public land law, since it deals solely with "lands owned or controlled by the Government of the United States" (16 U.S.C. 431, the Antiquities Act) --is not pre-empted with all other "public land laws" by §17(d)(2)(D) during the period prior to the termination date for Secretarial withdrawal.

III. PRINCIPALS OF LEGISLATIVE INTERPRETATION: INFERENTIAL REPEAL OF PRIOR LEGISLATION.

The repeal of a law or parts thereof is inferred only if the conflicting statutes are wholly inconsistent and repugnant to each other. Statutes and Statutory Construction, §247-250, Sutherland 2d. Edition (1928). The doctrine of implied repeal of a statute is a limited one and the Courts will infer a repeal only if the terms and operation of the laws cannot be harmonized. There is a presumption against repeal and the Courts will try to construe the law to reconcile the inconsistency.

In cases where the Courts do find that there has been an implied repeal, they will repeal the conflicting provision only insofar as it is necessary. A recent case from the 10th Circuit Court of Appeals aptly illustrates when and how the Court determines that Congress has impliedly repealed the law. In Plains Electric Generation and Transmission Cooperative, Inc. v. The Pueblo Indians of Laguna, 542 F.2d 1375 (10th Circuit 1976), the Court found that the statute enacted May 10, 1926, which gave the State of New Mexico authority to condemn land of the Pueblo Indians of New

Mexico had been impliedly repealed by a subsequent act of April 23, 1928. In this public land law matter, the Court relied on the legislative history of the 1928 Act to find that it was intended to operate as a substitute for the 1926 Act. The Court found that the two statutes were inconsistent, and that Congressional intent was to repeal the first by enacting the second, although the second Act did not specifically state that it repealed the first. It is noteworthy that the colloquy which took place during enactment of the later statute was a principal determinant used by the Court to decide that the second act in fact repealed the first.

IV. THE ANTIQUITIES ACT AND THE JACKSON HOLE NATIONAL MONUMENT.

Precedent exists to show that Congress can override Presidential Proclamations, made pursuant to the Antiquities Act, withdrawing Government land to create National Monuments. When President Franklin Denalo Roosevelt declared Jackson Hole, Wyoming to be a National Monument in 1945, Congress voted to repeal the creation of that National Monument. President Roosevelt vetoed the repealing legislation and his veto was sustained. Nevertheless, it is clear that Congress and the President both believed that the legislation, if not successfully vetoed, would have overridden the Proclamation creating the National Monument.

This conclusion is based on basic constitutional law which provides that Congress can override acts of the Executive. By the same token, subsequent legislation, such as ANCSA, can repeal the applicability of the Antiquities Act to particular government land.

V. EXTENSION LEGISLATION AND COLLOQUY.

A simple amendment to §17(d)(2)(D) changing the five-year deadline to a six-year deadline would serve to bar the President from employing the Antiquities Act to permanently designate d-2 lands as National Monuments, based on the theory that subsection 17(d)(2) inferentially revokes the applicability of the Antiquities Act to the Alaskan Lands in question prior to the expiration date of the withdrawals.

Clearly, the Department of Interior may disagree with this theory and the President may issue proclamations withdrawing d-2 lands into National Monuments on December

19. At that point, the State of Alaska and/or the Steering Council would probably seek declaratory relief from the Courts, but said relief might be a long time coming. In addition, it is always possible that judicial interpretations will support the President.

To prevent running the above risk, we would recommend either or both of the following.

First, a simple colloquy on the Senate floor stating that the Extension legislation continues the already spoken intention of Congress (in ANCSA) that it shall make the final decisions on permanent designations for the Alaskan lands withdrawn by the Secretary under §17(d)(2).

The second suggestion is to examine recent statements and actions by the Department of Interior to determine whether they currently interpret the Antiquities Act and other public land laws to apply to d-2 lands subsequent to December 18, 1978 or prior to it. Specifically, do the withdrawal proclamation orders that have been drawn up take effect prior to December 18? Has the Secretary made any statements to the effect that public land law will apply only after December 18, etc.? If the Interior Department believes that public land law would apply prior to December 18, then it will also believe that said public land laws apply during the period of the proposed §17(d)(2) extension (absent specific legislative language or colloquy to the contrary). If the Interior Department has concluded the opposite, then the worth of the simple extension is increased and the prospects are improved for obtaining declaratory relief in the event that the Antiquities Act is used regardless of the Extension.

VI. BLM ORGANIC ACT WITHDRAWALS.

Whereas the Antiquities Act preceded ANCSA and therefore is subject to the public land law pre-emption in ANCSA, the BLM Organic Act is more recent legislation. Fortunately, the BLM Organic Act, at §701(e), 43 U.S.C. 1701, states that: "Nothing in this Act shall be construed as modifying, revoking, or changing any provision of the Alaskan Native Claims Settlement Act". An extension would also probably preclude substantial Organic Act withdrawals of (d)(2) lands.

It is interesting to note that the House Report on the BLM Organic Act, at page 29 of H. Report 94-1163, states that the Antiquities Act is also specifically not repealed. This, of course, contrasts with the legislative history of the Alaska Native Claims Settlement Act, which does not in any way exclude the Antiquities Act from being repealed for the purposes of §17(d)(2).

VII. EXTENSION LEGISLATION PROBLEM:
D-2 LANDS IN EXCESS OF 80 MILLION ACRES.

§17(d)(2)(D) keeps areas withdrawn by the Secretary pursuant to paragraph (C) away from appropriation under public land law until Congress acts or until the five-year limit is reached. Paragraph (C) refers back to lands withdrawn pursuant to Paragraph (A) of §17(d)(2). As we are all aware, Paragraph (A) limits the Secretary's withdrawal to a maximum of 80 million acres of unreserved public lands in the State. It is unclear to us whether the Antiquities Act could apply to lands withdrawn by the Secretary under §17(d)(2) over and above the 80 million acres. There may be some lands that fall between the cracks, or to which the Department of Interior could apply public land laws via the use of §17(d)(1). We have not had the time to research this point fully.

POINT TWO

Notes:

Point Two: By legislation, Congress should convey to the State its full entitlement of federal lands authorized by the Alaska Statehood Act, and to Alaska Natives by the Alaska Native Allotment Act, 48 U.S.C. 357 (Act of May 17, 1906), as amended, and by the Alaska Native Claims Settlement Act, as amended;

(1) The problems with our state selections hinge on the Secretary of Interior deciding whether our state selections are valid or invalid. (Yes, Virginia, it's all up to the Secretary). Achieving legislative conveyence of State Selections eliminates the possibility of our existing state selections being found invalid and, therefore, available for Federal purposes rather than State ownership.

(2) Slowness to convey the land once selections have been found valid has been a major problem with the Native selections as well as State selections. Legislative conveyence would immediately relieve this problem to a large degree. There is still a question as to whether legislative conveyence would be "bankable" conveyence since descriptions would be based on protracted surveys, not on-ground surveys. Its a good start, though.

(3) Where state selected land lies on the edge of conservation system units, the unit boundaries should be redrawn to avoid our state land being subject to inholding restrictions,e.g.:

a) Chelatna Lake area on South Addition to McKinley boundary.

b) The Mulchatna River drainage in the southwest corner of the Lake Clark unit.

c) 600,000 acres of the 1972 out of court settlement lands along the southern boundary of the Gates of the Arctic unit.

POINT THREE

Notes:

Point Three: Congress should provide for a rational means of providing access to state and private lands across any federal enclaves created;

Basically access breaks into two categories: (1) recreation, and (2) transportation and utility.

(1) To date, most proposals have ignored specific recreation access needs and dealt rather with access for those with inholdings in Federal enclaves, or access across federal lands to state and privately held land. Those who do not own land within federal enclaves or have business on adjoining land must be assured of the land for recreational purposes. Unless prior use has been established, wilderness users such as river floaters, helicopter skiers, hikers, etc, may have trouble flying in to a point of departure. Proponents of HR 39 and similar Senate bills claim that such legislation will be a boost to our tourist industry. Unless access to the parks and wilderness is expressly assured, our tourists will not get to the scenic and recreational wonders they came here for.

Recreational access language should guarantee access by specifically identified mode, i.e., snowmobile, float-planes, helicopter, etc.

If such language as that in S.9 (this congress' number for what passed out of the Energy committee last year--not to be confused with the Ad Hoc compromise), is used, it should be made to indicate that the meaning of "traditional access" refers to the mode of access and not the area of the state. Seek modifying language and clarification in the Report and floor debate.

(2) For transportation and utility access such as: (a) water transportation (b) oil and gas pipelines (c) slurry and solid matter pipelines (d) electrical utility corridors (e) oil and gas pipelines (f) rights of way for surface vehicles on rugged terrain and (g) improved highways, and railroads, AGENCY DISCRETION FOR DENYING SUCH ACCESS SHOULD BE MINIMIZED. A streamlined process for consolidated decision making in rights-of-way and access must be provided for.

We need language guaranteeing access and a streamlined authority to deal with it. Otherwise, existing law will stand wherein the federal government has a vast amount of discretion. The federal agencies tend to utilize their discretion to deny access and, in the cases of Wilderness, are largely upheld by the courts.

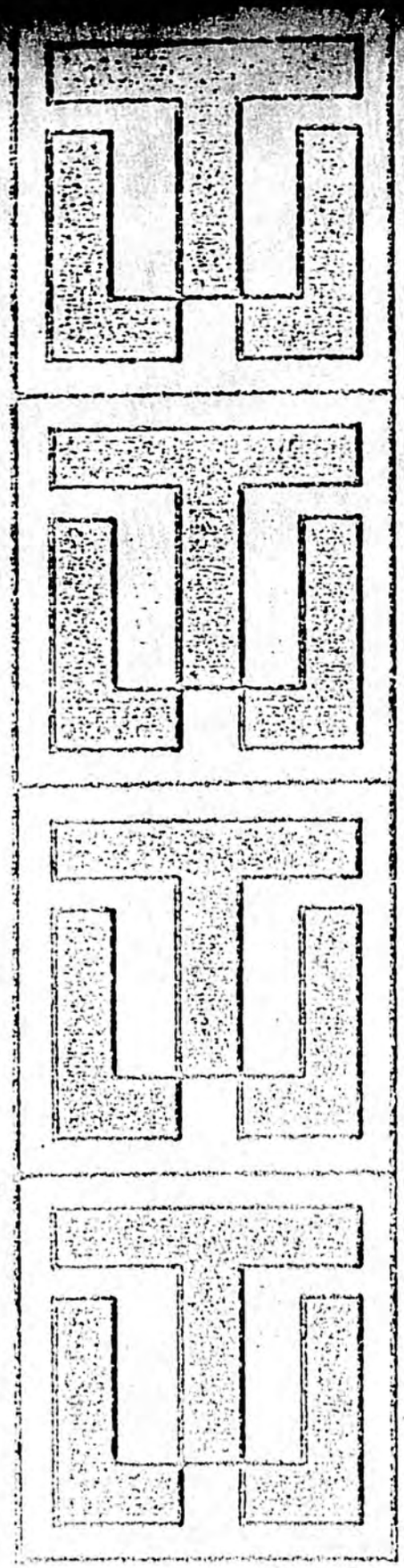
Reduce duplicative and unnecessary involvement by federal agencies. Mandate guarantees and streamlined decision making. If a system whereby Presidential and or Congressional approval are required for access, make

sure that approval occurs under expedited time limit procedures. Congressional resolutions regarding rights-of-way should be by means of a privileged motion, assuring immediate floor consideration.

(3) Temporary Access and access to inholdings: An effort should be made to reduce the opportunity for the Secretary to deny permits based on incompatible use unless he makes specific findings in writing that can be contested through a specific process. Otherwise, the current situation will continue, where the courts tend to uphold agency decisions based on discretionary language. The same applies to recreational access language.

SEE ATTACHED THREE MEMOS

(1) Transportation Law Journal
(2) Chart: Existing law concerning Access Across Federal land.
(3) Wilderness



TRANSPORTATION LAW JOURNAL

UNIVERSITY OF DENVER
COLORADO SEMINARY
COLLEGE OF LAW

MOTOR CARRIER LAWYERS ASSOCIATION

Volume 9, Number 1 1977

Rights-of-Way on Federally Owned Lands: A Journey through the Statutes by Way of the Federal Land Policy and Management Act of 1976*

LEE D. MORRISON**

I. INTRODUCTION

II. PUBLIC LANDS
- A. *GENERAL RIGHT-OF-WAY PROVISIONS OF THE BLM ACT*
  - 1. *Application*
  - 2. *Limits on Size and Duration*
  - 3. *Controls on Use and Occupancy*
  - 4. *Right-of-Way Corridors*
  - 5. *Payment for Use*
  - 6. *Suspension or Termination*
- B. *SPECIFIC PURPOSES FOR RIGHTS-OF-WAY*
  - 1. *Transportation*
  - 2. *Electric Energy, Communication, and Water Facilities*
  - 3. *Pipeline Systems*
    - a. *Application*
    - b. *Limits on Size and Duration*
    - c. *Controls on Use and Occupancy*
    - d. *Right-of-Way Corridors*
    - e. *Payment for Use*
    - f. *Suspension or Termination*

III. NATIONAL FOREST SYSTEM

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* My deepest thanks to two persons associated with the Joint Federal-State Land Use Planning Commission for Alaska (JFSLUPC) for their help in preparing this article. John W. Katz, Counsel for the JFSLUPC, reviewed my preliminary work and David L. Schooler, a former law intern with JFSLUPC, did initial research into the topic. However, the responsibility for any errors in the contents of this article rests solely with the author.

** Member of Colorado Bar; B.S., Colorado State University, 1973; J.D., University of Denver, College of Law, 1977.

IV. Other Reserved Lands
A. *Statutes of General Applicability*
B. *Management Systems*
1. *National Wildlife Refuge System*
2. *National Park System*
3. *Military Reservations*
4. *National Wilderness Preservation System*
5. *National Wild and Scenic Rivers System*

V. Conclusion

I. Introduction

Rights-of-way across federally owned lands are necessary for the development of transportation facilities in the United States, especially in the eleven contiguous western states[1] and Alaska. Roads, railroads, electrical power and communication facilities, water distribution facilities, and oil and gas pipelines constructed over any substantial distance cannot ordinarily avoid crossing federally owned lands in those states for several reasons. Natural resources related to such projects are found in abundance on federally owned lands. Minerals, oil and gas, hydroelectric power and timber produced on these lands require transportation facilities in order to reach their market. Federally owned lands are sometimes situated so that the only reasonable access to private or state owned lands is across the federal lands. The federal government owns approximately one-third of the nation's lands and nearly eighty percent of the land in the eleven contiguous western states and Alaska.[2] State[3] and Native[4] selection rights in Alaska will

1. As defined in 43 U.S.C.A. § 1702(o) (West Supp. 1977), the states are Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming.

2. Bureau of Land Management, United States Dep't of the Interior, Public Land Statistics 10 (1975) [hereinafter cited as Statistics]. The State of Alaska is especially dependent on the availability of rights-of-way across federally owned lands for transportation purposes. In 1974, 96% of the 365 million acres of land in Alaska was in federal ownership. By the terms of the Alaska Statehood Act, Pub. L. No. 85-508 § 6(a),(b), 72 Stat. 340 (1958), and the Alaska Native Claims Settlement Act (ANSCA), 43 U.S.C. §§ 1611, 1613(h) (Supp. IV 1974), this figure will eventually be reduced to approximately 57%. Section 17(d)(2) of ANSCA provides for the withdrawal of 80 million acres of public lands by the Secretary of the Interior (d-2 lands) for possible inclusion into the national parks, forest, wildlife refuge, and wild and scenic rivers systems (the four systems). The Secretary has made recommendations as to the disposition of those lands and Congress is required to act on these recommendations by 1978. 43 U.S.C. § 1616(d)(2) (Supp. IV 1974).

The final disposition of these federally owned lands is of critical importance to the future of surface transportation in Alaska. With the exception of the trans-Alaskan pipeline and haul road, present surface transportation systems are limited to the southcentral portion of Alaska. Proposals for future transportation systems into the remote areas of Alaska will inevitably involve d-2 lands. One function of this article is to set forth the current state of the law regarding rights-of-way across federally owned lands so that the effect of including an area into one of the four systems or the national wilderness preservation system will be known. The article also deals with other existing land classifications: public lands and military reservations.

3. The Alaska Statehood Act, Pub. L. No. 85-508 § 6(a),(b), 72 Stat. 340 (1958) grants 800,000 acres for community and recreational centers and an additional 102,550,000 acres with no restrictions on the use.

4. The Alaska Native Claims Settlement Act, §§ 12, 14(h), grants Alaskan Natives the

reduce this figure to approximately fifty percent during the next several years, but the area is still substantial.

The federal government has a long standing policy of granting rights-of-way across federal lands. Right-of-way statutes presently in force date as far back as 1891.[5] Congress, in establishing the Public Land Law Review Commission (PLLRC) in 1964, recognized that:

> The public land laws of the United States have developed over a long period of years through a series of Acts of Congress which are not fully correlated with each other . . . Those laws, or some of them, may be inadequate to meet current and future needs of the American people . . . Administration of the public lands and the laws relating thereto has been divided among several agencies of the Federal Government . . . .[6]

This statement was, and to some extent, still is indicative of the state of the public land laws dealing with rights-of-way. Grants of rights-of-way under the older statutes have recently been challenged as being beyond the scope of the authority granted by Congress to the land managing agencies.[7] One such challenge[8] resulted in a 1973 revision of the right-of-way section of the Mineral Leasing Act in order that the trans-Alaskan pipeline could be constructed.[9]

The Federal Land Policy and Management Act of 1976[10] (BLM Act) represents a major revision in public land law, including the law dealing with rights-of-way. The BLM Act grants to the Bureau of Land Management (BLM) comprehensive authority to manage the public lands pursuant to extensive policy guidelines. Public lands are to be retained in federal ownership unless disposal "will serve the national interest."[11] The BLM Act sets up a program of land and resource inventory in conjunction with a land use planning process.[12] Management is to be according to multiple use[13] sustained yield principles[14] with a strong emphasis on protection of environmental and wilderness values.[15] The right-of-way provisions of the BLM

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right to select through village and regional corporations, a total of 40 million acres of federally owned land in Alaska, 43 U.S.C. §§ 1611, 1613(h) (Supp. IV 1974).

5. 43 U.S.C. § 946 (1970).

6. 43 U.S.C. § 1392 (1970).

7. *See, e.g.*, Wilderness Soc'y v. Morton, 479 F.2d 842 (D.C. Cir. 1973), *cert. denied*, 411 U.S. 917 (1973), Sierra Club v. Hickel, No. 51454 (D. Cal. July 23, 1969), *vacated for lack of standing*, 443 F.2d 24 (9th Cir. 1970), *aff'd sub nom*, Sierra Club v. Morton, 405 U.S. 727 (1972).

8. Wilderness Soc'y v. Morton, 479 F.2d 842 (9th Cir. 1973), *cert. denied* 411 U.S. 917 (1973).

9. 30 U.S.C. § 185 (Supp. IV 1974). The legislative history of the act indicates Congress' concern with the *Wilderness Society* decision. S. Rep. No. 207, 93d Cong., 1st Sess. 11, *reprinted in* [1973] U.S. Code Cong. & Ad. News 2417, 2417-2423.

10. Pub. L. No. 94-579, 90 Stat. 2743 (codified in scattered sections of 7, 16, 30, 40, 43 U.S.C.A.).

11. 43 U.S.C.A. § 1701(a)(1) (West Supp. 1977).

12. *Id.* §§ 1711-12.

13. *Id.* § 1702(c).

14. *Id.* § 1702(h).

15. *Id.* §§ 1701(a)(7,8), 1782.

Act[15] represent a comprehensive system for the grant and management of such rights-of-way. One purpose of this article is simply to identify the significant aspects of these right-of-way provisions. Another purpose is to compare the BLM Act provisions, which govern public lands and national forest system lands, with the statutes applicable to the national wildlife refuge and park systems, military reservations, and national wilderness preservation and wild and scenic rivers systems.

The inconsistent use of terminology has long been the bane of those practicing public land law. Unless otherwise noted, the term public lands will hereafter be defined in accordance with the BLM Act as "any land and interest in land owned by the United States within the several states . . ." administered by the BLM, excepting lands located on the outer continental shelf or lands held for the benefit of Indians, Aleuts, and Eskimos.[17] The term reserved lands or reservation will be defined as federal lands which have been set aside for a specific public purpose or program and are not generally subject to disposition under the public land laws.[18] This is a generally accepted meaning of the terms even though certain statutes provide other definitions. The term right-of-way is also to be defined according to the BLM Act. This definition is very broad and includes "an easement, lease, permit or license to occupy, use or traverse public lands granted for the purposes listed in . . . [the] Act."[19]

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16. *Id.* §§ 1761-71.

17. *Id.* § 1702(e).

18. *See* United States v. Celestine, 215 U.S. 278, 285 (1909); United States v. Myers, 206 F. 387, 391 (8th Cir. 1913).

19. 43 U.S.C.A. § 1702(f) (West Supp. 1977). The purposes are listed in § 501(a) of the BLM Act, 43 U.S.C.A. § 1761(a) (West Supp. 1977), which states that rights-of-way may be granted for:

> (1) reservoirs, canals, ditches, flumes, laterals, pipes, pipelines, tunnels and other facilities and systems for the impoundment, storage, transportation, or distribution of water;
>
> (2) pipelines and other systems for the transportation or distribution of liquids and gases, other than water and other than oil, natural gas, synthetic liquid or gaseous fuels, or any refined product produced therefrom, and for storage and terminal facilities in connection therewith;
>
> (3) pipelines, slurry and emulsion systems, and conveyor belts for transportation and distribution of solid materials, and facilities for the storage of such materials in connection therewith;
>
> (4) systems for generation, transmission, and distribution of electric energy, except that the applicant shall also comply with all applicable requirements of the Federal Power Commission under the Federal Power Act of 1935 (49 Stat. 847; 16 U.S.C. 791);
>
> (5) systems for transmission or reception of radio, television, telephone, telegraph, and other electronic signals, and other means of communication;
>
> (6) roads, trails, highways, railroads, canals, tunnels, tramways, airways, livestock driveways, or other means of transportation except where such facilities are constructed and maintained in connection with commercial recreational facilities on lands in the National Forest System; or
>
> (7) such other necessary transportation or other systems or facilities which are in the public interest and which require rights-of-way over, upon, under, or through such lands.

II. Public Lands

Management of the public lands is primarily governed by one statute. The Federal Land Policy and Management Act of 1976[20] gives the Bureau of Land Management (BLM) comprehensive authority to administer the public lands. Some of the provisions of the BLM Act apply to the Forest Service administration of national forest system lands as well. The BLM Act repeals partially or totally thirty statutes[21] which previously authorized rights-of-way and replaces them with a single title, Title V. This title authorizes the Secretaries of the Interior and Agriculture to grant rights-of-way across public lands and forest system lands, respectively. This authority does not extend to areas designated as wilderness.[22] The BLM Act is not the only statute governing rights-of-way on public lands. Section 28 of the Mineral Leasing Act,[23] the acts relating to federally funded highways,[24] and the Federal Power Act[25] also authorize certain rights-of-way on public lands.

Section 302 of the BLM Act is closely related to, and may overlap with Title V. Section 302, which does not apply to national forest system lands, grants the Secretary of the Interior the authority to regulate the use, occupancy, and development of public lands by several means, including easements, permits, licenses and leases. Federal agencies may not acquire the right to use public lands by means of this section.[26]

The following discussion of rights-of-way on public lands is divided into two parts. Part A deals with the general provisions of the BLM Act which could be applied to any rights-of-way granted under the Act. Part B analyzes the various purposes for which rights-of-way may be obtained under the BLM Act and other applicable statutes.

A. General Right-of-Way Provisions of the BLM Act

1. Application

An applicant for the grant or renewal of a right-of-way is required to submit to the Secretary information reasonably related to the use or intended use of the right-of-way, including the effect on competition.[27] In addition, the Secretary may require the submittal of a plan of construction, operation, and rehabilitation by an applicant if the Secretary finds that the proposed use of the right-of-way may cause a significant impact on the environment.[28]

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20. Pub. L. No. 94-579, 90 Stat. 2743 (1976) (codified in scattered sections of 7,16,30,40,43 U.S.C.A.). *See* J. Carver and C. Carver, *Federal Land Policy and Management Act of 1976*, 9 Rocky Mtn. Min. L. Newsletter (1976), for a summary of the provisions of the Act.
21. Pub. L. No. 94-579, § 706, 90 Stat. 2793 (1976).
22. 43 U.S.C.A. § 1761(a) (West Supp. 1977).
23. 30 U.S.C. § 185 (Supp. IV 1974).
24. 23 U.S.C. §§ 101-322 (1970).
25. 16 U.S.C. §§ 791a-825r (1970).
26. 43 U.S.C.A. § 1732 (West Supp. 1977).
27. *Id.* § 1761(b).
28. *Id.* § 1764(d).

The Secretary may grant the right-of-way only when he is satisfied that the applicant has the technical and financial capability to construct the project in accordance with the requirements of the Act.[29]

2. Limits on Size and Duration

The BLM Act does not quantify the limits on size and duration, but instead, sets forth the factors the Secretary must take into account in specifying the limits for each right-of-way. The Act requires that each right-of-way be limited to the ground which will be occupied by the project for which the right-of-way was issued, is necessary for operation of the project, is necessary for public safety, and will do no unnecessary damage to the environment. The Secretary may also authorize the temporary use of additional lands for construction, operation, maintenance, termination of, and access to, the project.[30] A right-of-way is limited to a "reasonable term in light of all circumstances concerning the project."[31] Circumstances which are to be considered include the cost, useful life, and public purposes of the project.

3. Controls on Use and Occupancy

The Secretary has at his disposal several means by which he may exert control over the use and occupancy of rights-of-way. Environmental concerns are of great importance, but other conditions may serve as a basis for control as well. Section 505 requires each right-of-way to contain terms and conditions which will minimize damage to the environment, require compliance with applicable federal or state air or water quality standards, and require compliance with similar state standards for the use of rights-of-way if those standards are more stringent than federal standards.[32] Further conditions may be included if deemed necessary to protect federal interests, manage the surrounding lands, and protect the interests of subsistence users. In addition, location of a route that will cause the least damage to the environment, taking into consideration the feasibility of that route, may be required.[33] The Secretary may include a liability clause in the terms of the right-of-way[34] and may require the posting of security for obligations imposed upon the holder of the right-of-way.[35] The BLM Act permits the use or disposition of minerals or vegetative materials, including timber, located on or around rights-of-way, only if authorization has been obtained pursuant to other applicable laws.[36]

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29. *Id.* § 1764(j).
30. *Id.* § 1764(a).
31. *Id.* § 1764(b).
32. *Id.* § 1765(a).
33. *Id.* § 1765(b).
34. *Id.* § 1764(h).
35. *Id.* § 1764(i)
36. *Id.* § 1764(l)

The BLM Act deals separately with the granting of rights-of-way to federal agencies or departments. The Secretary may grant such rights-of-way, subject to "such terms and conditions as he may impose . . . ."[37] The section 302 use, occupancy and development provisions do not apply to federal agencies or departments.

4. Right-of-Way Corridors

The BLM Act encourages the consolidation of rights-of-way into transportation and/or utility corridors. "In order to minimize adverse environmental impacts and the proliferation of separate rights-of-way, the utilization of rights-of-way in common shall be required to the extent practical . . . ."[38] The Act requires the Secretary to reserve, in any right-of-way or permit, the right to grant additional rights-of-way or permits for compatible uses on or adjacent to the original right-of-way or permit. The Secretary is granted the authority to designate right-of-way corridors and to require that all rights-of-way in an area be confined to the corridor.

5. Payment for Use

Generally, the holder of a right-of-way granted under the BLM Act is required to pay annually the fair market value of the right-of-way, as determined by the Secretary. A right-of-way applicant may also be required to reimburse the United States for all reasonable costs incurred in the processing of the application. The rent may be waived where the United States has been granted reciprocal rights-of-way over the applicant's land pursuant to a cost share agreement and may be waived or reduced for federal, state, or local governments and non-profit organizations.[39]

6. Suspension or Termination

Abandonment or noncompliance with the Act, applicable regulations, or conditions of the right-of-way, may be grounds for suspension or termination of the right-of-way. Such suspension or termination may take place after due notice to the holder of a right-of-way, or an appropriate proceeding under the Administrative Procedure Act[40] for a holder of an easement.[41] No

37. *Id.* § 1767.
38. *Id.* § 1763.
39. *Id.* § 1764(g).
40. 5 U.S.C. § 551 (1970).
41. Neither the BLM Act nor its legislative history shed any light on how an easement varies from a right-of-way. The language in 43 U.S.C.A. § 1764(g) and the distinction that there is no difference between a right-of-way and a permit (such that a pipeline grant is a right-of-way) but a difference between a right-of-way and an easement. *But see* the BLM interim guidelines for issuance of rights-of-way, which require a right-of-way grant to contain language stating that it is an easement issued pursuant to the BLM Act. BLM Organic Act Directive No. 76-13 (December 14, 1976). Former subdivision (c) of § 302(b) of the BLM Act, 43 U.S.C.A. § 1732(b) (West Supp. 1977), which states: "[T]he Secretary [of the Interior] shall insert in any instrument providing for the use, occupancy, or development of the public lands a provision providing for termination or suspension, after notice and hearing, of such instrument upon a final

administrative proceeding is required if the right-of-way terminates by its own terms; and there may be an immediate temporary suspension, without hearing, in order to protect public health, safety, or the environment.[42] The Act does not terminate pre-existing rights-of-way but, with the consent of the holder, the Secretary may reissue the rights-of-way pursuant to the BLM Act.[43]

B. Specific Purposes for Rights-of-Way

1. *Transportation*

The basic statutory authority for the grant of rights-of-way across public lands for transportation is the BLM Act. Rights-of-way may be issued under the Act for such things as roads, railroads, canals, tunnels, tramways and airways.[44] The BLM Act also authorizes the construction of roads within and near public lands which will permit maximum economy in harvesting timber while at the same time meeting the requirements for managing other resources. Financing may be accomplished by use of any combination of appropriated funds, timber purchase contract requirements, or cooperative financing with public or private agencies.[45]

Where a right-of-way is sought under the BLM Act for the realignment of a railroad already on public lands, the Secretary has the option of granting the new right-of-way under the same terms and conditions as the portion of the old right-of-way relinquished to the United States. The Secretary may do so if the lands involved are not within a community and are of approximately equal value, and if he finds the action to be in the public interest.[46]

Rights-of-way across public lands for the purpose of constructing federally funded highways[47] may be obtained by the states.[48] The routes for federal-aid highways are designated by state or local officials[49] subject to approval by the Secretary of Transportation.[50] The Secretary of Transportation is required to cooperate with the Secretaries of the Interior, Housing and Urban Development, and Agriculture and with the states "in developing transportation plans and programs that include measures to maintain or enhance the natural beauty of the lands traversed."[51] Once the Secretary of

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administrative finding of a violation of any term or condition of the instrument . . . ." (emphasis added).

42. 43 U.S.C.A. § 1766 (West Supp. 1977).
43. *Id.* § 1769(a).
44. *See* note 19 *supra*.
45. 43 U.S.C.A. § 1764(g) (West Supp. 1977).
46. *Id.* § 1769(b).
47. This term includes federal-aid highways, 23 U.S.C. §§ 101(a), 103, (1970), and other federally funded highways, 23 U.S.C. Ch. 2 (1970), including forest and public land highways, development roads and trails, parkways and defense access roads, as defined at 23 U.S.C. § 101(a) (1970).
48. 23 U.S.C.A. § 103 (West Supp. 1977); 23 U.S.C. § 317 (1970).
49. *Id.* § 103(b)(1), (c)(1), (d)(1), (e)(1).
50. 23 U.S.C. § 103(l) (1970).
51. *Id.* § 138 (also codified at 49 U.S.C. § 1653(l) (1970)).

Transportation determines that land owned by the United States is reasonably necessary for the highway right-of-way, he must file the required information and a request for the right-of-way with the Secretary of the department which administers the lands in question.[52]

2. Electric Energy, Communication, and Water Facilities

The BLM Act authorizes rights-of-way for "systems for generation, transmission, and distribution of electric energy,"[53] but requires that the applicant also comply with the Federal Power Act of 1935 (FPA).[54] The portion of the FPA which deals with rights-of-way on federally owned lands is intended to provide "a complete scheme of national regulation which would promote the comprehensive development of water resources of the Nation . . . ."[55] The FPA authorizes the Federal Power Commission (FPC) to grant licenses which, among other things, permit the use and occupancy of public lands. These licenses may be issued

> for the purpose of constructing, operating, and maintaining dams, water conduits, reservoirs, powerhouses, transmission lines, or other project works necessary or convenient . . . for the development, transmission, and utilization of power across, along, from, or in any of the streams or other bodies of water over which Congress has jurisdiction . . . or upon any of the public lands and reservations . . . or for the purpose of utilizing the surplus water or water power from any government dam . . . .[56]

No licenses may issue until the FPC determines that the project will be in conformance with a comprehensive plan for improving or developing waterways and improving or utilizing water-power development, and for other beneficial public uses including recreation.[57]

The FPC has no jurisdiction to license power lines crossing federal lands which are not a part of a hydroelectric project.[58] Furthermore, the FPC interprets its authority over powerlines which are a part of a hydroelectric

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52. If within a period of four months after such filing, the Secretary of such Department shall not have certified to the Secretary [of Transportation] that the proposed appropriation of such land . . . is contrary to the public interest or inconsistent with the purposes for which such land . . . [has] been reserved, or shall have agreed to the appropriation and transfer under conditions which he deems necessary for the adequate protection and utilization of the reserve, then such land . . . may be appropriated and transferred to the State highway department . . .

23 U.S.C. § 317(b) (1970).

53. 43 U.S.C.A. § 1761(a)(4) (West Supp. 1977).

54. 16 U.S.C. §§ 791-825r (1970).

55. Pacific Power and Light Co. v. Federal Power Comm'n, 184 F.2d 272, 274 (D.C. Cir. 1950). *See* 1 DANIEL, MANN, JOHNSON, AND MENDENHALL, FEDERAL PUBLIC LAND LAWS AND POLICIES RELATING TO USE AND OCCUPANCY VII-54-73 (1970) (document prepared for PLLRC) [hereinafter referred to as DANIEL], for a complete discussion of the uses of public lands and reservations authorized by the Federal Power Act.

56. 16 U.S.C. § 797(e) (1970). The license issues for the "project works," as defined at 16 U.S.C. § 796(12) (1970), and not for the entire project. Lake Ontario Land Dev. and Beach Protection Ass'n v. Federal Power Comm'n, 212 F.2d 227, 232 (D.C. Cir. 1954), *cert. denied*, 347 U.S. 1015 (1954).

57. 16 U.S.C. § 803(a) (1970).

58. *Id.* § 797(e).

project as applying only to "primary lines transmitting power from the power house or appurtenant works of a project to the point of junction with the distribution system or with the interconnected primary transmission system . . . ."[59]

Regulations promulgated under prior law imposed special conditions on rights-of-way over lands administered by the Departments of Agriculture and the Interior for electrical transmission lines of thirty-three kilovolt (kV) capacity or greater.[60] Briefly, these conditions allow the Secretary to require an applicant for a right-of-way to make "surplus capacity"[61] of his "transmission or other facilities"[62] available to the federal government or to allow the federal government to add to the transmission facilities in order to create surplus capacity. This enables the federal government to transmit power over existing private power lines, a practice known as "wheeling", without being required to build its own lines.[63] The BLM Act makes no mention of wheeling but the legislative history indicates that there was no intent to abolish the practice.[64] The BLM has proposed a rule change, pursuant to the BLM Act's general grant of authority to issue rights-of-way, to make the wheeling regulations applicable to power lines of sixty-six kV capacity or greater.[65]

Rights-of-way for communications facilities are authorized by the BLM Act.[66] Similarly, the Act authorizes rights-of-way for facilities for the distribution and impoundment of water.[67] Presumably, any water facilities constructed for the purpose of hydroelectric generation of electric energy would be considered under section 501(a)(4) and be subject to the FPA.

3. *Pipeline Systems*

There are essentially two statutes which govern pipelines and associated facilities for materials other than water, on public and forest lands. The first statute is the BLM Act, which provides authority for the granting of rights-of-way for the transportation and storage of solid materials,[68] as well

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59. 18 C.F.R. § 2.2 (1976).

60. 43 C.F.R. § 2851.1-1(a)(3) and (5) (1976); *see also* 1 DANIEL, *supra* note 55, at VII-32-45.

61. That is, capacity of the transmission system in excess of the requirements of the holder of the right-of-way. 43 C.F.R. § 2851.1-1(a)(5)(ii) (1976).

62. [T]he term "transmission facility" includes (a) all types of facilities for the transmission of electric power and energy and facilities for the interconnection of such facilities, and (b) the entire transmission line and associated facilities, from substation or interconnection point to substation or interconnection point, of which the segment crossing the lands of the United States forms a part.

43 C.F.R. § 2851.1-1(a)(5)(ii)(k) (1976).

63. 43 C.F.R. § 2851.1-1(a)(5)(ii) (1976). These regulations have been upheld by the courts. Utah Power and Light Co. v. Morton, 504 F.2d 728 (10th Cir. 1974).

64. H.R. Rep. No. 1163, 94th Cong., 2d Sess. 19, *reprinted in* [1976] U.S. Code Cong. & Ad. News 6175, 6193.

65. 43 U.S.C.A. § 1761(a) (West Supp. 1977); 42 Fed. Reg. 20,315 (1977).

66. *Id.* § 1761(a)(5).

67. *Id.* § 1761(a)(1), see note 19 *supra*.

68. *Id.* § 1761(a)(3), see note 19 *supra*.

as gases and liquids not covered by the Mineral Leasing Act.[69]

Section 28 of the Mineral Leasing Act (MLA) governs rights-of-way for pipelines for the transportation of natural gas and petroleum.[70] A right-of-way for a purpose associated with an oil or gas pipeline, such as communication facilities, may possibly be obtainable under either Act. Section 28 of the MLA generally applies to "Federal lands,"[71] a term which excludes lands in the national park system, but includes other types of reserved lands. Any agency head[72] has the authority to grant a right-of-way if the surface which is the subject of the right-of-way application falls entirely under that agency's jurisdiction.[73] Otherwise, the Secretary of the Interior is empowered to make the decision. In the event the lands covered by the right-of-way in question are controlled by more than one department of the federal government, the Secretary of the Interior must consult with the appropriate Secretaries before making a decision.[74] In contrast, the BLM Act requires a separate right-of-way grant from the Secretaries of Agriculture and the Interior, where the right-of-way crosses lands administered by both Departments.[75] In all cases, if a Secretary or agency head determines that a right-of-way through a federal reservation under his jurisdiction is inconsistent with the purposes of the reservation, a right-of-way will not be granted.[76]

a. Application. The requirements for making application for a right-of-way under the MLA are similar to those under the BLM Act. The MLA requires the applicant for a right-of-way to submit information regarding the use of the right-of-way. The MLA, in contrast to the BLM Act, lists specific types of information which may be required.[77] The MLA does not specifically require information regarding the effect of the use of the right-of-way on competition, but operators of pipelines are subject to various regulatory schemes.[78] The MLA, unlike the BLM Act, provides an opportunity for the public and governmental agencies to participate in right-of-way application determinations, including where appropriate, public hearings.[79] The Secre-

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69. *Id.* § 1761(a)(2); *see* note 19 *supra*.

70. The Mineral Leasing Act covers rights-of-way for pipelines for the purpose of transporting "oil, natural gas, synthetic liquid or gaseous fuels, or any refined product produced therefrom . . ." 30 U.S.C. § 185(a) (Supp. IV 1974).

71. "'Federal Lands' means all lands owned by the United States except lands in the National Park System, lands held in trust for an Indian or Indian tribe, and lands on the Outer Continental Shelf." 30 U.S.C. § 185(b)(1) (Supp. IV 1974).

72. "'Agency head' means the head of any Federal department or independent Federal office or agency, other than the Secretary of the Interior, which has jurisdiction over Federal lands." This would include, therefore, the Secretary of Agriculture. 30 U.S.C. 185(b)(3) (Supp. IV 1974).

73. 30 U.S.C. § 185(c)(1) (Supp. IV 1974).

74. *Id.* § 185(c)(2).

75. 43 U.S.C.A. § 1761(a) (West Supp. 1977); *cf.* 43 U.S.C.A. § 1771 (West Supp. 1977).

76. 30 U.S.C. § 185(b)(1) (Supp. IV 1974).

77. *Id.* § 185(r)(6).

78. *Id.* § 185(r)(1)-(5).

79. *Id.* § 185(k).

tary, or agency head under the MLA, may require the submittal of a plan of construction, operation, and rehabilitation if the project will cause a significant impact on the environment.[80] The MLA requires the Secretary of the Interior or agency head to notify the House and Senate Interior and Insular Affairs Committees upon receipt of a right-of-way application for an oil or gas pipeline twenty-four inches in diameter or greater. In this situation, the right-of-way in question may not be granted for a period of sixty days after such notice unless the Committees waive the time requirement.[81] Both statutes provide that the right-of-way may be approved only if the applicant has the requisite technical and financial capabilities.[82]

b. Limits on Size and Duration. The Secretary has less discretion under the MLA than under the BLM Act to set the maximum size and duration of rights-of-way. The width is limited to fifty feet plus the ground occupied by the facilities, unless the Secretary of the Interior or an agency head makes a written determination that additional lands are necessary for the operation of the project and protection of the environment.[83] Both statutes authorize the temporary use of additional lands[84] and require the consideration of the same factors in determining the duration of the right-of-way,[85] but the MLA permits an absolute maximum term of thirty years.[86]

c. Controls on Use and Occupancy. The use and occupancy of rights-of-way may be controlled in much the same way under the Mineral Leasing and the BLM Acts. Each allows the Secretary to include a liability clause in the right-of-way[87] and require the posting of security.[88] Both Acts specify certain terms which must be imposed on rights-of-way, but the BLM Act also lists certain terms which may be imposed at the Secretary's discretion.[89] One major difference between the Acts is in the emphasis the BLM Act places on the compliance with state standards which are more stringent than the federal standards.[90] The MLA merely requires the Secretary or agency head to comply with state standards for right-of-way construction, operation and maintenance to the extent practical.[91]

d. Right-of-way Corridors. The provisions dealing with the joint use of rights-of-way are nearly identical in the two Acts. The BLM Act has an

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80. *Id.* § 185(n)(2). There is a similar requirement under the BLM Act, *see* text accompanying note 28 *supra*.
81. 30 U.S.C. § 185(w)(2) (Supp. IV 1974).
82. *Id.* § 185(j); *see* text accompanying note 29 *supra*.
83. *Id.* § 185(d).
84. *Id.* § 185(e); *see* text accompanying note 30 *supra*.
85. *Id.* § 185(n); *see* text accompanying note 31 *supra*.
86. *Id.* § 185(n).
87. *Id.* § 185(x); *see* note 34 *supra*.
88. *Id.* § 185(m); *see* note 35 *supra*.
89. *Id.* § 185(n)(2); *see* text accompanying note 34 *supra*.
90. 43 U.S.C.A. § 1765(a)(IV) (West Supp. 1977).
91. 30 U.S.C. § 185(v) (Supp. IV 1974).

additional provision which sets forth the criteria to be used in designating transportation and utility corridors.[92]

e. Payment for Use. The MLA is consistent with the BLM Act in requiring payment of fair market rental value for the right-of-way plus the costs of processing the application and inspecting the facility.[93] However, there are no exceptions to this requirement in the MLA.

f. Suspension or Termination. The grounds as well as the administrative procedures for suspension or termination of a right-of-way are essentially the same under the MLA and the BLM Acts.[94] Where an administrative proceeding is appropriate, the BLM Act requires a hearing pursuant to the Administrative Procedure Act for easements only, but the MLA requires such a hearing for all rights-of-way.[95]

III. National Forest System

The sections of the BLM Act dealing with policies and planning do not apply to the national forest system lands. Instead, the policy guidelines and planning requirements for the Forest Service are set forth in a number of other statutes. Congress has authorized the Secretary of Agriculture to administer national forests.[96] The purposes of the national forests are "to improve and protect the forest," to secure "favorable conditions of waterflows . . . , to furnish a continuous supply of timber,"[97] and to provide for outdoor recreation, range, and wildlife and fish. Mining is also a generally accepted use.[98] Renewable resources of lands in the national forest system[99] are to be managed on a multiple use sustained yield basis.[100] To this end, the Forest and Rangeland Renewable Resource Act of 1974 requires an assessment of the renewable resources and the preparation of a renewable resource program.[101]

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92. *Id.* § 185(p); 43 U.S.C.A. § 1763 (West Supp. 1977)
93. 30 U.S.C. § 185(l) (Supp. IV 1974); *see* text accompanying note 39 *supra*.
94. 30 U.S.C. § 185(o) (Supp. IV 1974), *see* text accompanying notes 40-42 *supra*.
95. 30 U.S.C. § 185(o)(1)(C) (Supp. IV 1974); 43 U.S.C.A. § 1766 (West Supp. 1977).
96. 16 U.S.C. § 471 (1970).
97. *Id.* § 475.
98. *Id.* § 528.
99. The national forest system is defined as:

> all national forest lands reserved or withdrawn from the public domain of the United States, all national forest lands acquired through purchase, exchange, donation, or other means, the national grasslands and land utilization projects administered under title III of the Bankhead-Jones Farm Tenant Act [7 U.S.C. §§ 1010 et seq. (1970)], and other lands, waters, or interests therein which are administered by the Forest Service or are designated for administration through the Forest Service as a part of the system.

16 U.S.C. § 1609 (Supp. IV 1974).

100. The BLM Act requires public lands to be administered on a similar basis but the definitions of multiple use and sustained yield are not identical between the two statutes. 16 U.S.C. § 531 (1970); 43 U.S.C.A. § 1702(c),(h); Carver, *supra* at note 13.
101. 16 U.S.C. §§ 1601, 1610 (Supp. IV 1974).

Congress has specifically addressed policies relating to transportation in and around the national forest system and declared that the "installation of a proper system of transportation to service the National Forest System . . . shall be carried forward in time to meet anticipated needs on an economical and environmentally sound basis . . . ."[102]

Under the BLM Act, the Secretary of Agriculture has nearly identical authority to grant rights-of-way, with respect to national forest lands as does the Secretary of the Interior, with respect to the public lands.[103] One difference is that rights-of-way for transportation facilities are not authorized "where such facilities are constructed and maintained in connection with commercial recreation facilities on lands in the national forest system."[104] Another difference is that the Secretary of Agriculture is excluded from the BLM Act section authorizing roads for timber production.[105] This is so because he already has similar authority under section 4 of the Act of October 13, 1964,[106] which applies to national forest system lands.

The same provisions of the MLA which apply to public lands apply to national forest system lands.[107] However, the Secretary of Agriculture can disallow the issuance of an oil and gas pipeline if he determines that the right-of-way would be inconsistent with the purposes of the reservation.[108]

At least two statutes relating to rights-of-way on national forest lands were not repealed by the BLM Act. One of these, the 1964 Act, authorizes the Secretary of Agriculture to grant permanent or temporary easements for roads in the national forest system.[109] The other is the Forest Service Organic Act, a section of which permits settlers within the boundaries of national forests to construct wagon roads in order to reach their homes and utilize their property.[110]

IV. Other Reserved Lands

A. *Statutes of General Applicability*

There are several statutes which either establish the authority to grant rights-of-way or determine the conditions of such rights-of-way on reserved public lands. For organizational purposes, these statutes have been divided into two categories. The first category of statutes which also apply to national forest system lands and public lands will only be discussed insofar as they apply to each type of reserved land. These statutes include: the

102. *Id.* § 1608.
103. 43 U.S.C.A. § 1761(a) (West Supp. 1977).
104. *Id.* § 1761(a)(6).
105. *Id.* § 1762(a).
106. 16 U.S.C. § 535 (1970) [hereinafter the 1964 Act].
107. 30 U.S.C. § 185(a), (b)(1) (Supp. IV 1974).
108. *Id.* § 185(b)(3).
109. 16 U.S.C. § 533 (1970).
110. *Id.* § 478.

FPA,[111] the MLA,[112] and the acts applying to federally-funded highways.[113] The second category of statutes have been repealed insofar as they apply to national forest system lands and public lands, but remain applicable to some types of reserved lands. These statutes include a group of ditches and canals acts,[114] the 1901 Act,[115] and the 1911 Act.[116]

The canals and ditches acts grant to canal ditch companies or irrigation or drainage districts, rights-of-way for canals, laterals, and reservoirs,[117] and permit such rights-of-way to be used for water transportation, domestic purposes and development of power.[118] The statutes prescribe the maximum size of the right-of-way, but additional land may be used when the Secretary of the Interior deems it necessary for the operation and maintenance of the reservoirs, canals and laterals.[119] The Secretary may also grant permits for dwellings, buildings or corrals for the convenience of those engaged in the care and management of the water works.[120] Rights-of-way on reservations are to be located so that they do not "interfere with the proper occupation by the Government . . . ."[121]

The 1901 Act presently authorizes the Secretary of the Interior to grant rights-of-way through federal reservations and certain national parks[122] for structures used in the generation and distribution of electrical power and for telephone and telegraph purposes. The statute also authorizes structures for the transportation and storage of water.[123] The interest granted is denoted as a "right of way", but because the Secretary of the Interior can revoke the right-of-way at his discretion, the courts have construed the interest as a permit or license.[124] The maximum size is specified by the Act and no such right-of-way may be granted through a reservation without the approval of the chief officer of the supervising department. Such approval is contingent upon a finding by him that the proposed right-of-way is not incompatible with the public interest.[125]

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111. *See* text accompanying notes 53-59 *supra*.
112. *See* text accompanying notes 70-95 *supra*.
113. *See* text accompanying notes 47-52 *supra*.
114. 43 U.S.C. §§ 945-954 (1970).
115. Act of Feb. 15, 1901, 43 U.S.C. § 959 (1970) (also codified at 16 U.S.C. §§ 79, 522 (1970)).
116. Act of March 11, 1911, 43 U.S.C. § 951 (1970) (also codified at 16 U.S.C. §§ 5, 420, 523 (1970)).
117. 43 U.S.C. § 946 (1970).
118. *Id.* § 951.
119. *Id.* § 946.
120. *Id.* § 950.
121. *Id.* § 946.
122. Yosemite and Sequoia National Parks, and the General Grant Grove section of Kings Canyon National Park, 43 U.S.C. § 959 (1970).
123. 43 U.S.C. § 959 (1970).
124. United States v. Colorado Power Co., 240 F. 217, 220 (D. Colo. 1916), United States v. Lee, 15 N.M. 382, 110 P. 607, 610-611 (1910).
125. 43 U.S.C. § 959 (1970).

The 1911 Act empowers the head of the department with jurisdiction over the lands involved to grant "an easement for rights-of-way" across federal reservations if he finds that such use is not incompatible with the public interest. Such an easement may be granted for placement of poles and lines for electric power transmission, and for structures and facilities for communication purposes. The maximum term of the easement is fifty years and the interest is subject to forfeiture for abandonment or failure to use for two years. The maximum size of the right-of-way is also specified by the statute.[126]

A comparison of the ditches and canals acts, and the 1901 and 1911 Acts with the BLM Act is not particularly useful. The early statutes are much less detailed than the BLM Act. As a result, extensive regulations have been promulgated in order to create a total system of administration and management of rights-of-way. However, when promulgated these regulations applied to public lands and national forest system lands as well as reserved lands. It remains to be seen whether the regulations promulgated under the BLM Act will be applicable to reserved lands. The other complicating factor is that the reserved lands frequently have specific rights-of-way authorities outside of the early statutes. Thus, the practical applicability of the early statutes is somewhat in doubt.

B. Management Systems

1. *National Wildlife Refuge System*

The Secretary of the Interior has authority to administer the national wildlife refuge system (NWRS) through the Fish and Wildlife Service (F&WS). The NWRS includes "all lands, water, and interests therein administered by the Secretary [of the Interior] as wildlife refuges, areas for the protection and conservation of fish and wildlife that are threatened with extinction, wildlife ranges, game ranges, wildlife management areas, or waterfowl production areas . . . ."[127]

In contrast to the public lands, there is no unified statute which sets forth management policies and the purposes for the NWRS. Regulations for administering the NWRS[128] cite as management authority the National Wildlife Refuge System Administration Act[129] and seven other statutes which deal with administrative procedures, individual units of the NWRS, and game and fish management.[130]

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126. *Id.* § 961.

127. 16 U.S.C.A. § 668dd(a)(1) (West Supp. 1977).

128. 50 C.F.R. § 29.1-29.22 (1976).

129. 16 U.S.C.A. §§ 668dd, 715s (West 1974 & Supp. 1977) [hereinafter cited as Refuge Administration Act].

130. The statutes cited include: 5 U.S.C. § 301 (1970) which provides general authority to promulgate regulations; 16 U.S.C. §§ 655, 725, 690d (1970) which are portions of acts establishing specific NWRS areas; 16 U.S.C. § 715(i) (1970) from the Migratory Bird Conservation Act; 16 U.S.C. § 664 (1970) from the Fish & Wildlife Coordination Act; 43 U.S.C. § 315a

Easements may be granted under the Refuge Administration Act for essentially the same purposes as rights-of-way under the BLM Act. These purposes include, but are not limited to, powerlines, telephone lines, pipelines, canals, ditches, and roads.[131] The Refuge Management Act is similar to the BLM Act, in that the right-of-way provisions require payment of fair market value for use of the rights-of-way and limit the size of rights-of-way to the land necessary for the construction, operation, and maintenance of the permitted activities.[132] The BLM Act provisions are much more extensive than the Refuge Administration Act, especially in the area of protection of the environment and public safety. However, the Refuge Administration Act requires a determination by the Secretary of the Interior that the permitted activity is "compatible with the purposes for which these areas are established."[133]

There are several statutes of broad applicability which may apply to the NWRS. The ditches and canals acts,[134] and the 1901[135] and 1911[136] Acts have not been repealed insofar as they apply to the NWRS, but the F&WS regulations no longer cite them as authority for granting rights-of-way.[137] In any case, project works subject to FPC jurisdiction must be licensed by the FPC.[138] This license may be granted only if the FPC finds that the licensing will not interfere with the purposes of the refuge, and any such license is subject to the conditions the Secretary of the Interior deems necessary to protect the reservation.[139] Rights-of-way for federally-funded highways may be acquired across NWRS lands,[140] but special protection is granted NWRS lands and other publicly owned lands of special significance. For example, the Secretary of Transportation

> shall not approve any program or project which requires the use of any publicly owned land from a public park, recreation area, or wildlife or refuge of national, state, or local significance . . . or any land from a historic site . . . unless (1) there is no feasible and prudent alternative to the use of such land, and (2) such program includes all possible planning to minimize harm to such park, recreational area, wildlife and waterfowl refuge, or historic site resulting from such use.[141]

(1970) from the Taylor Grazing Act and 16 U.S.C. § 460 (1970) from the Act of Sept. 28, 1962, as amended by the Act of Oct. 15, 1966 which provides for recreational use of NWRS lands, fish hatcheries and other conservation areas administered for fish and wildlife purposes. Measures have been introduced in recent sessions of Congress to establish a governing agency and organic act for the NWRS. *E.g.*, S. 984, 95th Cong., 1st Sess., 123 CONG. REC. S4020 (daily ed. March 11, 1977); H.R. 2062, 95th Cong., 1st Sess., 123 CONG. REC. H477 (daily ed. Jan. 19, 1977).

131. 16 U.S.C.A. § 668dd(a)(1)(B) (West Supp. 1977).
132. *Id.* § 668dd(d)(2).
133. *Id.* § 668dd(d)(1)(B).
134. 43 U.S.C. §§ 946-954 (1970); *see* text accompanying notes 117-21 *supra*.
135. 43 U.S.C. § 959 (1970); *see* text accompanying notes 122-25 *supra*.
136. 43 U.S.C. § 961 (1970); *see* text accompanying note 126 *supra*.
137. 50 C.F.R. § 29.21-.22 (1976).
138. *See* text accompanying notes 53-59 *supra*.
139. 16 U.S.C. § 797(e) (1970).
140. *See* text accompanying notes 47-52 *supra*.
141. 23 U.S.C. § 138 (1970) (also codified at 49 U.S.C. § 1653(f) (1970)).

There are also special provisions which apply to oil and gas pipeline rights-of-way in the NWRS. Under section 28 of the MLA, rights-of-way may be issued across a refuge[142] unless the Secretary or agency head determines that such a right-of-way is inconsistent with the purposes of the refuge.[143]

2. National Park System

The national park system is administered by the Secretary of the Interior through the National Park Service (NPS).[144] The NPS is charged with promoting and regulating the use of national park system[145] lands "by such means and measures as conform to the fundamental purpose of the said [lands] . . . , which purpose is to conserve the scenery and the natural and historic objects and the wild life therein and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations . . . ."[146] A statute which applies specifically to a particular area within the park system will control, in the event of a conflict, over a statute generally relating to the administration of the park system.[147]

There is no comprehensive right-of-way authority for the national park system. Instead, a patchwork system of outdated laws supplies the right-of-way authority. The ditches and canals acts[148] and the 1911 Act[149] are applicable to lands in the national park system. The 1901 Act specifically applies to Yosemite and Sequoia National Parks and other reservations.[150] Other reservations, in this context, probably would include national recreation areas and national monuments but not other national parks. The FPC has no authority to license project works within national parks or monuments. Instead, Congress must license projects located within parks or monuments.[151] The FPC can license projects on reservations, other than parks and monuments, if it finds that the licensing will not interfere or be inconsistent with the purposes of the reservation.[152]

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142. In its final version, the amendment to section 28 of the MLA excluded only national park system lands, lands held in trust for Indians or Indian tribes and outer continental shelf lands from the authority to grant rights-of-way. The Senate version of the bill also excluded wilderness areas and wildlife refuges. H.R. Rep. No. 624, 93d Cong. 1st Sess. 21-22, *reprinted in* [1973] U.S. Code Cong. & Ad. News 2523.

143. 30 U.S.C. § 185 (b)(1) (Supp. IV 1974).

144. 16 U.S.C. § 1 (1970).

145. The national park system includes national parks, monuments, memorials, parkways, and other lands administered through the NPS. 16 U.S.C. § 1c(a) (1970).

146. 16 U.S.C. § 1 (1970). This section is made applicable to national park system lands by 16 U.S.C. § 1c(b) (1970).

147. 16 U.S.C. § 1c(b) (1970).

148. 43 U.S.C. §§ 946-954 (1970); *see* text accompanying notes 117-21 *supra*.

149. 43 U.S.C. § 961; 16 U.S.C. § 5 (1970); *see* text accompanying note 125 *supra*.

150. 43 U.S.C. § 959 (1970); 16 U.S.C. § 79 (1970); *see* text accompanying notes 122-25 *supra*.

151. 16 U.S.C. § 797a (1970).

152. *Id.* § 797(e) (1970); *see* text accompanying notes 53-59, 138-39 *supra*.

Rights-of-way for surface vehicle transportation can be obtained in a number of ways. Rights-of-way for federally funded highways may be obtained for crossing national park system lands,[153] subject to a finding of a lack of feasible or prudent alternatives.[154] Recently, authorization was given for federal-local cooperative studies to determine "the most feasible Federal-aid routes for the movement of vehicular traffic through or around national parks so as to best serve the needs of the traveling public while preserving the natural beauty of these areas."[155] The Secretary of the Interior has special authority to construct and improve roads and trails in the national park system.[156] Rights-of-way for oil and gas pipelines cannot be obtained through national park system lands. Section 28 of the MLA specifically excludes those lands.[157]

3. Military Reservations

The secretary of a military department has broad authority to grant easements for rights-of-way over lands reserved for use by his department or otherwise under his control. However, there is nothing like the BLM Act's comprehensive guidelines for administering rights-of-way. The secretary makes such grants under his own conditions, but he may only grant the easement if he finds that it will not be against public interest.[158] The rights-of-way may be used for such purposes as railroads, oil pipelines, ditches and canals, and roads.[159] He may also grant rights-of-way for gas, water and sewer pipelines if he makes an additional finding that the right-of-way will not substantially injure the interest of the United States in the property affected.[160]

Military reservations are subject to some of the statutes of broad applicability. In particular, the 1911 Act[161] has specifically been recognized as applying to military reservations.[162] The ditches and canals acts[163] and the 1901 Act[164] apply to such lands, but the specific statute governing military reservations would take precedence in the event of a conflict. The FPC licensing authority applies to military reservations with the special condition that the FPC find that such a license is not inconsistent with the purposes of the reservation.[165] The MLA pipeline provisions allow the grant-

153. *See* text accompanying notes 47-52, 141 *supra*.
154. *See* text accompanying note 141 *supra*.
155. 23 U.S.C.A. § 138 (West Supp. 1977).
156. 16 U.S.C. § 8 (1970).
157. *See* text accompanying note 71 *supra*.
158. 10 U.S.C. § 2668(a) (1970).
159. *Id.*
160. 10 U.S.C. § 2669 (1970).
161. 43 U.S.C. § 961 (1970); 16 U.S.C. § 420 (1970); *see* text accompanying note 126 *supra*.
162. 10 U.S.C. § 2668(a)(10) (1970).
163. 43 U.S.C. §§ 946-54 (1970); *see* text accompanying notes 117-21 *supra*.
164. 43 U.S.C. § 959 (1970); *see* text accompanying notes 122-25 *supra*.
165. 16 U.S.C. § 797(e) (1970); *see* text accompanying notes 53-59, 138-39 *supra*.

ing of rights-of-way for oil and gas pipelines across military reservations.[166] There is a possible conflict between the MLA and the statute which applies specifically to military reservations.[167]

4. National Wilderness Preservation System

The national wilderness preservation system(NWPS) was established in 1964 by the Wilderness Act.[168] The basic policy of the Act is to secure "for the American people of present and future generations the benefits of an enduring resource of wilderness."[169] Congress may designate wilderness areas in national forests, the national park system, the national wildlife refuge system,[170] and on the public lands.[171] The agency or department holding management authority prior to the designation of lands as wilderness retains jurisdiction over those lands.[172] The effect of the Act is to provide a special set of rules which require the managing agency or department to administer wilderness areas within their jurisdiction—"for the use and enjoyment of the American people in such manner as will leave them unimpaired for future use and enjoyment as wilderness . . . ."[173]

As a general rule, the Act prohibits manmade structures within wilderness areas. The Act states that "except as specifically provided for in this chapter, and subject to existing private rights, there shall be no commercial enterprise and no permanent road within any wilderness area . . . and except as necessary . . . for the purpose of this chapter . . . there shall be . . . no structure or installation within any such area."[174] Rights-of-way through specific wilderness areas may be authorized by the President, in accordance with any regulations he may desire. This authority extends to:

> reservoirs, water conservation works, power projects, transmission lines, and other facilities needed in the public interest, including the road

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166. 30 U.S.C. § 185(b)(1) (1970); *see* text accompanying notes 72-95, 143 *supra*.

167. 10 U.S.C. §§ 2668-2669 (1970) grant rights-of-way for oil and gas pipelines under much different standards than the MLA.

168. 16 U.S.C. §§ 1131-1136 (1970).

169. *Id.* § 1131(a).

170. *Id.* § 1133(a).

171. 16 U.S.C.A. § 1782(c) (West Supp. 1977).

172. 16 U.S.C. § 1131(b) (1970).

173. *Id.* § 1131(a). Congress has defined the term wilderness:

> A wilderness, in contrast with those areas where man and his own works dominate the landscape, is hereby recognized 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. An area of wilderness is further defined to mean in this chapter an area of undeveloped Federal land retaining its primeval character and influence, without permanent improvements or human habitation, which is protected and managed so as to preserve its natural conditions and which (1) generally appears to have been affected primarily by the forces of nature, with the imprint of man's work substantially unnoticeable; (2) has outstanding opportunities for solitude or a primitive and unconfined type of recreation, (3) has at least five thousand acres of land or is of sufficient size as to make practicable its preservation and use in an unimpaired condition; and (4) may also contain ecological, geological or other features of scientific, educational, scenic, or historical value.

Id. § 1131(c).

174. *Id.* § 1133(c).

> construction and maintenance essential to development and use thereof, upon his determination that such use or uses in the specific area will better serve the interests of the United States and the people thereof than will its denial.[175]

This authority applies only to wilderness areas located on public lands or in national forests and does not include national park system or national wildlife refuge system wilderness areas. Access rights, of an unspecified type, are to be granted to owners of land surrounded by national forest or public land wilderness areas.[176] Similarly, the Secretaries of Agriculture and the Interior are required to permit "by reasonable regulations consistent with the preservation of the area as wilderness," ingress and egress to valid mining claims or other valid occupancies surrounded by national forest and public land wilderness areas.[177] In summary, the Wilderness Act authorizes no rights-of-way through national park or wildlife refuge system wilderness areas but does allow certain uses of national forest and public land wilderness lands.

The MLA authorizes, with the exception of national park system wilderness areas, oil and gas pipelines through wilderness areas. A right-of-way through any wilderness area could be denied by the appropriate department Secretary or agency head on the basis of incompatibility with the purposes for which such wilderness areas are established.[178]

Under the BLM Act special rules apply to public lands which have been identified as having wilderness characteristics and are awaiting congressional action. The Secretary of the Interior is required to administer such lands in a manner "so as not to impair the suitability of such areas for preservation as wilderness."[179] This standard apparently precludes rights-of-way in such study areas except to the extent those rights-of-way would be allowed in a wilderness area.[180]

5. *National Wild and Scenic Rivers System*

The national wild and scenic river system was created by Congress to preserve those rivers in a "free-flowing condition, and that they and their immediate environments shall be protected for the benefit and enjoyment of present and future generations."[181] In general, the wild and scenic river system "shall be administered in such manner as to protect and enhance the values which caused it to be included in said system without, insofar as

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175. *Id.* § 1133(d)(4).
176. *Id.* § 1134(a).
177. *Id.* § 1134(b).
178. 30 U.S.C. § 185(b)(1) (Supp. IV 1974). *See* text accompanying notes 70-95, 143 *supra*.
179. 43 U.S.C.A. § 1782(c) (West Supp. 1977); *cf.* Parker v. United States, 448 F.2d 793 (10th Cir. 1971), *cert. denied* 405 U.S. 989 (1971), which involved addition of contiguous areas to a national forest primitive area.
180. *See* text accompanying notes 174-78 *supra*.
181. 16 U.S.C. § 1271 (1970).

is consistent therewith, limiting other uses that do not substantially interfere with public use and enjoyment of these values."[182]

The right-of-way provisions of the Wild and Scenic Rivers Act (WSRA) cannot be understood without information regarding the classification and designation. There are three possible classifications within the wild and scenic rivers system—wild, scenic and recreational. Wild river areas are free of impoundments, generally accessible only by trail, and essentially primitive and unpolluted. Scenic river areas are free of impoundments, largely primitive and undeveloped, but accessible in places by roads. Recreational river areas are readily accessible by road or railroad, may have some development, and may have undergone some impoundment in the past.[183] A river may be included in the wild and scenic rivers system either by Congressional designation, or by an act of a state legislature followed by approval by the Secretary of the Interior.[184]

Rivers within the system are subject to several jurisdictional authorities. Rivers designated by state action are administered by that state.[185] Congressionally designated rivers may be administered by either the Secretary of the Interior or Agriculture, through agencies within their departments. Any portion of the system which lies in the national wilderness preservation system "shall be subject to the provisions of both the Wilderness Act and this chapter with respect to preservation of such river and its immediate environment, and in case of conflict between the provisions of the Wilderness Act and this chapter the more restrictive provisions shall apply."[186]

The WSRA indicates the statutory authorities which dictate the management of rivers in the system.[187] Transportation functions are treated separately from management in general. The Act states that the Secretaries of the Interior and Agriculture "may grant easements and rights-of-way over . . . any component of the wild and scenic rivers system in accordance with the laws applicable . . ." to the national park and national forest systems respectively, but any conditions precedent to granting of rights-of-way must

182. *Id.* § 1281(a).
183. *Id.* § 1273(b).
184. 16 U.S.C.A. § 1273(a) (West Supp. 1977).
185. *Id.* § 1273(a)(ii).
186. 16 U.S.C. § 1281(b) (1970).
187. With respect to management generally, any component of the Wild and Scenic River System that falls within or is added to the national park system is subject to the statutory authority governing the parks. Similarly, wild and scenic rivers located within the national wildlife refuge system are subject to the statutory authority governing refuges. If there is conflict between the Wild and Scenic Rivers Act and the national park system acts or the act establishing the national wildlife refuge system, the more restrictive provisions shall apply. Under the Wild and Scenic Rivers Act, the Secretary of Agriculture "may utilize the general statutory authorities relating to the national forests in such manner as he deems appropriate to carry out the purposes of this chapter." 16 U.S.C. § 1281(d) (1970). Consequently, the Secretary of Agriculture is given more discretion to administer wild and scenic river areas that fall within his jurisdiction than is the Secretary of the Interior for parks and refuges.

be related to the policy and purpose of the Wild and Scenic Rivers Act.[188] This may seem to be of academic importance until one considers the effect on the MLA. Oil and gas pipeline rights-of-way are not authorized in national park system lands.[189] Therefore, any river designated under the WSRA, which is administered by the Interior, could not be crossed by oil and gas pipelines, even if the river is merely designated as "recreational".[190]

The WSRA has a significant impact on the water project licensing authority of the FPC.[191] The FPC is prohibited from licensing project works directly affecting any river designated as a component of the wild and scenic rivers system.[192] This prohibition also extends to rivers designated by Congress as potential additions to the system.[193]

V. Conclusion

A complete assessment of the legal authorities for obtaining rights-of-way across federally owned lands cannot be undertaken until regulations have been promulgated under the BLM Act. The amount of discretion left to the managing agency in promulgating regulations is much less than under other rights-of-way authorities, with the exception of the MLA, but actual operation of the BLM Act still depends in large measure upon agency interpretation and implementation. This article has set forth some of the areas where problems of interpretation and implementation of the BLM Act right-of-way provisions might arise, but the BLM Act does represent a significant effort by Congress to reform public land law by presenting a comprehensive system for the grant and management of rights-of-way on public lands and national forest system lands.

Reform is still needed for rights-of-way authorities governing federally owned lands not subject to the BLM Act. This article has detailed areas of confusion in and overlap between the various right-of-way statutes applicable to different types of reserved lands. One possible partial solution would be to apply the BLM Act right-of-way provisions to all types of federally owned lands, subject to additional provisions consistent with the special nature of each management system. The most critical provisions are those dealing with the threshold requirements for the grant of a right-of-way. For example, the secretary of the department charged with administering the lands in question, or in the case of wilderness areas, the President, can be required to make a written determination that the proposed right-of-way is not inconsistent with the purposes for the reservation or is in the public interest to grant the right-of-way. Such a determination can be made subject to public review and comment. A stricter test, similar to the test the Secretary

188. 16 U.S.C. § 1284(g) (1970).
189. 30 U.S.C. § 185(a)(b)(1) (Supp. IV 1974), *see* text accompanying note 71 *supra*.
190. *See* text accompanying note 183 *supra*.
191. *See* text accompanying notes 53-59, 138-39 *supra*.
192. 16 U.S.C.A. § 1278(a) (West Supp. 1977).
193. *Id.* § 1278(b).

of Transportation must apply to projects subject to his approval,[194] can be applied by requiring a finding that there is no feasible and prudent alternative to the proposed use of such land. Certain uses of rights-of-way which Congress finds particularly repugnant to the purposes of a particular management system can be prohibited entirely. Terms and conditions, in addition to those imposed by the BLM Act, can be imposed to minimize aesthetic and environmental impacts if a right-of-way application is granted.

The BLM Act is evidence that Congress has embarked on a strong program of public land law reform. It should be apparent from this article that more reform is in order, at least in regard to the laws governing rights-of-way.

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194. *See* text accompanying notes 140-41 *supra*.

Federal-State
Land Use Planning Commission
For Alaska

733 W. FOURTH AVENUE, SUITE 400
ANCHORAGE, ALASKA 99501

October 3, 1977

MEMORANDUM

TO: Commission

FROM: John W. Katz, Counsel

SUBJECT: Existing Law Concerning Access Across Federal Lands

Pursuant to requests made at the last Commission meeting, I am sending a copy of a chart prepared by the Solicitor's office of the Department of the Interior to outline existing law concerning the issuance of easements and rights-of-way across various categories of Federal land. For a more detailed treatment of the same subject, I refer you to the memorandum prepared by Lee Morrison, one of our former externs from the University of Denver College of Law.

If you have any questions concerning the statutory authority discussed in the accompanying chart, please let me know.

JWK:go

Enclosure (1)
1. Chart

Notes:

S.C. § 5	All areas of the park system. (See 16 U.S.C. 1c(b))	Rights-of-way for: 1. Electrical poles and lines; 2. Communication poles and lines; 3. Communication transmitting, relay and receiving facilities.	1. No more than 50 years; 2. 200' on each side of center line, or 3. 400' by 400' for facilities; 4. Finding of "not incompatible with the public interest"; 5. Citizen.	1. Forfeitable for nonuse for 2 yrs. or for abandonment. 2. Regulations at 43 C.F.R. Part 2800-not limited to these facilities-except it says pursuant to statute-see 43 C.F.R. 2801.1-7(b).
U.S.C. 79	1. Yosemite and Sequoia Nat'l Pks - legis. hist. indicates no other parks. 2. Presumably all the rest of the system except the parks, but 1c(b) may make this applicable to whole system.	Rights-of-way for: 1. Electrical plants, poles and lines; 2. Telephone and telegraph purposes; 3. Canals, ditches, pipes and pipelines, flumes tunnels or other water conduits; 4. Water plants, dams and reservoirs.	1. 50' sq. or 50' from center line; 2. Citizenship; 3. Not incompatible with the public interest.	1. Regs at 43 C.F.R., Part 2800;
.S.C. 8-8d	All park system. (See 1c(b))	Construction of: 1. Roads 2. Trails 3. Bridges 4. Approach roads.	None	This is not an authority to grant rights-of-way, but an authority for the Secretary to acquire rights-of-way for facilities for park purposes.
.S.C. 92 and 92a	Mt. Ranier	Use of park land under K, lease, permit to establish and operate a tramway or cableline.	None	§ 92a revokes authority to grant right-of-way for railway.

16 U.S.C. § 193 § 225 § 349 § 393	Rocky Mtn. Grand Canyon Mt. McKinley Hawaii	Makes § 79 applicable to these parks.	Same as § 79, generally, except must be consistent with primary purpose of the park.	1. If § 79 is applicable to all parks by virtue of § 1c(b), these provisions become irrelevant.
16 U.S.C. § 393	Hawaii National Park	Easements or rights-of-way for: 1. Steam, electric or similar transportation.	In Sec. discretion and subject to conditions he may deem wise.	
16 U.S.C. § 273d	Capitol Reef	Easements and rights-of-way, apparently for any purpose.	1. Shall grant: a. Nondiscriminatory basis; b. Unless - route would have significant adverse effects on administration of the park.	1. Only general authority to any unit.
16 U.S.C. 406d-2	Grand Teton	Rights-of-way for persons and property to and from State and private land in and adjacent to Park.	1. Sec. shall designate and open; 2. Location and use subject to regulation by Sec.	
16 U.S.C. § 410n	Everglades	Drainage through natural waterways or limited construction of drainage facilities.	1. Sec. shall allow-unless; 2. After public hearing he finds it seriously detrimental to preservation and propagation of the flora and fauna of the park.	
16 U.S.C. § 420 (same P.L. as § 5)	Military Parks	Identical to § 5.		

16 U.S.C. § 459d-3(b)	Padre Island National Seashore	Any related to the development, production, or transportation of oil and gas minerals.	On terms and under such regulations prescribed by the Secretary.	
16 U.S.C. § 460a	Natchez Trace Parkway	Revocable licenses or permits for rights-of-way for <u>any purpose</u>.	1. Nondiscriminatory terms and regulations; 2. Not inconsistent with use for parkway.	
16 U.S.C. § 460a-3 & § 460a-8	Blue Ridge Parkway and Extension	Same as above	Same as above	
16 U.S.C. § 460bb-(c) and (d)	Klondike Gold Rush National Historical Park	1. Rights-of-way, easements, permits and other benefits in White Trail Unit for pipeline and railroad. 2. Highway right-of-way to State of Alaska in the Chilkout Trail Unit.	1. As to (1) - authorized not required and if no ADVERSE impacts to park resources will result. 2. As to (2) - no feasible and prudent alternative - all planning to minimize harm to park-and no significant adverse effects to historical and archeological resources or to management protection and admin. of park.	1. Pipeline and railroad limited to those authorized by listed statutes.
16 U.S.C. §460ℓ-22(a)	National Park System except Parks, or monuments of scientific significance.	Freehold or leasehold interests in property which is acquired by the Sec. within park system unit.	1. Terms and conditions to assure it will be used consistent with purposes of the unit; 2. Highest bidder; 3. Not less than fair market value.	1. This authority has marginal if any value, as a right-of-way authority.
16 U.S.C. § 460ℓ-22(b)	National Park System	Authority for land exchange within the National Park System.	1. Land given up by Secretary must be in the same State as land acquired; 2. Approximately equal in value or cash transferred to equalize.	

16 U.S.C. § 1248 and § 1284	National Trails Wild and Scenic Rivers	Rights-of-way and easements.	1. In accordance with laws applicable to the National Park system on a system-wide basis; 2. Provided conditions are related to purpose of the respective statutes.	
16 U.S.C. § 1133	Wilderness	There is no authority to grant rights-of-way in wilderness areas.		1. Administrator must maintain wilderness character; 2. No commercial enterprise and permanent road; 3. Except for administration - no temorary road, aircraft, structure or installation.
23 U.S.C. § 317	Statute provides for appropriation of federal land by DOT for highway purposes.	Federal Aid Highways	Sec. of Trans. files map with Sec. of Interior - within 4 mons., Sec. of Interior must certify that appropriation for highway would be contrary to the public interest or inconsistent with purposes for which land was reserved.	
23 U.S.C. § 138 and 49 U.S.C. § 1653(f) and 49 U.S.C. § 1610	Public parks and recreation lands	Projects or programs approved by Sec. of Transportation. Urban mass transmit programs.	1. No prudent and feasible alternative. 2. All possible planning to minimize harm to the park or recreation area.	These statutes apply to DOT activities only. Compliance with these statutes is a condition precedent to a request for appropriation under 23 U.S.C. § 317.

uthorities U.S.C. 797a	Parks and monuments	Permit, license or lease for: 1. Dams, conduits, reservoirs, powerhouses, transmission lines; 2. Other works for water; 3. Other works for power.	Must be specifically authorized by Congress.	Legislative history is clear that this was not meant to limit authority of Sec. of the Interior, but rather the permit and license authority of the FPC.
U.S.C. 797(e)	All other areas	Same as above	Finding by the Commission: 1. Not interfere or be inconsistent with purpose of reservation; 2. Subject to conditions imposed by Sec. of Interior necessary to protect and utilize reservation.	
U.S.C. 668dd(d) (2)	National Wildlife Refuge System	1. Powerlines, telephone lines; 2. Canals, ditches; 3. Pipelines; 4. Roads 5. Other similar uses.	1. Use is compatible with purposes for which area was established.	
U.S.C. 185	All "Federal lands" - defined to exclude National Park System, Indian trust lands, and the Outer Continental Shelf.	Oil and gas pipelines.	1. If in federal reservation, not inconsistent with the purposes of the reservation; 2. Such regulations and terms a Secretary may prescribe.	1. Section has provisions on environmental control, financial standards, bonding and other control factors.

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TELEX 0-89-2501

MEMORANDUM

To: Tom Williams, Esquire

Date: July 14, 1978

Access Issues in Wilderness Areas

Litigation enforcing the Wilderness Act of 1964 (16 U.S.C. §1131 et seq.) is limited to a few cases. The holdings in these cases indicate that access to inholdings to exercise valid rights in wilderness areas is permitted for logging contracts but will be denied for mining. The Forest Service regulations have delayed action on access permits, and imposed entry restrictions which decrease the commercial value of the logging or mining interests. The National Environmental Policy Act of 1969 (42 U.S.C. §4231 et seq.) has proven to be an effective tactic to delay entry. Access permits into wilderness areas constitute a major Federal action requiring an environmental impact statement.

Rules concerning the enforcement and administration of public lands are affected by the following factors. The Wilderness Act gave the respective Secretary authority to regulate access and use of motorized vehicles through any conservation unit. Such authority has been held to be discretionary even where access is guaranteed or permitted, Minnesota Federation of Ski Touring Clubs v. Butz, 7 E.L.R. 20531, (D. Minn. 1977). Therefore, the scope of judicial review is limited to points of law, U.S. v. Parker, 448 F.2d 793 (10th Cir. 1971). Post Parker Courts generally defer to administrative expertise and will retain right of review on legal questions only.

ACCESS ACROSS WILDERNESS

Cases litigating the right of access across wilderness lands for road construction, are relatively rare. Most conservation units in the Lower 48 were designated around the existing access routes and after road development. A recent case not involving wilderness lands, the Society for the Protection of New Hampshire Forest et al. v. Nebel, 5 E.L.R. 2004 #74208 (D. N.H. 819 1974), enjoined construction until an environmental impact statement for the entire highway system was completed.

Trade associations have provided instances where access across conservation units is denied, but in some cases, company names are withheld to protect the company's commerical interests. Northern California is the site of many Forest Service disputes according to the Western Timber Association. Four years ago, one lumber company sought access to a small tract of land it owns. Subsequently, the Forest Service and the BLM entered into a joint land use planning agreement. Only part of the area affected qualified for wilderness review under the BLM Organic Act, but all access applications are delayed pending the outcome of the plan. This company's mill faces eminent bankruptcy because the tract cannot be developed.

Comparable needs for access across units in Alaska raise several problems. The Forest Service which administers multiple use lands is more likely to exercise its discretion in favor of access than Interior which prefers single use. Where means of access are subject to administrative discretion, nothing prevents Interior from imposing onerous restrictions which make access not commercially viable. Access in Alaska involves huge tracts of land in a state over which there is virtually no development.

A related problem unique to Alaska concerns the "traditional and customary means of access" language found in the Wilderness Act and also in H.R. 39. This phrase has little meaning since most travel is so infrequent or irregular to not qualify as traditional and customary.

Alaska risks denial of any means of motorized access across conservation units if wilderness designations are not kept to a minimum. The landing of planes in wilderness areas is prohibited except for approved sites. Lacking many "traditional or customary sites" wilderness areas could be managed so as to preclude entry to all except the subsistence hunters and those who choose to walk or ride a horse. The same holds true for motor boats and snowmobiles, which function as important means of transportation.

ACCESS TO INHOLDINGS IN WILDERNESS AREAS

Two primary cases illustrate the problems of the timber and the mining industries in exercising their pre-existing rights in wilderness areas. After several years of litigation, Minnesota Research Group v. Butz, 541 F.2d 1292, (8th Cir. 1976), held that continued logging of the Portal Zone in the Boundary Waters Canoe Area was permissible. This decision reversed the District Court which had permanently enjoined all logging in the Boundary Waters Canoe Area on the grounds that logging contradicts the wilderness purpose of the area and that the environmental impact statement filed by the Forest Service was inadequate, see 358 F. Supp. 584, (D. Minn. 1973). The 8th Circuit decision ended a legal battle which had required three hearings before the Court of Appeals and two before the U.S. Supreme Court. Despite the legal victory, counsel for the intervenor Consolidated Paper Co. reports that no logging is being done due to the threat of further litigation.

At issue was the construction of two conflicting sections of the Wilderness Act e.g., no logging in wilderness versus the exception made for the Boundary Waters Canoe Area. T The 8th Circuit's precedent is of limited aid to Alaskan lumber interests The Wilderness Act specifically excepted the Boundary Waters Canoe Area to accommodate those uses. The Department of Agriculture is required to manage the Boundary Waters Canoe Area so as to retain its primitive character without unnecessary restrictions, (16 U.S.C. §1133(d)(5)). Moreover, statutory history supported continuation, of logging and the Forest Service agreed. In contrast, Alaska's commercial logging is limited to Southeast Alaska and has been frozen pending the outcome of the Forest Service's RARE II study.

The 8th Circuit reached a different result in Izaak Walton League v. St. Clair, 497 F.2d 851 (8th Cir. 1974), where the Defendant's exercise of mining claims in the Boundary Waters Canoe Area was halted until the Forest Service acted on the access permits. The Court merely deferred to the Forest Service's administrative discretion Like the lumber industry, no mining has been permitted. If the Forest Service refuses to act on the application, the effect is the same as if it were denied.

Arguably, St. Clair sought upgraded access, but only to exercise mineral claims predating the wilderness designations.

Access was theoretically guaranteed in the Wilderness Act. The number of mining claims in the proposed units in Alaska make similar conflict inevitable. If the administrative procedures and land management policies applied in the Lower 48 continue, access will be effectively denied into existing inholdings, thus preventing the exercise of those existing rights.

Similar policies and procedures apply to wilderness potential lands as in West Virginia Conservancy v. Island Creek Coal Company, 441 F.2d 232 (8th Cir. 1971) where the Court upheld an injunction prohibiting the construction of a road for purposes of logging and mineral exploration in a roadless area. The facts are similar to those in U.S. v. Parker, 448 F.2d 793 (10th Cir. 1971) in which the Court upheld an injunction prohibiting the issuance of timber sale contracts until the Forest Service had completed its wilderness review.

Examples of cases which never reach litigation where access was denied also exist. The National Park Service denied a landowner's application to use an existing railroad grade to haul the lumber from an inholding in western Yosemite Park.

Another lumber company in the Big Butte Shinbone National Forest applied for access several years ago and the Forest Service delayed action. All applications have been returned because the area has since been included in a land use plan.

RARE II process has frozen many access applications. The industry frustration results when they file for access long before the area is subject to the RARE process and the application is delayed. When the area in question becomes subject to RARE II the application is returned unprocessed.

Louisiana Pacific Lumber Company owned timber rights in an inholding in the national forests north of San Francisco and went through years of litigation in both the federal and state courts to gain access over BLM lands. The expense and time involved usually discourage companies from enforcing their rights.

Mining companies have encountered similar difficulties according to the American Mining Congress. The prospect of litigation every step of the way has discouraged exploration in wilderness. Where known deposits or claims exist, the delays and onerous restrictions force the company to back off. In Blue Range, Arizona one company spent ten months

with the Forest Service to get a permit to build a temporary road one eighth of a mile long and to drill one hole. They then asked to build a longer road but the Forest Service demanded helicopters. The company ceased all exploration.

Another example of truly onerous restrictions is in Absaroka, Wyoming where the company could use helicopters between daylight and nine a.m. and could only land on the claim site. Personnel had to walk or ride horses.

Requiring an environmental impact statement has proven to be an effective deterrent to inholding access. Wilderness designations are subject to valid existing rights and access is implied (and guaranteed in H.R. 39). However, the land manager has discretionary authority to regulate the means of access and because that authority is discretionary, the Courts are reluctant to reverse agency decisions. Both Minnesota Public Interest Research Group v. Butz, supra, and Wyoming Outdoor Coordinating Council v. Butz, 484 F.2d 1244 (10th Cir. 1973) were remanded for preparation of environmental impact statements. This delays the litigation and effectively diminishes the commercial viability of the desired access.

It should also be noted that environmentalists tried to enjoin all mining activities in the Death Valley National Monument (Death Valley National Monument v. Interior #76-401, filed February 26, 1976 in the Northern District of California), on the basis that mining is per se incompatible with wilderness. Such a construction is contrary to the Wilderness Act and is unfair to those holding existing rights.

MOTORIZED VEHICLES

While H.R. 39 authorizes the continued use of snowmobiles in wilderness areas, this exception could be undone as in Minnesota Federation of Ski Touring Clubs v. Nebel, 7 E.L.R. 20531 (January 18, 1977), where the District Court upheld Secretary of Agriculture's prohibition of snowmobiles in the Boundary Waters Canoe Area on the grounds that Secretarial management was discretionary. In Circuit Bear Tooth National Forest, Montana snowmobiles were denied use of a right of way formerly reserved by Sweetgrass County. Airstrips have been closed in the Bob Marshall National Forest. Other airstrips remain open as in Selway Bitterroot National Forest.

The Alaskan exception to snowmobile travel outside of subsistence uses may be difficult to defend. Motorized vehicles are generally prohibited and their use in the Boundary Waters Canoe Area was part of a compromise reached

in the drafting of the Wilderness Act. Snowmobiles are limited to those places where their use is traditional and customary. There are few such areas in Alaska because most of the d2 lands are not frequently travelled. Consequently, if motorized vehicle use in Alaska is permitted for the subsistence users or where it is traditional and customary, that could apply to very few areas, leaving most of the units accessible to only the hardiest.

POINT FOUR

Notes:

POINT FOUR: State management of fish and game on all lands in Alaska should be continued;

(1) Seek as much autonomy as possible for the State's management of fish and wildlife including subsistence programs.

(2) Minimize to the extent possible federal oversight or sign off authority over our management programs.

(3) In varying degrees, the Natives, Carter Administration, State of Alaska, and the Alaska Coalition have all accepted the idea of establishing regional subsistence zones with corresponding regional subsistence advisory councils.

POINT FIVE

Notes:

POINT FIVE: **Congress should exempt highly valuable mineral deposits and other commodity resources from inclusion in federal systems which obviate development;**

(1) **The evaluation process which is implicit in point five should not be left to the Secretary alone. In our freedom of information act search of the Department of Interior regarding mineral information we clearly established that the secretary had sent misleading mineral information to the President and Congress justifying his withdrawals.**

(2) **In order to comply with point five a comprehensive resource inventory is needed (which (d)(2) designations would in many cases preclude), so we would know where the resources are which should be excluded from the preservation units.**

(3) **For those areas which are presently known to be of high commodity value we simply (ha) need to elicit commitments from those with whom you speak to support the redrawing of boundaries to exclude those areas.**

Some specific areas which you might ask them to commit to are listed on page two of the attached Bill Horn briefing paper.

(4) **If commitments to redraw boundaries cannot be achieved, try for commitments to allow indepth comprehensive resource inventories of all conservation system units in Alaska. The commitment needs to be for more than an "assessment." Assessment is the Administration word for preliminary visual and rock hammer evaluation.**

Section 817 of the new HR 39 states the Secretary of Interior shall "assess" oil, gas and other minerals potential on all public lands except national park lands and the program "may" include such techniques as core and test drilling. However, the section goes on to say "not withstanding any restriction on such drilling under other law"--which the prohibitive Wilderness Act would be.

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COMMITTEE ON INTERIOR AND INSULAR AFFAIRS
U.S. HOUSE OF REPRESENTATIVES
WASHINGTON, D.C. 20515

January 22, 1979

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STEERING COUNCIL
FOR ALASKA LANDS

ALASKA

B R I E F I N G P A P E R

SUBJECT: H.R. 39 IMPACT OF ALASKA RESOURCES:
MINERALS AND OIL & GAS

Prepared by Bill Horn, Minority Consultant, Alaska Lands

M I N E R A L S I M P A C T S

THE PERCENTAGE GAME

Among the most repeated statistics offered by proponents of extensive land withdrawals in Alaska is that "two-thirds of the land with mineral potential are unaffected" by H.R. 39 or similar bills. Unfortunately, this figure is extremely misleading. The U.S. Bureau of Mines, Department of the Interior categorizes lands in Alaska as being Highly Favorable, Favorable, or Less Favorable for mineral occurrences. When all three are considered together, roughly two-thirds do fall outside H.R. 39 withdrawals. However, when only the Highly Favorable zones are examined approximately 70 percent of these rich areas are withdrawn by H.R. 39.

Virtually all of the active mineral exploration in Alaska occurs in these Highly Favorable mineral areas. Moreover, most of the existing major discoveries are concentrated in these rich zones. Withdrawal of an inordinate amount of the choicest mineral lands will severely impact development of the Alaskan mineral industry and the ancillary national benefits which will emanate from such development.

IMPACT ON EXISTING DISCOVERIES AND EXISTING LANDS

H.R. 39's adverse impact on high quality mineral lands is evident when a recent Alaska minerals study done by the Stanford Research Institute (S.R.I.) is scrutinized. That study examined seven of the most promising mineral finds in Alaska which are likely to go into commercial production if not obstructed. Incidentally, just these seven discoveries, when put into production, are estimated to create 40,000 plus jobs in the Lower 48 and reduce our trade deficit by $1 billion annually.

The Lik discovery in the "Red Dog" district is a silver lead-zinc- cadmium deposit and is adjacent to the Noatak Monument. The mineral belt which produced the find runs eastward into the unit and is withdrawn.

In the Ambler district, there are two major lead-zinc-silver-copper discoveries: Picnic Creek and Arctic. The very rich South Brooks Range mineral belt which produced these finds is withdrawn on the east by the Gates of the Arctic Monument and on the west by the Kobuk Valley Monument.

The Eagle asbestos discovery near the upper Yukon River is on native land. However, the mineral province which produced it runs west into the Yukon-Charley Monument and east into the proposed Fortymile Wild River; both units are closed to mineral entry.

In Southeast Alaska, all three major discoveries identified by S.R.I. are included in proposed Wilderness units. The nickel-cobalt-copper find in the Bohemia Basin is part of the west Chichagof-Yakobi Island Wilderness. Our 90 percent plus dependence on both nickel and cobalt (the latter obtained chiefly from Zaire) is a serious national problem.

On Admiralty Island, the Greens Creek strike is a major silver-lead-zinc-gold discovery. The deposit is very near the coast and has easy access to water transport. In addition, most observers believe this will be the first major new mine to open in Alaska. However, its future is threatened by the Admiralty Island Monument which is redesignated a Wilderness in H.R. 39.

Lastly, the world's fourth largest Molybdenum deposit -- the U.S. Borax' Quartz Hill discovery -- is encompassed by the Misty Fiords Monument which is redesignated a Wilderness by H.R. 39. Borax has invested approximately $5 million in its discovery and is now threatened with shut down. Indeed, Administration officials have openly speculated about abrogating Borax' mining rights in the area. In addition, this is considered the second major mine which will open in Alaska if not obstructed. The House-passed H.R. 39 left this discovery alone.

MINERAL ECONOMICS

A cornerstone of the Alaska Coalition's position is that Alaska minerals are uneconomic so it doesn't really matter if such good mineral lands are withdrawn. This position emanates from one or two specious economic "analyses" that postulate (1) costs of operation in Alaska are high, (2) there are only a handful of gold placer mines now operating in Alaska, and (3) therefore, Alaska's minerals are uneconomic. Such "studies" always overlook the myriad problems generated by land status uncertainty.

The rebuttal to this position is short and sweet: In 1977 over 200 companies spent over $70 million in Alaska on mineral exploration. It is absurd to believe that these 200 firms would expend millions of dollars if mineral development in Alaska is uneconomic. Profit-making companies are not in the habit of investing capital where monetary return is highly improbable.

SUMMARY

The following summarizes the impact of H.R. 39 on Alaska mineral resources:

(1) The bill withdraws 70 percent of lands rated Highly Favorable for mineral occurrence by the U.S. Bureau of Mines;

(2) The mineral provinces which produced all seven of the major discoveries in Alaska are largely withdrawn;

(3) Three of the seven major finds -- Bohemia Basin, Greens Creek, and U.S. Borax' Quartz Hill -- are included within proposed Wilderness areas; and

(4) Alaska's minerals are economic as demonstrated by the Stanford Research Institute study and the fact that over 200 firms spent over $70 million on mineral exploration in Alaska in 1977.

O I L & G A S I M P A C T S

SEDIMENTARY BASINS

Alaska contains many sedimentary basins which may hold significant reserves of oil and gas. Except for extensive work around Prudhoe Bay and Cook Inlet, most of the interior oil and gas basins have not been subjected to any form of significant exploratory activity. Indeed, in the remaining 300 million acres of Alaska, only 12 exploratory oil wells have been drilled. Accordingly, our information base for the potential of these basins is virtually nonexistent.

H.R. 39 includes approximately 40 million acres of land which overlays identified basins in its conservation system units. Most of these units are Wildlife Refuges where oil and gas activity can occur if the Secretary makes specific findings that such activity is compatible with the purposes of the Refuge. However, over one-third of these Refuge lands are also classified Wilderness which totally precludes any oil and gas activity. Furthermore, there are only two Refuges in the U.S. on which oil and gas activity occurs. Although on paper Refuge designation does not stop such action, in practice such activity rarely occurs.

ARCTIC NATIONAL WILDLIFE RANGE

The Arctic Range is an existing nine million acre unit located in NE Alaska. Approximately 50 miles west of the unit is the Prudhoe Bay field which contains 10 billion barrels of oil and 26 trillion cubic feet of natural gas. Geologic mapping indicates that the trends which produced the Prudhoe field extend eastward and lie under the coastal plain of the Range. Accordingly, the Range is considered the finest onshore oil and gas prospect area in the U.S.

The same area which overlays the oil and gas basin hosts the Porcupine Caribou Herd each summer. This is presently the largest caribou herd in Alaska and it uses the Range's coastal plain as its calving grounds.

The Range is governed by the Refuge Administration Act which does permit oil and gas activity as outlined before. Of course, no such activity can occur until the compatibility test set forth in Section 4(d) of that Act is satisfied. However, H.R. 39 designates the entire existing Range as a Wilderness which totally blocks any and all oil and gas exploratory activity.

Major debate is likely to occur regarding this matter with Wilderness proponents arguing that the caribou need absolute protection. Those opposed to Wilderness generally contend that the Refuge Administration Act provides sufficient protection for the caribou but will also permit oil and gas assessment work.

ACCESS FOR PIPELINES

Another major concern is that even if oil or gas is found in some corner of Alaska, most of the major transportation routes for new pipelines are blocked by the expansive land designations in H.R. 39. The House-passed H.R. 39 attempted to mitigate this impact by including an entire title which set up new procedures for obtaining rights-of-way across conservation units. Although the procedures were more flexible than existing law, Alaskan interests and the oil and gas companies maintained the procedures were not sufficiently flexible to permit needed access.

The new H.R. 39 does not contain the language found in the House-passed bill and relies almost totally on existing law. The only change is to permit pipelines to cross Wild and Scenic Rivers. Existing law virtually eliminates the possibility of routing new pipelines across Parks, Refuges, or Wilderness areas in Alaska.

SUMMARY

The following outlines the major H.R. 39 impacts on Alaska oil and gas resources:

(1) The bill includes approximately 40 million acres of lands which overlay oil and gas basins in conservation system units;

(2) Because of extremely limited work on these basins, our information regarding their oil and gas potential is almost nonexistent;

(3) The existing Arctic Range, which is the finest on-shore and gas prospect area in the U.S., is made a Wilderness; &

(4) Many routes for new pipelines are blocked by the bill's land designations and no mitigating rights-of-way procedures are set forth.

POINT SIX

Notes:

Point Six: **Traditional land uses on all lands in Alaska should continue;**

This is a very broad statement which needs to be defined. Is a traditional use one which has been occurring since the turn of the century or since last month?

The freedom to use and travel the land that we have been accustomed to under BLM management will simply be history after passage of a (d)(2) bill. We can hope to minimize this loss of freedom through specific language supporting your points one through five.

As it appears now, subsistence hunting, fishing, and trapping will be allowed on conservation system lands in Alaska.

To allow non-subsistence users to carry firearms, hunt or trap in National Parks and Wilderness would require a specific amendment. Sport fishing is allowed in all the conservation units subject to State law and regulations.

HR 39 uses the phrase "traditional activities permitted by the Act . . ." but does not define what they are. Unless we define these terms we are setting ourselves up for years of litigation.

To wit: "Sec. 802. (a) SPECIAL ACCESS RIGHTS: Notwithstanding any other provision of this act or other law, the Secretary may permit on conservation system units the use of snowmachines; motorboats; airplanes able to land on snow, ice, water, or designated sites; and non-motorized surface transportation methods, for traditional activities permitted by this act or other law . . . ."

POINT SEVEN

Notes:

Point Seven: The President and the Secretary of the Interior should be precluded from establishing or adding to any conservation system unit within Alaska by means of any executive or administrative authority.

This resolution language seems the most simple and direct for achieving the goal. Another means which would be more complex but perhaps more explicit would be to cite the specific authority the Executive or Administrative branches of government would be precluded from exercising, i.e., Antiquities Act; Federal Land Planning and Management Act; Forest Management Practices Act, etc.

Precedent has been set in the state of Wyoming for such restrictions on the Executive, albeit in a narrower sense. The Antiquities Act was amended so as to preclude its use in Wyoming without the consent of Congress.

SEE ATTACHED COPY OF ANTIQUITIES ACT.

NATIONAL AND INTERNATIONAL MONUMENTS AND MEMORIALS

Cross References

Protection of timber upon national monuments from fire, disease, or insect ravages, see section 594 of this title.

§ 431. National monuments; reservation of land; relinquishment of private claims

The President of the United States is authorized, in his discretion, to declare by public proclamation historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest that are situated upon the lands owned or controlled by the Government of the United States to be national monuments, and may reserve as a part thereof parcels of land, the limits of which in all cases shall be confined to the smallest area compatible with the proper care and management of the objects to be protected. When such objects are situated upon a tract covered by a bona fide unperfected claim or held in private ownership, the tract, or so much thereof as may be necessary for the proper care and management of the object, may be relinquished to the Government, and the Secretary of the Interior is authorized to accept the relinquishment of such tracts in behalf of the Government of the United States.

June 8, 1906, c. 3060, § 2, 34 Stat. 225.

Historical Note

National Memorial Commission. Act Aug. 31, 1954, c. 1163, §§ 1 to 6, 68 Stat. 962, provided for a Commission to plan and develop a memorial to the Nation's great leaders to the Part of Potomac and the ideals [illegible] in the five [illegible] areas, [illegible] and to report such plans to Congress for legislative authorization after approval by the Secretary of the Interior, the National Capital Planning Commission, and the Commission of Fine Arts. The Commission terminated 90 days after submission of required report which was submitted in 1957 but audit of business was not completed until September 1961.

§ 431a. Limitation on further extension or establishment of national monuments in Wyoming

No further extension or establishment of national monuments in Wyoming may be undertaken except by express authorization of Congress.

Sept. 14, 1950, c. 950, § 1, 64 Stat. 849.

NATIONAL MONUMENTS ESTABLISHED UNDER PRESIDENTIAL PROCLAMATION—Continued

The following National Monuments were established under the proclamations listed:—Continued

National Monument	Proc.	Stat. at Large
Montezuma Castle National Monument, Arizona	656	34 Stat. 3265
Mound City Group National Monument, Ohio	1653	42 Stat. 2298
Muir Woods National Monument, California	793	35 Stat. 2174
Natural Bridges National Monument, Utah	804	35 Stat. 2183
Navajo National Monument, Arizona	873	36 Stat. 2491
Old Kasaan National Monument, Alaska	1351	39 Stat. 1842
Oregon Caves National Monument, Oregon	876	36 Stat. 2497
Pinnacles National Monument, California	796	35 Stat. 2177
Pipe Spring National Monument, Arizona	1863	43 Stat. 1913
Rainbow Bridge National Monument, Utah	1043	36 Stat. 2701
Russell Cave National Monument, Alabama	2113	75 Stat. 1058
Saguaro National Monument, Arizona	2232	47 Stat. 2557
Scotts Bluff National Monument, Nebraska	1547	41 Stat. 1779
Shoshone Cavern National Monument, Wyoming	880	36 Stat. 2501
Sitka National Monument, Alaska [redesignated as Sitka National Historical Park by Pub.L. 92-501, Oct. 18, 1972, 86 Stat. 901]	959	36 Stat. 2001
Statue of Liberty National Monument, New York	1713	43 Stat. 1968
Sunset Crater National Monument, Arizona	1941	46 Stat. 3023
Timpanogos Cave National Monument, Utah	1630	42 Stat. 2285
Tonto National Monument, Arizona	787	35 Stat. 2163
Tumacacori National Monument, Arizona	821	35 Stat. 2205
Tuzigoot National Monument, Arizona	2511	53 Stat. 2548
Walnut Canyon National Monument, Arizona	1318	39 Stat. 1761
Wheeler National Monument, Colorado	831	35 Stat. 2214
White Sands National Monument, New Mexico	2025	47 Stat. 2551
Wupatki National Monument, Arizona	1721	43 Stat. 1977
Yucca House National Monument, Colorado	1549	41 Stat. 1781
Zion National Monument, Utah [combined with Zion National Park into single national park unit by Act July 11, 1956, c. 568, 70 Stat. 527. See section 346b et seq. of this title]	2221	50 Stat. 1089

NATIONAL MONUMENTS ESTABLISHED UNDER PRESIDENTIAL PROCLAMATION

The following National Monuments were established under the proclamations listed:

National Monument	Proc.	Stat. at Large
Arches National Monument, Utah [abolished and funds thereof made available to Arches National Park by Pub.L. 92-155, § 1, Nov. 12, 1971, 85 Stat. 422. See section 272 of this title]	1875	46 Stat. 2988
Aztec Ruins National Monument, New Mexico	1923	42 Stat. 2295
Bandelier National Monument, New Mexico	1322	39 Stat. 1764
Black Canyon of the Gunnison National Monument, Colorado	2033	47 Stat. 2558
Buck Island Reef National Monument, Virgin Islands	3443	76 Stat. 1401
Cabrillo National Monument, California	1255	38 Stat. 1965
Capitol Reef National Monument, Utah [abolished and funds thereof made available to Capitol Reef National Park by Pub.L. 92-207, § 1, Dec. 18, 1971, 85 Stat. 739. See section 273 of this title]	2246	50 Stat. 1856
Capulin Mountain National Monument, New Mexico	1340	39 Stat. 1792
Casa Grande National Monument, Arizona	1470	40 Stat. 1818
Castillo de San Marcos National Monument, Florida	1713	43 Stat. 1968
Cedar Breaks National Monument, Utah	2054	48 Stat. 1705
Chaco Canyon National Monument, New Mexico	740	35 Stat. 2119
Channel Islands National Monument, California	2281	52 Stat. 1541
Chesapeake and Ohio Canal National Monument, Maryland	3391	75 Stat. 1023
Chiricahua National Monument, Arizona	1692	43 Stat. 1946
Colorado National Monument, Colorado	1126	37 Stat. 1681
Craters of the Moon National Monument, Idaho	1694	43 Stat. 1947
Devil Postpile National Monument, California	1166	37 Stat. 1715
Devils Tower National Monument, Wyoming [Act Aug. 9, 1955, c. 647, 69 Stat. 375 provided for addition of approximately 150 acres to monument and for exchange of monument lands]	658	31 Stat. 3226
Dinosaur National Monument, Utah-Colorado	1313	39 Stat. 1752
Edison Laboratory National Monument, New Jersey [redesignated, along with Edison Home National Historic Site and certain adjacent lands, as Edison National Historic Site by Pub.L. 87-628, § 1, Sept. 5, 1962, 76 Stat. 428]	3448	70 Stat. c19
Effigy Mounds National Monument, Iowa	2860	64 Stat. A371
El Morro National Monument, New Mexico	695	34 Stat. 3264
Fort Jefferson National Monument, Florida	2142	49 Stat. 3440
Fort Laramie National Monument, Wyoming [redesignated as Fort Laramie National Historic Site by Pub.L. 86-441, § 3, Apr. 29, 1960, 74 Stat. 81]	2292	53 Stat. 2491
Fort Pulaski National Monument, Georgia	1713	43 Stat. 1968
Gila Cliff-Dwellings National Monument, New Mexico	781	35 Stat. 2113
Glacier Bay National Monument, Alaska	1733	43 Stat. 1983
Grand Canyon National Monument, Arizona	2022	47 Stat. 2547
Gran Quivira National Monument, New Mexico	882	36 Stat. 2504
Great Sand Dunes National Monument, Colorado	1994	47 Stat. 2506
Holy Cross National Monument, Colorado	1877	46 Stat. 2993
Hovenweep National Monument, Colorado Utah	1651	42 Stat. 2299
Jackson Hole National Monument, Wyoming	2578	57 Stat. 731
Jewel Cave National Monument, South Dakota	799	35 Stat. 2180
Katmai National Monument, Alaska	1487	40 Stat. 1855
Lava Beds National Monument, California	1755	44 Stat. 2791
Lehman Caves National Monument, Nevada	1618	42 Stat. 2269
Marble Canyon National Monument, Arizona	3889	83 Stat. 924
Meriwether Lewis National Monument, Tennessee [included, along with Ackia Battleground National Monument, in Natchez Trace Parkway by Pub.L. 87-131, Aug. 19, 1961, 75 Stat. 335. See section 460—1 of this title]	1825	36 Stat. 879

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The following National Mon
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National M
Montezuma Castle National
Mound City Group National
Muir Woods National Mon
Natural Bridges National M
Navajo National Monument,
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Wupatki National Monument
Yucca House National Monum
Zion National Monument, U
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July 11, 1956, c. 598, 70 S
et seq. of this title]

NATIONAL MEMORIALS

National Memorial	Authorization
Arkansas Post National Memorial, Arkansas	Authorized by Pub.L. 88-595, July 6, 1960, 74 Stat. 323.
Benjamin Franklin National Memorial, Pennsylvania	Authorized by Pub.L. 92-551, Oct. 25, 1972, 86 Stat. 1166.
Chamizal National Memorial, Texas	Authorized by Pub.L. 89-479, July 12, 1966, 80 Stat. 232.
Custis-Lee Mansion National Memorial, Virginia	Authorized by Act Mar. 4, 1925, c. 562, 43 Stat. 1356. Made permanent memorial by Act June 29, 1955, c. 223, 69 Stat. 190.
Federal Hall National Memorial, New York	Designated May 26, 1939. Designation changed from Federal Hall Memorial Historic Site by Act Aug. 11, 1955, c. 779, 69 Stat. 692.
Fort Caroline National Memorial, Florida	Authorized by Act Sept. 21, 1950, c. 973, 64 Stat. 897. Established Jan. 16, 1953.
House Where Lincoln Died National Memorial, District of Columbia	Authorized by Act June 1, 1896, c. 420, 29 Stat. 429.
Johnstown Flood National Memorial, Pennsylvania	Authorized by Pub.L. 88-546, Aug. 31, 1964, 78 Stat. 752.
Lincoln Boyhood National Memorial, Indiana	Authorized by Pub.L. 87-407, Feb. 19, 1962, 76 Stat. 9.
Lincoln Museum National Memorial, District of Columbia	Authorized by Act Apr. 7, 1896, c. 28, § 1, 11 Stat. 23.
Lincoln National Memorial, District of Columbia	Authorized by Act Feb. 9, 1911, c. 42, 36 Stat. 898.
Mount Rushmore National Memorial, South Dakota	Authorized by Act Feb. 25, 1929, c. 315, 45 Stat. 1300.
Seabees of the United States Navy Memorial, District of Columbia	Authorized by Pub.L. 92-422, Sept. 18, 1972, 86 Stat. 678.
Thomas Jefferson National Memorial, District of Columbia	Authorized by Act June 26, 1934, c. 763, 48 Stat. 1243.
Washington Monument National Memorial, District of Columbia	Authorized by Act Aug. 2, 1876, c. 250, § 1, 19 Stat. 123.
Wright Brothers National Memorial, North Carolina	Kill Devil Hill National Monument authorized by Act Mar. 2, 1927, c. 251, 44 Stat. 1264. Name changed to Wright Brothers National Memorial, Dec. 1, 1953.

Miscellaneous National Monuments. Agate Fossil Beds National Monument, Nebraska, was authorized by Pub.L. 89-32, June 5, 1965, 79 Stat. 123.

Alibates Flint Quarries and Texas Panhandle Pueblo Culture National Monument, Texas, was authorized by Pub.L. 89-451, Aug. 31, 1965, 79 Stat. 587.

Big Hole Battlefield National Monument, Montana, was established by Ex.Ord.No. 1216 on June 23, 1910 and redesignated as Big Hole National Battlefield by Pub.L. 88-24, § 1, May 17, 1963, 77 Stat. 18.

Custer Battlefield Nat
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Florissant Fossil Beds
Aug. 20, 1969, 83 Stat. 10
Fort Matanzas Nation
Fossil Butte National
1972, 86 Stat. 1989.
Hohokam Pima Nation
21, 1972, 86 Stat. 1017.
Pecos National Monu
1965, 79 Stat. 105.

Armed Services ⇨51
Woods and Forests ⇨

National cemeteries, use
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1. Objects which may be
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Under this section, the
authorized to establish
serve embracing the G
the Colorado River; it
of scientific interest," Ca
Ariz.1929, 10 S.Ct. 419, 2
Ed. 659.

2. Grounds for proclaim

Proclamation No. 2578, 3
Stat. 731, declaring the
Country in Wyoming a
ment because of its histo
prehistoric structures, an
of historic or scientific in
shown to be arbitrary
interference by the court
oming v. Franke, D.C.W
Supp. 890.

The court cannot take
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1943, 57 Stat. 731, declarin
Hole Country in Wyomi
monument, which procla

Authorization

by Pub.L. 86-595, July 6, 1960, 33.

by Pub.L. 92-351, Oct. 25, 1972, 164.

by Pub.L. 89-479, July 12, Stat. 232.

by Act Mar. 4, 1925, c. 562, 43 56. Made permanent memorial June 29, 1955, c. 223, 69 Stat.

ed May 26, 1939. Designation d from Federal Hall Memorial Site by Act Aug. 11, 1955, c. Stat. 632.

ed by Act Sept. 21, 1950, c. 973, 64 97. Established Jan. 16, 1953.

ed by Act June 11, 1896, c. 420, 29 59.

ed by Pub.L. 88-516, Aug. 31, 8 Stat. 732.

ed by Pub.L. 87-407, Feb. 19, 6 Stat. 9.

ed by Act Apr. 7, 1860, c. 38, § 1, 1, 23.

ed by Act Feb. 9, 1911, c. 42, 36 898.

ed by Act Feb. 25, 1929, c. 315, 45 1300.

ed by Pub.L. 92-422, Sept. 18, 86 Stat. 673.

ed by Act June 26, 1934, c. 703, 48 1213.

ed by Act Aug. 2, 1876, c. 250, § 1, st. 123.

ell Hill National Monument au- ed by Act Mar. 2, 1927, c. 251, 44 1264. Name changed to Wright ers National Memorial, Dec. 1,

Beds National Monument, Nebras- Stat. 123.

ehdo Culture National Monument, 65, 79 Stat. 587.

a, was established by Ex.Ord.No. de National Battlefield by Pub.L.

Custer Battlefield National Monument, Montana, was [illegible] tery of Custer's Battlefield Reservation" on December 7, 1946. The name was changed to Custer Battlefield National Monument by Act Mar. 22, 1946, c. 110, 60 Stat. 59.

Florissant Fossil Beds National Monument, Colorado, was authorized by Pub.L. 91-629, Aug. 20, 1969, 83 Stat. 101.

Fort Matanzas National Monument, Florida, was established October 15, 1924.

Fossil Butte National Monument, Wyoming, was authorized by Pub.L. 92-537, Oct. 23, 1972, 86 Stat. 1069.

Hohokam Pima National Monument, Arizona, was authorized by Pub.L. 92-525, Oct. 21, 1972, 86 Stat. 1017.

Pecos National Monument, New Mexico, was authorized by Pub.L. 89-51, June 28, 1965, 79 Stat. 195.

Library References

Armed Services ⇐=51.
Woods and Forests ⇐=8.

C.J.S. Army and Navy § 107.
C.J.S. Woods and Forests §§ 11, 12.

Code of Federal Regulations

National cemeteries, use of, see 36 CFR 12.1 et seq.
Special regulations for particular areas, see 36 CFR 7.1 et seq.

Notes of Decisions

Abolishment of monuments 5
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1. Objects which may be declared monuments

Under this section, the President was authorized to establish a monument reserve embracing the Grand Canyon, of the Colorado River; it being an "object of scientific interest," Cameron v. U. S., Ariz.1920, 40 S.Ct. 410, 252 U.S. 450, 64 L.Ed. 659.

2. Grounds for proclaiming monument

Proclamation No. 2578, Mar. 15, 1943, 57 Stat. 731, declaring the Jackson Hole Country in Wyoming a national monument because of its historic landmarks, prehistoric structures, and other objects of historic or scientific interest, was not shown to be arbitrary so as to justify interference by the courts. State of Wyoming v. Franke, D.C.Wyo.1945, 58 F.Supp. 890.

The court cannot take any judicial interest in the motives which may have inspired Proclamation No. 2578, Mar. 15, 1943, 57 Stat. 731, declaring the Jackson Hole Country in Wyoming a national monument, which proclamation was described as an alleged attempt to circumvent congressional intent and authority in connection with such lands, since such discussions are only applicable as an appeal for congressional action. Id.

3. Designation of area in proclamation

That the area designated in Proclamation No. 2578, Mar. 15, 1943, 57 Stat. 731, establishing the Jackson Hole National Monument was not consistent with the preface to such proclamation was not material, where the area over which control was threatened was in any event limited to that defined in such proclamation. State of Wyoming v. Franke, D.C. Wyo.1945, 58 F.Supp. 890.

4. Reservation of mineral interests

To bring a lode mining claim within the saving clause in the withdrawal of public lands for a monument reserve, under this section, in respect of any "valid" mining claim theretofore acquired, the discovery must have preceded the creation of that reserve. Cameron v. U. S., Ariz.1920, 40 S.Ct. 410, 252 U.S. 450, 64 L.Ed. 659.

5. Abolishment of monuments

Section 431 et seq. of this title, authorizing the President to establish national monuments, does not authorize him to abolish them after they have been established. 1938, 39 Op.Atty.Gen. 185.

6. Transfer of monuments

It was not within executive authority to transfer national monuments under administration of War Department and Department of Agriculture to National

Park Service in Department of the Interior. 1929, 36 Op.Atty.Gen. 75.

7. Suits against United States

Where mineral claimants did not contend that federal government officers had acted beyond authority or under unconstitutional law or orders in withdrawing an area as a national monument or in causing default judgment to be entered voiding claimants' mining claim location thereon and transferring the property to the Atomic Energy Commission, claimants' action against the Commission and Secretary of Interior for declaratory and other relief was in effect an action against United States and, in absence of government's consent to be sued, could not be maintained. Oyler v. McKay, C.A.Utah 1956, 227 F.2d 604

A suit by the State of Wyoming against a federal officer in the Department of Interior, alleging that defendant was exceeding his authority in exercising control over the area known as the Jackson Hole National Monument, was not a suit against the United States which was not maintainable, nor was it a suit in which it was necessary to join defendant's superior officers. State of Wyoming v. Franke, D.C.Wyo.1945, 58 F.Supp. 899.

An action by the State of Wyoming against an official of the Department of the Interior involving dispute as to the jurisdiction of the state and the national government in and to the segregated area known as the Jackson Hole National Monument, was legally laid against defendant as an officer acting in excess of his authority, where it was claimed that the authority exercised and threatened to be exercised was not validly conferred by this section. Id.

8. Jurisdiction

An action by the State of Wyoming challenging the validity of Proclamation No. 2578, Mar. 15, 1943, 57 Stat. 731, with respect to the creation of the Jackson Hole National Monument, was an "action arising under the laws of the United States" of which the federal district court had jurisdiction. State of Wyoming v. Franke, D.C.Wyo.1945, 58 F. Supp. 899.

The federal district court has a limited jurisdiction to investigate and determine whether Proclamation No. 2578, Mar. 15, 1943, 57 Stat. 731, establishing the Jackson Hole National Monument, is an arbitrary exercise of power under this section so as to be outside of the scope and purpose of this section. Id.

An action by the State of Wyoming seeking a construction of this section and Proclamation No. 2578, Mar. 15, 1943, 57 Stat. 731, made thereunder in the creation of the Jackson Hole National Monument, claiming national interference with the use and maintenance of state highways therein, together with a loss of taxation and loss of revenue from game and fish licenses by the exercise of federal control, involved an amount in excess of $3,000 so as to give federal court jurisdiction. Id.

9. Pleadings

In action by the State of Wyoming involving the validity of Proclamation No. 2578, Mar. 15, 1943, 57 Stat. 731, creating the Jackson Hole National Monument, complaint, alleging that officers of the Interior Department had taken charge of the area and that defendant officer would continue to exercise such control when directed by his superiors to do so, was sufficient to invoke the jurisdiction of the federal district court for the restraint of a threatened act alleged to be illegal. State of Wyoming v. Franke, D.C.Wyo.1945, 58 F.Supp. 899.

10. Declaratory judgment

Where injunction would not lie to enjoin federal interference with the state's control over the Jackson Hole Country in Wyoming, designated by Proclamation No. 2578, Mar. 15, 1943, 57 Stat. 731, as a national monument, a declaratory judgment could not be substituted for injunction. State of Wyoming v. Franke, D.C.Wyo.1945, 58 F.Supp. 899.

ANOTHER POINT

Notes:

Another Point: Joint resolution does not address the problem of Wilderness and Wilderness Study designations. The land status is clear when a parcel is designated Wilderness. Wilderness Study land status is more uncertain. All park and refuge lands in HR 39 which are not designated Wilderness are in Wilderness Study. Wilderness Study lands must be managed as Wilderness until such time as Congress acts on the Secretaries' recommendations.

We need a time deadline for Congress to act on those millions of acres of Wilderness Study. If there is no deadline, those lands will be de facto Wilderness until Congress chooses to act "up" or "down" on those recommendations. Further to the deadline for action on the part of Congress should be language directing that if Congress fails to act within that allotted time, the land will revert back from its Wilderness Study status to its underlying designation.

COMMITTEE ON INTERIOR AND INSULAR AFFAIRS
U.S. HOUSE OF REPRESENTATIVES
WASHINGTON, D.C. 20515

January 19, 1979

MEMO TO: Minority Members, Interior and Insular Affairs Committee

FROM: Bill Horn, Minority Consultant - Alaska Lands

RE: SUMMARY OF H.R. 39 -- NEW 1979 VERSION

The following summarizes the new version of H.R. 39 recently introduced by Reps. Udall and Seiberling. It is radically different from the H.R. 39 which the House passed in May, 1978.

LAND DESIGNATIONS

The bill affects a total of 143 million acres of land in Alaska or nearly 40 percent of the State. It creates (a) 41 million acres of Parks, (b) 1.9 million acres of Preserves, (c) 70.8 million acres of Wildlife Refuges, (d) approximately 2 million acres of Wild and Scenic Rivers, and (e) adds 2.7 million acres to existing Forests. Total "new lands" set-aside are 118.4 million acres.

In addition, 25 million acres of existing Forests, Parks, and Refuges are reclassified as Wilderness areas. Lastly, within the 118.4 million acres of "new lands", 60 million acres are also designated Wilderness; total Wilderness is 85 million acres.

The following chart illustrates the various land designations:

H. R. 39 -- 1979 VERSION

"New Lands"		Million of Acres
National Park Service:	Parks	41.0
	Preserves	1.9
Fish & Wildlife Service:	Refuges	70.8
Wild & Scenic Rivers		2.0
Forest Additions		2.7
"New Lands" TOTAL		118.4

Wilderness	Millions of Acres
Existing Parks into Wilderness	6.5
Existing Refuges into Wilderness	12.0
Existing Forests into Wilderness	6.5
Subtotal	25.0
New Parks/Preserves Wilderness	35.5
New Refuge Wilderness	23.0
Forest Additions Wilderness	1.5
Subtotal	60.0
TOTAL WILDERNESS	85.0

Affected Lands

"New Lands" Designated Parks, Refuges, etc.	118
Existing Land Redesignated Wilderness	25
TOTAL AFFECTED LANDS	143

PARKS/PRESERVES

Title II ratifies the 13 Presidentially-created Monuments, and designates them as Parks which total 40.1 million acres. In contrast, House-passed H.R. 39 set aside only 27 million acres of Parks. The largest units are the 11 million acre Wrangells-St. Elias Park and the 8.2 million acre Gates of the Arctic Park.

The same title creates three Park/Preserves amounting to 1.9 million acres. Preserves are managed by the Park Service but sport hunting is permitted. The House-passed H.R. 39 set aside 16.5 million acres of Preserves.

REFUGES

Title III sets aside 70.8 million acres as new units of the Wildlife Refuge system. It achieves this by (a) ratifying the creation of two executively-created Monuments (11.8 million acres), (b) adding land to 5 existing Refuges (30.4 million acres), and (c) creating 11 new Refuges (28.6 million acres).

A major change from the House-passed H.R. 39 is the treatment of National Petroleum Reserve - Alaska. This is a 22 million acre Federal oil reserve set aside over 50 years ago; last year's H.R. 39 designated it a Refuge and provided that such classification

was not to affect oil development programs. The new H.R. 39 sets aside only two portions of the Reserve, totaling 7.1 million acres as Refuges. However, there is no language in the new bill directing that Refuge designation shall not interfere with the on-going Congressionally-authorized oil exploration program.

In addition, Refuges designated outside of the Petroleum Reserve amount to 63.7 million acres in the new H.R. 39; such designations amounted to only 54 million acres in the House-passed version.

This 17 percent increase in Refuge area outside of the oil Reserve is due to (1) the expansion of five Refuges contained in the House-passed H.R. 39 and (2) creation of a totally new unit. The new 39 reinstates the 2.85 million acre Iliamna Refuge which was a proposal dropped in September, 1977 by agreement among Reps. Udall, Seiberling, Young, and Secretary Andrus. Iliamna is one of the State's highest priority land selection interest areas.

FORESTS

Title IV adds less than 3 million acres to the existing Chugach and Tongass National Forests. However, over two-thirds of this acreage consists of mountain tops and ice fields. In addition, over 8 million acres or 35 percent of National Forest lands in Alaska are reclassified as Wilderness in the new bill.

WILD AND SCENIC RIVERS

Title V adds 13 rivers outside of conservation units covering approximately 2 million acres to the Wild and Scenic Rivers system. Another 10 rivers are added to the study category. Each designated river shall occupy a corridor up to four miles across.

The new 39 adds four rivers not designated by the House-passed version to the system including the Colville which forms the eastern boundary of the Petroleum Reserve and the Stony which is on State and Native land. Another major change is deletion of a House-passed H.R. 39 provision which excluded native lands from the boundaries of the designated Rivers.

WILDERNESS - GENERAL

The new bill designates 85.4 million acres as Wilderness in Alaska -- this represents over one-fifth of the State. In contrast, the House-passed H.R. 39 set aside 65 million acres of Wilderness units.

WILDERNESS - SOUTHEAST ALASKA

Title IV designates nearly 6.5 million acres or more than 40 percent of the existing Tongass National Forest as Wilderness. The 16 Wilderness units include the 1.1 million acre Admiralty Island unit and the 2.3 million acre Misty Fiords.

These Wilderness units grow over 200 million board feet of timber annually and withdrawal of these acreas will limit the Allowable Cut in the Forest to less than 320 million board feet each year. The local timber industry presently harvests an average of 520 million board feet annually.

The new bill contains two provisions which are supposed to close this 200 MMBF gap: (a) an authorization of $2 million annually to increase timber yields on nonwilderness lands and (b) an authorization for $5 million in annual loans for the purchase of special equipment which might permit the harvest of marginal timber stands presently uneconomical.

Last year's House-passed version created only 5 Wilderness areas in the Tongass which amounted to 2.4 million acres. The House also declined to set aside the large Misty Fiords area. In addition, it only reduced the allowable cut to 365 MMBF/yr. and did not contain any special timber funds.

WILDERNESS AND FISHERIES

The new H.R. 39 makes numerous changes regarding fisheries research, enhancement, and commercial fishing exceptions for Alaska Wilderness area. The bill limits (a) fisheries research, (b) fisheries enhancement activities, and (c) commercial fishing exceptions to only those Wilderness units within Forests. It does not provide any exceptions for hatchery and fish-pass construction in Wilderness areas.

Last year's H.R. 39 permitted (a) fisheries research in all Wilderness areas, (b) fisheries enhancement work in Refuge and Forest Wilderness areas, (c) commercial fishing in Refuge and Forest wilderness units, and (d) hatchery and fish-pass construction at specified sites in certain Wilderness units.

ACCESS

Traditional access through or across conservation units is ostensibly guaranteed. In addition, in-holders are granted assured access for economic and other purposes.

TRANSPORTATION RIGHTS-OF-WAY

The new bill makes only one change in present law governing rights-of-ways across conservation units: It permits oil and gas pipelines to cross Wild and Scenic Rivers subject to certain stringent conditions. Otherwise, existing law applies to all units.

Last year's House-passed bill contained a lengthy Title IX governing rights-of-ways across conservation units in Alaska. That Title authorized NEPA waivers for small projects, a more flexible permit process including possible Congressional review, a process to simplify permitting procedures involving two or more Federal agencies, etc.

OVERLAP WITH EXISTING STATE LANDS

The new H.R. 39 encompasses nearly 7 million acres of existing State lands within its unit boundaries. Major examples are State in-holdings of 1.4 million acres within the proposed Gates of the Arctic Park, 1 million acres within the proposed Lake Clark Park and Preserve, and 1.3 million acres within the expanded Arctic Wildlife Range. All of these lands were selected by the State and are recognized as valid by the Department of the Interior. Hence, the supposed in-holding problems created by the State's land selection interests are in reality caused by expansive boundaries in H.R. 39.

STATE SELECTION INTEREST LANDS

Although the State of Alaska is entitled to select 104 million acres of land per the Statehood Act, it has been permitted to choose only 75 million acres. However, it has identified where it wishes to select its remaining entitlement, and 11 million acres of the lands it wants to pick are included in the units in the new H.R. 39. Last year's bill, in contrast, blocked 9 million acres of the State's remaining selections.

LAND CONVEYANCES

The State has received patent to less than 25 million acres of its Statehood land entitlement and the Native Corporations less than 5 million acres of their 44 million acre settlement. Because of this situation, the House-passed H.R. 39 contained a lengthy Title VIII providing for expedited conveyance of lands to the State and the Natives. The new version of H.R. 39 does not contain this major title or any similar provisions.

OIL AND GAS

Approximately 40 million acres of lands which overlay identified sedimentary basins are included in conservation system units. Most of these units are Refuges where oil and gas leasing may occur if the Secretary finds that such activity is compatible with the purpose of the unit. However, such activity cannot occur in Wilderness portions of Refuges.

In addition, the 9 million acre Arctic Wildlife Range (just east of Prudhoe Bay) is designated Wilderness. Many consider this among the finest onshore oil and gas areas in North America. Wilderness classification is designed to protect the caribou calving grounds in the area.

MINERALS

The new H.R. 39 statutorily withdraws over 135 million areas in Alaska from mineral entry or nearly 40 percent of the State. The result is that 70 percent of lands rated Highly Favorable for mineral occurrences by the U.S. Bureau of Mines are closed. In addition, three world class mineral discoveries identified by the Stanford Research Institute are included in Wilderness areas: (1) Quartz Hill molybdenum find - Misty Fiords, (2) Greens Creek silver strike - Admiralty Island, and (3) Inspiration nickel/cobalt/copper - Yakobi Island.

Last year's H.R. 39 withdrew approximately 12 million acres less land from mineral entry and did not designate the area around Quartz Hill as Wilderness.

COOPERATIVE MANAGEMENT

The new bill does not establish any area where cooperative Federal-State management will be tested.

The House-passed H.R. 39 contained lengthy provisions setting up the Bristol Bay Cooperative Region to test such joint management.

SPORT HUNTING

The new H.R. 39 closes 41 million acres in Alaska to sport hunting and trapping. The Alaska Department of Fish & Game estimates that over 1500 hunting guides and trappers are adversely affected by this closure.

Last year's measure closed 27 million acres and permitted registered hunting guides to continue their hunting services within certain National Parks for 20 years.

SUBSISTENCE HUNTING

Title VII sets forth a Subsistence Management Program. Essentially it permits the State of Alaska to manage the program subject to oversight conducted by the Secretary of Interior. The program provides that subsistence hunting and fishing shall be the first priority consumptive use and the definition of a subsistence user is nonracial. The language is very similar to that which appeared in the House-passed bill.

Since that bill passed in May, 1978, a newer subsistence title was written in the Senate. It was agreed to by the Alaska Federation of Natives and further alleviated the State's serious concern that its fish and game management authority not be usurped by the Federal government.

SUBSISTENCE RESOURCE DAMAGE

THIS IS A MAJOR NEW PROVISION WITH ENORMOUS RAMIFICATIONS. Section 815 of the new bill establishes personal liability for damages to subsistence resources. If a person is engaged in any activity on a conservation unit in Alaska for which he holds a permit or authorization from the Secretary, that person is liable for any and all damages done to "fish, wildlife, and other renewable resources relied upon by local residents for subsistence purposes". Liability for any one incident is "LIMITED TO $50,000,000". The section does not spell out what constitutes "damage" and does state that the only activity not subject to such liability is subsistence fishing and hunting.

CLAIMS ACT AMENDMENTS

The bill's final Title contains a series of amendments to the Alaska Native Claims Settlement Act (ANCSA). Although most of these amendments are agreed to by the State, the Natives, and the Interior Department, the amendments were not contained in any of the Alaska lands bills which were before the House last year.

PLEASE NOTE: THE PRECEDING PAGES WERE TREATED AS A UNIT IN THE ORIGINAL DOCUMENT.

ALASKANS UNITED

are mandating

NO COMPROMISE

on All Alaska Lands



■ Lands not available for private use

□ Lands for private use

File D2

If we don't act now, this is **what** we can expect.

ALASKANS UNITED
5705 DeBarr Road
Anchorage, Alaska 99504

LEGAL (or illegal) FEDERAL LANDS?

Art. I, Sec. 8, clause 17 of the U.S. Constitution says;

"Congress shall have power" - - - - - "To exercise exclusive Legislation in all Cases whatsoever" over Washington D.C., "and to exercise like authority over all places PURCHASED by the CONSENT of the Legislature of the State in which the same shall be, for the erection of FORTS, MAGAZINES, ARSENALS, DOCK-YARDS, and other NEEDFUL BUILDINGS." It says nothing about Parks, Monuments, D-2, Antiquities Act or any other way the Fed. may attempt to acquire land.

Art. IV, Sec. 2, clause 1 of the U.S. Constitution says;

"The Citizens of each State shall be entitled to ALL Privileges and Immunities of Citizens in the several States." The original 13 colonies and 9 other states were declared soverign states and ALL land belongs to them. Is Alaska due any less?

Art.VI, Sec. 1, clause 2 of the U.S. Constitution says;

"This Constitution, and the Laws of the United States which shall be made in PURSUANCE thereof; - - - - - - - shall be the SUPREME LAW of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding."

16th American Jurisprudence, 2nd Edition, Section 177 Constitution Law says;

"The general rule is that an unconstitutional statute, though having the form and name of law, is in reality no law, but is wholly, void, and ineffective for any purpose; since unconstitutionality dates from the time of its enactment, and not merely from the date of the decision so branding it. An unconstitutional law, in legal contemplation, is as inoperative as if it had never been passed. Such a statute leaves the ques - tion that it purports to settle just as it would be had the statute not been enacted.

"Since an unconstitutional law is void, the general principles follow that it imposes no duties, confers no rights, creates no office, bestows no power or authority on anyone, affords no protection, and justifies no acts performed under it . . .

"A void act cannot be legally consistent with a valid one. An unconstitutional law cannot operate to supersede any existing valid law. Indeed, insofar as a statute runs counter to the fundamental law of the land, it is superseded thereby.

"No one is bound to obey an unconstitutional law and no courts are bound to enforce it."

Miranda vs. State of Arizona, 380 US 436 (1966):

"Where rights secured by constitution are involved, there can be no rule or legislation which would abrogate them."

President Carter has acted illegally under the Antiquities Act of 1906. Congress did not have the authority to even make such an act. Governor Hammond, although affirming the U.S. Constitution, is sitting back doing NOTHING. He should declare that Alaska is A Soverign State, and ALL Lands belong to the State. Mt. McKinley National Park would become Mt. McKinley State Park. Chugach National Forest would be returned as Chugach State Forest, and all other land held by the Fed. will be returned to the State of Alaska for use by its citizens in one form or another.

There is NO room for compromise, we want title to ALL of that which already belongs to us. If our present State administration will not uphold the law and govern our State property, it is up to each and every one of us to declare our POWER.

U.S. CONSTITUTION BILL OF RIGHTS

Article IX

The enumeration of the Constitution, of certain RIGHTS, shall not be construed to deny or disparge others retained by the PEOPLE.

Article X

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the PEOPLE.

If we do not adhere to these principles, (law) we are committing Treason against the United States and trampling on the blood of the Constitution. We must put down any act to overthrow the CONSTIT -- UTION, with whatever power we have to use.

Alaskans United are fighting for these principles. If you have time to help or other donations to help please contact us at;

ALASKANS UNITED
5705 DeBarr Road
Anchorage, Alaska 99504

Stand Up Alaskans

FOR OUR CONSTITUTIONAL RIGHTS.



Your freedom depends on it.

"We the people are rightful masters of both Congress and the Courts – not to overthrow the Constitution, but to overthrow the men who pervert the Constitution."

"To sin by silence when they should protest makes cowards of men."

– Abraham Lincoln

QUESTIONS

—Are you satisfied with Steven's handling of the Alaska Land problem?

—Is Hammond mishandling the Alaska Lands issue?

—Do you believe in the U.S. Constitution's land policy?

	Yes/No
Do you want antiquities?	____ ____
Do you want d-2?	____ ____
Do you want Alaska to maintain ownership of its land?	____ ____

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(907) 276-0677

Clark Engle
Chairman

"To Protect Our Constitutional Rights"
NO COMPROMISE!

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(907) 276-0677 Clark Engle
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