

ALASKA LEGISLATURE SPECIAL COMMITTEE / SUBJECT FILES 8672
680 SCOMM22: ALASKA LANDS FILE 1977-78

- 78/ 16 U.S.C.A. §1281(c).
- 79/ 16 U.S.C.A. §1281(d).
- 80/ 16 U.S.C.A. §1284(g).
- 80a/ 16 U.S.C.A. §1284(g).
- 81/ A.S. 38.05.300.
- 82/ A.S. 19.10.010.
- 83/ A.S. 19.10.015.
- 84/ A.S. 19.10.020.
- 85/ A.S. 38.05.330.
- 86/ See 1d.
- 87/ A.S. 38.35.010 et seq.
- 88/ A.S. 38.35.010.
- 89/ A.S. 38.35.050.
- 90/ A.S. 38.35.100(a).
- 91/ A.S. 38.35.120(d).
- 92/ A.S. 38.35.120(a) (13) and (14).
- 93/ See generally A.S. 41.20.
- 94/ e.g., A.S. 41.20.150.
- 95/ A.S. 41.20.020(g).
- 96/ Interview with personnel of the Division of Parks, Department of Natural Resources, State of Alaska.
Conducted by David Schooler, November 21, 1975.

43 USC 1770.

Sec. 510. (a) Effective on and after the date of approval of this Act, no right-of-way for the purposes listed in this title shall be granted, issued, or renewed over, upon, under, or through such lands except under and subject to the provisions, limitations, and conditions of this title: *Provided*, That nothing in this title shall be construed as affecting or modifying the provisions of the Act of October 13, 1964 (78 Stat. 1039; 16 U.S.C. 532-533) and in the event of conflict with, or inconsistency between, this title and the Act of October 13, 1964, the latter shall prevail: *Provided further*, That nothing in this Act should be construed as making it mandatory that, with respect to forest roads, the Secretary of Agriculture limit rights-of-way grants or their term of years or require disclosure pursuant to Section 501 (b) or impose any other condition contemplated by this Act that is contrary to present practices of that Secretary under the Act of October 13, 1964. Any pending application for a right-of-way under any other law on the effective date of this section shall be considered as an application under this title. The Secretary concerned may require the applicant to submit any additional information he deems necessary to comply with the requirements of this title.

(b) Nothing in this title shall be construed to preclude the use of lands covered by this title for highway purposes pursuant to sections 107 and 317 of title 23 of the United States Code.

(c) (1) Nothing in this title shall be construed as exempting any holder of a right-of-way issued under this title from any provision of the antitrust laws of the United States.

(2) For the purposes of this subsection, the term "antitrust laws" includes the Act of July 2, 1890 (26 Stat. 15 U.S.C. 1 et seq.); the Act of October 15, 1914 (38 Stat. 730, 15 U.S.C. 12 et seq.); the Federal Trade Commission Act (38 Stat. 717; 15 U.S.C. 41 et seq.); and sections 73 and 74 of the Act of August 27, 1894.

"Antitrust
law."

15 USC 8, 9.

REPEAL OF LAWS RELATING TO RIGHTS-OF-WAY

SEC. 705. (a) Effective on and after the date of approval of this Act, R.S. 2477 (43 U.S.C. 932) is repealed in its entirety and the following statutes or parts of statutes are repealed insofar as they apply to the issuance of rights-of-way over, upon, under, and through the public lands and lands in the National Forest System:

Act of	Chapter	Section	Statute at Large	43 U.S.C.
Revised Statutes 2379				631.
The following words only: "and the right-of-way for the construction of ditches and canals for the purpose herein specified is acknowledged and confirmed; but whenever any person, in the construction of any ditch or canal, injures or damages the possession of any settler on the public domain, the party committing such injury or damages shall be liable to the party injured for such injury or damage."				
Revised Statutes 2340				631.
The following words only: "or rights to ditches and reservoirs used in connection with such water rights."				
Feb. 16, 1897	325		29: 599	624.
Mar. 3, 1899	427	1	30: 1223	625, 626, (18 U.S.C. 553).
The following words only: "that in the form provided by existing law the Secretary of the Interior may file and approve surveys and plots of any right-of-way for a wagon road, railroad, or other highway over and across any forest reservation or reservoir site when in his judgment the public interests will not be injuriously affected thereby."				
Mar. 3, 1893	152		18: 452	624-629.
May 14, 1894	299	2-9	30: 309	612-1 to 642-9.
Feb. 27, 1901	614		31: 515	612.
June 26, 1904	3542		34: 451	614.
Mar. 3, 1904	561	15-21	28: 1101	545-549.
Mar. 4, 1917	181	1	39: 1197	
May 23, 1926	409		41: 663	
Mar. 1, 1931	53		41: 1154	620.
Jan. 13, 1937	11		20: 484	632-633.
Mar. 3, 1938	219		42: 1437	
Jan. 21, 1943	37		28: 635	551, 554, 557.
May 14, 1894	179		29: 129	
May 11, 1904	293		29: 404	
Mar. 4, 1917	181	2	39: 1197	
Feb. 15, 1901	373		31: 799	559 (18 U.S.C. 79, 722).
Mar. 4, 1911	208		26: 1233	637 (15 U.S.C. 5, 7, 17, 20, 520).
Only the last two paragraphs under the sub-heading "Improvement of the National Forests" under the heading "Forest Service."				
May 27, 1902	328		69: 95	
May 21, 1904	212		29: 127	612-613.
Apr. 12, 1910	156		30: 226	614-615.
June 4, 1907	2	1	39: 35	15 U.S.C. 531.
Only the eleventh paragraph under Surveying the public lands.				
July 22, 1937	517	31, 32	50: 525	7 U.S.C. 1010-1012.
Sept. 3, 1934	1235	1	68: 1146	631c.
July 7, 1909	Public Law 42-604		71: 241	40 U.S.C. 3452.
Oct. 23, 1932	Public Law 67-812	1-3	79: 1122	40 U.S.C. 319-321.
Feb. 1, 1903	288	4	33: 628	15 U.S.C. 524.

(b) Nothing in section 705(a), except as it pertains to rights-of-way, may be construed as affecting the authority of the Secretary of Agriculture under the Act of June 4, 1897 (30 Stat. 35, as amended, 16 U.S.C. 551); the Act of July 22, 1937 (50 Stat. 525, as amended, 7 U.S.C. 1010-1012); or the Act of September 3, 1954 (68 Stat. 1146, 43 U.S.C. 931c).

MANAGEMENT SYSTEMS

The attached material was prepared by Esther Wunnicke of the staff of the Federal-State Land Use Planning Commission for inclusion in the Commission's d-2 briefing book. It is a more complete discussion than that included in the second draft of the briefing book.

The attached draft includes discussions of, and background information on:

Management of National Interest Lands

National Park Service

U. S. Forest Service

U. S. Fish and Wildlife Service

Wild and Scenic Rivers System

Management Needs in Alaska

Management of Other Federal Lands

Bureau of Land Management

Relationship of Federal, State and Private Land Managers

October, 1976

SECRET TO CHIEF

III. C. MANAGEMENT SYSTEMS

Three nationwide management systems--National Park Service, U.S. Forest Service, and U.S. Fish and Wildlife Service--are named as potential managers of the d-2 lands in Section 17(d)(2) of the Native Claims Settlement Act. The fourth system--Wild and Scenic Rivers--is not a management system, but a classification system which takes its management from that of the adjacent land manager. All three land managers already manage several million acres in each system in Alaska, as well as other units throughout the United States. Another major land managing agency in Alaska is the Bureau of Land Management which is responsible for all unreserved Federal lands and, with the transfer of jurisdiction from the Navy to the Department of the Interior, has been given a mandate to manage surface resources on what will become National Petroleum Reserve Alaska.

The chief distinctions among the managing agencies are in the organic acts establishing policy for their management, staffing and financial support, and the way they are perceived by their constituencies. Each has some classification authority for the lands under its jurisdiction, and each, with the recent passage of the Federal Land Policy and Management Act of 1976, has, or will have, the proprietary authority to deny access, or condition allowed access, to units within its management jurisdiction.

The reservation by Presidential Order of the Afognak "Timberland Reserve" in 1892, followed by designation in 1907 of the Tongass National Forest which encompasses most of Southeast Alaska, was the first reservation in Alaska of what have come to be called "national interest lands." It is also interesting to note that it was this reservation which extinguished the aboriginal title of the Tlingit and Haida Indians of Southeast Alaska and which was the source of the suit of the Tlingit and Haidis in the Court of Claims for compensation for this loss of aboriginal right. An additional large unit of the National Forest Service, the Chugach National Forest, and three large units of the National Park Service, Mount McKinley National Park, Katmai National Monument, and Glacier Bay National Monument, had been designated by Statehood in 1959, along with many units of the Wildlife Refuge System, the largest and most commonly known being the Kenai Moose Range on the Kenai Peninsula, and the 9-million-acre Arctic Game Range created within the first year of statehood. Smaller units of the Refuge System on the coasts of Alaska were established to protect migratory waterfowl and sea mammals, particularly those for which the United States had international treaty obligations.

Conservation interests early recognized that not only were there other prime park, wildlife refuge, and forest lands in Alaska which in the national interest should be reserved from disposal to private individuals under the public land laws or to the State of Alaska under its selection rights, but that there were necessary additions to existing national interest lands to assure their boundaries and to assure a comprehensive conservation system throughout Alaska. With the passage of the Alaska

Native Claims Settlement Act, Congress also recognized that in addition to its obligation to treat fairly with the original inhabitants of Alaska--the Aleuts, Indians, and Eskimos which make up the Native population of Alaska--and to fulfill its statutory promise in the Statehood Act to the State of Alaska, there was an obligation to protect the national interest lands in Alaska.

Management of National Interest Lands

National Park Service

The National Park Service, established by Act of Congress, August 25, 1916, manages land in order to "conserve the scenery and the natural and historic objects and the wildlife 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." Within this basic objective, lands in the National Park System are managed in different ways according to a number of categories or "classifications." The agency is dedicated to the resolution of any use or management conflict in favor of the protection of the natural, scenic, wildlife or historical values mentioned in its enabling legislation.

Some parks have characteristics of natural, historic, and recreational categories, and the Service is laying stress on land classification within the parks so that resources may be appropriately identified and managed in terms of their inherent values and appropriate uses.

National Park Service natural areas, exemplified in Alaska by the present Mount McKinley National Park and Katmai and Glacier Bay National Monuments, are managed to place primary emphasis on the preservation of natural features of the area. Commercial harvest of timber, except where required to control insects or disease, is prohibited. Mineral prospecting, mining, and the extraction of minerals or the removal of soil, sand, gravel, and rock are also prohibited. For many years, mining claims could be established in and mining permitted in these natural parks in Alaska. With the recent passage of legislation prohibiting the acquisition of new mining rights in these, as well as other, National Parks, these exceptions in Alaska to general Park Service management will no longer be applicable. There are inholdings in the existing parks in Alaska, however, which, if they are not acquired by the Park Service, will be allowed to continue operations under strict surveillance. For the next four years, new surface disturbances for the purpose of mineral production will be prohibited.

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Public hunting is also prohibited, as is livestock grazing, and commercial fishing, except where provided by law. Sport fishing is permitted. Except where necessitated as a condition of establishment, where required by applicable law, or where required to serve park utility systems, transportation corridors and rights-of-way for private or corporate entities are not allowed in natural and historical parks.

National Park Service historical areas such as, in Alaska, the Sitka National Historic Park, are managed to place primary emphasis on maintaining, and, where necessary, restoring, the historic integrity of structures, sites, and objects of historical significance; and natural resources are to be maintained to resemble, as nearly as possible, the resource scene that occurred at the time of the period of history being commemorated.

Recreation areas include the national recreation areas, national seashores and lakeshores, national parkways, national scenic riverways, national rivers, and national scenic trails. Here, outdoor recreation is recognized as the dominant or primary resource management objective. Natural resources within recreation areas may be used and managed for additional purposes where compatible with recreation. Harvesting of timber, mineral prospecting, and removal of nonleasable minerals under applicable regulations may be permitted if such uses will not significantly impair the values of the area. Leasable minerals may also be removed in accordance with the Mineral Leasing Act. Public hunting, fishing, and possession of fish and resident wildlife are governed by applicable State laws with designation of zones and periods during which no hunting or fishing are permitted for reasons of public safety, administration, fish and wildlife management, or other public use and enjoyment of the area.

A new category in the Park Service system is the National Preserve category, applying now only to the Big Thicket National Preserve in Texas and the Big Cypress National Preserve in Florida. The primary purpose is to preserve areas with natural values of national significance, generally areas characterized by high scientific value, including significant ecological communities, and rare, unusual or endangered flora and fauna. Resource utilization, including exploration and extraction of minerals, recreation activities, construction of physical facilities, hunting, trapping, and fishing are permitted only if consistent with the primary objective of preserving the natural area.

Increased populations and increased demands for recreational resources, as well as the fact that often the measurement of Park Service success for purposes of funding is the number of public visitors each year to its units, have required new policies and methods. Recently, revised Park policies provide for the limitation of those activities which are detrimental to the natural and historic values each park was established to preserve. And that "the level, frequency and duration of permitted uses shall be limited where necessary to protect park resources from alteration or loss." Not only is the assessment of environmental impacts provided for in Park policy, but additional public involvement in policy and management determinations is the thrust of these new policies.

Methods and means are necessary to make this policy effective so that Park users may not be the instrument to destroy Park values. Additionally, Service responsibilities for the safety of its users must be addressed clearly and constructively. Alaskans are particularly conscious of this factor in Park Service management as a consequence of the 1976 climbing season when several lives were lost on Mount McKinley.

Because of a general "no hunting" policy, if the taking of fish, game, and other renewable resources for subsistence purposes by Alaska Natives and other rural Alaskans dependent on a subsistence lifestyle from the parks is allowed, a modification of customary Park Service management is required.

The Commission has determined as a general policy that prime natural, scenic, wildlife, and historical areas identified to be of national interest in Alaska should be placed under National Park Service management. It has further determined that without modification traditional Park Service management which disallows mining and hunting should be designated for these areas.

U.S. Forest Service

The Forest Service in the Department of Agriculture has primary Federal responsibility for the protection and development of the Nation's forestry resources. The first act for organizing and managing the public forest was passed in 1897. The Forest Service was formed in 1905 when the Bureau of Forestry in the Department of Agriculture was transferred responsibility of managing the Nation's Forest Reserves, later renamed the National Forests, from the General Land Office. At first, management of the National Forests was primarily custodial, protecting the forests from fires, insects and diseases, over-grazing, and erosion. After the end of World War II, demands for the goods and services which came from the forests increased greatly with a growing population of the United States, and there was intensified public concern for environmental quality.

National Forests provide many resources, and the National Forest Service has always permitted use of timber, grazing, mining, hunting, fishing, and trapping. As outdoor recreation became more popular, picnic areas, camping, campgrounds, cabins, hiking trails, and wilderness areas were provided. In 1960, Congress strengthened the Forest Service management policy with the passage of the Multiple Use-Sustained Yield Act. The Multiple Use-Sustained Yield Act defines multiple use as "the management of all the various renewable surface resources of the National Forest so that they are utilized in the combination that will best meet the needs of the American people."

The Service, through the Secretary of Agriculture, has broad authority for special classification of National Forest lands where areas of special interest have been designated as virgin, scenic, geological, historical, botanical, and zoological areas.

Fish and wildlife habitat is managed by the Forest Service with seasons, bag limits, methods and means of harvest and use set by the Alaska Department of Fish and Game; mineral development and exploration and development of locatable minerals on National Forest lands include the right to prospect, locate, mine and remove minerals and obtain patent to the claim.

Passage of the National Environmental Policy Act of 1969 and its requirements for Environmental Impact Statements provided additional opportunities for public environmental concerns to take substantive form. The Forest Service in Alaska has been the target of several suits brought under the NEPA, and Forest Service, Alaska, as well as some units of the Forest Service elsewhere is now subject to a so-called "Kohanganalia decision" prohibiting clear-cutting of timber. This issue, as well as other issues of Forest Service management practices, was before the Congress in the recently passed National Forest Management Act of 1976. The Act amends the 1974 Humphrey-Rarick Act, and in Section 18 harvesting guidelines are provided. Despite Forest Service contention that it has ample expression of congressional intent in order to do its job, the Service was also included, along with the Bureau of Land Management in the Federal Land Policy and Management Act of 1976.

The Forest and Rangeland Renewable Resources Planning Act (P.L. 93-378), also referred to as the Resources Planning Act or the Humphrey-Rarick Act, was passed August 17, 1974. It calls for long-range planning by the Forest Service to insure an adequate supply of forest resources in the future in the United States and the maintenance of the quality of the environment. Under the Act, the Forest Service must periodically submit to Congress a renewable resources assessment and a long-range renewable resource program. The renewable resource program is to be a long-range plan for all Forest Service programs, including the National Forest System, Research, and State and Private efforts.

Section 8 of the Humphrey-Rarick Act reiterates that the development and administration of the renewable resources of the National Forest System are to be in full accord with the concepts of multiple use and sustained yield of products and services as set forth in the Multiple Use Sustained-Yield Act of 1960. The definition of the National Forest System as given in the 1974 Act says that the System "consists of units of federally owned forest, range and related lands throughout the United States and its territories, united into a nationally significant system dedicated to the long-term benefit of present and future generations, and that it is the purpose (of this section) to include all such areas into one integral system." The Act also specifies another characteristic of Forest Service management. That is that "on-the-ground field offices, field supervisory offices, and regional offices of the Forest Service shall be so situated as to provide the optimum level of convenient, useful services to the public, giving priority to the maintenance and location of facilities in rural areas and towns near the national forest."

This Service, because of its long history and multiple use-sustained yield direction, has had a great deal of contact with local residents; and, as a consequence, has delegated considerable decision-making authority to its local officers. It also provides technical assistance to other landowners with respect to timber management.

There are three arms of the Forest Service: National Forest System, State and Private Forestry, and Research managing what the Service sees

as six major responsibilities or "resource systems"--outdoor recreation and wilderness, wildlife and fish habitat, rangeland grazing, timber resource, land and water, and human and community development.

The primary missions of the Outdoor Recreation and Wilderness System are to provide outdoor recreation opportunities and wilderness on national forests, protect and manage scenic, cultural and wilderness resources, and provide technical assistance and advice to other public and private forest landowners in developing forest-based recreational opportunities. The primary mission of the Wildlife and Fish Habitat System is to provide wildlife and fish habitat with special emphasis on threatened and endangered species in close coordination with states who have responsibilities for wildlife and fish populations. The primary mission of the Rangeland Grazing System is to provide forage for domestic livestock grazing on forest land and rangeland.

The primary mission of the Timber Resource System is to grow and make available wood for the Nation on a continuing basis. The primary mission of the Land and Water System is to protect, conserve, and enhance the basic resources of air, soil, and water on forest land and rangeland.

As a multiple use manager, it is often difficult for the Forest Service to deny uses on lands under its management, and with lumbering interests a large part of its constituency, it is often perceived by conservation interests as an agency which resolves conflict in favor of timbering, at all cost. In its renewable resources assessment and recommended renewable resource program filed to meet the requirements of the Humphrey-Rarick Act, the Forest Service focuses on (1) dispersed recreation opportunities with a moderate allocation of National Forest land to statutory wilderness designation, (2) priority on the most cost-effective resource management for timber and range activities, and (3) accelerated efforts on behalf of wildlife and fish, land and water stewardship, as well as human and community development. (Here, it should be noted that Forest Service lands are subject to a 400,000-acre selection entitlement of the State of Alaska specified in the Alaska Statehood Act.)

Issues in Forest Service management include how and when clear-cutting should be used; what kinds of recreational facilities and opportunities should be provided by the National Forests, and who should pay for them; and how much land should be designated as wilderness. It is too early to judge whether the recommended renewable resource program can be achieved or what the end result of the National Forest Management Act of 1976 will be. What should be apparent to those who view the designation of d-2 lands as an unchangeable decision is the changed policy and management practices direction which may come from future congressional review.

In determining areas which are best suited for Forest Service management in Alaska, a crucial question has been whether or not additions to the system should be made in interior Alaska.

U.S. Fish and Wildlife Service

The Wildlife Refuge (and Range) System is maintained "for the fundamental purpose of wildlife conservation and rehabilitation" and is managed by the U.S. Fish and Wildlife Service. Uses compatible with this primary purpose are allowable by permit of the Secretary of the Interior. These refuges are established for the restoration, preservation, development, and management of wildlife and wildlands habitat; for the protection and preservation of endangered or threatened species and their habitat; and for the management of wildlife and wildlands to obtain the maximum benefits from this resource. The system includes wildlife refuges, wildlife ranges, game ranges, wildlife management areas, waterfowl production areas, and other areas for the protection and conservation of fish and wildlife that are threatened with extinction.

In most instances, refuges are on Federal lands and waters controlled by the U.S. Fish and Wildlife Service. Some are established on lands and waters primarily controlled by some other Federal or public agency.

The special mission of the Refuge System is to provide, manage, and safeguard a National network of lands and water sufficient in size, diversity, and location to meet people's needs for areas where the entire spectrum of human benefits associated with migratory birds, other wild creatures, and wildlands are enhanced and made available. These areas are dedicated to the wildlife found thereon. But, public enjoyment of wildlife refuge areas is allowed consistent with the major management objective.

Basically, all acts are prohibited on a refuge unless permitted by the Secretary of the Interior, and the Secretary is authorized, under such regulations as he may prescribe, to (1) permit the use of any area within the system for any purpose, including but not limited to hunting, fishing, public recreation and accommodations, and access whenever he determines that such uses are compatible with the major purposes for which such areas were established, and (2) permit the use of, or grant easements in, over, across, upon, through or under any areas within the system for purposes such as powerlines, pipelines and roads, again, whenever he determines that such uses are compatible with the purposes for which these areas are established. Such uses may include mineral leasing, hunting, fishing and trapping, timber sales, and mining and metalliferous mineral location, as well as scientific investigations, hiking, camping, and other recreational use.

Most wildlife refuges and ranges have been established by Executive Order, and one of the chief distinctions between refuges established under Section 17(d)(2) of the Settlement Act and existing refuges and ranges is that the d-2 refuges will be established by Congress and, consequently, more difficult to modify or amend. Another distinction with respect to wildlife refuge lands in Alaska is that existing refuges have been made subject to limited selection rights by Alaska Native villages within them, presenting management problems and challenges to

the Service. On the other hand, without congressional action the Service can designate, and has designated, refuge lands authorized in the Settlement Act to replace those lands, in area, at least, which were selected by village corporations.

The Federal-State relationship with respect to resident game management is the major issue determining whether large mammal habitat areas in addition to, for example, the present Arctic Game Range and Kenai Moose Range should be placed under Fish and Wildlife Service management, or whether the proposed new additions to the Refuge System should emphasize migratory waterfowl nesting and breeding areas.

The size and location of proposed wildlife refuges is of particular concern to the State of Alaska for another reason. A 1975 decision of the Comptroller General has recently been confirmed by him to the effect that receipts from oil and gas leases on wildlife refuges created by withdrawals of public lands are required to be distributed pursuant to 16 U.S. Code Sec. 715s(c) rather than pursuant to the Mineral Leasing Act. If this decision is not overturned by judicial opinion, the effect is that 25 percent of the receipts will go to counties (or in Alaska's case boroughs), and 75 percent for the management of the refuges. Both the revenues to the State of Alaska and portions of the money settlement to Alaska Natives under the Settlement Act are based upon the Mineral Leasing Act.

As a matter of policy, the Commission has placed emphasis on prime waterfowl habitat areas rather than upland game areas.

Wild and Scenic Rivers System

The Wild and Scenic Rivers System is a congressional classification established in 1968. As designation of a wilderness area under the Wilderness Act does not change the proprietorship of the area, neither does designation of a wild and scenic river. It does establish certain controls on riverfront development and use, however. All rivers in the national system must be substantially free-flowing, have high quality water, and be long enough to provide a meaningful experience for the river traveler. Regulation and management of rivers in the system vary somewhat depending on which of three categories--wild, scenic, or recreation--apply.

Wild rivers are essentially in a primitive state and inaccessible except by trail. They are free of impoundments with watersheds or shorelines essentially primitive and waters unpolluted.

Scenic rivers, or sections of rivers, are free of impoundments, with shorelines and watersheds still largely primitive and undeveloped but accessible in places by roads.

Recreational rivers are readily accessible by road or railroad, may have some development along their shorelines, and may have undergone some impoundment or diversion in the past.

Any use, such as dams for hydroelectric purposes, which would change the free-flowing characteristic of the river would be precluded, and depending upon the management system of surrounding lands, hunting or mining may be denied on the rivers designated. Even within larger managing units which allow mining and the acquisition of title under the 1892 Mining Act, some restriction may be placed on the mining operation by classification of the river as a part of the Wild and Scenic River System. For instance, the issuance of a patent to any mining claim affecting lands within the system confers title only to the mineral deposits and such rights only to the use of the surface and the surface resources as are reasonably required for carrying on prospecting or mining operations. Minerals in lands which constitute the bed or bank or are situated within any river designated as a wild river will be withdrawn, subject to valid existing rights from all forms of appropriation under the mining laws and from operation of the mineral leasing laws. No such withdrawals are made in scenic or recreational river areas. Safeguards against pollution of the river and unnecessary impairment of the scenery within the area may be provided for by regulation even where mining is allowed.

With almost all of Alaska's rivers meeting the criteria for designation as units of the Wild and Scenic Rivers System, Commission review was on a statewide basis to assure that representative rivers were chosen. Of chief concern to Alaska residents was the effect of this classification upon hunting, fishing, and other subsistence activities, as well as the use of the rivers for transport.

Management Needs in Alaska

Given sufficient manpower and funding, and in a situation of intensive management, each of the present land managing agencies could manage a particular piece of land for a particular purpose or for compatible purposes. Their chief distinctions are in staffing, organic acts establishing them or giving them policy direction, the way in which their success is measured and the way in which they are perceived by their constituencies. To find that they are rivals for, often, the same tract of land, one need only trace the history of any of the proposals now before Congress for the creation, and designation of management of national interest units. The Park Service and Fish and Wildlife Service with the same Assistant Secretary in the same Department and responding to the same congressional committee compete for larger acreages, additional staff and additional funding. Even greater is the rivalry between the Forest Service in the Department of Agriculture which responds to another set of congressional committees and another constituency, and Department of the Interior agencies. That there is need for coordination between and among the Federal agencies designated for national interest land management is apparent.

Given the magnitude and strategic importance of State and private landholdings by Native corporations, often within the same ecosystem as a proposed unit of national interest land, and even more often adjoining

such units, there is need for coordination among Federal land managers, State land managers, and Native corporate land managers.

To establish a rational land use pattern in Alaska, it will be necessary to:

- ...provide intensive management to critical areas which are subject to impact or which are of such apparent national interest value that they should be set aside now.
- ...preserve other lands whose national interest qualities may either be less apparent or whose other resource values cannot now be accurately determined, for future land and resource management options.
- ...determine a unified policy for treatment of the Federal lands, along with State and private lands, in Alaska, with clear regulation, rulemaking and enforcement consistent with that policy.
- ...eliminate, where possible, duplication of effort and expertise.
- ...establish administrative boundaries which follow natural boundaries.
- ...provide means of coordination which carries with it authority to bind the component parts and line responsibility of the various agencies to the coordinating board of agency.
- ...assume participation by private citizens in institutional decisions.
- ...make best utilization of the existing land management systems.

Essential to the implementation of the land ownership and land use pattern which the Congress is in the process of establishing for Alaska is the need for unified planning and decision making. Without unified policy planning, each competing manager makes an independent assessment, an independent plan and an independent commitment to competing groups. Not only may such independent action cancel benefits which, in good faith, the land manager may think will be derived from the plan, but it may result in action on the land which is detrimental.

Unified planning and decision making is based on the recognition that knowledge of the future is limited and that no agency or group can predict or design with certainty. This recognition is also the foundation establishing a process of future classification of lands whose merits and resources are not now readily ascertainable.

Management of Other Federal Lands

The Organic Act of 1884 extended land laws relating to mining claims to Alaska, followed 14 years later by the extension of the homestead laws, and in 1900 by the extension of a system of public land surveys. The administration of these and other public land laws was placed in the General Land Office which, with the Grazing Service in the Department of the Interior, was the predecessor of the Bureau of Land Management which was created in 1946. With these beginnings in the General Land Office,

the Bureau of Land Management has been perceived by many as a land disposal, rather than a land managing, agency.

During territorial times and the early days of statehood when most of Alaska was in the public domain, the Bureau of Land Management's direction was custodial and protective in nature, principally from wildfire. Unlike its counterparts in the "lower 48" BLM-Alaska had no broad land classification authority except for a period between 1964 and 1970 under the Classification and Multiple Use Act. (The Taylor-Grazing Act which provided classification authority for the other public land states did not apply to Alaska.) The administration of the Homestead Act was a prime Bureau of Land Management responsibility, particularly after World War II when there was a rush to homestead in Alaska, not so much for settlement as for speculation. For example, by the end of 1955, 59 percent of the acreages transferred to homesteaders on the Kenai Peninsula were unoccupied or abandoned and another 31 percent were being used solely for residential purposes.

As the Nation gradually reversed its policy to dispose of public lands "to open up the country" and assure economic development, many executive withdrawals were made in territorial Alaska. Most of these were "temporary withdrawals" under authority of the Pickett Act or under the inherent authority of the President. A great number of these withdrawals are still in effect today. The chief distinction between these two authorities is that the Pickett Act specifically exempts mineral entry for metalliferous minerals from the withdrawal, whereas the inherent authority of the President permits the closing of public lands, by withdrawal, to mineral entry. Although some withdrawals were made by executive order, most of them in recent years have been made by the Bureau of Land Management for the Secretary of the Interior by public land orders.

Section 204 of the Federal Land Policy and Management Act practically repeals all existing withdrawal authority and, in addition to requiring congressional review of any withdrawals of more than five thousand acres, also provides for twenty-year terms for other withdrawals and for procedures for and a three-year limitation on emergency withdrawals to "preserve values that would otherwise be lost." Interestingly, lands in Alaska are not included in review of some existing withdrawals required of the Secretary of the Interior within fifteen years from the date of the Act.

An extensive examination of the management policies and practices of the Bureau of Land Management and the Forest Service was made by the Public Land Law Review Commission whose summary report to the Congress, One-Third the Nation's Land forms the basis for many of the changes in public land law and public land management which are now taking place. Most recently was passage in October, 1976 of the Federal Land Policy and Management Act of 1976 mentioned above. With most of the nation's public lands in Alaska and with the myriad responsibilities placed on it by the Alaska Native Claims Settlement Act, the Bureau of Land Management is one of the largest and most important agencies in Alaska.

The Bureau of Land Management has interim managing authority over the lands under consideration for inclusion by the Congress in one of the four systems--that is, the "d-2 lands." It also has management authority over the lands withdrawn for selection by Native village and regional corporations under the Claims Act and those lands withdrawn for classification under Section 17(d)(1) of the Claims Act--the "d-1 lands." Most recently, it has been given surface management authority over what will become in June, 1977, National Petroleum Reserve in Alaska, in addition to its leasing authority for offshore Federal lands under the Outer Continental Shelf Act.

Bureau of Land Management management means multiple use management. This is reiterated in the declaration of policy in the new organic act where it is stated that "management be on the basis of multiple use and sustained yield unless otherwise specified by law." In the Federal Land Policy and Management Act of 1976 "multiple use" is defined as

the management of the public lands and their various resource values so that they are utilized in the combination that will best meet the present and future needs of the American people; making the most judicious use of the land for some or all of these resources or related services over areas large enough to provide sufficient latitude for periodic adjustments in use to conform to changing needs and conditions; the use of some land for less than all of the resources; a combination of balanced and diverse resource uses that takes into account the long-term needs for future generations for renewable and nonrenewable resources, including, but not limited to, recreation, range, timber, minerals, watershed, wildlife and fish, and natural scenic, scientific and historical values....

The Bureau of Land Management uses a land use planning system to determine which uses best serve the public. Hunting, fishing, trapping, mining, grazing, use of off-road vehicles, and timber uses all are allowed on BLM lands. BLM also makes lands available for subsistence, residential, agricultural, recreational, industrial, commercial, and real estate uses. Except for the major disposals dictated by the Statehood Act and the Claims Act, no other new disposals are now allowed on the lands in Alaska under BLM jurisdiction. The Bureau has yet to begin a classification procedure for the d-1 lands as a necessary first step to future disposals, including many of those to the State of Alaska. As an indication that the future disposal of public lands may seldom be made, particularly outside Alaska, is another statement of policy in the new organic act that it is the policy of the United States that "the public lands be retained in Federal ownership unless as a result of the land use planning procedure provided for in this act, it is determined that disposal of a particular parcel will serve the national interest." However, Section 702 of the Act which repeals the homestead laws for the rest of the nation extends the date of that repealer for ten years in Alaska. Thus, should Alaska d-1 lands be classified for settlement and occupancy, the Homestead Act would apply to such lands.

BLM has many responsibilities in Alaska, as it does in the eleven western states. Its fire-fighting responsibility for about two-thirds of Alaska's land area includes fighting fires on lands of other Federal agencies, as well as State and Native lands and other private lands outside organized boroughs. The Bureau also has responsibility for surveying Federal lands. About 150 million acres of uplands in Alaska must be surveyed before final titles can be conveyed to the State of Alaska and Alaska Native corporations. BLM also is the disposal agency, often for lands which are under other agency jurisdictions, most notably leasing under the Mineral Leasing Act and the Outer Continental Shelf Act.

Grazing which is such a large part of the responsibility of BLM in the western states is not of major importance in Alaska except for reindeer which are licensed to graze on the public lands in Alaska.

The Bureau, because of its responsibility to respond to needs and forces outside the agency, such as fire, or the decision of a homesteader to obtain a particular tract, or a miner to explore for, locate, mine and eventually obtain patent to a mining claim, has been in a different position from the other managing agencies. With classification authority many of these problems in the future may be eliminated. With passage of the Federal Land Policy and Management Act of 1976 giving the Bureau enforcement and closure authority on the lands under its jurisdiction many other problems will be eliminated. Responding as it does to many "publics" however, most of whom are not oriented toward preservation but rather to use of the land's resources and the land itself as a commodity, the Bureau is often not seen as an agency to whom environmental protection should be entrusted. One chance to prove itself in Alaska has been given by choice of the Department of the Interior to manage exploration of oil and gas on NPR 4, and, in it, choice of the Bureau of Land Management to assume surface management responsibility for the petroleum reserve.

Another opportunity is for the Bureau to respond quickly and effectively by regulation and designation of manpower and resources to its new management task. The Act provides for the issuance of regulations necessary for its implementation and for criminal penalties for violations of such regulations. It also provides for institution of civil action for injunction or other appropriate order to prevent any person from utilizing public lands in violation of regulations issued by the Secretary. Presently, the only Federal statutes which make it a criminal offense to injure or destroy resources on the public domain relate to wanton destruction or willful setting of fire to timber on the public lands.

With the major obstacles to its management removed by passage of the Organic Act, the Bureau of Land Management in Alaska is faced with some immediate management needs: revisions of regulations for off-road vehicle use are necessary. Earlier regulations which established criteria for designating restricted and closed areas were held invalid in 1974 in National Wildlife Federation v. Morton. Regulations and procedures for classification of d-l lands have not yet been developed.

Much of the land under BLM management in Alaska is, or has been, open to mineral entry with the rights of locators and mining claimants governed by the terms of the Mining Laws of 1972, including the right of ingress and egress to their mining properties. This will be a factor in the planning and management of the public lands, as will the earlier noted effect of application of the Homestead Act in Alaska ten years beyond its expiration in other states. The major management need for the Bureau of Land Management is the preparation of regulations to implement its new authorities.

Relationship of Federal, State, and Private Land Managers

Federal, State, and private land managers, particularly Alaska Native corporations, will own lands in every region of Alaska. These lands were often selected for quite different reasons. Recommendations for additions to or new units of the four systems stress the protection of high quality wildlife habitat, preservation of scenic and wilderness resources, and the provision of recreation. State selections have stressed lands for human occupancy and resource development potential, although many acres have been identified for habitat protection and recreational use. Native selections have tended to concentrate on wildlife lands for subsistence use near the villages or for resource development. Although it would appear that State and Native selections are somewhat similar, one is for public use, while the latter is for private use.

None of the land selections have been made with complete freedom. Native selections, for example, were constrained by the terms of the Settlement Act which limited some selections to 25 township blocks, following township lines, around existing villages and others to deficiency lands withdrawn for that purpose. A checkerboard pattern of ownership within the 25-township withdrawal areas will also often result from the terms of the Settlement Act.

A further uncertainty as to the exact location and management regime for Alaska's lands is presented by the need to reduce the present over-selection of Native lands in some regions to the land selection entitlement in the region. Also undetermined at this time is the location of the remaining 35-million-acre selection entitlement of the State of Alaska. The State need not complete its selections until, at the earliest 1984, with the possibility that having been delayed in its selections first by the so-called "land freeze" and next by the withdrawal of lands under the Settlement Act, the State will ask for an extension of time within which to make its selections. Another element of uncertainty is the determination of what inland lakes and streams were navigable at the time Alaska became a State. A determination of navigability carries with it ownership by the State of Alaska of the submerged lands under the lake or stream. This may result in significant State ownership within designated "national interest" lands, or within, or bisecting, Native landholdings.

As has been seen, the policies, management objectives, and management authorities of each of the four federal land managing agencies differ. Thus, it is not unreasonable to assume that even on Federal lands there may be conflicts between adjoining Federal land managers. There are similar discrepancies among State land and resource managers, to say nothing of differences between State public land managers and Native corporate land managers. There is need for institutions to unify and coordinate planning and management of Alaska lands.

One unifying source is the police power of the State for the adoption of surface land use controls. However, Article VI, Clause 2, of the United States Constitution provides that the Constitution and the laws of the United States made in pursuance thereof are the supreme law of the land. Thus, should the State law be determined to be an obstacle to the purpose and objectives of the national government in an area of authority delegated to the Federal government, the Federal law would prevail. One then looks to the regulatory authority of the Federal government as a unifying force. But Federal regulatory power is limited to delegated constitutional authority which is, however, usually liberally construed by the Courts. The constitutional basis of the Clean Air Act (42 USC 1857), Federal Water Pollution Control Act (33 USC 1251), and Solid Waste Disposal Act (42 USC 3251), for example, is found in the Commerce clause (Article I, Section 8, Clause 3) which has been held to sustain environmental protection.

Although the Commerce clause may be the source of some environmental protection laws which apply irrespective of land status, it is the Property clause in Article IV, Section 3, Clause 2, of the United States Constitution which is the source of the authority of Congress to enact laws dealing with Federal lands. Congress has exclusive jurisdiction over some Federal lands and concurrent legislative jurisdiction where the State concerned has reserved to itself the right to exercise, concurrently with the United States, all of the same authority. In Alaska, Mount McKinley National Park is an area of exclusive jurisdiction in the Federal government with the State reserving only the right to serve process and tax persons and corporations in the park.

All other Federal lands in Alaska, including some dedicated to military purposes, are areas of concurrent jurisdiction. On the basis of concurrent jurisdiction Naval Petroleum Reserve No. 4 was included within the North Slope Borough, for example, even though Section 11(b) of the Alaska Statehood Act reserved to the United States "the power of exclusive legislation" over those lands held by the military, including NPR 4, at the time of Statehood, because other provisions included State service of process, concurrent jurisdiction consistent with laws hereafter enacted by Congress pursuant to such reservation of authority.

Absent congressional legislation on the subject the State police power extends over Federal lands within its political boundaries which are not reserved to the exclusive jurisdiction of Congress, so long as Congress has not also acted in the same arena, thereby preempting State authority. The inclusion within a state of lands of the United States does not take

from Congress the power to control their occupancy and use, to protect them from trespass and injury, and to prescribe the conditions upon which others may obtain rights in them, even though this may involve the exercise in some measure of what commonly is known as the police power.

The proprietary relationship of the Federal and State governments will result in their being adjoining landowners, with boundaries which often do not follow natural divisions. The legal and regulatory relationship of the Federal and State governments will often be overlapping, particularly in areas of concurrent jurisdiction or where only the proprietary rights of the Federal government are asserted on Federal lands.

Presently, OMB Circular No. A-95 requires Federal agencies to develop procedures for assuring that Federal plans and projects are consistent or compatible with State, areawide, and local development plans and programs. Also, State, areawide, and local applicants seeking HUD comprehensive planning assistance (701) program grants must, by statute, consider the effect of major Federal activities on their planning and development. In addition, proposed Coastal Zone Management programs require the cooperation of all landowners in the coastal zone in accordance with a State plan for the coastal zone. One problem is a recent ruling of the U.S. Attorney General that Federal lands, regardless of their status (that is, whether they are public domain or lands reserved for particular purposes), cannot be considered a part of the coastal zone. This points up the need for specific articulation of future Federal-State relationships in Alaska with respect to cooperative planning management, or classification of State or Federal lands which involves participation of the other government.

There is need to (1) exchange information regarding plans, policies, and projects, (2) develop methods for involving Federal, State, and sub-State agencies in each other's planning process, (3) for agreement on the use of common data bases and, to the degree feasible, common boundaries for planning purposes, (4) identifying marginal activities which can be eliminated, thereby effecting cost reductions, and (5) identifying priorities for cooperative intergovernmental action.

There are many cooperative agreements between Federal agencies and often between Federal and State agencies usually dealing with a single subject-matter or a single geographic area. For example, the Forest Service has an agreement with the National Park Service and is working on an agreement with the Environmental Protection Agency for 208 planning. The Bureau of Outdoor Recreation has 21 agreements with various agencies. The Corps of Engineers has 36 agreements with various Federal agencies concerning water resource matters; and the Bureau of Land Management has agreements with five Federal and four State agencies, and is beginning to develop a model agreement for use with State clearinghouses under A-95 procedures. Taking leadership in this coordinative effort, particularly at the Washington level, has been the Council on Environmental Quality and the Department of Housing and Urban Development.

The structure of Alaska State government lends itself to coordinative effort through the Governor's Office of Planning and Development, and various cabinet-level task forces appointed for specific issues. The ability of the Federal agencies to coordinate their activities at the Washington level is less apparent. The Alaska Task Force in the Department of the Interior, joined by Forest Service representatives from the Department of Agriculture, was formed to deal with the implementation of the Alaska Native Claims Settlement Act with mixed results, resulting largely from lack of staffing for the Task Force itself and decisions by some members to act unilaterally without Task Force discussion or coordination. An earlier group structured to coordinate Alaska Federal programs was the President's Review Committee. This was the Washington, D.C. counterpart to the Federal Field Committee for Development Planning in Alaska, and functioned from 1964 to mid-1971. This body's membership was at the Assistant-Secretary level from the departments having major responsibilities in Alaska. It met quarterly, had a small staff, and maintained frequent contact with the Alaska-base Federal Field Committee. Such a structure, at the minimum, seems necessary if the coordinative efforts of an Alaska Federal-State coordinating body are to be effective.

Without regional governments in much of rural Alaska, there has not been time to formulate coordinating mechanisms on a regional level. Thus, there is need of a coordinative body in which Federal and State governments fully participate, both at a Federal and State level.

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Honorable Mike Colletta
 Alaska State Senator
 1016 West Sixth Avenue
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Dear Mike:

I thought this would be of interest to you.

With best wishes,

Cordially,

BIRCH, HORTON, BITTNER & MONROE


 Ronald G. Birch

RGB:lra
 encl.:

Honorable Guy Martin's Testimony before
 the Subcommittee on General Oversight
 and Alaska Lands
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MEMORANDUM

To: Ronald G. Birch

Date: September 23, 1977

Honorable Guy Martin's Testimony
before the Subcommittee on
General Oversight and Alaska Lands

Secretary Martin was called before the Subcommittee to explain the delays in the implementation of ANCSA. The Subcommittee meeting focused on the reasons for the delay which include litigation by both the native corporations and Interior with respect to designation of easements. The Subcommittee is also considering including amendments to ANCSA in the d-2 bill to implement the conveyances. Interior opposes this because it prefers that these issues be resolved administratively. Despite the administration's protests, it was the clear sense of the committee that unless the conveyances are effected in a year, d-2 will be amended.

Under Martin's direction, the Bureau of Land Management has adopted a policy of aggressive administration which will give the native needs priority in making the land conveyances to the native corporations. Since July, the Bureau of Land Management has submitted 19 option papers to the Subcommittee, the Alaska Federation of Natives, the State Selection Commission and FSLUPC. These groups will respond

Ronald G. Birch

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Testimony by Guy Martin on Alaska Lands

with comments and meet with the BLM in late September to discuss the issues presented in the option papers. Martin also plans meetings with the native groups to maximize direct input. By early November, a comprehensive proposal will be prepared which will represent the Administration's policy and the procedures to implement that policy. Certain regulations and guidelines may also be indicated, but that will depend on the nature of the proposal.

The General Administration Office conducted a study which attributed the delay in making the conveyances to the following reasons: the lack of clear and immediate policy-making procedures by the BLM officers; poor management of BLM; and excessive litigation. Due to inadequate channels to resolve the conveyance disputes the parties go to court once the point of impasse is reached.

The selection of easements has been one of the primary sources of litigation between the Department of Interior and the native corporations. ANCSA §17(d)(1) provides that the native and state lands are to be subject to recreational easements, transportation and utility corridors. However, the Act did not specify the procedures by which these easements were to be selected and as a result the conveyances have been delayed until the Department could decide where and how it would choose the easements. For example, a recent decision by Judge von der Heydt declared blanket coastal easements illegal under ANCSA, and the Department must review the question of linear easements and decide whether to appeal. This adds one more delay to the resolution of conflicting claims. The Department has filed a protective notice of appeal, and the Public Easement Defense Fund, a sportsmen's association, have appealed to the 9th Circuit. While the Department has been criticized for litigating each point, Martin pointed out that the easement question is not a simple one. The easement provision in ANCSA did not specify how the easements were to be defined, so the Department developed its own procedures which were challenged at each point. Underlying the easement question are two opposite points of view: One, sees the federal government as a master planner of land use in Alaska while the second believes the question of easements and waterway access rights should be left to the decision of the state. There are four legislative alternatives before the subcommittee:

1. Congress can amend ANCSA to change the public policy which favored the reservation of easements.
2. Congress can amend ANCSA to define what easements shall be reserved and how they will be defined.
3. Interior can convey the land subject to a future determination of the easement. This is a variation of the floating easement.
4. No easements or access rights of way will be reserved and the state can use its power of eminent domain if necessary to later obtain land.

Since recreational easements and access rights are to be determined on the basis of past use, the BLM has used questionnaires and meetings with the local people to determine the patterns of use. In addition, the staff accepts any recommendations from concerned parties. The definition of an established pattern of use takes into account how much an area is used, how many people use it, how long has it been used, etc. Leaders of the native corporation are also consulted. The recent litigation has centered on the scope and kind of easements which the BLM attempted to reserve. Intertribe disputes over access to waterways have also had to be resolved in the courts. A Board of Arbitration has been proposed by both the GAO study and Seiberling to settle these conflicts on a case-by-case basis and keep the issues out of court.

Another source of litigation has concerned resolution of homestead claims under the 1906 Native Allotment Act. Prior to passage of the ANCSA, the BLM had encouraged homestead filing which provided that each person could file 160 acres per person. From 1906 to 1971, only about 3,000 claims had been filed. When ANCSA repealed the Homestead Act, except for any pre-existing claims which meant any claims pending at the passage of the Act, there was a mad rush to file claims before its passage. At the time of the passage there had been 9,000 claims pending, of which 6,500 claims are still pending. The litigation has concerned the claims which were denied and the BLM has since implemented procedures to protect the due process rights of the claimants. The processing of the homestead claims is also delayed by the necessary field investigations.

Ronald G. Birch

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The GAO report suggested two steps to decrease the amount of litigation by the BLM. The first was to provide formal procedures for the resolution of disputes within the Bureau of Land Management. Presently, disputes over easements policy or any other policy are settled informally or in court. The second solution would be to create an administrative tribunal to resolve disputes which arise in the administration of ANCSA. This is presently being studied by the Department. Martin did point out that an administrative board may not be the real answer because the native corporations may prefer having direct access to the courts instead of being submitted to another administrative board.

Another problem that the Bureau of Land Management faces is acquiring Alaskan land held or controlled by other federal agencies which they have not used for a long time. ANCSA provided that the other agencies should declare it surplus and then submit it to the Bureau of Land Management to be included in the pool of land for native-state site selection. However, other agencies generally have not been cooperative about giving up any of their land to another federal agency. The GAO study recommended the establishment of a commission to identify this land and compel the agencies to give it to the BLM. Seiberling suggested the OMB also but Secretary Martin disagreed on the grounds that the Department of Interior has sufficient administrative authority to obtain the surplus land.

Additional staff was also part of the GAO recommendations but Martin disagreed. Since the ANCSA conveyances involve so many complex issues, Martin believes that additional staff members could not develop the necessary expertise soon enough to be of any value. With respect to additional survey crews in the regional office, Martin agreed that they had a heavy workload. However, survey delays do not delay the conveyances because the Department makes an interim conveyance subject to the final survey. Since this is an established practice, loan companies are willing to make housing loans after the interim conveyance so individual natives are not delayed in building homes.

The GAO study also criticized the BLM's failure to monitor the distribution and use of federal funds to the native Alaskans. However, Interior takes the position that it has not been charged with the duty of overseeing the use of the federal funds, once they are distributed to the native corporations. The native corporations file financial statements with the Department of Interior and would probably resent a federal audit. Seiberling suggested a management consultation facility be established to aid the native corporations in the investment of their funds, but the BIA may be in a better position to offer this kind of assistance. Seiberling also raised a subsidiary issue with respect to the shareholder's rights in management of the native corporations. This is totally unrelated to the Interior's jurisdiction and it is doubtful that the native corporations fall within the scope of SEC regulation.

While the Department is attempting to limit future litigation, the d-2 proposal will lead to controversy where lands selected by native corporations have been incorporated into the d-2 proposal. So long as the bill is in mark-up it will not be possible to settle any native selections on land which is potentially subject to dual withdrawal.

The subcommittee's Alaskan trip raised two final problems. The first concerns the Congressional appropriation of \$10 million in 1976 to the natives as prepayment of pipeline royalties. This amount was to be repaid from the actual royalties received but the natives would have had the money immediately. This appropriation was never made part of the Department of Interior budget and no payments were ever made. Since the natives are presently receiving royalties, the Department takes the position that it does not have to make the payments at this late date.

The second problem concerns the erosion problems in the Noatak Village which is built on the edge of the river. The river is shifting its course and the Army Corps of Engineers has refused to build a levy to stop the erosion because the village is too small for their jurisdiction. Meanwhile, HUD is building a water and sewer system which will be of little value if no village is left. To Seiberling, this was one more example of Interior's insensitivity to native problems.

Constance E. Brooks

CB

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September 19, 1977

• ADMITTED IN D. C.

Stephen Cowper, Esq.
 Chairman
 Steering Council of Alaska Lands
 Suite D
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 Fairbanks, Alaska 99707

Senator Mike Colletta
 1016 West Sixth Avenue
 Suite C
 Anchorage, Alaska 99501

Dear Steve and Mike:

Enclosed you will find a copy of the prepared statement of Secretary Andrus presented to the General Oversight and Alaska Lands Subcommittee of the House Interior Committee. I would like to emphasize for your consideration several particular points about this statement.

First, it was not accompanied by specific amendments. They will not be forthcoming until at least September 21. On behalf of the Steering Council, I have written the members of the Subcommittee requesting public hearings on the precise amendments when they become available. A copy of that letter is enclosed with this.

Second, the Secretary's proposal will permit no mining for minerals except in two particular zones in the Wrangells.

Third, oil and gas exploration and leasing appear to face difficult, although yet unspecified, hurdles for implementation.

Fourth, subsistence uses will be confined to particular zones and subject to suspension or termination by Interior, under as of yet unspecified circumstances.

Fifth, all areas not within the 43 million acres of designated wilderness will become wilderness study areas under the Wilderness Act, with some limitations on access and use even before any decision regarding wilderness status is made.

Sixth, Guy Martin apparently has reserved for himself the issue of conveyances to the State and Natives, with the Administration decision to come sometime in the future.

Finally, you will note the inclusion of the park preserve concept. It is Interior's position that only hunting will be permitted within the preserves, and nothing such as grazing, oil and gas exploration, etc, will be allowed.

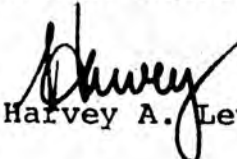
Much of this information came from Cynthia Wilson in a short briefing for Senator Stevens which Sharon Long and I attended. From what emerged in the few questions asked at that briefing, it is certain that the Secretary's statement requires close scrutiny and full consideration of the amendments proposed to effectuate it.

In terms of future action, we are going to try to arrange some small briefings, possibly over lunch, by Stevens, Gravel, and Young staffers for members of the staff of other Congressmen. It is our thought that this type of education mechanism well could be beneficial.

As developments occur, we will of course keep you informed.

Cordially,

BIRCH, HORTON, BITTNER & MONROE


Harvey A. Levin

HAL:jal
Enclosures - As indicated

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September 19, 1977

• ADMITTED IN D. C.

As you know, on September 15, 1977, Secretary Andrus testified before the General Oversight and Alaska Lands Subcommittee regarding the d-2 recommendations of the Administration. However, the Secretary was not equipped with the precise amendments which the Administration will be offering, it appearing that such amendments will not be forthcoming until Wednesday, September 21.

On behalf of the Steering Council for Alaska Lands, the joint legislative-executive committee created by the State of Alaska to formulate and present the position of the State on d-2 matters, I respectfully and strongly urge that you support public hearings on those amendments. The matter is of considerable moment to the nation as well as the State. Its import demands public, congressional scrutiny of the precise Administration proposals, which took almost forty pages just to summarize, and which left numerous of the questions raised unanswered due to the unavailability of specifics. Without the hearings, full consideration of this monumental proposition will be lacking and generations of Americans will have been denied their due measure of Congressional consideration.

Very truly yours,

BIRCH, HORTON, BITTNER & MONROE

Harvey A. Levin

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D-2

STATEMENT OF SECRETARY OF THE INTERIOR CECIL D. ANDRUS
BEFORE THE SUBCOMMITTEE ON GENERAL OVERSIGHT AND ALASKA
LANDS, HOUSE COMMITTEE ON INTERIOR AND INSULAR AFFAIRS,
ON H.R. 39. AND SIMILAR BILLS, "TO DESIGNATE CERTAIN
LANDS IN THE STATE OF ALASKA AS UNITS OF THE NATIONAL
PARK, NATIONAL WILDLIFE REFUGE, WILD AND SCENIC RIVERS
AND NATIONAL WILDERNESS PRESERVATION SYSTEM, AND FOR
OTHER PURPOSES, AND H.R. 5605, AND SIMILAR BILLS, "TO
ESTABLISH ADMIRALTY ISLAND NATIONAL PRESERVE IN THE
STATE OF ALASKA, AND FOR OTHER PURPOSES."

Mr. Chairman, it is my privilege to present today
President Carter's recommendations for new National Parks,
Wildlife refuges, wild and scenic rivers, Forests and
wilderness areas in Alaska.

We recommend the enactment of H.R. 39 with certain
modifications.

I want to compliment you, Mr. Chairman, the members of
this Subcommittee, and the Chairman of the Full Committee
for the tremendous amount of work you have accomplished
since I appeared before you last April. Your efforts in
holding hearings here in "the lower 48" and in Alaska,
and the great amount of testimony you have received, reflect
the dimension of the opportunity we have in Alaska. As
President Carter said in his May 23rd Environmental Message,
"No conservation action the 95th Congress could take would
have more lasting value than this." Moreover, the estab-
lishment of large land areas in Alaska as units of the

"Four Systems" is the highest environmental priority of this Administration. Your efforts to date clearly demonstrate that this matter remains one of the highest environmental priorities of the 95th Congress.

Mr. Chairman, for almost half a millenium man has put ever increasing pressures upon the ecology of the North American continent. The "Lower 48" with a population of perhaps one million Natives five centuries ago, now supports some 213 million and serves as breadbasket and manufacturer to much of the rest of the world.

Alaska had perhaps 75,000 Natives when the Russians colonized it. Now it has several times that population -- and is growing rapidly -- and it is looked upon as a major source of fuels and other material needs for the "Lower 48" and for other Nations.

Until very recent times the essence of our national policy has been the most rapid possible development and consumption of the resources of this continent. In establishing the first national parks and wildlife reservations a little more than a century ago, the Congress made some of its greatest contributions to the future of America, and of the world. It was a belated but nonetheless noble determination to maintain some of the natural beauty and wildlife of America for all time. This movement began

after we already had lost many of our treasures in the "lower 48" -- but in time to save some of the most spectacular.

Now we have an opportunity to learn from the past -- to avoid making the rash mistakes we committed in our youth as a Nation. Alaska is a rejuvenation for us as a country -- a chance to preserve a major portion of our natural heritage -- the resources which more and more are recognized as essential to the continued existence of man on earth.

We can be profligate with these resources -- we can dig, cut, drill and destroy these resources at random so that our material standard of living today and tomorrow will be a degree or two higher. Or we can conserve these resources to help insure the health and prosperity of Alaska, our country and the world for decades and perhaps centuries to come.

Through enactment of our proposals, we can be certain that the crown jewels of Alaska -- its most spectacular natural environments, recreation areas, and wildlife habitats -- will remain intact for the benefit of our Nation's citizens.

Some people seem to fear that we are trying to hoard resources needed by Americans today and in the immediate future. Our proposal has been prepared with sensitivity to the resource needs of Alaska and America both now and for the coming years.

There are roughly 375 million acres in Alaska. Our proposal involves approximately 91 million acres. The State of Alaska will be receiving 103 million acres, much of which will be open to development. The Natives are receiving more than 44 million acres, much of which will be developed. And there will be tens of millions of acres remaining outside the "Four Systems" which will be available for mining, grazing, timber, harvesting, hunting, fishing, and various multiple uses for the benefit of Alaska and the Nation.

we are leaving open to potential development -- should we also invite development and risk the destruction of areas which are important for their beauty, their wildlife, or their ecological and cultural significance? Why shouldn't we protect and preserve some of these resources so that the people of our future -- perhaps even during our own lifetime -- will have some options? Visual aesthetics, wildlife and other benefits are resources that can be used over and over.

Let me suggest this:

-- If we err in this decision and exclude some precious and delicate areas from the four systems, these areas could be lost forever. Americans in the future could never enjoy them nor benefit from production from them. Alaska would be left with devastated areas rather than with preserved treasure, with a liability rather than an asset.

-- But if we err by conserving too much, this can always be changed in the future. Our system of government -- as I needn't remind members of Congress -- responds to pressures from the people. In the future the people may decide that they need the resources from one of the areas so urgently that they want to redesignate the area or allow additional development under stringent controls -- this can be done. I am sure that Congress will not be insensitive to such demands.

A great many romantic novels have been written about our development of the frontier in the Lower 48. It was a time when a rambunctious nation expanded across a continent. It was also a time of haphazard development and gross abuse of our precious resources. But we thought we could afford it then because we were young and in a hurry and there was a great deal of land with not many people.

Today we are a mature and hopefully wiser nation with a chance to control our destiny. The recklessness of yesterday in the use of our resources today would lead to inevitable disaster tomorrow.

Alaska has rightfully been called America's last land frontier.

Alaska is so important because it is a huge state and the resources there are of tremendous value in a world where energy, minerals, timber, wildlife and other resources are being depleted at an alarming rate.

The problem of attempting to decide today what to do with this enormous landscape so as to preserve it for the future is staggering. It would be natural to fear that we lack the imagination to deal with conflicts of the scope presented by Alaska, but we should not fear failure simply because we cannot see all that is in the future.

Failure will come only if we choose not to act now. Until now inaccessibility and a harsh climate have shielded Alaska from the impacts of "progress" that we have experienced in the "lower 48." Now, however, change is sweeping Alaska as never before.

Oil raised north of the Brooks Range flows 800 miles to the south to drive the engines of "progress" for the rest of the Nation. Alaska Natives whose lives were once totally dependent upon wildlife are now shareholders in large corporations. The change from a subsistence lifestyle to a cash economy has been not only rapid but inexorable, and the changes affect different regions, and even different villages in different ways.

We could not halt these changes even if we wanted to. What we can do is protect and wisely manage some of what is unchanged. We can choose now to give future generations of Americans a heritage in which they will exult and for which they will remember us with gratitude and pride.

We cannot be, and we have not been, insensitive to the needs of the people of the State of Alaska. My staff and I have sought out the views of Governor Hammond, the State Legislature's Committee on d-2, the Land Use Planning Commission, representatives of the Native groups, conservation organizations, resource users and concerned citizens. I have visited Alaska and discussed this legislation with many of these people personally. Many of the decisions I have reached concerning our proposals have been difficult. I have tried, however, to accommodate as many of the views expressed as possible and still remain true to my responsibilities as Secretary of the Interior.

Governor Hammond has stated eloquently that "it is not easy to be both oil barrel to the Nation and National Park to the World," but to a great extent Alaska is both. He and the Land Use Planning Commission have each presented "d-2" proposals which recognize this difficulty and treat it responsibly.

The proposals which I am presenting for your consideration today draw heavily on those proposals, and, I am pleased to say, are in large measure compatible with them. We are deeply indebted to both for their resource information and their wise judgment in dealing with the d-2 questions.

Our proposal would place approximately 92 million acres of Alaska lands into the "Four Systems" management units. We recommend establishing 10 new units and expanding three existing units of the National Park System. We also recommend establishing nine new units and expanding five units of the National Wildlife Refuge System.

These recommendations would constitute approximately 41.7 million acres in National Parks and Monuments and 45.1 million acres in National Wildlife Refuges. We are also recommending 33 rivers for inclusion in the National Wild and Scenic Rivers System totalling some 2.45 million acres and nine rivers for study, and additions of some 2.5 million acres to existing National Forests. In addition, the Administration recommends the establishment of Admiralty Island as wilderness under the jurisdiction of the Forest Service.

Parcels of isolated public land remain in southeast Alaska. These are all in areas where there is dominant management by the Forest Service and have not been identified as having national significance for Park or Refuge designation. Land management patterns and management efficiencies could be achieved by adding these parcels to the National Forest System (approximately 1.6 million acres). In addition, an area of .9 million acres in the Copper River delta will be transferred to the Forest Service to consolidate ownership with the understanding that it will be managed to protect its significant wildlife resources.

I would like to comment specifically on one area, Iliamna. We considered including it in the National Wildlife Refuge System, but I have decided it is not appropriate for inclusion. Although the fish and wildlife values of the Iliamna area are tremendous, I did not propose a refuge because of the land ownership patterns in this area. The Natives have made large selections and the State intends to make selections.

I chose not to propose an Iliamna refuge in light of the importance which the State placed on the State regulation of fishery resources and because of assurance by the State that it will sensitively manage this area for its fish and wildlife values.

We are depending upon the State to protect the fish and wildlife in the Iliamna area. Our amendment to H.R. 39 would provide sufficient authority to protect this important resource if the State has not established a management scheme prior to conveyance which is consistent with such protection. After conveyance, if the Secretary determines that State management is inconsistent with protection of this resource he may, by appropriate order establish one or more units of the National Wildlife Refuge System within the area. (of remaining federal lands)

A special study area is being proposed on the Alaska Peninsula, which contains some of the highest wildlife resources in the State. Because of mixed land ownership patterns on the Peninsula, we did not propose immediate establishment of a refuge there. However, the federal lands would be protected during the study period to assure that wildlife values are maintained, while efforts are made to consolidate land ownership patterns. Upon completion of the study in June of 1983, a specific proposal would be made on how we can best provide long-term protection of wildlife resources, possibly including establishment of one or more Refuges.

Mr. Chairman, certain working principles have guided our deliberations in developing these recommendations. For example, wherever possible we have tried to protect whole watersheds; resources rather than acreage have been the guide to the boundaries we have drawn. The preservation of natural and cultural diversity and habitat for fish and wildlife are primary reasons for all of our recommendations.

In order to recognize total ecosystems our boundaries include some lands selected by the State and the Natives. Land selections so included would be treated as inholdings in existing Parks and Refuges. We are hopeful that the State and the Natives will work with us in the management of these areas to the benefit of all concerned.

While we have considered other resource values, we believe the fundamental purpose of Section 17(d)(2) is to identify and preserve nationally significant cultural, historic, fish and wildlife, and their habitat, scenic, scientific and recreational resources in Alaska for the enjoyment of all Americans. We have done everything we could to eliminate resource conflicts in the proposals by adjusting the boundaries accordingly.

Some potential conflicts remain, such as in the Gates of the Arctic, but in these cases we decided that the value of the resource being protected far outweighed the potential value of the minerals being included within the park boundary. With respect to the Gates proposal, we excluded some areas of high mineral potential but did not exclude the entire mineral potential zone because to do so would have removed a major portion of the park ecosystem, and would have had an adverse impact on the area's wildlife resource.

Even though we do not now have, and may never have, complete information on the mineral resources of Alaska, we do have to make a decision. I am confident that the boundaries drawn and the management established by this proposal will be in the best long-term interests of the Nation.

We have carefully considered the nature of the existing Federal land management systems before including an area in one of the systems. For example, National Parks are usually spacious land areas essentially of primitive character containing scenery and natural wonders so outstanding in quality that their preservation intact has been mandated by Congress for use by both present and future generations.

In general, National Monuments are small national parks established to protect a single nationally significant natural or cultural feature. Generally both National Parks and National Monuments can be used for fishing, hiking, camping, interpretive programs and wildlife observation. New mining claims, grazing, commercial timber harvesting and hunting are generally not permitted. Subsistence taking, however, is permitted in Hawaiian parks.

We have attempted to draw our recommended boundaries in such a fashion as to accommodate these general criteria. Where conflicts arose that could not be resolved by exclusive boundary designation we have used a "park-preserve" concept. Similar to Big Thicket and Big Cyprus, National Preserves may accommodate a variety of uses including sport hunting, under regulation, which do not significantly impair the natural or cultural values for which the preserve is established.

no orig?
in preserves

In the case of National Wildlife Refuges, they may vary considerably in size, but all refuges possess land and water habitats capable of sustaining significant populations of fish and wildlife. The management of refuges generally permits a wide variety of recreational activities if compatible with the purposes for which the refuge was established.

Cullison says no. Discretionary oil and gas leasing in refuges may be permitted under strict controls once the area is classified and it is determined such use is compatible with primary refuge purposes. New grazing or timber harvesting, generally must contribute to the enhancement of the wildlife habitat before these uses are authorized. These general management criteria also weighed heavily in our area boundary decisions.

Mr. Chairman, I would now like to discuss several important issues which have an overall application to our d-2 legislative proposal.

COOPERATIVE PLANNING AND MANAGEMENT

There is widespread consensus that some sort of cooperative planning and management is needed among Federal, State and private landowners. ANCSA and Alaska Statehood provisions are resulting in divergent landholdings in every area of the State. Decisions on wildlife, transportation, watersheds and various developments of national significance cut across these property boundaries. Several proposals have been advanced by Governor Hammond, Members of the Alaska delegation and the Land Use Planning Commission to formalize a means by which Federal and State cooperation can best be obtained.

To facilitate overall planning and management cooperation in the State, we propose the establishment of a Statewide cooperative planning commission. This commission would serve as the Statewide focus for cooperative planning, doing not only its own work on major issues, but also serving as the catalyst and organization for State/Federal/Native planning,

interagency studies and meetings. The Commission would be advisory to land managers and could make such recommendations as land use designations outside of Federal management areas. The Chairman would be appointed by the Secretary with the concurrence of the Governor and would serve on a full-time basis. The Commission would be composed of public members, Native representatives and land managers who represented each of the Federal land management agencies in Alaska and their counterpart State land management agency representatives.

Further, you will notice that included in many of our d-2 area proposals, we have identified adjacent areas within which resource use and development are critically important to the proper protection, management and interpretation of the natural and wildlife resources within the d-2 area. We urge legislative designation of those areas.

These areas are designated "areas of environmental concern" (AEC). We propose that the Department be authorized to enter into voluntary cooperative agreements with the landowners in these areas of concern so that some form of cooperative planning and consultation can be achieved between the d-2 land management agency and the public and private adjacent landowners on matters related to the purposes of the d-2 lands. We are not proposing any regulatory authority in these areas other than that encompassed in existing Federal law, such as the Federal Water Pollution Control Act, etc. Rather, the AEC's would be related to the cooperative planning and management effort to be undertaken by the proposed Advisory Commission.

Additionally, we propose that the Secretary be authorized to enter into cooperative agreements with the State and Native corporations within Cooperative Planning and Management Zones established by the Commission. These zones could be

established by mutual agreement by the Department, the State and the Native corporations whose lands would be included within a zone. We propose this cooperative Planning and Management Zone mechanism as a means by which cooperative planning and management can be employed to protect a particular resource in whole ecosystem-wide areas, such as the North Slope, the Beaufort Sea, the Bristol Bay salmon fishery watershed or the Arctic caribou herd migration area.

In all instances cooperative arrangements would be advisory only. We are not proposing that any responsibility of the Secretary of the Interior be delegated to any Board or Commission by agreement or otherwise.

SUBSISTENCE

Although hunting activities have traditionally been allowed on certain Federal lands, they have generally been prohibited in areas of the National Park System. However, there is a need to recognize legitimate subsistence uses in Alaska which occur in some of the proposed park system areas.

In areas added to the National Wildlife Refuge System, a similar provision recognizing subsistence uses would apply as in the park system. Additionally, the refuges would be open to sport hunting within the framework of Federal and State law.

Refuge areas could also be closed in whole or part to hunting, both sport and subsistence, if necessary to protect the resources of the area.

This legislative proposal would authorize the Secretary within areas authorized or added to the Four Systems to designate certain subsistence use zones, which recognize the traditional subsistence uses at the 1971 level. The land manager would be authorized to close all or part of these subsistence zones for various reasons associated with management, administration, and fish and wildlife protection. This closure authority is necessary to assure that the areas are managed for the purposes for which they are established and to preserve the total ecology of the area. To the extent that consumptive uses of the fish, wildlife and plant resources are authorized on a given area, however, a preference would be given to subsistence uses.

This proposal is based upon the concept that subsistence hunting, as with resident wildlife management generally, should be a State responsibility and managed under State authority consistent with existing Federal law.

WILDERNESS

Studies have now been completed as to the suitability for designation as wilderness on three existing National Park System areas and on thirteen existing national wildlife refuges in Alaska as required by the Wilderness Act. Due to the pending d-2 additions, and due to the Native selections within existing refuges, wilderness recommendations on existing areas with four exceptions, have not previously been submitted to the Congress.

We propose wilderness in three existing units of the National Park System in Alaska, totalling 6.7 million acres, and in four existing refuges totalling 12.5 million acres for a total of 19.2 million acres of wilderness in existing areas.

Our studies indicate that selective immediate wilderness designation is highly desirable for some of the new d-2 areas which we propose. Therefore, we recommend designation of wilderness in four new park

system areas, totalling 23.6 million acres, and designation in two new refuge additions, totalling 0.51 million acres. The total for existing and new areas is 43.31 million acres.

All remaining new park and refuge system additions and remaining reviews of existing wildlife refuges will be formally studied under the Wilderness Act and recommendations made in 3 to 7 years as to wilderness suitability. We will attempt to use the resources of the Department in such a prioritized manner that some of these studies will be completed within 3 years and others will be scheduled for completion within 3 to 7 years. Due to weather limitations, manpower limitations, and the need for surveys of other resources, we could not complete all of these studies within 3 years. Further legislative action by the Congress would be required to designate these studied areas as wilderness. We recommend no wilderness designation for wild and scenic rivers outside national interest areas.

The Wilderness Act permits the established use of motorboats and the landing of aircraft in wilderness areas by regulation. Our proposals will, of course, allow for continued use of navigational aids and access to them for administrative purposes in wilderness areas.

Aircraft, motorboats, and snowmachines are the principal means of motorized access in remote parts of Alaska, and the use of snowmachines is widespread for subsistence purposes. We propose that the use of motorboats and the landing of aircraft be permitted in wilderness areas under certain necessary regulations to protect the area. Further, we propose that the use of snowmachines in wilderness areas be strictly limited to subsistence use, emergencies, and management.

MINERALS

In drafting this proposal, we have attempted to draw tightly our proposed boundaries where possible so as to exclude areas of high mineral potential without compromising environmental values. In areas where the decisions were made to include an area of potentially high mineralization, we believe the value of these natural areas to this Nation outweighs the potential development value of their non-renewable resources.

National parks, monuments, and wild rivers established by this legislation will be withdrawn from all mineral exploration, entry, and location, or leasing,

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Says no oil &
gas leasing

subject to valid existing rights. Refuges should also be withdrawn from location and entry for hardrock minerals, but we propose that discretionary oil and gas leasing be permitted in the new refuges where compatible with the purposes for which the lands are established, and following appropriate classification by the Department. In accordance with recent amendments to ANCSA, oil and gas development will take place where the Natives own subsurface rights within the Aniakchak National Preserve.

Mineral Study and Extraction

All units of the National Park System in the United States are closed to mineral entry and location under the Mining Law of 1872. In those areas of the National Park System where valid mining claims existed prior to closure, activities on those claims would be strictly regulated under the terms of the Mining in the Parks Act, P.L. 94-429, 16 U.S.C. 1901 et seq., which would apply to valid claims within areas added in Alaska.

Within the proposed Wrangell-St. Elias National Preserve, we have recognized two areas containing

potentially significant mineral resources. The possible importance of these two areas is such that further mineral study and controlled mineral extraction should be considered. Accordingly, this legislation identifies the land containing the mineral zones and authorizes the Secretary to conduct mineral studies and mineral extraction under a permit system, with environmental constraints.

We propose that the Department be authorized to make in-house exploration studies by the Geological Survey, or to issue study and exploration permits to private concerns, to undertake the necessary studies to determine the nature of the minerals in these zones, and the feasibility of extraction of the minerals in a manner consistent with the purposes for which the preserve was established.

In addition, we anticipate that there will be a number of valid mining claims within the boundaries of new Alaskan units of the National Wildlife Refuge System, and that regulatory control of activities on these claims

will be required. Although designation of an area as a wildlife refuge is an implied delegation of regulatory authority, the authority contained in the Mining in the Parks Act is the type of specific language that not only provides a basis for efficient regulation but also provides a standard for the exercise of this authority. This authority will automatically apply to all new units of the National Park System. We propose that this authority be extended to all new Alaskan units of the National Wildlife Refuge System.

The effect of this addition would lead to a consistency in treatment of valid claims in Alaska on parks and refuges, would support environmental regulations, and would require registration of claims within 1 year of passage of this Act, rather than by October 1979 as required by the BLM Organic Act.

Extraction Permits

After reviewing the information obtained as a result of this study and exploration in the mineral management zones of the Wrangell preserve, we would determine whether minerals could be extracted in a manner consistent with the purposes for which the preserve was established and whether reclamation were possible. If we found these criteria satisfied, we would have the discretionary authority to issue a mineral extraction permit. The permit would contain necessary stipulations and conditions to insure the protection of the environmental integrity of the area.

An extraction permit would be issued in one of two ways. If a private concern applied for and was granted a study permit and exploration permit, and as a result of such activities submitted a report and proposal to the Department that satisfied the statutory criteria, we would issue an extraction permit to that private concern, if a permit were issued at all.

It should be recognized, however, that an exploration or study permit would grant no extraction rights and no automatic right to an extraction permit. If, on the other hand, we made a decision to issue extraction permits on the basis of a U.S. Geological Survey study, we would issue permits on a competitive basis.

The only minerals available for extraction under this approach are hardrock minerals (those locatable under the Mining Law of 1872). Minerals covered under the Mineral Leasing Act (e.g., oil and gas), and the Materials Act (e.g., sand and gravel), are not included.

ACCESS AND RIGHTS-OF-WAY ACROSS PARKS AND REFUGES

We strongly believe that the application of existing law and procedures, such as section 4(f) of the Department of Transportation Act and section 4 of the National Wildlife Refuge Administration Act, as amended, for the determination of need for transportation corridors through newly proposed d-2 areas is sufficient.

Pipelines and utility rights-of-way are granted on refuges if they are compatible with resource protection and management. We will study carefully

on a case-by-case basis any right-of-way request to assure that it does not adversely affect the natural values sought to be protected and managed in the legislation establishing a particular area. We reject the thought that transportation corridors be carved out of nationally significant d-2 lands before the need for such access is established, the impact on the resources is known, and all viable alternatives have been considered. We do, however, endorse the need for ongoing planning for future transportation access needs.

WILD AND SCENIC RIVERS

We propose the designation of 33 rivers or segments of rivers as components of the National Wild and Scenic Rivers System and the designation of 9 rivers for study as potential components of the national system. Twenty-three of the rivers would be within the boundaries of other areas. Approximately 2.45 million acres of land would be involved in the ten rivers outside of the other d-2 proposed areas.

H.R. 39 designates 20 wild rivers and 3 scenic rivers--all outside parks and refuges--for addition to the Wild and Scenic Rivers System, and it provides for management of the rivers by the National Park Service. H.R. 39 also designates the 23 rivers and their corridors as wilderness, subject to the provisions of the Wilderness Act of 1964. No rivers are designated for future study in H.R. 39.

Alaska's wild and scenic rivers represent some of the finest water-related recreation opportunities in the country. We recommend that the bill designate all qualified rivers as units of the Wild and Scenic Rivers System, regardless of whether they occur within or outside of parks and refuges. Those rivers designated outside of parks and refuges should be managed by the Federal agency managing the adjacent lands. It would be inefficient and confusing to the public if one agency had management authority over the river corridor and another was responsible for adjacent lands and resource uses.

We recognize that designation of a large number of rivers in Alaska as components of the National Wild and Scenic Rivers System will affect their use as potential sites for the development of hydroelectric power. However, with the exception of the Susitna, which we recommend for study designation only, we believe that the need for hydroelectric power in Alaska is far too speculative to justify withholding wild and scenic river designation at this time.

We are not recommending that wild and scenic rivers be designated as wilderness. The protection afforded designated rivers under the Wild and Scenic Rivers Act is adequate. Moreover, wilderness designation would conflict with future needs for access across these rivers for such facilities as pipelines.

EXPRESS AUTHORITY TO EFFECT LAND EXCHANGES

Section 704(b) of H.R. 39 would revoke land selections by the State within areas added to the national land conservation systems, and it directs the Secretary to make available to the State other public lands of approximately equal acreage.

In general, the State has selected lands based on their known potential for mineral development, other commodity use, or for population growth. An equal-acreage formula would not therefore assure the State that its original purpose in selecting lands could be fulfilled.

We have drawn our recommended boundaries for the most part to exclude State-selected lands which have high development potential. Our boundaries do, however, include some areas of State-selected lands, some of which have been tentatively approved for conveyance to the State.

Mr. Chairman, we do not support the revocation provisions of H.R. 39. Within the boundaries of the proposed d-2 acres, the Department should be given express authority to acquire lands, waters, and interests therein by donation, purchase, or exchange. This authority should provide, however, that property owned by the State of Alaska or any political subdivision thereof may be acquired only upon the consent of the

State. In this same regard, this express acquisition authority in the Secretary should provide that property conveyed under ANCSA to any Native corporation may be acquired only with the consent of the owner.

CONVEYANCE OF LAND TO THE STATE AND NATIVES

The State's remaining land selection entitlement will come from lands left after Native selections and d-2 areas are completed. By the end of November, the State will make known its specific areas of interest for selections, and these will be considered by the Department concurrently with the 17(d)(2) legislative action. Our objective will be to seek conveyance of State selections not in conflict with Native selections, national interest land, or good land planning and management principles as agreed with the State at the time the final bill is passed. If we are successful, a substantial percentage of State entitlement can be conveyed on this schedule.

Following passage, work should continue to make further selections and improve the overall land pattern especially with regard to inholdings by exchanges and cooperative planning and management.

The concern of the Native corporations to receive title to lands granted them under the ANCSA is one with which I agree. Unfortunately, to assure that the title they receive is good and "bankable" and to meet other requirements of the ANCSA, there are various steps that the Department must take in processing these conveyances. I assure you that all members of my staff and I are fully committed to seeking ways to resolve existing problems and to expedite the necessary conveyances.

As you are aware from Assistant Secretary Martin's recent appearances before this Committee, he is actively consulting with the Natives, LUPC, State and others concerning a number of issues which are slowing the conveyance process. Included is the entire 17(b) easement issue which is one of the major factors contributing to delay and disagreement among the various interests. This overall review is scheduled for completion in November, following which we will make and announce our decisions on the various issues. We believe it is generally premature to decide now to amend

ANCSA in this legislation. While we remain open to legislated conveyance, we are committed to speeding up the conveyances administratively.

COASTLINE AREAS OF REFUGES AND PARKS

Mr. Chairman, I would like to emphasize to the Committee and to the State, at this time, the importance with which I view the zones offshore from the proposed refuges and parks. I don't think that anyone will deny that the waters adjacent to a coastal area are an integral part of the coastal ecosystem. There is a vital link between the wildlife values of the shoreline area and the wildlife values of the waters and the offshore islands.

Although we have not drawn the boundaries of the refuges or parks to include these offshore areas, we are quite concerned about the wildlife which are so abundant within a six-mile area offshore from these refuges and parks. Within a six-mile area offshore, our studies show that the greatest number of marine mammals

and the largest number of seabirds are found feeding, rearing their young, staging and resting during migration. Such areas offshore require extremely sensitive management to protect these habitats.

We believe that the Department, the National Oceanic and Atmospheric Administration, and the State can work together in these areas to manage cooperatively these adjacent offshore areas to avoid environmentally disturbing conflicts. These areas should be included in one or several cooperative planning zones under our proposed cooperative planning scheme.

Mr. Chairman, except for a variation in overall acreage and wilderness acreage recommendations, and other more minor amendments, I believe that H.R. 39 is in basic agreement with our proposal on the broader issues which we face in this legislative endeavor. Since the early beginning of the Alaska Native Claims Settlement Act legislative process, over 10 years ago, the Department and the Congress have been involved in a long, continuous process of growth and innovation in

dealing with the unique and challenging problems concerning Alaska. We are now nearing the end of the ANCSA process and the enactment of this d-2 legislation will be the last major legislative initiative in that process.

We have a task before us of historic significance. We have an opportunity to preserve and protect the valuable natural, scenic, and wildlife resources of Alaska.

The President and I are totally committed to the early passage of a strong d-2 legislative package. I pledge to you the full support of the Department and its resources in working on this legislation. We are looking forward to continuing to work with you and your staff on this legislation. We also look forward to working with the State, the Natives, and the existing Federal-State Land Use Planning Commission to arrive at cooperative means to plan for the future of Alaska and the Nation.

Mr. Chairman, with this legislation we have the opportunity to protect important resources in Alaska in a manner that has been lost forever in most of the "Lower 48" States. When I say "we" have an opportunity, I mean all of us--the American people, the Federal Government, the Government of the State of Alaska, the Natives whose lifestyle is as integral a part of the land as the rivers, the wildlife and the mountains--we have the opportunity now to protect and preserve the future of millions of acres of Federal lands which belong to all the citizens of this Nation.

Mr. Chairman, I will be pleased to answer any questions which the Committee members might have at this time.

DEPARTMENT OF THE INTERIOR RECOMMENDED AMENDMENTS
TO H.R. 39, PROPOSED "ALASKA NATIONAL INTEREST LANDS CONSERVATION ACT"

1. On page 1 at the beginning of line 2 of the long title of the bill insert "National Forest,"; on line 3 of the long title change "System" to "Systems"; and in line 5, change "section 1" to "SEC. 2."

Perfecting Amendment ^{1/}

1/ A perfecting amendment is one which, in our judgment, makes the Act (1) more accurately reflect the objective of the legislative proposal, (2) less subject to misinterpretation, (3) consistent with generally used legislative format, (4) consistent between sections of the Act, (5) corrects typographical or grammatical errors or omissions, or (6) reflects other proposed amendments. For example, if the purpose of the Act is to be responsive to Section 17(d)(2) of ANCSA, then "NATIONAL FOREST" should appear in the title as we propose. Since we are referring to several systems, the "System" in the third line of the long title should be plural.

H.R. 39

To designate certain lands in the State of Alaska as units of the National Park, National Wildlife Refuge, Wild and Scenic Rivers and National Wilderness Preservation System, and for other purposes.

2. On page 1, line 7, delete "Federal"; and on page 2, line 11, delete "and" and change "may" to "are".

Perfecting Amendment

3

3. On page 2, line 12, change "described" to "designated".

(perfecting amendment)

4. On page 2, line 18, after "of," insert "and".

Perfecting Amendment

5. On page 2, lines 20 and 21, change "underdeveloped" to "relatively undeveloped".

Perfecting Amendment

6. On page 2, lines 23 and 24, delete "and preserve cultural values of indigenous peoples and"; and in line 24, delete "their".

Perfecting Amendment

7. On page 3, revise lines 6 through 14 to read as follows:

(c)(1) Areas established in titles I and II of this Act shall, subject to valid existing rights, comprise the lands, waters, and interests therein within the boundaries generally depicted on the maps bearing the following designations:

Title I-National Park System--

Aniakchak National Monument/Preserve, numbered
ANIA-90,002

Bering Land Bridge National Preserve, numbered
BELA-90,002

Cape Krusenstern National Monument, numbered
CAKR-90,005

Denali National Park, numbered DENA-90,002,
and Denali Wilderness, numbered DENA-90,003 .

Gates of the Arctic Wilderness National Park,
numbered GAAR-90,006, and Gates of the Arctic
Wilderness, numbered GAAR-90,007

Glacier Bay National Park, numbered GLBA-90,000,
and Glacier Bay Wilderness, numbered GLBA-90,001

Katmai National Park, numbered KATM-90,002, and
Katmai Wilderness, numbered KATM-90,003

Kenai Fjords National Park, numbered KEFJ-90,003,
and Kenai Fjords Wilderness, numbered KEFJ-90,004

Kobuk Valley National Park, numbered KOVA-90,006

Lake Clark National Park/Preserve, numbered
LACL-90,004, and Lake Clark Wilderness,
numbered LACL-90,005

Noatak National Ecological Preserve, numbered
NOAT-90,000

Wrangell-St. Elias National Park/Preserve,
numbered WRST-90,002, and Wrangell-St. Elias
Wilderness, numbered WRST-90,003

Yukon-Charley National Rivers, numbered YUCH -
90,005

Title II-National Wildlife Refuge System--

Alaska Marine Resources, numbered FWS 71-00-0101

Arctic, numbered FWS 71-00-0301

Becharof, numbered FWS 71-00-0401

Innoko, numbered FWS 71-00-0601

Kanuti, numbered FWS 71-00-0701

Kenai, numbered FWS 71-00-0801

Koyukuk, numbered FWS 71-00-0901

Nowitna, numbered FWS 71-00-1001

Selawik, numbered FWS 71-00-1100

Tetlin, numbered FWS 71-00-1201

Togiak, numbered FWS 71-00-1301

Yukon Delta, numbered FWS 71-00-1401

Yukon Flats, numbered FWS 71-00-1501

The boundaries of areas added to the National Park and Wildlife Refuge Systems shall, in coastal areas, not extend seaward beyond the mean high tide line to include lands owned by the State of Alaska unless the State shall have concurred in such boundary extension and such extension is accomplished under the notice and reporting requirements of this Act.

Title IV - National Forest System --

NFS Alaska, dated , for those lands in

Title IV.

Perfecting Amendment

This amendment reflects more accurately the maps which are available to assist in the identification of the areas discussed by the legislative proposal.

10.

8. On page 3, line 21, change "authorized" to "effected"; and revise lines 24 and 25 to read "and filed with the Speaker of the House of Representatives and the President of the Senate,".

Perfecting Amendment

HR 39:

7 descriptions shall be based on Bureau of Land Management
8 cadastral surveys, and boundaries shall follow hydrographic
9 divides or embrace other topographic features in all cases
10 where straight line map boundaries approximate such
11 features.

9. On page 4, lines 7 and 8, delete "descriptions shall be based on
Bureau of Land Management cadastral surveys, and". (Perfecting Amendment)

10. On page 4, after line 11, insert the following after the period:

Following reasonable notice in writing to the Congress of his intention to do so, the Secretary of Interior and the Secretary of Agriculture may make minor adjustments in the boundaries of the areas added to or established as units of the National Park, Wildlife Refuge, Wild and Scenic Rivers, and the National Forest Systems by this Act.

Rationale

This would permit the respective Secretary to make minor boundary adjustments to assure easily identified boundaries, to avoid isolating small tracts of land, or to add or delete lands not needed for management purposes.

*Title I -- National Park System
44.7 million acres*

- 19 (1) Gates of the Arctic National Park of approxi-
20 mately thirteen million six hundred thousand acres:

11. On page 4, revise lines 19-25 to read as follows:

(1) Gates of the Arctic Wilderness National Park,
containing approximately 8.12 million acres of
Federal lands, which shall be managed for the

- 1 (2) Yukon-Charley National Preserve of approxi-
2 mately three million two hundred thousand acres;

12. On page 5, revise lines 1 and 2 to read as follows:

(2) Yukon-Charley National Rivers, containing
approximately 1.69 million acres of Federal lands,

TITLE I — NATIONAL PARK SYSTEM

41.7 million acres

- 3 (3) Kobuk Valley National Monument of approxi-
4 mately one million nine hundred thousand acres;

13. On page 5, revise lines 3 and 4 to read as follows:

(3) Kobuk Valley National Park, containing
approximately 1.67 million acres of Federal lands,

- 5 (4) Cape Krusenstern National Monument of ap-
6 proximately nine hundred thousand acres;

14. On page 5, revise lines 5 and 6 to read as follows:

(4) Cape Krusenstern National Monument, containing
approximately 0.36 million acres of Federal lands,

- 7 (5) Wrangells-Kluane International Park of ap-
8 proximately fourteen million acres and an associate
9 Chisana National Preserve of one million eight hundred
10 thousand acres: *Provided, however,* That the Secretary,

15. On page 5, revise lines 7-14 to read as follows:

(5) Wrangell-St. Elias National Park, containing
approximately 9.56 million acres of Federal lands,
mammals; and in a manner consistent with the
foregoing, to provide opportunities for camping
and hiking, and other outdoor recreation activities.

15
16

(5) Lake Clark National Park of approximately
seven million five hundred thousand acres; ::

16. On page 5, revise lines 15 and 16 to read as follows:

(6) Lake Clark National Park, containing approximately
2.43 million acres of Federal lands, and Lake Clark
National Preserve, containing approximately 0.71
million acres of Federal lands. The park and preserve
shall be managed for the following purposes, among

17 (7) Kenai Fjords National Monument of approxi-
18 mately six hundred thousand acres; ::

17. On page 5, revise lines 17 and 18 to read as follows:

(7) Kenai Fjords National Park, containing approximately
0.41 million acres of Federal lands, which shall be

19 (8) Aniakchak Caldera National Monument of ap-
20 proximately four hundred thousand acres; ::

18. On page 5, revise lines 19 and 20 to read as follows:

(8) Aniakchak National Monument, containing approximately
0.34 million acres of Federal lands, and Aniakchak
National Preserve, containing approximately 0.16 million
acres of Federal lands. The monument and preserve shall