

ALASKA LEGISLATURE SPECIAL COMMITTEE / SUBJECT FILES 86729

689 SCOMM22: ALASKA LANDS FILE 1977-78

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proposals for National Parks and Wildlife Refuges, both of which are land management systems that embody land use purposes and management requirements entirely separate and distinct from the purposes and intent of the Antiquities Act; and

- c. Each reservation of land described in said Proclamations purports to offer general protection of vast geological formations, animal and human migration routes, or potential future archaeological sites or discoveries, which are not those objects properly intended for protection under the express statutory requirements of the Antiquities Act.

57. The President's actions in proclaiming fifteen Alaska National Monuments and reserving additional land for two existing Alaska National Monuments and Parks further constitutes an abuse of any proper executive discretion conferred on the President by the Antiquities Act in the following respects:

- a. The Presidential Proclamations purport to protect living plants and animals, or whole ecosystems, none of which are inanimate objects, nor are they individual historical landmarks, historic or prehistoric structures or other objects of historic or scientific interest, as required by the Antiquities Act. Such designations constitute an arbitrary and capricious use of Presidential power to reserve land for the protection of living things which are not properly cognizable within the plain meaning of said statute;
- b. Said Proclamations purport to reserve tracts of land pursuant to the Antiquities Act, but in fact describe areas of public land far in excess of the smallest area compatible with the protection and management of the proper objects, if any, to be protected; in fact, the

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boundaries were designated to conform to pre-existing administrative and legislative proposals for National Parks and Wildlife Refuges, both of which are land management systems that embody land use purposes and management requirements are entirely separate and distinct from the purposes and intent of the Antiquities Act, thus constituting an abuse of discretion by the President.

- c. Said Proclamations arbitrarily and capriciously reserve lands that are not intended to offer general protection of vast geological features, animal and human migration routes, or potential future archaeological sites or discoveries, which are not those objects properly intended for protection under the express statutory requirements of the Antiquities Act.

58. The issuance of said Presidential Proclamations on December 1, 1978, further violates the doctrine of separation of powers between the Executive Department and the Congress, because the President's unilateral executive actions withdrawing national monuments enter an area of decision-making which Congress has expressly reserved to itself in Section 17(d)(2) of ANCSA, 43 U.S.C. § 1616(d)(2), when it provided that lands withdrawn under it are withdrawn from "all forms of appropriation under the public land laws." (emphasis added).

INJURY TO PLAINTIFF

59. Prior to December 1, 1978, plaintiff had filed land selection applications and identifications for selection for an amount of land completing plaintiff's land grant entitlement under Section 6 of the Statehood Act.

60. The Presidential Proclamations preserve plaintiff's land selection rights only with respect to tentatively approved

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lands or selections which the Secretary has previously recognized, including those in the 1972 Memorandum of Understanding. Approximately nine million acres of state land selections are contained within National Monument boundaries, and upon information and belief plaintiff asserts that defendants intend to reject those land selections which are within National Monument boundaries.

61. Denial of plaintiff's land selections violates plaintiff's vested rights under the Statehood Act.

62. WHEREFORE, plaintiff prays as to its Third Cause of Action that this Court grant the following relief:

- a. That this Court enter an order declaring that the National Monuments created in Alaska on December 1, 1978, by Presidential Proclamation are unlawful under the Antiquities Act as it may apply to lands in Alaska which have been selected by the State pursuant to the Statehood Act;
- b. That this Court enter an order declaring each of the Alaska National Monuments proclaimed on December 1, 1978 to be null and void because the President unlawfully exercised executive power not delegated to him under the Antiquities Act;
- c. In the alternative, that this Court enter an order declaring null and void those portions of said Monuments which reserve land to protect items or subjects not under the purview of the Antiquities Act;
- d. In the alternative, that this Court issue an order reducing the size of said Monuments to those minimum sizes that properly conform to the requirements of the Antiquities Act;
- e. That this Court enter an order declaring that the Proclamations creating National Monuments in Alaska on December 1, 1978 constitute an arbitrary and capricious

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act and abuse of Presidential authority, and invalidate or otherwise make void and ineffective said Proclamations;

- f. In the alternative, to the extent that the boundaries of said National Monuments have been arbitrarily and capriciously drawn, that this Court order and declare that those improperly included portions of the National Monuments are void and of no effect;
- g. That this Court enter an order declaring invalid the Presidential Proclamations creating said National Monuments on December 1, 1978, because the President's actions violate the doctrine of separation of powers, by usurping the authority reserved to Congress in Section 17(d)(2) of ANCSA to determine the ultimate disposition of these lands, and as they conflict with plaintiff's land selection rights under the Alaska Statehood Act.
- h. That this Court declare the Proclamations of December 1, 1978 to be invalid and of no force or effect because the lands encompassed in the purported Monuments were not, pursuant to Section 17(d)(2)(A), subject to any form of appropriation under any of the public land laws, including the Antiquities Act.
- i. This Court enter such additional orders as it may deem necessary to afford plaintiff complete relief as prayed for in this Third Cause of Action.

VIII.

FOURTH CAUSE OF ACTION: NATIONAL MONUMENTS
MAY NOT BE PROCLAIMED ON CONGRESSIONALLY
DESIGNATED NATIONAL FOREST LANDS

63. Plaintiff realleges and incorporates herein every assertion set forth in paragraphs 1 through 62 in this Complaint.

64. Proclamations 4611, 4618 and 4623 were signed by the President on December 1, 1978, and published in the Federal Register on December 5, 1978.

65. The lands described in the above-mentioned Proclamation are part of the Tongass National Forest, which was created pursuant to a series of executive reservations made under the Organic Act of 1897, 16 U.S.C. § 481.

66. On October 22, 1976, Congress revised the National Forest Management Act of 1976 (hereinafter referred to as the "Forest Management Act"), by enacting 16 U.S.C. §§ 1601, et seq., which amended the Forest Rangeland Renewable Resources Planning Act of 1974, 16 U.S.C. §§1601 et seq.

67. Said Acts consolidated laws governing the National Forest System in order to define and permanently reserve lands for the National Forest System, to dedicate all lands reserved in the National Forests to the principles and goals set forth in the Multiple Use-Sustained Yield Act of 1960, 16 U.S.C. §§ 528, et seq., and to give the U.S. Forest Service specific legislative

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directives to implement the concept of multiple use and sustained yield in the nation's national forests.

68. The last sentence in Section 9(a) of the Forest Management Act, 16 U.S.C. § 1609(a), specifically provides:

Notwithstanding the provisions of the Act of June 4, 1897, no land now or hereafter reserved or withdrawn from the public domain as national forest pursuant to the Act of March 3, 1891, or any act supplementary to and amendatory thereof, shall be returned to the public domain except by an Act of Congress.

The above section repealed previous laws which had permitted lands to be removed from a National Forest System by executive order, and requires an Act of Congress to remove public lands from the management system Congress has mandated for the National Forest System.

69. The Forest Management Act also gave the U.S. Forest Service specific authority to harvest the forest lands under the Multiple-Use Sustained Yield Act of 1960, in the enactment of 16 U.S.C. § 1604(f). Passage of the Forest Management Act further affirmed the principles of multiple use-sustained yield and specifically defined and dedicated all lands in the National Forest System to those principles.

70. Upon passage of the Forest Management Act, the lands later described in Presidential Proclamations 4611, 4618 and 4623 were dedicated by Congress to the principles of multiple use-sustained yield, and absent an Act of Congress to the contrary, were permanently reserved as units of the National Forest System, to be managed for such purposes.

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71. The above-cited Proclamations were issued pursuant to authority claimed by the President under the Antiquities Act. Under the constitutional doctrine of separation of powers, such executive authority is powerless to change the status or management of such lands, since Congress has required that only an Act of Congress can do so.

72. The President, in proclaiming these National Monuments from land reserved as part of the Tongass National Forest, has acted beyond the legal bounds of executive authority delegated to him under the Antiquities Act because the creation of such national monuments contravenes Congress' specific requirement that lands in the National Forest System be managed for multiple use and sustained yield. The purposes and land management policies applicable to these three purported National Monuments, under the Antiquities Act, are and will continue to be, by regulation, different from those covering these same lands as mandated in the Forest Management Act.

73. The President's actions constitute an arbitrary and capricious act and an abuse of discretion because he has reclassified land for single use, where such land was required by Congress to be managed under the principles of multiple use and sustained yield.

INJURY TO PLAINTIFF

74. The creation of National Monuments out of the Tongass National Forest adversely affects the State of Alaska and its people in the following ways, among others:

- a. The restricted use classification under the Antiquities Act purports to withdraw from possible selection by plaintiff approximately four million acres of land, some of which may have been subject to selection by the State pursuant to Section 6(a) of the Statehood Act;

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- b. The restricted use classification of the lands described in Proclamations 4611, 4618, and 4623 removes, or will remove, said land from multiple-use management policies and will otherwise restrict uses, including the harvest of timber on these lands, thereby adversely affecting individual businesses and residents of Alaska who directly or indirectly depend on the timber industry for their livelihood;
 - c. The restricted-use classification further prohibits the removal or management of other natural resources on these lands, including minerals and fish, thus adversely affecting many residents of Alaska who depend on related industries for their livelihood.
 - d. The restricted-use classification and rules governing National Monuments threatens the continuation of numerous lawful commercial enterprises within the boundaries of those National Monuments, including hunting lodges, hunting and fishing guides, trappers, and other commercial enterprises;
75. WHEREFORE plaintiff asks that this Court grant the following relief with respect to this Fourth Cause of Action:
- a. That this Court declare the National Monuments created pursuant to Proclamations 4611, 4618 and 4623 as null, void and without legal effect for each of the following reasons:
 - (1) The National Forest Management Act of 1976, 16 U.S.C. §§ 1601, et seq., supercedes the Antiquities Act to the extent that the land cannot be removed from general National Forest Management policies without an Act of Congress;

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- (2) The creation of National Monuments in Proclamations 4611, 4618 and 4623 places the lands involved under the jurisdiction of a different regulatory and management scheme, including a use classification which contradicts the will of Congress as adopted in the National Forest Management Act, and thus violates the Constitutional doctrine of separation of powers;
 - (3) The President's actions in reserving as National Monuments the lands described in Proclamations 4611, 4618 and 4623, pursuant to his claimed authority under the Antiquities Act, constitutes an abuse of executive authority because such actions arbitrarily and capriciously purport to remove land from customary National Forest System management, including an end to the Congressionally-established policy of multiple use and sustained yield with respect to the affected lands, when such actions can only be undertaken by an Act of Congress.
- (b) That this Court enter an order declaring that the State land selections made, or to be made, pursuant to Section 6(a) of the Statehood Act on any lands in the Tongass and Chugach National Forests which at the time of selection were otherwise vacant and unappropriated, are valid land selections that cannot be superceded or revoked by the subsequent purported reservation of such lands for National Monuments under the Antiquities Act, 16 U.S.C. §§ 431, et seq.; and
 - (c) That this Court enter such additional orders as it may deem necessary to afford plaintiff complete relief as prayed for in this Fourth Cause of Action.

IX.

**FIFTH CAUSE OF ACTION: PUBLIC LAND ORDERS
PROMULGATED PURSUANT TO SECTION 17(d)(1) OF
ANCSA CANNOT LAWFULLY PRECLUDE PLAINTIFF
FROM FILING LAND SELECTIONS, NOR RECEIVING
PATENT TO SAID LAND**

76. Plaintiff realleges and incorporates herein every assertion set forth in paragraphs 1 through 75 in this Complaint.

77. The predecessors of the Secretary of Interior, the current Secretary and other officials of the Department of Interior have issued numerous public land orders with respect to public lands in Alaska pursuant to the authority given the Secretary in Section 17(d)(1) of ANCSA, 16 U.S.C. § 1616(d)(1). This Section provides that the Secretary may use his then-existing withdrawal authority to withdraw public lands in Alaska to protect the public lands, to classify and reclassify such lands, and to open them to appropriation under the public land laws in accordance with the classification of such lands.

78. The public land orders issued by the defendants pursuant to Section 17(d)(1) of ANCSA purported to withdraw the affected lands from Statehood Act selection by the plaintiff. The Section 17(d)(1) public land orders affect more than one half of the vacant, unreserved and unappropriated public land in the State. These public land orders thus have dramatically reduced, and continue to reduce, the amount of land the defendants have left open to plaintiff from which to select.

79. The express language of Section 17(d)(1) of ANCSA only closed lands withdrawn under that section to appropriation under the general public land laws, whereas those lands withdrawn under Section 17(d)(2) of ANCSA were withdrawn by express language which also protected such lands from selection under the Alaska Statehood Act.

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80. To the extent that each public land order promulgated pursuant to Section 17(d)(1) of ANCSA purports to withdraw that land from selection by the plaintiff, those public land orders violated, and continue to violate, plaintiff's vested rights of land selection under the Statehood Act; violated, and continue to violate, the express language of Section 17(d)(1) of ANCSA, 16 U.S.C. § 1616(d)(1); violated, and continue to violate the terms and provisions of the Memorandum of Understanding of 1972; and violated, and continue to violate, the legal intent and purpose of enacting Section 17(d)(1) of ANCSA.

81. If the State is not permitted to select on Section 17(d)(1) lands, the cumulative effect of the Section 17(d)(1) withdrawals, the Section 17(d)(2) withdrawals, and other withdrawals by the Secretary of the Interior have had the effect of denying Alaska its lawful entitlement under the Alaska Statehood Act.

82. The Secretary's public land orders pursuant to Section 17(d)(1), which purport to close land to selection by plaintiff, further violate Sections 6(b) and 6(g) of the Statehood Act because the Secretary lacks the authority to impose such conditions on the land grant contained in the Statehood compact. Section 6(b) of the Statehood Act granted to the State and entitled it to select up to one hundred two million five hundred fifty thousand acres of public land, which was vacant, unappropriated and unreserved at the time of selection. No provision in Section 6(b) conditions such selections on the Secretary's approval.

INJURY TO PLAINTIFF

83. The actions of the defendants alleged in this Cause of Action have directly interfered with and have violated the rights of plaintiff to the land grants vested in the State upon its admission to the United States.

84. These violations on the part of the defendants have precluded plaintiff from making selections on certain lands, have denied plaintiff title to and use of some or all of said lands, and tax revenues from said lands, and have imposed the risk of loss of its pending selections filed on land still subject to Section 17(d)(1) public land orders.

85. WHEREFORE plaintiff prays as to its Fifth Cause of Action that this Court grant it the following relief:

- a. That this Court enter an order declaring that all land selections previously filed by plaintiff, and those land selections to be filed in the future, on public lands withdrawn pursuant to Section 17(d)(1) shall, if otherwise valid, be deemed valid selections of the public lands encompassed by such selections, pursuant to the land grant contained in Section 6 of the Alaska Statehood Act;
- b. That this Court enter an order declaring that all identifications for selection filed by plaintiff prior to December 17, 1978, pursuant to Section 17(d)(2)(E) of ANCSA, and all land selections filed by plaintiff after December 17, 1978, on lands formerly within withdrawals made pursuant to Section 17(d)(2)(A) of ANCSA, shall, if such selections are otherwise valid, be deemed effective selections of the public lands encompassed by such selections pursuant to the grant contained in Section 6 of the Alaska Statehood Act;
- c. That this Court enter an order declaring that all land selections filed or reaffirmed by plaintiff on Section 17(d)(1)-withdrawn lands after December 17, 1978, on lands described in paragraphs 2, 5, 6, and 8 of the

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Memorandum of Understanding dated September 1, 1972, shall, if such selections are otherwise valid, be deemed effective selections of the public lands encompassed by such selections pursuant to the grant contained in Section 6 of the Alaska Statehood Act;

- d. That this Court enter such additional orders as it may deem necessary to afford plaintiff complete relief as prayed for in its Fifth Cause of Action.

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X.

**SIXTH CAUSE OF ACTION: PLAINTIFF'S LAND
SELECTION RIGHTS UNDER THE STATEHOOD ACT
ARE EXEMPT FROM THE WILDERNESS INVENTORY
AND REVIEW PROVISIONS OF FLPMA**

86. Plaintiff realleges and incorporates herein every assertion set forth in paragraphs 1 through 35 in this Complaint.

87. The Secretary, and the officials of the department, have interpreted the provisions of Sections 201 and 603 of FLPMA, 43 U.S.C. §§ 1711, 1782, so as to apply the requirements of said sections to public lands which have been or may be selected by plaintiff, notwithstanding the specific exemption contained in Section 701(g)(6) of FLPMA at 43 U.S.C. Prec. § 1702.

INJURY TO PLAINTIFF

88. The interpretation placed upon Sections 201 and 603 of FLPMA, as aforesaid, if applied to public lands in Alaska in any manner which would make such lands unavailable for selection by plaintiff or unduly delay approval and conveyance of such selections, now constitutes or will constitute a violation of Section 6 of the Alaska Statehood Act, a breach of the compact between the United States and the people of Alaska, and will violate the express Congressional directive that FLPMA not be used to preclude or otherwise affect land grants made to the states.

89. WHEREFORE, plaintiff prays as to its Sixth Cause of Action that this Court grant it the following relief:

- a. That this Court enter an order declaring that Sections 201 and 603 of FLPMA, 43 U.S.C. §§ 1711 and 1782, are not applicable to present and future land selections filed by plaintiff;
- b. That this Court enter such additional orders as it may deem necessary to afford plaintiff complete relief as prayed for in its Sixth Cause of Action.

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XI.

**SEVENTH CAUSE OF ACTION: DEFENDANTS' FAILURE
TO ACT ON PLAINTIFF'S LAND SELECTIONS VIOLATES
PLAINTIFF'S RIGHTS UNDER THE STATEHOOD ACT**

90. Plaintiff realleges and incorporates herein by reference each and every legal assertion and statement of fact set forth in Paragraphs 1 through 89 of this Complaint.

91. Plaintiff has filed land selections describing certain Federal public lands pursuant to the grants made to it in Sections 6(a) and 6(b) of the Alaska Statehood Act. To date the Secretary has failed and refused to timely adjudicate and approve such land selections, with regard to approximately 36,253,652 acres of land selected by Plaintiff prior to November 14, 1978. The Secretary has further failed to implement an administrative program and to hire sufficient personnel to adjudicate and approve such selections.

92. Plaintiff on November 14, 1978, duly selected and identified for selection certain federal public lands pursuant to the land grant made by Section 6(b) of the Alaska Statehood Act and the authority contained in Section 17(d)(2)(E) of ANCSA. Approximately 33 million acres of those selections and identifications for selection filed November 14, 1978 do not conflict with those National Monuments proclaimed by the President, nor with permanent withdrawals proposed by the Secretary pursuant to Section 204(c) of FLPMA, 43 U.S.C. §1714(c).

93. The Secretary and the responsible Interior Department officials have failed and refused to recognize the validity of such selections and identifications for selection of lands not in conflict with National Monuments and proposed permanent Secretarial withdrawals. The Secretary and the responsible Interior Department officials have further refused to initiate the process of adjudication, tentative approval and patent of such lands.

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INJURY TO PLAINTIFF

94. Plaintiff, upon information and belief, alleges that the Defendants will continue to not take any action regarding the above-described land selections, which is in direct violation of Plaintiff's rights under the Statehood Act.

95. WHEREFORE, Plaintiff prays as to its Seventh Cause of Action that this Court grant the following relief:

- a. That this Court enter an Order of Mandamus directing the Secretary and the responsible officials of the Interior Department to immediately adjudicate and issue tentative approval to all land selections filed by Plaintiff under Section 6 of the Alaska Statehood Act and which were pending prior to November 14, 1978;
- b. That this Court enter an Order of Mandamus directing the Secretary and the responsible officials of the Interior Department to immediately adjudicate and issue tentative approval to all land selections and identifications filed by plaintiff on November 14, 1978 and which are not in conflict with National Monument designations or proposed permanent withdrawals to be made by the Secretary pursuant to Section 204(c) of FLPMA (43 U.S.C. §1714(c)).
- c. That this Court enter such additional orders as it may deem necessary to afford plaintiff complete relief as prayed for in its Seventh Cause of Action.

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XII.

**EIGHTH CAUSE OF ACTION: DEFENDANTS' PROPOSED
EXERCISE OF AUTHORITY UNDER SECTION 22(e) OF
ANCSA CANNOT LAWFULLY BE USED TO CREATE NEW
WILDLIFE REFUGES**

96. Plaintiff realleges and incorporates herein every assertion set forth in paragraphs 1 through 95 in this Complaint.

97. The Secretary and the responsible officials of the Department of the Interior are authorized by Section 22(e) of ANCSA, 43 U.S.C. § 1621(e), to replace, with other public lands, those lands within wildlife refuges existing in 1971 in Alaska which have been or will be conveyed to Native village corporations. Upon information and belief, plaintiff alleges that defendants intend to replace those wildlife refuge lands lost by conveyance to Native village corporations,

- a. From public lands elsewhere in Alaska which are neither adjacent to nor in proximity to the affected wildlife refuge;
- b. On the basis of the number of acres selected by Native village corporations in existing wildlife refuges, regardless of the actual number of acres each corporation is entitled to receive or the lawfulness of such selections; and
- c. On the basis of the total acreage of selections by Native village corporations in wildlife refuges, regardless of the actual number of acres conveyed in fact to such corporations.

98. The above-alleged actions by the Secretary and the responsible officials of the Department of Interior will constitute a violation of the requirements and purposes of Section 22(e) of ANCSA.

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INJURY TO PLAINTIFF

99. To the extent that such actions by the Secretary and the responsible officials of the Department of Interior preclude or supercede land selections by the plaintiff, those actions contravene plaintiff's rights to land grants which were vested in plaintiff under the Statehood Act and were recognized in ANCSA, and are therefore unlawful.

100. Such actions by the Secretary and the responsible officials of the Department of Interior as alleged herein, if otherwise lawful, constitute "major federal actions" within the meaning of NEPA.

101. WHEREFORE, plaintiff prays for the following relief under this Cause of Action:

- a. That this Court enter an order enjoining the Secretary and officials of the Department of the Interior from implementing Section 22(c) of ANCSA in the manner set forth in the "Environmental Supplement", in the Secretary's public statements, and as alleged in this cause of action.
- b. That this Court enter an order declaring that any action proposed to be taken by the Secretary and the responsible officials of the Department of the Interior, or either of them, pursuant to Section 22(e) of ANCSA shall conform to the following requirements:
 - (1) Refuge replacement lands shall be designated from public lands adjacent to, or in proximity to, the wildlife refuge whose lands require replacement;
 - (2) Refuge replacement lands shall be designated on an acre-for-acre basis for those wildlife refuge lands which are actually conveyed to Native village corporations from time to time.

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- c. That this Court enter an order reinstating plaintiff's land selection rights as to any lands withdrawn pursuant to Section 22(e) of ANCSA which were withdrawn by the Secretary under the erroneous interpretation of statutory authority and intention as alleged herein.
- d. That this Court enter an order declaring that any action taken by the defendants to implement Section 22(e) of ANCSA, if otherwise lawful, shall constitute a "major federal action" within the meaning of NEPA.
- e. That this Court enter such additional orders as it may deem necessary to afford plaintiff complete relief as prayed for in this Cause of Action.

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XIII.

NINTH CAUSE OF ACTION: DEFENDANTS HAVE
BREACHED THE PROVISIONS OF THE 1972
MEMORANDUM OF UNDERSTANDING

102. Plaintiff realleges and incorporates herein every assertion set forth in paragraphs 1 through 101 inclusive in this Complaint.

103. The named Department of the Interior defendants have taken, or have failed to take, certain actions more specifically alleged herein which constitute a breach of the Memorandum of Understanding of 1972 which was executed by the predecessor of the Secretary and the Governor of Alaska in settlement of the lawsuit brought by the State and more particularly described in the Statement of Facts.

104. The Memorandum of Understanding of 1972 provided that the defendants would recognize plaintiff's Statehood Act selections of certain lands which were then withdrawn for Native selection pursuant to Section 11(a) of ANCSA, 16 U.S.C. § 1610(a), and other lands previously open to plaintiff for land selection, but which the defendants had refused to recognize before the settlement.

105. Subsequent to the execution of the Memorandum of Understanding, the Secretary and officials of the Department of the Interior have failed to take necessary actions to comply with the terms of the Memorandum of Understanding. Specifically, the defendants have failed to make certain lands available for selection by plaintiff, due to defendants' failure to promptly convey validly-selected lands to Native corporations and defendants' failure to require the Native corporations to place priorities on land selections and to reduce selections in excess of entitlement. As a result of defendants' failure to act, the lands described in the 1972 Memorandum of Understanding have not been made available

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to the plaintiff for selection promptly upon completion of Native corporation selections on December 18, 1975, in contravention of the express provisions in the Memorandum of Understanding.

106. After the filing of this lawsuit, the defendants have, upon information and belief, taken certain steps to make some, but not all, of the above-described lands available to plaintiff. To the extent that the defendants refuse to recognize plaintiff's land selections on lands described in the 1972 Memorandum of Understanding which are in excess of lawful selections by Native Corporations, plaintiff alleges that the defendants continue to violate the 1972 Memorandum.

INJURY TO PLAINTIFF

107. As a result of the failure of the defendants to act as alleged in the foregoing paragraphs, plaintiff's land selection rights under Section 6 of the Statehood Act, and which were recognized by predecessors of the defendants in the 1972 Memorandum of Understanding, have been precluded and delayed.

108. Each of defendant's failures to immediately make certain land available to plaintiff and to convey otherwise valid selections as required by the Memorandum of Understanding of 1972 constitutes a separate and independent breach of the Memorandum of Understanding and a separate and independent violation of plaintiff's vested rights to its land grant under Section 6 of the Statehood Act.

109. WHEREFORE, plaintiff asks this Court to grant the following relief with respect to this cause of action:

- a. That this Court enter an order declaring that defendants have violated the provisions of the 1972 Memorandum of Understanding and have violated plaintiff's land selection rights under the Alaska Statehood Act.
- b. That this Court order and direct the defendants to take all steps necessary and to act expeditiously to place the defendants in full compliance with the provisions

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of the Memorandum of Understanding and to recognize these and selections made by plaintiff.
c. That this Court enter such additional orders as it may deem necessary to afford plaintiff complete relief as prayed for in its Ninth Cause of Action.

XIV.

**TENTH CAUSE OF ACTION: DEFENDANTS' FAILURE
TO PROMPTLY CONVEY NATIVE LANDS AND FAILURE
TO REJECT NATIVE OVERSELECTIONS UNDULY IM-
PEDES PLAINTIFF'S SELECTION RIGHTS**

110. Plaintiff realleges and incorporates herein every assertion set forth in paragraphs 1 through 109 in this Complaint.

111. ANCSA requires the Secretary and the other named Interior Department agents to immediately convey to eligible Native village and regional corporations those lands validly selected by them in fulfillment of their respective land entitlements pursuant to Sections 14(a), (b), and (c) thereof, 43 U.S.C. §§ 1613, et seq., among others.

112. ANCSA further directs the Secretary to make public lands in Alaska available for selection and identification by plaintiff pursuant to Sections 11 and 17 of ANCSA, 43 U.S.C. §§ 1610, 1616, among others, which lands are comprised of lands not withdrawn under Section 17(d)(1) or Section 17(d)(2)(A) of ANCSA, withdrawn lands in even-odd, odd-even townships, and lands not validly selected by Native village and regional corporations.

113. The Secretary and the responsible Interior Department officials have permitted the Native village and regional corporations to file land selection applications describing lands which far exceed the land entitlements and overselection allowances permitted for fulfillment of lawful entitlements of the respective regional and village corporations.

114. The filing of a land selection application by a regional or village corporation, under current departmental regulations, acts to segregate that land from appropriation under the public land laws and from selection by the plaintiff. Said segregation remains in effect until the land selection application is withdrawn or rejected.

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for the purpose of underbidding, and to cause the

change in the price of the goods to be made by the plaintiff's

c. That this Court has such additional orders as

may seem proper and afford plaintiff complete relief

prayed for in the above Cause of Action.

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115. The defendants have failed to expeditiously approve and convey the land selections filed by the regional and village corporations. The defendants have further failed to exercise their statutory and regulatory authority to reduce, reject and repudiate excess Native land selections and as required by the policy decisions announced by the Secretary on March 6, 1978.

INJURY TO PLAINTIFF

116. Plaintiff has been prevented and unduly delayed, by the Secretary's actions and omissions as alleged, from exercising its valid land selection rights granted it by the Alaska Statehood Act and amended to it by ANCSA, with respect to several million acres of federal lands which are subject to land selection application filed by Native corporations far in excess of their respective entitlements.

117. WHEREFORE plaintiff prays as to its Tenth Cause of Action that this Court grant the following relief:

- a. That this Court enter an Order declaring that, until the Secretary conveys validly-selected lands to Native village and regional corporations in fulfillment of their entire respective entitlements, or until the Secretary requires prioritizing, reduction and rejection of all excess Native corporation selections and selection applications to an amount of acreage not greater than 25 per cent of the total remaining land entitlement of each Native corporation which has not been conveyed to it by interim conveyance or patent, first occurs, all land selection applications filed in the future by plaintiff upon any such lands shall, if otherwise valid, be considered valid selections of such lands, subject only to conveyance

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ORIGINAL.

of such lands to the Native Corporation whose land selection predated plaintiff's land selection.

- (b) That this Court order the Secretary to immediately implement the policy decisions announced by the Secretary on March 6, 1978, regarding Native overselections under ANCSA.
- (c) That this Court enter such additional orders as it may deem necessary to afford plaintiff complete relief as prayed for in its Tenth Cause of Action.

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XV.

**ELEVENTH CAUSE OF ACTION: THE DEFENDANTS'
ACTIONS UNDER SECTION 204 OF FLPMA TO REVOKE,
REJECT OR PRECLUDE PLAINTIFF'S LAND SELECTIONS
IN EXCESS OF THEIR AUTHORITY**

118. Plaintiff realleges and incorporates herein every assertion set forth in paragraphs 1 through 117 in this Complaint.

119. The Secretary has in the past and will continue to exercise authority purportedly derived from Section 204 of FLPMA, 43 U.S.C. § 1714, to preclude plaintiff from exercising its land selection rights under Section 6 of the Alaska Statehood Act.

120. Plaintiff has filed with the Secretary certain land selections, and identifications for selection, the total acreage of which will fulfill plaintiff's Statehood Act Section 6(b) entitlement. Approximately 41 million acres of said land selections and identifications for selection were filed on November 14, 1978.

121. On and after November 16, 1978, the Secretary exercised authority claimed under Section 204(e) of FLPMA to promulgate Public Land Order 5653, as amended by Public Land Order 5654, which Orders purport to withdraw approximately 110 million acres of public land from selection under Section 6 of the Statehood Act.

122. Plaintiff, upon information and belief, alleges that to the extent its land selections made on or before November 14, 1978 conflict with P.L.O. 5653 and P.L.O. 5454 the defendants will refuse to recognize and will reject those selections.

123. Any action by defendants to refuse to recognize all of plaintiff's land selections filed on or before November 14, 1978 exceeds the Secretary's authority under FLPMA or any other law, and is therefore unlawful, for the following reasons, among others:

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- a. The Secretary has no independent discretion to disapprove land selections filed by plaintiff pursuant to Section 6(b) of the Statehood Act, nor any independent authority under FLPMA to appropriate or reserve land in any manner which would deny plaintiff's rights to validly select lands under Section 6(b) of the Statehood Act.
- b. Public Land Order 5653 makes an emergency withdrawal of the described lands, subject to valid existing rights. All of plaintiff's pending land selections and identifications for selection constitute valid existing rights and the Secretary cannot revoke them by exercise of his withdrawal powers under FLPMA;
- c. The Secretary's Section 204(e) withdrawal which purports to preclude plaintiff from filing land selections or obtaining approval of pending selections is of no legal effect because Section 701(g)(6) of FLPMA exempts state land grants from the provisions of FLPMA.
- d. Public Land Orders 5653 and 5654 purport to invoke an emergency withdrawal where in fact no emergency existed since the lands were protected at the time by existing withdrawals, and because conclusory statements regarding the existence of an emergency by a U.S. Representative or by the Secretary, with no basis in fact, are legally insufficient to support such a withdrawal.
- e. Any action taken pursuant to § 204(e) is null and void because this section violates the Constitutional doctrine of separation of powers between the executive and legislative branches of the United States Government.

124. The Secretary has announced that he intends to use his withdrawal authority under Section 204 of FLPMA to effect 20-year withdrawals of federal lands not already designated as new National Monuments or additions thereto, from those lands which were described in Public Land Order 5653, as stated previously in this Complaint. To the extent that such withdrawals may be claimed to preclude, revoke, deny or otherwise delay plaintiff's pending and future Statehood Act selections, said withdrawals exceed the Secretary's lawful authority and violate Section 701(g) (6) of FLPMA.

INJURY TO PLAINTIFF

125. By virtue of the Secretary's unlawful application of Section 204 of FLPMA, plaintiff will be denied its land grant rights under the Alaska Statehood Act.

126. WHEREFORE, plaintiff requests that this Court grant the following relief:

- a. That this Court enter an order declaring that to the extent that Public Land Orders 5653 and 5654 purport to preclude plaintiff from filing valid land selections, such orders are null, void, and without legal effect;
- b. That this Court enter an order declaring that plaintiff's land grants have vested under Section 6 of the Statehood Act and are saved from revocation or denial by Section 701(g) (6) of FLPMA;
- c. That the Court enter an order declaring plaintiff's land selections or identifications for land selection to be valid existing rights;
- d. That this Court declare that any withdrawal order previously issued by the Secretary pursuant to authority claimed under Section 204 of FLPMA, 43 U.S.C. § 1714, and particularly under Subsections (b), (c), and (e) thereof, are null, void, and of no effect as they may be claimed to apply to existing or future land selections by plaintiff.

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- e. That this Court enter an order declaring Public Land Order 5653, as amended by Public Land Order 5654, is null and void because the Secretary has failed to establish that an emergency existed on November 16, 1978.
- f. That this Court enter an order declaring that Section 204(e) of FLPMA, 43 U.S.C. § 1714(e), as implemented by the Secretary, violates the Constitutional doctrine of separation of powers between the executive and legislative branches of government.

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XVI.

TWELFTH CAUSE OF ACTION: VALID EXISTING RIGHTS

126. Plaintiff realleges and incorporates herein every assertion set forth in paragraphs 1 through 125 in this Complaint.

127. As of December 1, 1978, plaintiff had filed land selections or identifications for land selections which, upon conveyance, will complete the State's land grant entitlement under Section 6(b) of the Statehood Act.

128. The Presidential Proclamations, Numbers 4611 through 4627, signed by the President on December 1, 1978, provide that the establishment of each National Monument is "subject to valid existing rights".

129. Plaintiff's pending land selections under Section 6(b) of the Alaska Statehood Act are "valid existing rights" within the meaning of the Presidential Proclamations.

INJURY TO PLAINTIFF

130. Approximately nine million acres of plaintiff's land selections or identifications for land selection lie within the boundaries of the National Monuments created December 1, 1978.

131. Plaintiff, upon information and belief, alleges that the defendants will reject or refuse to convey said land selections despite the recognition of valid existing rights in each of the Proclamations.

132. WHEREFORE plaintiff asks this Court to grant it the following relief:

- a. That this Court enter an order declaring all plaintiff's land selections and identifications for land selections filed on or before November 30, 1978 to be valid existing rights, and that they are not defeated by the National Monument withdrawals;

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- b. That this Court enter an order directing the defendants to timely and expeditiously approve and convey plaintiff's land selections and identifications for selection without regard to claimed conflicts with National Monument boundaries; and
- c. That this Court enter such additional orders as it may deem necessary to afford Plaintiff complete relief as prayed for in this Twelfth Cause of Action.

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XVII.

THIRTEENTH CAUSE OF ACTION: ANTIQUITIES ACT
PROCLAMATIONS PRECLUDED BY SECTION 17(d)(2)(A)
OF ANCSA

133. Plaintiff realleges and incorporates herein every assertion set forth in paragraphs 1 through 132 in this Complaint.

134. Section 17(d)(2)(A) of ANCSA directs the Secretary to withdraw "from all forms of appropriations under the public land laws" up to 80 million acres in Alaska, pending Congressional Resolution of the permanent status of the lands or until December 18, 1978, whichever was sooner.

135. Approximately 80 million acres were in fact withdrawn pursuant to this Subsection.

136. On December 1, 1978, the President of the United States by Proclamation under the Antiquities Act withdrew approximately 56 million acres into National Monuments from lands already withdrawn by the Secretary under Section 17(d)(2)(A).

137. The Antiquities Act is a public land law of the United States and the designation of National Monument lands by the President is a "form of appropriation" not permitted by Section 17(d)(2)(A).

INJURY TO PLAINTIFF

138. As a result of the withdrawals for National Monuments wrongfully made by the President of the United States on December 1, 1978, the plaintiff has been denied certain uses of those lands and the ability to select and receive title to the lands chosen by the plaintiff pursuant to the Alaska Statehood Act that conflict with the National Monuments designated by the President, and has suffered certain other injuries.

139. WHEREFORE plaintiff prays as to its Thirteenth Cause of Action that this Court grant it the following relief:

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- a. That this Court enter an order declaring the Presidential Proclamations of December 1, 1978, purportedly creating the Alaska National Monuments in question, to be null and void, without force and effect, and otherwise invalid;
- b. That this Court enjoin the President and the Department of Interior from taking any course of action, issuing any order, promulgating any regulations, or undertaking any other activities purporting to treat the designated National Monument areas under the requirements of the Antiquities Act, and ordering the Secretary to re-establish and continue prior use regulations;
- c. That this Court enter such additional orders as it may deem necessary to afford plaintiff complete relief as prayed for in its thirteenth Cause of Action.

XVIII.

FOURTEENTH CAUSE OF ACTION: COSTS AND FEES

140. Plaintiff realleges and reincorporates herein by reference every assertion set forth in paragraphs 1 through 139 of this Complaint.

141. Plaintiff has incurred certain costs and fees in the filing of this action.

142. WHEREFORE plaintiff prays as to its Fourteenth Cause of Action that this Court enter an order awarding it costs and fees against defendants, and each of them.

DATED at Anchorage, Alaska this ____ day of January, 1979.

AVRUM GROSS
Attorney General

THOMAS MEACHAM
Assistant Attorney General

RONALD G. BIRCH
Birch, Horton, Bittner & Monroe

Attorneys for Plaintiff
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MONUMENTS AND MEMORIALS 16 § 431

NATIONAL AND INTERNATIONAL MONUMENTS AND MEMORIALS

Cross References

Protection of timber upon national monuments from fire, disease, or insect ravages, see section 504 of this title.

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

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

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

Historical Note

National Monument Commission. Act Aug. 31, 1954, c. 1160, §§ 1 to 6, 68 Stat. 1020, provided for a Commission to obtain plans and designs for a useful monument to the Nation symbolizing to the United States and the world the ideals of a democracy as embodied in the five freedoms (speech, religion, press, assembly, and petition) and to submit such

plans to Congress for legislative authorization after approval by the Secretary of the Interior, the National Capital Planning Commission, and the Commission of Fine Arts. The Commission terminated 30 days after submission of required report which was submitted in 1957 but audit of business was not completed until September 1961.

States § 74.

Appropriation

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States § 123.

NATIONAL MONUMENTS ESTABLISHED UNDER PRESIDENTIAL PROCLAMATION

The following National Monuments were established under the proclamations listed:

National Monument	Proc.	Stat. at Large
Arches National Monument, Utah [abolished and funds thereof made available to Arches National Park by Pub.L. 92-155, § 1, Nov. 12, 1971, 85 Stat. 422. See section 272 of this title]	1875	46 Stat. 2988
Aztec Ruins National Monument, New Mexico	1923	42 Stat. 2205
Bandelier National Monument, New Mexico	1322	39 Stat. 1701
Black Canyon of the Gunnison National Monument, Colorado	2033	47 Stat. 2558
Buck Island Reef National Monument, Virgin Islands	3143	70 Stat. 1111
Cabrillo National Monument, California	1255	38 Stat. 1905
Capitol Reef National Monument, Utah [abolished and funds thereof made available to Capitol Reef National Park by Pub.L. 92-207, § 1, Dec. 18, 1971, 85 Stat. 730. See section 273 of this title]	2246	50 Stat. 1854
Capulin Mountain National Monument, New Mexico	1340	39 Stat. 1792
Casa Grande National Monument, Arizona	1470	40 Stat. 1818
Castillo de San Marcos National Monument, Florida	1713	43 Stat. 1908
Cedar Breaks National Monument, Utah	2054	48 Stat. 1705
Chaco Canyon National Monument, New Mexico	740	35 Stat. 2119
Channel Islands National Monument, California	2281	52 Stat. 1541
Chesapeake and Ohio Canal National Monument, Maryland	3391	75 Stat. 1023
Chiricahua National Monument, Arizona	1092	43 Stat. 1916
Colorado National Monument, Colorado	1126	37 Stat. 1681
Craters of the Moon National Monument, Idaho	1091	43 Stat. 1917
Devil Postpile National Monument, California	1160	37 Stat. 1715
Devils Tower National Monument, Wyoming [Act Aug. 9, 1905, c. 647, 69 Stat. 575 provided for addition of approximately 150 acres to monument and for exchange of monument lands]	658	34 Stat. 3230
Dinosaur National Monument, Utah-Colorado	1313	39 Stat. 1752
Edison Laboratory National Monument, New Jersey [redesignated, along with Edison Home National Historic Site and certain adjacent lands, as Edison National Historic Site by Pub.L. 87-628, § 1, Sept. 5, 1962, 76 Stat. 428]	3148	70 Stat. c10
Effigy Mounds National Monument, Iowa	2800	61 Stat. A371
El Morro National Monument, New Mexico	605	34 Stat. 3261
Fort Jefferson National Monument, Florida	2112	40 Stat. 3340
Fort Laramie National Monument, Wyoming [redesignated as Fort Laramie National Historic Site by Pub.L. 80-441, § 3, Apr. 29, 1960, 74 Stat. 81]	2202	53 Stat. 2401
Fort Pulaski National Monument, Georgia	1713	43 Stat. 1948
Gila Cliff-Dwellings National Monument, New Mexico	781	35 Stat. 2102
Glacier Bay National Monument, Alaska	1733	47 Stat. 1988
Grand Canyon National Monument, Arizona	2022	47 Stat. 2517
Gran Quivira National Monument, New Mexico	882	30 Stat. 2503
Great Sand Dunes National Monument, Colorado	1094	47 Stat. 2500
Holy Cross National Monument, Colorado	1877	40 Stat. 2903
Hovenweep National Monument, Colorado-Utah	1054	42 Stat. 2200
Jackson Hole National Monument, Wyoming	2578	57 Stat. 731
Jewel Cave National Monument, South Dakota	700	35 Stat. 2180
Katmai National Monument, Alaska	1487	40 Stat. 1835
Lava Beds National Monument, California	1755	44 Stat. 2301
Lehman Caves National Monument, Nevada	1018	42 Stat. 2200
Marble Canyon National Monument, Arizona	3880	83 Stat. 924
Meriwether Lewis National Monument, Tennessee [included, along with Ackia Underground National Monument, in Natchez Trace Parkway by Pub.L. 87-131, Aug. 10, 1961, 75 Stat. 335. See section 400-1 of this title]	1825	30 Stat. 890

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NATIONAL MONUMENTS ESTABLISHED UNDER PRESI- DENTIAL PROCLAMATION--Continued

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

National Monument	Proc.	Stat. at Large
Montezuma Castle National Monument, Arizona	696	34 Stat. 3265
Mound City Group National Monument, Ohio	1653	42 Stat. 2298
Muir Woods National Monument, California	793	35 Stat. 2174
Natural Bridges National Monument, Utah	804	35 Stat. 2183
Navajo National Monument, Arizona	873	36 Stat. 2191
Old Kasaan National Monument, Alaska	1351	39 Stat. 1812
Oregon Caves National Monument, Oregon	870	36 Stat. 2497
Pinnacles National Monument, California	796	35 Stat. 2777
Pipe Spring National Monument, Arizona	1663	43 Stat. 1913
Rainbow Bridge National Monument, Utah	1043	36 Stat. 2703
Russell Cave National Monument, Alabama	3413	75 Stat. 1058
Saguaro National Monument, Arizona	2032	47 Stat. 2557
Scotts Bluff National Monument, Nebraska	1547	41 Stat. 1779
Shoshone Cavern National Monument, Wyoming	880	36 Stat. 2591
Sitka National Monument, Alaska [redesignated as Sitka National Historical Park by Pub.L. 92-501, Oct. 18, 1972, 86 Stat. 904]	959	36 Stat. 2601
Statue of Liberty National Monument, New York	1713	43 Stat. 1968
Sunset Crater National Monument, Arizona	1911	46 Stat. 3023
Timpanogos Cave National Monument, Utah	1610	42 Stat. 2285
Tonto National Monument, Arizona	787	35 Stat. 2168
Tumacacori National Monument, Arizona	821	35 Stat. 2205
Tuzigoot National Monument, Arizona	2344	53 Stat. 2548
Walnut Canyon National Monument, Arizona	1318	39 Stat. 1701
Wheeler National Monument, Colorado	831	35 Stat. 2214
White Sands National Monument, New Mexico	2025	47 Stat. 2551
Wupatki National Monument, Arizona	1721	43 Stat. 1977
Yucca House National Monument, Colorado	1549	41 Stat. 1781
Zion National Monument, Utah [combined with Zion National Park into single national park unit by Act July 11, 1956, c. 508, 70 Stat. 527. See section 346b et seq. of this title]	2221	50 Stat. 1080

NATIONAL MEMORIALS

National Memorial	Authorization
Arkansas Post National Memorial, Arkansas	Authorized by Pub.L. 86-595, July 8, 1960, 74 Stat. 333.
Benjamin Franklin National Memorial, Pennsylvania	Authorized by Pub.L. 92-551, Oct. 25, 1972, 86 Stat. 1161.
Chamizal National Memorial, Texas	Authorized by Pub.L. 89-479, July 12, 1966, 80 Stat. 232.
Castle-Lee Mansion National Memorial, Virginia	Authorized by Act Mar. 4, 1925, c. 562, 41 Stat. 1350. Made permanent memorial by Act June 29, 1955, c. 223, 69 Stat. 190.
Federal Hall National Memorial, New York	Designated May 26, 1939. Designation changed from Federal Hall Memorial Historic Site by Act Aug. 11, 1955, c. 779, 69 Stat. 632.
Fort Caroline National Memorial, Florida	Authorized by Act Sept. 21, 1950, c. 973, 64 Stat. 897. Established Jan. 10, 1953.
House Where Lincoln Died National Memorial, District of Columbia	Authorized by Act June 11, 1896, c. 420, 29 Stat. 439.
Johnstown Flood National Memorial, Pennsylvania	Authorized by Pub.L. 88-546, Aug. 31, 1964, 78 Stat. 752.
Lincoln Boyhood National Memorial, Indiana	Authorized by Pub.L. 87-407, Feb. 19, 1962, 76 Stat. 9.
Lincoln Museum National Memorial, District of Columbia	Authorized by Act Apr. 7, 1896, c. 28, § 1, 14 Stat. 23.
Lincoln National Memorial, District of Columbia	Authorized by Act Feb. 9, 1911, c. 42, 36 Stat. 898.
Mount Rushmore National Memorial, South Dakota	Authorized by Act Feb. 25, 1929, c. 315, 45 Stat. 1300.
Seabees of the United States Navy Mem- orial, District of Columbia	Authorized by Pub.L. 92-422, Sept. 18, 1972, 86 Stat. 678.
Thomas Jefferson National Memorial, District of Columbia	Authorized by Act June 26, 1934, c. 763, 48 Stat. 1243.
Washington Monument National Memorial, District of Columbia	Authorized by Act Aug. 2, 1876, c. 250, § 1, 19 Stat. 123.
Wright Brothers National Memorial, North Carolina	Kill Devil Hill National Monument au- thorized by Act Mar. 2, 1927, c. 251, 44 Stat. 1204. Name changed to Wright Brothers National Memorial, Dec. 1, 1953.

Miscellaneous National Monuments. Agate Fossil Beds National Monument, Nebraska, was authorized by Pub.L. 89-33, June 5, 1965, 79 Stat. 123.

Abilene Flint Quarries and Texas Panhandle Pueblo Culture National Monument, Texas, was authorized by Pub.L. 89-151, Aug. 31, 1965, 79 Stat. 587.

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

MONUMENTS AND MEMORIALS

Authorization

Authorized by Pub.L. 86-505, July 6, 1960, 84 Stat. 333.

Authorized by Pub.L. 92-551, Oct. 25, 1972, 86 Stat. 1161.

Authorized by Pub.L. 80-470, July 12, 1968, 80 Stat. 232.

Authorized by Act Mar. 4, 1925, c. 562, 43 Stat. 1550. Made permanent memorial by Act June 20, 1935, c. 223, 49 Stat. 9.

Designated May 20, 1939. Designation changed from Federal Hall Memorial Historic Site by Act Aug. 11, 1953, c. 40, 69 Stat. 632.

Authorized by Act Sept. 21, 1950, c. 973, 64 Stat. 897. Established Jan. 10, 1953.

Authorized by Act June 11, 1806, c. 420, 20 Stat. 439.

Authorized by Pub.L. 88-516, Aug. 31, 1964, 78 Stat. 752.

Authorized by Pub.L. 87-407, Feb. 10, 1962, 76 Stat. 9.

Authorized by Act Apr. 7, 1806, c. 28, § 1, 20 Stat. 23.

Authorized by Act Feb. 9, 1911, c. 42, 36 Stat. 1808.

Authorized by Act Feb. 25, 1920, c. 315, 45 Stat. 1300.

Authorized by Pub.L. 92-422, Sept. 18, 1972, 86 Stat. 678.

Authorized by Act June 26, 1934, c. 703, 48 Stat. 1243.

Authorized by Act Aug. 2, 1876, c. 250, § 1, 19 Stat. 123.

Devil Hill National Monument authorized by Act Mar. 2, 1927, c. 251, 44 Stat. 1201. Name changed to Wright Brothers National Memorial, Dec. 1, 1933.

Well Beds National Monument, Nebraska, 70 Stat. 123.

Pueblo Culture National Monument, 71, 1945, 79 Stat. 687.

Montana, was established by Ex.Ord.No. 1. Hole National Battlefield by Pub.L.

Custer Battlefield National Monument, Montana, was proclaimed "National Cemetery of Custer's Battlefield Reservation" on December 7, 1894. The name was changed to Custer Battlefield National Monument by Act Mar. 22, 1946, c. 110, 60 Stat. 59.

Florissant Fossil Beds National Monument, Colorado, was authorized by Pub.L. 91-60, Aug. 20, 1969, 83 Stat. 101.

Fort Matanzas National Monument, Florida, was established October 15, 1921.

Fossil Butte National Monument, Wyoming, was authorized by Pub.L. 92-537, Oct. 23, 1972, 86 Stat. 1000.

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

Pecos National Monument, New Mexico, was authorized by Pub.L. 80-51, June 28, 1965, 79 Stat. 195.

Library References

Armed Services 51.
Woods and Forests 8.

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

Code of Federal Regulations

National cemeteries, use of, see 36 CFR 12.1 et seq.

Special regulations for particular areas, see 36 CFR 7.1 et seq.

Notes of Decisions

Abolishment of monuments 5
Declaratory judgment 10
Designation of area in proclamation 3
Grounds for proclaiming monument 2
Jurisdiction 8
Objects which may be declared monuments 1
Pleadings 0
Reservation of mineral interests 4
Suits against United States 7
Transfer of monuments 6

1. Objects which may be declared monuments

Under this section, the President was authorized to establish a monument reserve embracing the Grand Canyon, of the Colorado River; it being an "object of scientific interest." *Cameron v. U. S.*, Ariz.1920, 40 S.Ct. 410, 252 U.S. 450, 64 L. Ed. 650.

2. Grounds for proclaiming monument

Proclamation No. 2578, Mar. 15, 1913, 57 Stat. 731, declaring the Jackson Hole Country in Wyoming a national monument because of its historic landmarks, prehistoric structures, and other objects of historic or scientific interest, was not shown to be arbitrary so as to justify interference by the courts. *State of Wyoming v. Franke*, D.C.Wyo.1915, 58 F. Supp. 800.

The court cannot take any judicial interest in the motives which may have inspired Proclamation No. 2578, Mar. 15, 1913, 57 Stat. 731, declaring the Jackson Hole Country in Wyoming a national monument, which proclamation was de-

scribed as an alleged attempt to circumvent congressional intent and authority in connection with such lands, since such discussions are only applicable as an appeal for congressional action. *Id.*

3. Designation of area in proclamation

That the area designated in Proclamation No. 2578, Mar. 15, 1913, 57 Stat. 731, establishing the Jackson Hole National Monument was not consistent with the preface to such proclamation was not material, where the area over which control was threatened was in any event limited to that defined in such proclamation. *State of Wyoming v. Franke*, D.C.Wyo.1915, 58 F.Supp. 800.

4. Reservation of mineral interests

To bring a lode mining claim within the saving clause in the withdrawal of public lands for a monument reserve, under this section, in respect of any "valid" mining claim theretofore acquired, the discovery must have preceded the creation of that reserve. *Cameron v. U. S.*, Ariz.1920, 40 S.Ct. 410, 252 U.S. 450, 64 L.Ed. 650.

5. Abolishment of monuments

Section 431 et seq. of this title, authorizing the President to establish national monuments, does not authorize him to abolish them after they have been established. 1939, 30 Op.Atty.Gen. 185.

6. Transfer of monuments

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

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D.C.Wyo.1915, 58 F.

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Historical Note

Codification. Section comprises only part of the last sentence of section 1 of Act Sept. 11, 1950. The remainder of such section, except that part of the last sentence which repealed sections 406 to 406d of this title, is set out as sections 406d-1 and 451a of this title.

1950, see note under section 406d-1 of this title.

Legislative History. For legislative history and purpose of Act Sept. 11, 1950, see 1950 U.S.Code Cong.Service, p. 3746.

Repeal of Inconsistent Laws. Repeal of laws inconsistent with Act Sept. 11,

Cross References

National parks in Wyoming, limitation on further extension or establishment, see section 451a of this title.

§ 432. Permits to examine ruins, excavations, and gathering of objects; regulations

Permits for the examination of ruins, the excavation of archaeological sites, and the gathering of objects of antiquity upon the lands under their respective jurisdictions may be granted by the Secretaries of the Interior, Agriculture, and Army to institutions which they may deem properly qualified to conduct such examination, excavation, or gathering, subject to such rules and regulations as they may prescribe: *Provided*, That the examinations, excavations, and gatherings are undertaken for the benefit of reputable museums, universities, colleges, or other recognized scientific or educational institutions, with a view to increasing the knowledge of such objects, and that the gatherings shall be made for permanent preservation in public museums. The Secretaries of the departments aforesaid shall make and publish from time to time uniform rules and regulations for the purpose of carrying out the provisions of this section and sections 431 and 433 of this title.

June 8, 1906, c. 3060, §§ 3, 4, 34 Stat. 225.

Historical Note

Codification. The last sentence only of this section was derived from section 4 of Act June 8, 1906, the remainder being from section 3.

The Department of War was designated the Department of the Army and the title of the Secretary of War was changed to Secretary of the Army by section 205(a) of Act July 26, 1917, c. 343, Title 11, 41 Stat. 501. Section 205(a) of Act July 26, 1917, was repealed by section 53 of Act Aug. 10, 1950, c. 1041, 70A Stat. 611. Section 1 of Act Aug. 10, 1950,

enacted "Title 10, Armed Forces" which in sections 3011 to 3013 continued the military Department of the Army under the administrative supervision of a Secretary of the Army.

Secretary of the Air Force. For transfer of certain functions relating to real property under the jurisdiction of the Department of the Air Force, to the Secretary of the Air Force from the Secretary of the Army, see Secretary of Defense Transfer Order No. 14 [1 2 (25)], eff. July 1, 1918.

Code of Federal Regulations

Preservation of antiquities, see 25 CFR 132.1 et seq., 43 CFR 3.1 et seq.

SCOMM

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STATE OF ALASKA
OFFICE OF THE GOVERNOR
ANCHORAGE

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February 19, 1980

For your information.

John W. Katz
Special Counsel to
the Governor

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

**STATEMENT OF GOVERNOR JAY HAMMOND
CONCERNING SENATE TIME AGREEMENT**

February 15, 1980

The following statement contains Governor Jay S. Hammond's analysis of the time agreement which will govern future Senate consideration of the pending Alaska lands legislation. The agreement, which was arrived at last Thursday, specifies the rules for debate and amendment of the legislation reported last November by the Senate Committee on Energy and Natural Resources:

"I want to indicate at the outset that I was not privy to the discussions which preceded the execution of the time agreement. Therefore, I do not know the details of the parliamentary situation which confronted Alaska's two Senators. I am certain, however, that they did everything within their power to assure favorable treatment of our concerns.

"The time agreement hopefully gives the State some additional leverage by postponing the date for Senate consideration of the lands legislation. Legislation considered closer to the end of a session is easier to control.

"This benefit should not be overemphasized, however. The lands legislation now has a momentum and a life of its own. The time agreement almost assures that the lands bill will be considered shortly after the July recess and also precludes the opportunity to filibuster Senate passage of this legislation. Of course, we have felt for quite some time that the Senate majority leader, for a number of reasons, would probably bring the bill to the floor some time this year. Moreover, it is unlikely that a filibuster could have been maintained for very long.

"Unfortunately, the time agreement does not control our efforts to deal with the bill in any subsequent conference with members of the House of Representatives, nor does it preclude the opportunity to filibuster Senate approval of the conference report. It should be noted, however, that under some scenarios, a conference committee may never be convened. The agreement permits Senator Tsongas to propose five whole title amendments to the legislation reported by the Senate Energy Committee. If Senator Tsongas is dissatisfied with the results of the amendment process, he can call for a vote on his substitute bill, which is substantially similar to the Udall-Anderson measure.

"If Senator Tsongas succeeds with most of his key amendments, or if his substitute is adopted, it is very likely that the House will simply adopt the Senate bill. In such circumstances, a conference with the House would not occur, and the State would lose much of the leverage which it might otherwise have.

"However, it should also be noted that under the time agreement, Senators Jackson, Stevens, and Gravel each may propose three amendments. We hope to work with these and other Senators to seek needed improvements in the legislation reported by the Senate Energy Committee. The amendment process will not be easy. It is likely that much of what we want will be opposed by proponents of the Tsongas substitute, and we will have to work very hard to convince uncommitted Senators of the merits of what we are requesting.

"If we are successful in protecting the essential elements of the Energy Committee bill or in making some of the improvements which most Alaskans want, it is very likely that the U.S. House will request a conference with the Senate. The 96 million acres of national monuments, wildlife refuges, and special management areas which have been created by unilateral executive action, together with further anticipated withdrawals, create a situation which would enable proponents of the Udall-Anderson bill to be more insistent about what they want.

"Despite this, I believe that our principal vulnerability is on the Senate floor, and not in a conference. On the basis of our prior experience, I believe that the State can fair reasonably well in a conference committee situation, as we have done in the committees with substantive jurisdiction and in the so-called "ad hoc conference" of a couple of years ago. Moreover, as mentioned previously, the need for a conference committee would give the State additional leverage in that forum and perhaps during subsequent Senate consideration. Also, it is likely that all three members of our Congressional delegation would participate in the conference.

"However, I do not believe that it is reasonable to expect that some substantial changes would not be made in the conference, particularly with respect to boundary delineation. Yet, for a number of reasons, I believe that the consensus points can be largely protected.

"In summary, I believe that the time agreement may provide some potential benefits, but these opportunities should not be over-emphasized. We have a very difficult task before us. In order for us to succeed, we must work extremely hard, and perhaps most important, we must have unity. If such unity does not exist, our chances for success will be severely diminished, for the proponents of the Udall-Anderson bill are dedicated and united."



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copy

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STATE OF ALASKA
OFFICE OF THE GOVERNOR
WASHINGTON, D.C.

February 21, 1980

Mr. Bill Reffalt
Chief, Alaska Native Claims
U. S. Fish and Wildlife Service
U.S. Department of the Interior
C Street Between 18th & 19th Streets, N.W.
Washington, D. C.

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MAR 5 1980

Dear Bill:

This correspondence is written in response to the Department of the Interior's request for written comments concerning its Notice of Intent to Prepare Environmental Impact Statements and Supplements for proposals relating to the Alaska Peninsula, Iliamna area, and certain named rivers in Alaska. This Notice appeared in the FEDERAL REGISTER on January 31, 1980.

I want to indicate at the outset that our submission of written comments should not be construed as diminishing the State's resolve to pursue its present litigation against the Federal government respecting the designation of new national monuments, wildlife refuges, and special management areas in Alaska by means of unilateral executive action. We continue to believe that the various claims made in that litigation are meritorious. However, in order to be of maximum assistance in the EIS process, and in accordance with the dictates of existing case law, we want to participate constructively and fully in your analysis of available options.

We strongly support the Department's decision to prepare new environmental impact statements in connection with the proposals now under study. In fact, as indicated in our current lawsuit, the State believes that new environmental impact statements are a necessary predicate to all of the executive actions taken by the President and the Secretary since November, 1978. In our opinion, the existence of new resource information and statutory authority, such as the Federal Land Policy and Management Act, require a total reconsideration of the environmental impact statements drafted by the Department in 1974. (It is also our position that such statements, for both procedural and substantive reasons, were inadequate for their original purpose.)

As a general matter, the State believes that a reasonable legislative solution is far preferable to the creation of new conservation units by executive action. The reasons for this conclusion have been documented in prior Congressional testimony by Governor Hammond and other State officials, and in previous correspondence to the Department. Accordingly, I will not dwell upon these reasons here, except to indicate that they have special relevance in connection with proposed executive action relating to the Alaska Peninsula and Iliamna.

The Bristol Bay region was the subject of considerable discussion and negotiation preceding and during the Senate Energy Committee's markup of Alaskan lands legislation last year. As a consequence of these deliberations, the Committee formulated a solution which was concurred in by all of the principal parties involved. In essence, this solution would have resulted in the immediate legislative conveyance to the State of some 4 million acres around Lake Iliamna, and in the designation of certain Federal wildlife refuges. The resolution just alluded to appears in both the legislation reported by the Senate Energy Committee and in the Tsongas substitute. While parts of this resolution can be implemented by executive action - and we would suggest that this be done if any further action is undertaken - there can be no question that the legislative alternative would be far preferable from the point of view of most of those who participated in the original discussions concerning the Bristol Bay region.

Our specific comments regarding the analysis contained in the Department's recent Notice are as follows:

1. There can be no question that some of the areas under consideration contain "outstanding" fish and wildlife populations and habitat. However, we believe that the statement of issues to be considered should avoid the use of such subjective modifiers. Otherwise, a bias may creep into the subsequent analysis. Thus, for example, while utilizing the adjective "outstanding" to modify fish and wildlife populations and their habitat, no such modifier is used to describe the hydroelectric potential of the Susitna River. Yet, initial studies of that project would clearly lead to the conclusion that the Susitna does possess "outstanding" potential.

2. The statement of issues refers to "(o)ther elements of the local economy." (Emphasis supplied.) We believe that such scrutiny should be expanded to include regional, statewide, and national impacts. Restricting or prohibiting the utilization of certain resources may have impacts which transcend local situations, and we believe that a good environmental impact statement must assess these consequences.

3. The Alaska Peninsula area contains deposits of coal. Accordingly, possible impacts on the future exploration and development of this resource should be assessed in the same manner as the scoping document would require for oil and gas resources located on the Peninsula.

4. New environmental impact statements should consider the impact of any future Federal land designations on State, Native, and other private lands which are located within or are adjacent to the areas involved. This examination should consider both upland and submerged lands which have or will be transferred out of Federal ownership. In addition, we believe that the impact statements should consider impacts of State and private landholdings on the capacity of the various Federal land management options to achieve the desired objectives. In particular, such scrutiny should consider the question of whether unilateral executive action is preferable to more cooperative approaches, such as a cooperative planning regime which takes cognizance of the migratory nature of certain species of fish and wildlife.

5. While the short time frame allotted by the Department for comment on the scoping document has precluded an exhaustive literature search, we would suggest that the documents listed immediately below be considered in drafting future impact statements. These documents, which contain new resource data or information relating to OCS leasing, are as follows:

(a) "Mineral Terrains of Alaska Map", University of Alaska, AEIDC, 1979.

(b) USGS, AMRAP Report covering Iliamna and Alaska Peninsula areas.

(c) USGS Open File Reports: #78-1E Southern Alaska; #77-169F Southwestern Alaska; and #77-1691 Coal on Alaska Peninsula.

(d) USGS literature summaries by Cobb, et al.

(e) USGS report in progress on oil and gas potential - update of USGS Circular 725.

(f) (1) State of Alaska's "5 Year Leasing Program", January, 1980; (2) Interior Department's OCS Leasing schedule; and (3) Bristol Bay Native Corporation's petroleum exploration plans.

(g) "Exploratory Soil Survey of Alaska", USDA, Soil Conservation Service, 1978.

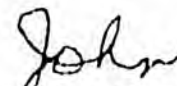
6. Last year, the Alaska Legislature enacted a concurrent resolution (copy enclosed) setting forth seven consensus points for use in assessing the adequacy of the pending Alaska lands legislation. These criteria are also relevant in any consideration of executive action.

While most of the consensus points are referred to one way or another in the scoping document, we believe that possible impacts on the traditional Alaska lifestyle should receive further attention. Such an examination should not only consider impacts on subsistence use, but also the total impact of increased Federal restrictions, regulations, and bureaucracy on the traditional use of public lands by urban and rural Alaskans. In addition, we believe that the EIS documents should carefully consider (and adopt) the "no-action" option, which is the rough equivalent of the consensus point relating to administrative forbearance from creating further conservation withdrawals in Alaska.

7. We believe that neither the U. S. Fish & Wildlife Service nor the Heritage Conservation and Recreation Service possesses all of the expertise necessary to prepare a truly interdisciplinary environmental impact statement. Therefore, we urge these agencies to solicit the assistance of other Federal agencies and departments and of other parties with expertise in the varied matters referred to in the scoping document.

In behalf of the State, I want to thank you for this opportunity to comment on the Notice of Intent to Prepare Environmental Impact Statements. We look forward to providing further input as the EIS process continues.

Sincerely,



John W. Katz
Special Counsel

cc: Governor Jay S. Hammond
Lieutenant Governor Terry Miller
Ms. Cynthia Wilson
Ms. Sue Kemnitzer
Mr. Jim Pepper

JOHN W. KATZ

Special Counsel to the Governor

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The following organizations either
Bill as reported from the Senate Energy &
oppose the Senator Tsongas substitute bill.

Conservation and Recreation

National Outdoor Coalition
National Rifle Association
Safari Club International
Boundary Waters Canoe Alliance
United Fourwheel Drive Association
Territorial Sportsmen of Alaska
Game Conservation International
International Association of Fish and Wildlife Agencies
National Trappers Association
American Fur Industry
North American Foundation for Wild Sheep
National Wildlife Federation (State Affiliates)
Alaska Virginia
Texas Ohio
Washington Illinois
Michigan New Jersey
Mississippi Pennsylvania
Georgia Wyoming
New York

Western & Midwestern State Fish and Wildlife Agencies
Connecticut Sportsmen's Alliance
National Campers & Hikers Association
Jackson Hole Outfitters
Philadelphia Federation of Sportsmen
Wildlife Legislative Fund of America
Wildlife Society
Main's Sportsmen
REAL Alaska Coalition

Unions

AFL-CIO
International Brotherhood of Teamsters
Laborers International Union of North America
Seafarers International Union of North America
United Paperworkers International Union
United Association of Journeymen & Apprentices of the
Pipefitting Industry of the U.S.
International Brotherhood of Carpenters
International Union of Operating Engineers
International Brotherhood of Electrical Workers
American Society of Professional Engineers
Washington State Building Construction Trades Council
American Society of Civil Engineers
Marine Engineers Beneficial Association

Unions (cont.)

International Longshoremen & Warehousemen Union
United Brotherhood of Carpenters and Joiners of America
Maritime Trades Department of AFL-CIO
Laborers International Union of North America

Government & Civic

National Association of Counties
Good Sense Forum
Alaska Municipal League
Western Interstate Regions

Land Use

Public Lands Council
National Grange
National Park Inholders Association
American Farm Bureau
American Land Development Association
National Association of Cattlement
National Association of Realtors

Trade Associations

Association of Equipment Distributors
Associated General Contractors
National Association of Manufacturers
National Association of Home Builders
National Association of Property Owners
U.S. Chamber of Commerce
National Rural Electric Cooperatives

Aviation

National Air Transportation Association
Alaska Air Carriers Association
U.S. Seaplane Pilots Association

Timber and Lumber

American Forestry Institute
National Forest Products Association
Southern Forest Products Association
Western Timber Association
Federal Timber Purchasers Association
Industrial Forestry Association

Energy & Minerals

American Petroleum Institute
Rocky Mountain Oil & Gas Association
Western Oil and Gas Association
American Gas Association

Energy & Minerals (Cont.)

Alaska Oil & Gas Association
American Mining Congress
Southern Oregon Resource Alliance

Native Corporations

Skee Atika Native Corporation
Sea Alaska Corporation

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



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FEB 4 1980

January 18, 1980

Dear Senator _____:

This correspondence is written to urge your support for the Alaska lands bill reported by the Senate Committee on Energy and Natural Resources, and your opposition to the Udall-Anderson bill and the Tsongas substitute, which is virtually identical in all important respects to the Udall measure.

Unfortunately, the Alaska lands issue has become clouded in misinformation and innuendo. The issue is not one of environment versus development or concerned citizens juxtaposed against special interests.

The Committee's bill and other pending legislation are all strong environmental measures. Each bill would more than double the size of certain federal conservation systems, would designate several parks and wildlife refuges larger than many states, and would protect important scenic and wildlife resources throughout Alaska. Moreover, all of the pending bills exceed, by a very wide margin, the 80 million acre ceiling which the 91st Congress, in balancing the various competing interests, authorized the Secretary of the Interior to study for permanent conservation designation.

At the same time, the Committee bill addresses other important federal and State concerns. For one thing, this legislation would facilitate the environmentally-sensitive assessment of Alaska's oil and gas and other mineral resources. Representations to the contrary notwithstanding, the Udall and Tsongas bills do not accomplish this result, nor can it be said that 95 percent of Alaska's oil and gas resources would be available for development under these measures.

In view of recent events in Iran and elsewhere, the Committee bill's treatment of Alaska's oil and gas resources seems only prudent. Moreover, carefully conceived exploration now could avoid panicky, unplanned efforts later as energy resources become increasingly less abundant.

In addition, the Committee bill, far better than any other pending measure, would help to satisfy Alaska's entitlement under the Statehood Act--an unfulfilled federal promise made over 20 years ago--and to address other State concerns. These concerns were expressed in a resolution enacted last year by the State Legislature. In my opinion, the resolution asks from the Congress only that which the responsible representatives of any State would request in similar circumstances.

In brief, we ask that any Alaska lands bill contain provisions to: (1) fulfill Alaska's entitlement under the Statehood Act;

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(2) provide needed access across Federal lands; (3) insure continuing State management of resident wildlife and fish; (4) remove high-value commodity resources from the boundaries of conservation units within which even environmentally responsible development would be precluded; (5) assure traditional Alaskan uses at existing levels; and (6) require administrative forbearance from the imposition of further conservation withdrawals without Congressional concurrence.

It is my judgment and that of the Alaska Congressional delegation that the Udall and Tsongas bills simply do not satisfy these basic objectives. While both measures contain some provisions which purport to deal with such matters, the treatment, by and large, is totally inadequate.

To assist you in considering the pending Alaska lands legislation and the reasons for my support of the Energy Committee bill, I am enclosing the following supplemental information:

1. A critique of the Udall-Anderson and Tsongas bills. This memorandum analyzes the two bills in terms of the principal federal and State interests which are affected.
2. Myths and facts about the Alaska lands legislation. This document sets forth some of the principal misconceptions and inaccuracies about the pending legislation, as articulated in verbatim quotations, and then provides a refutation of these statements, particularly those dealing with Alaska's energy potential.
3. Congressional testimony on Alaska energy sources. This testimony, which was prepared by one of Alaska's foremost geologists, briefly summarizes the existing data respecting Alaska's energy resources.
4. Summary of new information concerning the oil and gas potential of the Arctic National Wildlife Range. This statement summarizes the data contained in a new U.S. Geological Survey-State of Alaska report on the Arctic National Wildlife Range and includes an interpretation of that report by the State geologist.
5. A comparative summary of the pending legislation. This summary provides a brief, but accurate, description of the Committee bill, the Udall-Tsongas measures and existing law.
6. A summary of the land designations in the Carter Administration proposal. While there are certain differences in boundaries and land management designations between this proposal and the Committee bill, it is worth noting that many of the acreage totals for conservation systems and individual units are similar.

7. Caribou and oil. This paper, which was written by one of Alaska's foremost wildlife biologists, describes the possible effects of oil exploration and development on the Porcupine caribou herd, concluding that properly regulated exploration should have little impact on the herd or its calving grounds in the Arctic National Wildlife Range.

Most Alaskans recognize that important federal, as well as State, interests are involved in the Alaska lands issue. We believe that Alaska is large enough and diverse enough to accommodate these interests without jeopardizing the economic viability of the United States or the State, or imposing a "permit" lifestyle on our citizens.

Thus, the issue is not one of environment versus development, but rather relates to which measure best balances the various considerations which are involved. In my opinion, the bill reported by the Senate Energy Committee (by a vote of 17-1) best accomplishes this result. That measure is the product of nearly 60 markup sessions held over the past two years, together with numerous hearings and workshops. Unlike the Udall-Anderson and Tsongas bills, the Committee bill reflects the need to avoid polar extremes in the resolution of the complex series of issues raised by the Alaska lands legislation.

Thank you for your consideration of this correspondence. If you have any questions, please contact me at (907) 465-3500, or my Special Counsel, John W. Katz, at (202) 624-5858.

Sincerely,

Jay S. Hammond
Governor

Enclosure

STATE OF ALASKA

OFFICE OF THE GOVERNOR

ANCHORAGE

A CRITIQUE OF THE UDALL-ANDERSON BILL (H.R. 39),
S.222, AND THE TSONGAS SUBSTITUTE*ACREAGE

The Udall-Anderson bill would affect a total of 155 million acres in Alaska.** The following table indicates how lands are set aside under the Udall measure:

<u>New Lands</u>	<u>Millions of Acres</u>
Parks and Monuments	27.0
Park Preserves	17.0
Wildlife Refuges	79.0
Wild & Scenic Rivers	2.0
Forest Additions	<u>2.5</u>
New Lands Total -	127.5
<u>Wilderness Designations</u>	
Existing Park/New Wilderness	7.0
Existing Refuge/New Wilderness	14.1
Existing Forest/New Wilderness	<u>6.4</u>
Subtotal -	27.5
New Park & Preserve/ New Wilderness	26.8
New Refuge/New Wilderness	<u>13.2</u>
Subtotal -	40.0
Wilderness Total -	67.5
<u>Lands Affected</u>	
New Lands	127.5
Existing Lands Designated Wilderness	<u>27.5</u>
TOTAL LANDS AFFECTED -	155.0

* While the Udall-Anderson bill differs in some respects from S.222 and the Tsongas substitute, these differences (except

(footnotes on following page)

Dealing with millions of acres is akin to dealing with billions of dollars--after the first few zeros, the numbers are difficult to fully comprehend. To provide some perspective, the Udall bill's "new lands" set aside of 127.5 million acres is larger than the State of California (101 million acres). The highly restrictive wilderness designations total 67.5 million acres--more than twice the size of New York (33 million acres). Some of the individual parks and refuges are also immense, such as the 12-million acre Wrangells-St. Elias Park/Preserve and the 10-million acre Yukon Flats Refuge. For comparison, the State of Maryland covers less than 7 million acres, and the State of Massachusetts is 5 million acres in size. Lastly, the total land area affected by the Udall bill (155 million acres) is equal to the land mass of the eastern coastal states from Maine to South Carolina.

Alaska's Crown Jewels

Proponents of the Udall bill often argue that enactment of that measure is critical if the "crown jewels" of Alaska are to be protected. Nothing could be a greater exaggeration. For over a year, every version of the Alaska lands legislation which has received the serious attention of Congress has protected the "crown jewels." Thus, the areas cited as examples when the "crown jewels" are discussed are permanently protected under S.9, which was recently reported by the Senate Committee on Energy and Natural Resources.

(footnote continued from preceding page)

for relatively small variations in the acreage figures provided above and for relatively minor changes noted elsewhere in this critique) are not germane to the analysis contained herein. Thus, it is fair to say that the geographic designations and management provisions of all three bills are virtually the same in their impact.

**It should be noted in this regard that Section 17(d)(2) of the Alaska Native Claims Settlement Act of 1971 (ANCSA) specified that "up to but not to exceed 80 million acres" were to be withdrawn and studied for possible inclusion in Federal conservation systems.

Notwithstanding certain statements to the contrary, it is worth noting that former Secretary of the Interior Rogers C. B. Morton recommended approximately 83 million acres for inclusion in conservation units. Of this acreage, approximately 18 million acres were earmarked for national forests, which are managed on a multiple use basis, and there was no "instant" wilderness.

In protecting Alaska's "crown jewels," S.9 establishes or expands 14 units of the National Park System totalling more than 44 million acres. These designations would double the size of the National Park System in the United States. S.9 also establishes or expands 12 units of the National Wildlife Refuge System (some units larger than many states) totalling nearly 36 million acres, and designates more than 37 million acres of Alaska lands as wilderness, while earmarking many millions more for wilderness study. In so doing, S.9 doubles the size of the National Wilderness Preservation System and more than doubles the National Wildlife Refuge System in this country. Finally, 24 of Alaska's finest rivers or river segments are added to the Wild and Scenic Rivers System by S.9, with 10 additional rivers being designated for further study. The conservation designations in S.9--approximately 103.3 million acres of new set asides and 118.9 million total acres of new and existing withdrawals which are designated or redesignated--equal in acreage the land mass of all the New England and Mid-Atlantic states combined.

The Udall measure would create conservation units far in excess of the acreage required to protect the "crown jewels." Under the "broad brush" approach of the Udall bill, important commodity resources are included within conservation units which would preclude the use of such resources in the future.

A dramatic example can be seen in the Yukon Flats. Far beyond the significant habitat areas which produce over two million ducks annually, the Udall boundaries encompass several million acres of upland and benchland areas above the Flats. These areas, which the State wishes to receive as partial fulfillment of its Statehood Act entitlement, comprise some of the finest agricultural soils in all of Alaska. The Udall refuge boundaries also include the White Mountains, an area radically different in terrain from the Yukon Flats and studded with existing mining claims.

Udall proponents argue that these areas must be included within the refuge under the "total ecosystem" theory that any development in the region would adversely affect the waterfowl habitat of the Flats. The "ecosystem" of the Yukon Flats, however, is fed by two major rivers from Canada and numerous tributaries which run through existing private lands. Denying resource use on Federal lands beyond the important habitat areas cannot protect the Flats. Enforcement of existing environmental quality standards would allow resource use and would insure protection for the waterfowl habitat, which is one of the "crown jewels" of Alaska.

Numerous other examples of such "environmental overkill" exist throughout the Udall bill.

Oil and Gas

The Udall bill would severely impact both the exploration and development of Alaska's important onshore oil and gas potential.

Adverse impacts would result from: (a) wilderness designation of the Arctic National Wildlife Range (ANWR), which has been estimated to contain as much as 14 billion barrels of recoverable reserves; (b) an adequate means of addressing transportation across conservation system units which block access routes to areas with oil and gas potential; (c) creation of new and unreasonably burdensome procedures for oil and gas leasing; and (d) other severe restrictions on exploration and development.

The ANWR is situated 55 miles east of the Prudhoe Bay oil and gas field, which holds nearly 10 billion barrels of recoverable oil and 26 trillion cubic feet of natural gas. A geologic sequence, similar to that encountered at Prudhoe Bay and in the Canadian oil and gas fields to the east, is thought to exist within the Range. It is the combination of favorable geology and proximity to a developed transportation system (the Trans-Alaska Pipeline) which makes the ANWR the most promising oil and gas prospect on the North American continent.

Although the acreage of ANWR with prime oil and gas potential is relatively small, this limited acreage could conceivably contain a large percentage of the economic oil and gas resources in onshore Alaska. Since acreage cannot be processed in a refinery, attention must focus on the hydrocarbon resource and its location. As noted, the Udall measure designates this important oil and gas area as wilderness, which precludes any assessment and development activity, even under the most stringent environmental safeguards.

It should be noted that no pending Alaska lands bill proposes the development of ANWR. Thus, S.9 proposes a systematic study of petroleum, wildlife, and other values, with the final decision about development being left to Congress. Proponents of the Udall bill oppose this careful assessment; they apparently do not trust the Congress to make the right decision once all relevant information is known. (As yet, there has been no seismic exploration in ANWR. While most biologists believe that oil exploration can occur without adversely affecting the Porcupine caribou herd, there is little data relating to impacts from any future development.)

Moreover, the Udall bill would impose restrictive management designations on certain petroleum provinces which have not yet been explored. While holding out the theoretical possibility of exploration and subsequent development, the management guidelines and leasing formula provided in the Udall bill make it unlikely that oil and gas will ever be discovered or produced. Thus, for example, new oil and gas activity has almost never been permitted in a wildlife refuge irrespective of whether the area involved has been designated wilderness.

In addition, the Udall bill effectively blocks transportation system access to and from other oil and gas areas. Development

of Alaska's energy resources will be largely contingent upon construction of new petroleum transportation facilities. Many of these facilities will have to cross conservation units at some point. Since the Udall measure relies heavily on existing right-of-way laws, locating pipelines and related facilities across such areas would be very difficult.

Lastly, the Udall measure abandons existing law regarding onshore oil and gas leasing in Alaska and imposes a new and more complex leasing process. Essentially, the bill splits leasing into exploration and development phases. Thus, in some instances, exploration permits must be secured, and if a discovery is made, a separate development lease must be obtained. The additional bureaucratic delays and uncertainty caused by these new leasing procedures would surely impede oil and gas development in Alaska. Moreover, there is no evidence to suggest that existing law, without the proposed Udall changes, does not adequately serve the public interest.***

State Lands

Although the Statehood Act of 1958 granted the State of Alaska 104 million acres of land, the State has received effective title (patent or tentative approval) to only about 38 million acres. Moreover, the State has been prevented from selecting many of the lands which it has identified.

The Udall measure exacerbates this situation by adversely affecting 16 million acres of land desired by the State. The bill includes approximately 4 million acres of pre-1978 State selections inside the boundaries of its parks, preserves, refuges, etc. Hence, recognized State lands become inholdings by virtue of the expansive Udall boundaries. In addition, the Udall boundaries seek to deny the State 12 million acres or one-third of the State's November, 1978 selections.

One of the most serious defects of the Udall bill regarding State lands is that it deletes key provisions relating to the implementation of the Alaska Statehood Act. Last year, in response to a number of long-standing problems regarding the selection and conveyance of State lands, the version of the Alaska lands bill which passed the House incorporated a comprehensive title designed to remedy these problems. A similar title was included in the version of the bill recently reported by the Senate Committee on Energy and Natural Resources, and in the bills reported last spring by the House Interior and Merchant Marine and Fisheries Committees.

***It is sometimes rumored that Alaska is exporting oil to Japan. This is simply not true. In fact, such exports are prohibited by Federal law.

While the Udall bill does include certain technical provisions pertaining to the State land selection process, a number of key components are absent. For example, the bill does not contain provisions which grant the State an extension of the selection period (in recognition of years of Federal land withdrawals, freezes, and other executive actions).

Of tremendous concern to the State, the current version of the Udall bill excludes provisions which would immediately convey to the State all selected lands outside of the exterior boundaries of conservation units established by the final legislation. In the absence of such a conveyance, the State will face additional years of delay and uncertainty in obtaining its land entitlement.

Minerals

The development of Alaska's mineral potential is severely constrained by the Udall bill. First, the bill would statutorily withdraw approximately 145 million acres, or 40 percent of Alaska, from mineral entry. These closures would have a major impact on those mineralized areas rated highly favorable by the U.S. Bureau of Mines. Nearly 70 percent of these areas are withdrawn.

Second, several existing world-class mineral discoveries are included within wilderness areas, preserves, etc. Under existing regulations, it is extremely difficult to open a major mining operation within such units. Hence, inclusion of these discoveries in restrictive units may be tantamount to prohibiting development. Among the affected discoveries are the U.S. Borax molybdenum find (one of the world's largest discoveries),**** the Green's Creek silver-gold-lead-zinc deposit, the Mr. Prindle uranium discovery, and the Orange Hill copper find.

Third, access routes to other major mineral areas are blocked by the pattern of unit designations. For example, the extremely important Ambler district (where three of the mineral discoveries are valued at more than \$8 million) is virtually surrounded by three Park Service wilderness areas and two wildlife refuges. It is highly improbable that developed surface transportation to these mineralized areas would be permitted across such units, especially considering the inadequate transportation and access mechanisms in the Udall bill.

****This deposit is addressed, albeit inadequately, in the Tsongas substitute. While including the statutory guidelines contained in S.9, the substitute proposes wilderness boundaries which are too constricted to permit efficient mine development.

Timber Jobs

The Tongass National Forest in Southeast Alaska supports a timber industry which is the backbone of the region's private industry. Approximately 3,000 people are employed directly by the timber industry, which has an average of 520 million board feet annually (MMBF/YR) over the past seven years.

The Udall bill sets aside 5.8 million acres or 36 percent of the forest as wilderness. According to Forest Service data, this wilderness set aside would reduce the permitted annual harvest on national forest lands to 360 MMBF/YR or 30 percent less than the present average level. The Forest Service estimates that a harvest reduction of that magnitude would eliminate up to 2,000 existing jobs and would raise regional unemployment to a devastating 35 percent.

Proponents of the Udall bill have attempted to offset this adverse employment impact by: (1) authorizing additional funds for intensive forest management, and (2) making assumptions regarding the use of Native owned timber. Regarding extra monies, the bill authorizes 8 million dollars annually for intensive forestry management on non-wilderness lands and provides subsidies to the industry to enable it to harvest sub-economic timber stands. Even if these additional funds are appropriated each and every year--and certain key Congressmen and Senators have indicated that such appropriations will not be forthcoming--the allowable cut can be raised to only 410 MMBF/YR. A harvest at that level could eliminate up to 1,300 existing jobs.

Accordingly, supporters of the Udall measure must make critical assumptions regarding the use of Native owned timber. These assumptions run counter to the spirit of the Alaska Native Claims Settlement Act, which is premised on Native self-determination. In essence, proponents of the Udall bill want to use Native timber to offset the adverse consequences of excessive wilderness designations. Only by committing such timber to the existing industry can adverse employment impacts be held to a minimum. However, exercising the economic freedom granted them in ANCSA, the Native corporations in Southeast (with one exception) are opposed to any scheme, the principal purpose of which is the utilization of their timber to mitigate employment consequences.

By contrast, S.9 also establishes millions of acres of wilderness and other protective designations encompassing the "crown jewels" of Southeast Alaska. While the bill does not mandate any particular level of annual harvest, it does seek to perpetuate existing jobs and concomitant community stability. However, the means employed--the designation of special management areas subject to Congressional review and stringent interim protection--are straightforward and realistic.

Wildlife Management

One of the principal reasons for Alaska's fight for statehood was its desire to manage fish and resident wildlife. The experience with Federal management during territorial days had been bleak. Generally, such management was fragmented and badly funded, and it often appeared arbitrary to local residents. Since statehood, the State has established a comprehensive management program premised on carefully compiled data. As a result, most populations of fish and wildlife species are currently viable and healthy. The few exceptions involve species which are primarily subject to natural fluctuation.

The Udall bill threatens the traditional Federal-State relationship with respect to the management of fish and resident wildlife. In several important sections, the bill fails to draw a clear distinction between the Federal government's responsibility for habitat management and the State's traditional role as the manager of resident wildlife. This confusion could lead to Federal interference in the setting of seasons, bag limits, methods of take, and other facets of day-to-day regulation. The inevitable consequence of such interference would be fragmented and uncertain management which would inure to the detriment of the species involved. By contrast to the Udall bill, S.9 draws a much sharper distinction between the respective roles of the Federal government and the State.

One of the most blatant examples of the Udall bill's failure to perpetuate traditional State authority is illustrated by the Federal oversight section of the subsistence title. Following a consultative process in which the State receives little procedural protection, the Secretary of the Interior is authorized to set seasons, bag limits, and methods of take upon a finding that the State is failing to meet certain subsistence-related requirements. These requirements already exist in Alaska law, and the State has no problems with the policy which is embodied therein. However, the failure of the Udall bill to provide adequate procedural protection raises the very real possibility of constant Federal interference in State management. By contrast, S.9 provides the State with additional procedural safeguards, both at the administrative level and in any subsequent judicial challenge. While a few Native corporations have stated their preference for the Federal oversight mechanism contained in the Udall bill or the approach embodied in S.9, many others have indicated that either approach would be acceptable.*****

*****By including certain language from S.9, the Tsongas substitute attempts to clarify the Federal-State relationship with respect to wildlife management. However, this attempt is vitiated by the substitute's inclusion of the previous Federal oversight provisions of the Udall bill.

Recreational Hunting

Throughout Alaska, recreational hunting is an important activity with significant economic spin-offs. The President's unilateral creation of new national monuments in December, 1978 closed 43 million acres to recreational hunting, coupled with an additional 7.5 million acres closed by statutory or executive action in prior years. Although much of Alaska remains open to recreational hunting despite the national monument designations, the lands closed by the President's action contain much of the high quality hunting areas sought by those who prize the opportunity to hunt in truly wild country.

The Udall bill does take steps to correct some of the anti-hunting excesses of the President's action. In acreage terms, the Udall measure closes 27 million acres. Unfortunately, the impacts of closing these areas are still quite substantial. Thus, the Alaska Department of Fish and Game estimates that the Udall bill would close 50-55 percent of the Dall sheep hunting, 20-21 percent of the bear hunting, and 10-12 percent of the moose hunting in the State. As a consequence of these permanent closures, there would be increased hunting pressure on adjoining lands, with the concomitant management problems which such pressure would generate.

In addition, hunting guides would be heavily impacted. Between 47 and 49 percent of the established and State-assigned guide areas fall partly or completely in parks. For example, under the Udall bill, no areas within the 8-million acre "Gates of the Arctic" complex would be open to recreational hunters.

The Udall measure could also impose restrictions on hunting-related activities in many areas, particularly in wilderness units. These restrictions create a situation where, although recreational hunting is legally permitted, hunters may be denied access or other necessary use of the area.

Transportation and Access

Various studies conducted by government agencies and universities have identified a number of serious problems in existing law relating to the approval of transportation and utility systems which cross Federal lands. These problems include a lack of coordination between Federal agencies and between Federal and State agencies; the absolute veto power vested in land-managing agencies, which often lack transportation expertise; the failure of many existing laws to specify clearly the criteria which should be used in considering an application; lengthy and unwarranted delays; gaps in existing law; bifurcated procedures for approving systems and rights of way; and lengthy court delays.

In Alaska, the problems just cited are exacerbated by the extremely large conservation units established in all pending measures and by the fact that, in contrast to the experience of most other states, Alaska's surface transportation system will be developed after, rather than before, the creation of restrictive conservation withdrawals.

The Udall bill does not meet the challenge created by these factors. For one thing, its use of boundaries delineation to avoid future conflicts is far less sophisticated than in S.9. As a consequence, key access points, such as port sites, river crossings, and mountain passes, are encompassed within restrictive units when there is often no apparent need to do so.

This flaw could seriously jeopardize future onshore and offshore oil development, which is totally dependent on needed access. Thus, although the Udall bill may theoretically allow petroleum exploration and development in certain areas, difficulties in building needed facilities related to offshore development or in obtaining access in favorable topographic locations may well thwart future oil development.

Perhaps the greatest transportation-related inadequacy of the Udall bill is its treatment of the problems in existing law which were described previously. While the Udall measure does improve on existing law, it does not go far enough. One significant inadequacy is the bill's heavy dependence on the antiquated procedural mechanisms contained in existing law. Many other problems are more technical in nature. However, the net result of these inadequacies is a transportation process which cannot address basic policy objectives upon which virtually all proponents of Alaska lands legislation are in agreement.

The issue of access to inholdings is also more troublesome in the Udall bill than in other pending measures, particularly because the conservation system units contained in the bill encompass far more State and private lands.

Conclusion

For the reasons outlined in this analysis, the State of Alaska urges support for S.9. This measure was recently reported by a 17-1 vote of the Senate Committee on Energy and Natural Resources. It represents the product of numerous hearings and workshops and nearly 60 markup sessions held by the Committee during the past two years. Unlike the Udall-Anderson and the Tsongas substitute, S.9 represents a careful balance of environmental and developmental concerns. Its solutions are carefully conceived, reflecting

the need to avoid polar extremes in the resolution of the complex series of issues raised by the Alaska lands legislation. Fortunately, Alaska is large enough and diverse enough to accommodate such solutions.

One other thing should be mentioned. When the Udall bill was being considered in the House of Representatives, some of its proponents contended that enactment of such a expansive measure was necessary to counter expected Senate action designed to eviscerate the Alaska lands legislation. In fact, such action has never materialized, nor was it ever likely. Accordingly, we believe that S.9 should be kept intact, so that needed adjustments can be made in conference. (Please see the November 16, 1979 "Dear Colleague" letter circulated by Senators Jackson and Hatfield regarding the need to leave the Committee bill intact on the Senate floor.)

STATE OF ALASKA
OFFICE OF THE GOVERNOR
WASHINGTON, D.C.

Myths and Facts About the Alaska Lands Legislation

August 28, 1979

The following statements have been taken directly from testimony presented by Congressmen Udall and Seiberling and from correspondence to Congress written by members of the Carter Administration. Not only are these statements extremely inaccurate and misleading in themselves, they contribute to a pattern of hyperbole and misperception which has pervaded the Alaska lands debate from the beginning.

Most of the statements have been advanced as arguments in support of the Udall-Anderson bill. In this context, the statements take on added significance, because they have become a misleading basis for an advocacy position. Since the statements discussed below deal with such important elements of the pending legislation, we feel compelled to set the record straight.

General Statements and Philosophy

1. Myth: "...The Udall-Anderson bill is the fair and balanced bill the House passed last year..." --Congressman Udall, testimony before the House Rules Committee, April 30, 1979.

Fact: The Udall-Anderson bill is not the bill that passed the House last year. There are many significant differences and omissions. For example, the Udall-Anderson bill increases the amount of wilderness acreage, particularly in the extremely sensitive region of Southeastern Alaska, omits important provisions relating to the conveyance of State lands, creates additional conflicts with commodity resources and State selection desires, and significantly increases the total amount of acreage that would be affected by Alaska lands legislation.

Moreover, it should be noted that some of the principal proponents of the Udall-Anderson bill claimed that the

*With certain exceptions not relevant here, the so-called Huckaby bill reported by the House Interior Committee is similar to S.9, which is now pending before (and was reported last year by) the Senate Committee on Energy and Natural Resources. Therefore, statements and rebuttals addressed to the House measure apply equally to S.9 and the Senate's consideration of that bill.

Senate would pass a weak Alaska lands bill, and that therefore it was necessary for the House to pass Udall-Anderson in order to establish a strong negotiating position in the conference committee. There has never been any evidence that the Senate would treat the Alaska lands legislation in the manner just indicated. In fact, the Senate Energy Committee reported a strong environmental bill last year.

2. Myth: "...In our approach we have been guided by two principles. One is save and preserve only the areas of true national significance. The other...is that we exclude areas of economic interests..." --Congressman Udall, testimony before the House Rules Committee, April 30, 1979.

Fact: Proponents of all the Alaska lands bills support these principles. The problem is that the Udall-Anderson bill does not apply them. For example, that proposal would include in wilderness areas two of Alaska's seven world-class mineral discoveries identified by the Stanford Research Institute. (Also see comments regarding the Arctic Wildlife Range and Southeast Alaska.)

3. Myth: "It is very clear that two-thirds of Alaska is wide open (for development)..." --Congressman Udall, testimony before the House Rules Committee, April 30, 1979.

Fact: This is not an acreage game. Resources, whether they be beautiful scenery, minerals, or wildlife habitat, are where you find them.

Moreover, the State has enacted stringent land use and environmental controls which apply to State and private lands. In addition, the State has created numerous State parks and critical habitat areas, including two of the largest State parks in the United States. Several Federal statutes regulate or prohibit activities on Federal lands which are unaffected by the D-2 legislation, and certain Federal environmental laws apply to all lands.

Energy

4. Myth: "...The most likely sources (of oil and gas) are offshore. Every single area is available. We mandate the Secretary to go ahead and start leasing this. Of the 149 million sedimentary basins onshore, all are made available except 2 million..." --Congressman Udall, testimony before the House Rules Committee, April 30, 1979.

Fact: Neither the Udall-Anderson bill nor any other pending Alaska lands measure deals with oil and gas development on the

Outer Continental Shelf. This matter was treated in legislation enacted by the Congress last year. Moreover, it should be recognized that oil development in Arctic coastal areas poses environmental risks far exceeding those associated with upland development or OCS development elsewhere in the country.

With respect to the last sentence quoted above, the Udall-Anderson bill would prohibit oil and gas development in ten million acres of favorable onshore petroleum provinces, as identified by the United States Bureau of Mines. Portions of these provinces are included in national parks, park preserves, and wilderness areas located in national forests and wildlife refuges.

5. Myth: "...95% of the oil and gas potential, both the high and favorable, as well as the sedimentary basins, is open for development." --Congressman Seiberling, testimony before the House Rules Committee, April 30, 1979.

Fact: In addition to the response to Myth No. 4, petroleum experts make it clear that the existing data base will not support such assertions. One memorandum prepared by geologists for the State of Alaska concludes:

"Thus, a statement such as '95% of the energy resources of Alaska lie outside proposed D-2 boundaries' is inaccurate, misleading, incomplete, and incorrect, unless the author has some statistically correct means of concomitantly stating how sure, or how unsure, he is of his estimate. If he cannot make this important qualification, his statement is not only meaningless, but a distortion of the truth."

Moreover, Congressman Seiberling's statement presupposes the inclusion of an adequate title relating to the transportation of energy resources. The transportation title in the Udall-Anderson bill is not nearly as good as its counterpart in other pending measures, and therefore could discourage development located far from existing transportation facilities.

Finally, it should be noted that the Udall-Anderson bill would substantially alter the system for upland oil and gas leasing in certain areas. The net effect of these changes is to create a bifurcated approval process that would probably impede future leasing. The need for such changes is questionable, particularly since the existing Mineral Leasing Act of 1920 has worked reasonably well and has frequently been amended to address environmental and other concerns.

6. Myth: "...recently the USGS made tests right next to the (Arctic National Wildlife) Range and they find that the facts on which they had extrapolated are incorrect. They have downgraded their estimates to the point where it looks like it is not even an economically viable potential..." --Congressman Seiberling, testimony before the House Rules Committee, April 30, 1979.

Fact: There has been no new testing in the Arctic Wildlife Range. The USGS report referred to by Congressman Seiberling consisted of a re-evaluation of the existing data base. The report simply indicated that the physical conditions governing oil and gas potential in the Arctic Wildlife Range are probably somewhat different than those at Prudhoe Bay. Most petroleum experts still believe that the coastal plain of the Arctic Wildlife Range is the most promising unexplored upland petroleum province on the North American continent.

7. Myth: "...You could not get any more oil (out of) Alaska if you wanted to. You would have to build another pipeline..." --Congressman Udall, testimony before the House Rules Committee, April 30, 1979.

Fact: This is simply not true. The present oil pipeline is not operating at full capacity, and could receive additional through-puts. In addition, given the lead time required for exploration and development, it is likely that the Prudhoe Bay field will be declining about the time that new discoveries would come on line.

8. Myth: "The Bill (Udall-Anderson) will expedite leasing in this Reserve (National Petroleum Reserve - Alaska) and is preferable to any alternative before the House." --Secretary Schlesinger, correspondence to Congressman Ashley, dated May 4, 1979.

Fact: While the Udall-Anderson bill does contain provisions for expediting leasing in the National Petroleum Reserve - Alaska, those provisions are actually weaker than ones included in the Breaux-Dingell bill, which was pending at the time of Secretary Schlesinger's letter. For example, in contradistinction to Breaux-Dingell, the Udall measure, as it existed at the time of Secretary Schlesinger's letter, did not mandate a deadline for leasing. On the House floor, the Udall-Anderson bill was amended to include the stronger language from Breaux-Dingell.

9. Myth: "Although it is true that some of the areas in Alaska that will be foreclosed to development have favorable geological anomalies which are potentially important for oil and gas,

the total amount of possible oil and gas acreage in Alaska for which exploration and development would be prohibited is not great." --Secretary Schlesinger, correspondence to Congressman Ashley, dated May 4, 1979.

Fact: While this statement is true, its use to support the Udall-Anderson approach is quite misleading, especially in its inference that the exploration and development of important new energy sources in Alaska would not be adversely impacted by H.R. 39. Acres of land are not barrels of oil, and as mentioned above, the Udall-Anderson bill would foreclose exploration of the most significant upland petroleum prospect in Alaska. Moreover, the foreclosed acreage lies in close proximity to the recent discoveries near Point Thompson and to the existing Trans-Alaska Pipeline.

State Lands

10. Myth: "...Mr. Udall didn't mention that in addition to the 105 million that the State has been granted to select, and they have already selected 100 of those 105 million and the argument is only about the other 5 million which they want to select into parks and so forth. The natives have gotten 44 million acres granted to them so you have a total of 149 million acres that are going to go to the inhabitants of the State..." --Congressman Seiberling, testimony before the House Rules Committee, April 30, 1979.

Fact: Of the 103.5 million acres promised to the State of Alaska some 20 years ago in the Alaska Statehood Act, the State has received effective title (patent and tentative approval) to only 36 million acres. While the State has filed selections encompassing many more millions of acres of its entitlement, much of this acreage is presently under administrative or judicial challenge by the Federal Government. If the Federal Government is successful--and we will probably not have a final answer for several years--the State will fall far short of its total entitlement, but the deadline for selection (which is 1984) will have expired. Moreover, while the location of most Native selections is not fixed, less than 9 million acres of the total Native entitlement promised in 1971 has been conveyed.

11. Myth: "We do not support the expedited conveyance language in...this bill (Huckaby) and recommend that it be deleted from the bill. Substantial policy, procedural, and administrative changes have begun to make the existing conveyance process function as it should." --Secretary Andrus, correspondence to Congressman Udall, dated March 13, 1979.

Fact: The State conveyance language included in the Huckaby bill, S.9, and the version of H.R. 39 which passed the House last year, was developed during an intensive process which

involved the direct participation of the Department of the Interior. Despite important "administrative and procedural" changes which the Department has made since then, the existing conveyance process has not yet begun to "function as it should." In late 1978, Secretary Andrus announced that the State would receive conveyance to considerable acreage during 1979. Well over half the year has passed, and the State has yet to receive a single acre.

As a consequence of problems in the administrative processing of State selections and of certain factors beyond the control of the Interior Department, Alaska has received effective title to only about 36 million of the 103.5 million acres promised some twenty years ago at statehood. The conveyance title in Hucksaby would streamline the land transfer process and would effect a number of needed changes in the Alaska Statehood Act. These changes are important, and cannot be made by administrative action.

Timber Harvesting and Mining in Southeast Alaska

12. Myth: "... (Regarding Admiralty Island in Southeast Alaska)... they chop it up and make it into something called the pulp bank so pulp can continue to be shipped..." --Congressman Udall, testimony to the House Rules Committee, dated April 30, 1979.

Fact: Everyone agrees that the existing annual cut and job levels in Southeast Alaska should be maintained. The principal conflict concerns the method for accomplishing this. Under the bill reported last year by the Senate Energy Committee, a portion of Admiralty Island would be designated as a special management area and managed as wilderness for a ten-year period. If, at the end of the ten-year period, studies show that the annual cut cannot be maintained, Congress could authorize timber harvesting. If Congressmen Udall and Anderson are correct that their approach to Southeast Alaska will not reduce the annual cut or existing job levels, Admiralty Island would never be harvested under any of the pending bills.

13. Myth: "... We can produce the same amount of timber as in the past 4 or 5 years and there would be room for growth. There will not be a single job in Alaska lost in the timbering industry and there will be room for growth..." --Congressman Seiberling, testimony before the House Rules Committee, April 30, 1979.

Fact: Given the wilderness designations in the Udall-Anderson bill, both additional federal funding and State and privately-owned timber would be required to maintain the existing level of harvest. There is no guarantee of either. In fact, there is every indication that adequate appropriations would not be forthcoming. Moreover, the ten-year average

harvest, which represents a more accurate picture of the timber industry in Southeast, is significantly higher than the four-or-five-year averages used as a basis for the Udall-Anderson bill.

14. Myth: "The Udall-Anderson compromise responds to the timbering, mining, fishing, and employment issues (affecting Southeast Alaska) raised during the development of this legislation." --Secretary Berglund, correspondence to Congressman Lungren, dated May 7, 1979.

Fact: Econometric studies by the U.S. Forest Service (page 27, final EIS, Tongass Land Use Management Plan) show that Southeast Alaska's timber industry could sustain a significant loss of jobs as a result of the land designations in the Udall bill. According to some projections, unemployment in the region could exceed thirty-five percent (35%). Of the three major mineral discoveries in Southeast Alaska which have been identified by the Stanford Research Institute, two are included within wilderness areas. Thus, the U.S. Borax molybdenum find at Quartz Hill, perhaps the largest deposit of its type in the world, is located within the proposed Misty Fjords wilderness. While wilderness designation theoretically does not preclude the development of valid mining claims, experience shows that further exploration and development are usually stifled. In summary, all proponents of Alaska lands legislation advocate the establishment of large wilderness areas in Southeastern, but the designations in the Udall-Anderson bill are so excessive as to belie Secretary Berglund's statement.

15. Myth: "the Administration is committed to maintaining the timber harvest level of 450 mmbf from the National Forests in Alaska, through an increased investment of up to \$12 million annually." --Secretary Berglund, correspondence to Congressman Lungren, dated May 7, 1979.

Fact: This statement, used as evidence of a guarantee for protection of existing jobs in Southeast Alaska's timber industry, is very misleading. The Congress must appropriate the funds to make it come true. Moreover, the Administration's budget recommendations for timber programs in the national forests actually showed a reduction this year from previous years. In light of this, it is difficult to believe that Congress would increase appropriations to Alaska, especially at the apparent expense of the other western states. This conclusion has already been substantiated by the statements of one subcommittee chairman who has jurisdiction over Forest Service programs.

Mining

16. Myth: "...Are we fair on mining?...We have given them 700 years of drilling at 1,000 acres per day to open up. We say drill in

those areas first..." --Congressman Udall, testimony before the House Rules Committee, April 30, 1979.

Fact: Under the Udall-Anderson bill, 70% of the acreage rated by the Bureau of Mines as highly favorable for hardrock minerals would be permanently withdrawn from development. The total amount of acreage available for mineral development is not the critical factor--it is the location of that acreage which is important.

17. Myth: "It (the Huckaby bill) mandates the President to recommend by 1981 a program for private mineral development on parks." --Secretary Andrus, correspondence to Congressman Udall, dated March 13, 1979.

Fact: The Huckaby bill merely directs the President to make recommendations on the advisability of opening areas to development. Like other elements of the study and reporting requirements, the objective is to compile resource and policy information for use by Congress in subsequent decision-making. In fact, under all pending bills, national parks, preserves, and national park monuments are closed to mineral development unless opened by subsequent Congressional action.

Transportation

18. Myth: "(The Huckaby bill) rewrites existing law on the subject (transportation access) for Alaska. We believe existing law is adequate and the entire transportation title is unnecessary and ought to be deleted from the bill." --Secretary Andrus, correspondence to Congressman Udall, dated March 13, 1979.

Fact: While proponents of various Alaska lands bills have disagreed about the mechanics of a transportation title, every bill which has been seriously considered by the Congress during the last three years has incorporated a comprehensive title dealing with transportation and access across conservation system units. The present transportation system in Alaska is embryonic, and the conservation units which would be established through the Alaska lands legislation are immense, often isolating State and Native lands, communities, and commodity resources. Most people who have considered the issue believe that Alaska's situation is unique and that a number of problems in existing law are exacerbated by the factors mentioned above.

Hunting

19. Myth: "...We say (Udall-Anderson) 90 percent of the whole area will be open for sport hunting..." --Congressman Udall, testimony before the House Rules Committee, April 30, 1979.

Fact: This figure is entirely erroneous, whether it applies to the total land mass of Alaska (375 million acres) or only to Federal lands in Alaska. With respect to the entire State, the following lands are now, or would be, closed to public sport hunting: 44 million acres of Native lands; several million acres of existing Federal reserves such as McKinley National Park; 30 million acres designated in the Udall-Anderson bill; and certain State and private lands. If one looks only at Federal lands, the combination of existing reserved lands, together with the additional areas closed by the Udall-Anderson bill, would exceed 10 percent of such lands. In addition, several important sport hunting areas open under pending bills are closed in the Udall-Anderson proposal. Finally, with hunting, as with other resource issues, percentages and numbers of acres open to a given use are not nearly so important as the location and quality of the resource.

Alaska Native Position

20. Myth: "...and it is no coincidence that the Natives, whose interest we have carefully tried to protect in this legislation, are supporting the Udall-Anderson bill." --Congressman Seiberling, testimony before the House Rules Committee, April 30, 1979.

Fact: Alaska Natives, like any other large group of people, do not speak with one voice on this extremely complex series of issues. Certain proponents of the Udall-Anderson bill asked several of the Native corporations to abandon their long-standing neutrality regarding support of any particular bill as a quid quo pro for inclusion in the Udall-Anderson bill of amendments of particular interest to each corporation. Some corporations wrote equivocal letters endorsing legislation containing their amendments; others refused to respond to this demand. The Alaska Federation of Natives, the official spokesman for most of the Native regional corporations, has refused to endorse any particular Alaska lands bill. The State of Alaska strongly supports the Native amendments included in the Udall-Anderson and other bills considered by the House.

Specific Geographic Areas

21. Myth: "(The Huckaby bill) does not provide refuge protection for all of the Alaska Peninsula refuge proposal." --Secretary Andrus, correspondence to Congressman Udall, dated March 13, 1979.

Fact: Under the Huckaby bill, the entire Bristol Bay Region, including the Federal lands on the Alaska Peninsula, would be designated as the Bristol Bay Cooperative Region. Following a three-year cooperative study between the Federal Government and the State, a plan would be presented to both Congress and the State Legislature. During the interim period of the study, all Federal lands within the region would be managed by the U.S. Fish and Wildlife Service as a refuge. If the plan is unacceptable to Congress, all of the Federal lands on the Alaska Peninsula (and certain Federal lands elsewhere in the region) would continue to be managed "as if they were included within a refuge established under Section 302 of this Act."

22. Myth: "It (the Huckaby bill) deletes key habitat from the existing Yukon Flats National Monument, an area that every year produces 2.1 million waterfowl." --Secretary Andrus, correspondence to Congressman Udall, dated March 13, 1979.

Fact: The area deleted from the Udall-Anderson proposal for Yukon Flats is geographically different from the Yukon Flats proper, and the former area, designated as a national recreation area in the Huckaby bill, lies far beyond the prime waterfowl habitat as identified by the U.S. Fish and Wildlife Service. In the important habitat area, the Huckaby boundary is identical to the boundary in the version of H.R. 39 which passed the House of Representatives last year and which was strongly endorsed by the Carter Administration.

Summary

23. Myth: "Existing laws designed to protect the public interest in Federal lands all over the country are waived or weakened. The bill flatly prohibits any future studies or withdrawals "except those authorized by this Act" for any purpose whatsoever; it opens 20 million acres of existing National Park System land to trophy and sport hunting; it opens the currently protected, extremely fragile Arctic National Wildlife Range to oil and gas exploration; it deletes key habitat from the existing Yukon Flats National Monument, an area that every year produces 2.1 million waterfowl; it omits refuge designation, adopted by the House in 1978, for the Togiak and highly productive Alaska Peninsula area; it makes unwarranted changes in existing law so as to permit roads, pipelines, coal slurry lines, railroads, etc., through national parks and wildlife refuges and wilderness areas; and it weakens wilderness protection by providing for a variety of incompatible uses." --Secretary Andrus, correspondence to Congressman Udall, dated March 13, 1979.

Fact: This is one of the most blatant examples of hyperbole and inaccuracy expressed by some participants in the process of developing Alaska lands legislation.

None of the pending Alaska lands bills purport to waive or amend existing environmental laws of general applicability, such as the Clean Air Act, the Water Pollution Control Act, or the Solid Waste Act. The Huckaby bill, though not S.9 with one exception, does obviate the need for certain withdrawals and studies because Congress is addressing these matters within the framework of a comprehensive, multi-million acre legislative solution.

With respect to Secretary Andrus' statement regarding hunting within units of the National Park System, it must be noted that no pending bill would open to hunting those lands which were closed prior to December 1, 1978. On that date, President Carter created 56 million acres of new national monuments, many of which are closed to sport hunting. At that time, the President indicated that his actions were intended to be interim in nature, pending a final Congressional resolution. If the people's elected representatives, after balancing all of the competing concerns, determine that certain adjustments in prior unilateral administrative actions should be made, it seems that such Congressional decision-making would represent a proper working of the Federal system, and would effectuate the Carter Administration's professed intentions.

With respect to the effect of the Huckaby bill on the Arctic Wildlife Range, it should be noted that this area is not currently designated as wilderness. Therefore, upon a finding of compatibility with refuge objectives, the Secretary of the Interior, under his existing authority, could open this area to oil and gas leasing. Thus, it is the Udall-Anderson bill which would change the status quo. In contrast, certain other bills would authorize a carefully-controlled assessment of the oil and gas potential of the Arctic coastal plain, thus permitting the Congress to make an informed decision at a later date to open or close the Range to oil and gas development. In this way, the possibility of panicky and unplanned exploration during some future oil crisis can be avoided.

The "Yukon Flats National Monument" is one of the areas established last year pending Congressional action. Moreover, the key habitat areas are adequately protected in all the pending measures (see Myth No. 22, Yukon Flats, and Myth No. 21, Alaska Peninsula).

With respect to the statement on access through conservation system units, none of the pending bills change the substantive standards for approval of transportation and utility systems. In recognition of certain deficiencies in existing law and Alaska's unique geographic circumstances, most of the pending measures, including the Udall-Anderson bill, improve the process for considering and approving applications. No proposed bill would permit administrative approval of access through areas where Congressional action is required under existing law. (Also, see Myth No. 18.)

Regarding Secretary Andrus' comments on wilderness, all pending bills contain provisions which make at least some modifications in the Wilderness Act in order to address the immense acreages involved and the unique nature of the rural Alaskan lifestyle. Thus, for example, all bills would permit certain motorized activities in wilderness areas. The changes in wilderness management which are allowed by the various bills are in fact minor, in relationship to the objectives of the Wilderness Act and the magnitude of the acreage placed in Wilderness.