

ALASKA LEGISLATURE SPECIAL COMMITTEE / SUBJECT FILES 86 / 2

696 SCOM:22: ALASKA LANDS FILE 1977-78

INNOKO

Sanctuary Boundary

Area of Ecological Concern



KANUTI NATIONAL WILDLIFE REFUGE

Recommended Proposal:

To designate all federal lands and waters comprising approximately 1.20 million acres within the boundary described by the accompanying map as the Kanuti National Wildlife Refuge. The boundary also would extend administrative jurisdiction over the navigable waters included within the proposal.

Objectives:

To perpetuate, for the benefit of all people, nationally significant migratory waterfowl and mammal populations utilizing the lands and waters of the Kanuti area; to maintain the other resident fish and wildlife resources; to protect the habitat utilized by these species such that it will continue to provide fish and wildlife resources in such abundance that will continue to provide the opportunity for residents of Allakaket, Alatna and Bettles Field to continue their current subsistence lifestyle; and to provide cooperative management mechanisms for refuge, State and private lands and interests in the Kanuti area.

Comparison with other proposals:

H.R. 39 (Udall): Proposes a refuge of 0.8 million acres.

H.R. 2082 (Leggett): Proposes a refuge of 0.8 million acres.

S. 1787 (Stevens): Proposes a refuge of 0.43 million acres

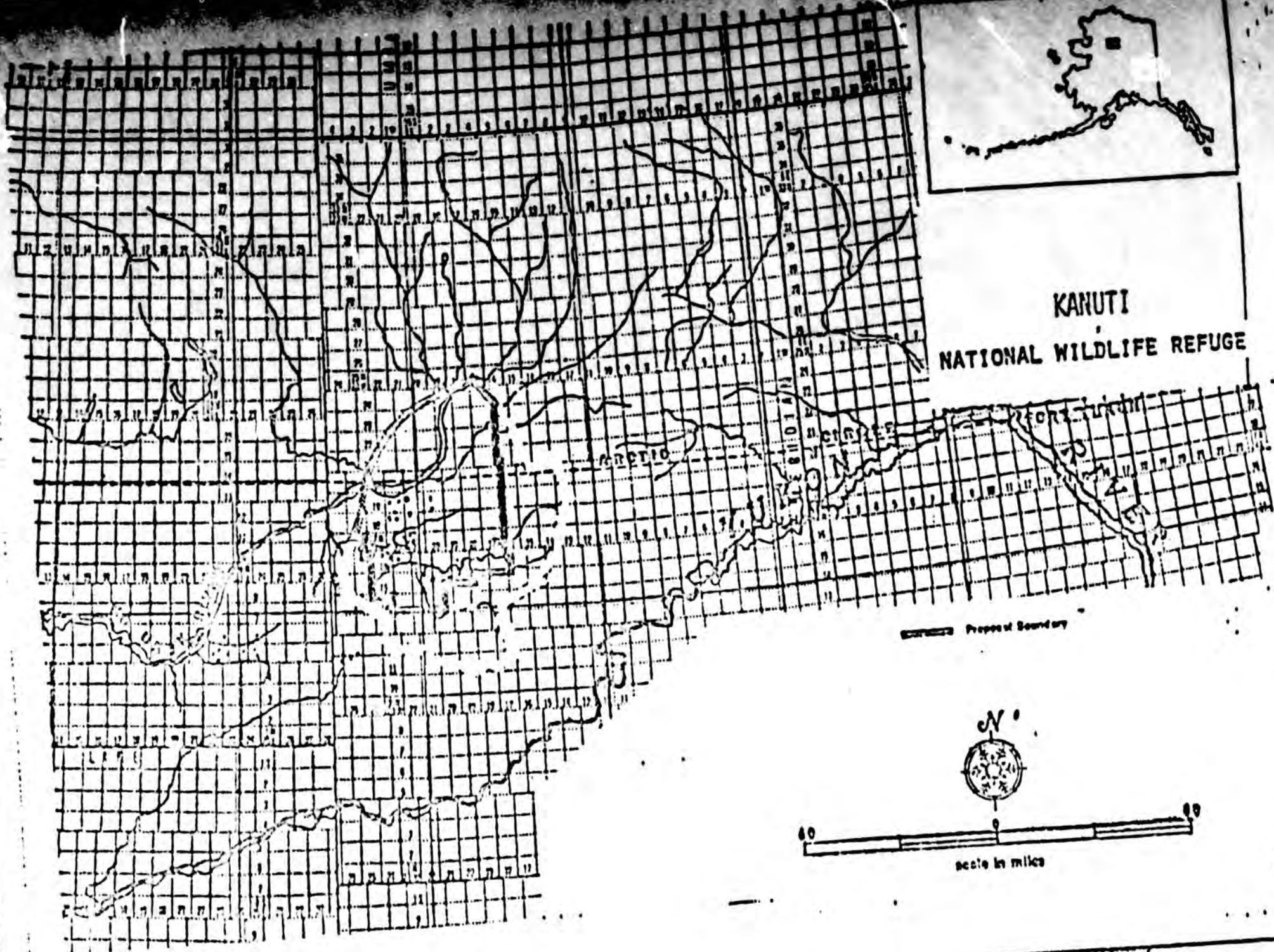
LUPC: Proposes a refuge of .43 million acres

Decision Rationale:

No significant mineral deposits are known and petroleum potential is considered low. Oil and gas exploration or extraction will be permitted only pursuant to Secretarial decision and classification and under strict permit requirements. //



KANUTI
NATIONAL WILDLIFE REFUGE



Proposed Boundary



Scale in miles

KENAI NATIONAL MOOSE REFUGE

Recommended Proposal:

To establish the Kenai National Moose Refuge comprising the existing Range, a southern addition of approximately 97,600 acres of federal lands and waters not otherwise conveyed by ANCSA and a northern addition of 86,000 acres of Chickaloon Flats and its watershed from the existing Chugach National Forest.

Portions of the existing and all of the southern addition are recommended for designation as units of the National Wilderness System at this time.

Objectives:

To perpetuate, for the benefit of all people, a nationally significant population of moose; to maintain other mammal, waterfowl and fishery resources of the Refuge; to protect the wilderness character of habitats represented on the Refuge; to provide environmental education and land management training opportunities for the public; and to provide wildlife-oriented recreation compatible with fish and wildlife resource management.

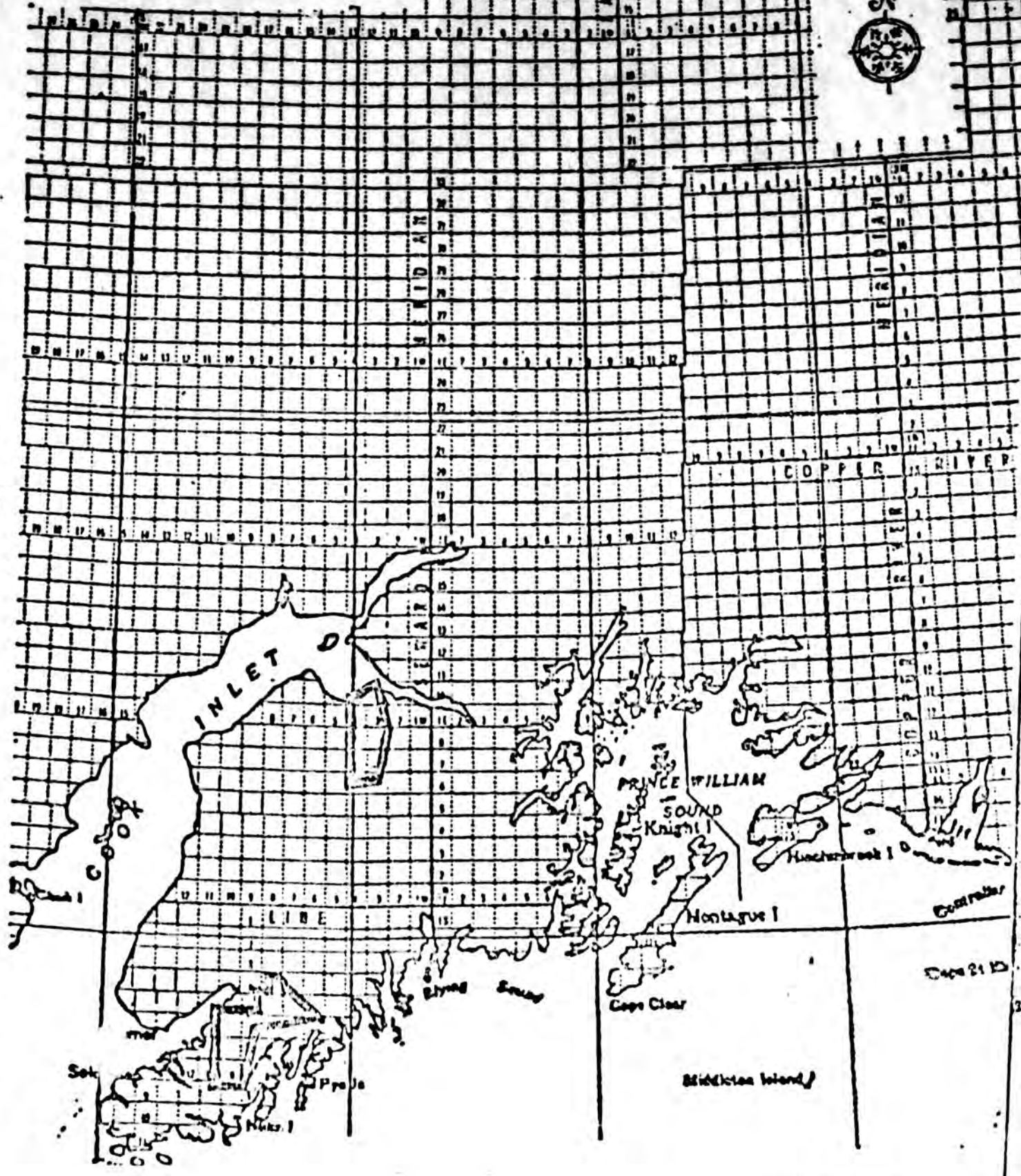
Comparison with other bills:

LUPC: Recommends addition of part of proposed southern addition to the existing Refuge.

Decision Rationale:

These additions will enhance the already well-established Kenai National Moose Range, and are supported in principle by the LUPC. There are no known conflicts and no objections to this proposal. The State has no interest in selecting lands within this area.

PORTLAND TO THE NEW NATIONAL HOUSE SERVICE



September 1, 1977

KOYUKUK NATIONAL WILDLIFE REFUGE

Recommended Proposal:

To designate the Koyukuk National Wildlife Refuge comprising approximately 3.33 million acres of federal lands and waters within the boundary described by the accompanying map. The boundary would extend administrative jurisdiction over the navigable waters included within the proposal.

Objectives:

To perpetuate, for the benefit of all people, the nationally significant waterfowl and other migratory bird resources utilizing the lands and waters of the Koyukuk area; to maintain significant furbearing and large mammal populations; to protect the habitat utilized by these many species such that it will continue to provide fish and wildlife resources in such abundance to provide the opportunity for residents of adjacent villages to continue their current subsistence lifestyle; and to provide cooperative management mechanisms for refuge, State and private lands and interests in the Koyukuk area.

Comparison with other proposals:

H.R. 6564 (Morton): Proposes area as one unit of the 4.3 million acre Koyukuk proposal.

H.R. 39 (Udall): Proposes a refuge of 3.7 million acres.

H.R. 1652 (Dingell): Proposes a refuge of 6.272 million acres.

H.R. 2082 (Leggett): Proposes a refuge of 3 million acres within the Koyukuk River Basin.

S. 1787 (Stevens): Refuge of 1.580 million acres.

LUPC: Refuge of 2.53 million acres.

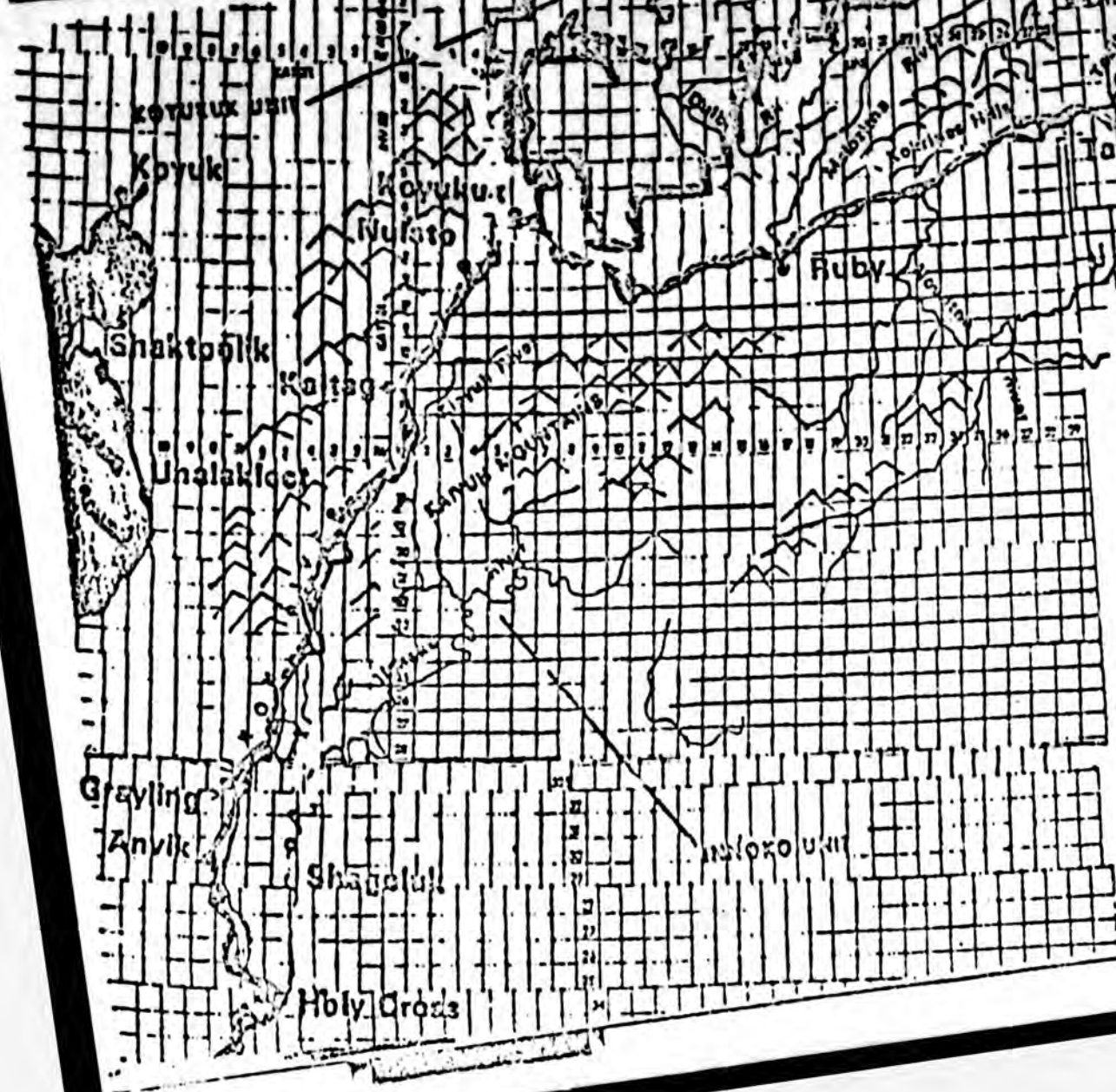
Decision Rationale:

Establishment of the refuge would assure perpetuation of the known fish and wildlife resources of the area.

Refuge designation would ~~preclude~~ new mining. The boundary has been withdrawn in the northwest to avoid almost completely a mineralized province containing several hardrock and placer prospects included within Native regional selections. Oil potential is considered low. Because refuge proposal boundary falls outside the equivalent H.R. 39

(Udall) proposal, the State of Alaska is not prepared at this time to indicate its interests in selection within this area. The State plans to make such interests known by late November 1977. Oil and gas exploration and development would be subject to Secretarial decision and classification and permit requirements.

Merchantable timber resources in this area are speculative at present with an estimated total harvestable resource of 6 million board feet, enough to build 400 homes. Most of this is adjacent to the rivers or on islands—areas which are normally not logged because of the threats to water quality and soil erosion. Local subsistence use in the area harvests nearly the annual sustainable yield.



KOYUKUK NATIONAL WILDLIFE REFUGE

- Proposed Refuge Boundary
- Area of Ecological Concern

NOWITNA NATIONAL WILDLIFE REFUGE

Recommended Proposal:

To designate all federal lands and waters comprising approximately 1.45 million acres within the boundary described by the accompanying map as the Nowitna National Wildlife refuge. The boundary also would extend administrative jurisdiction over the navigable waters included within the proposal.

The Nowitna River is recommended as a National Wild River.

Objectives:

To perpetuate, for the benefit of all people, the nationally significant waterfowl, other migratory bird and mammal populations utilizing the lands and waters of the Nowitna area; to maintain the resident fish and wildlife populations; to protect the habitat utilized by these species such that it will continue to provide fish and wildlife resources in such abundance that continues to provide the opportunity for residents of adjacent villages to continue their current subsistence lifestyle; and to provide cooperative management mechanisms for refuge, State and private lands and interests in the Nowitna area.

Comparison with other proposals:

H.R. 654 (Morton): Proposes the area as the Yukon-Kuskokwim National Forest.

H.R. 39 (Udall): Proposes a refuge of 1 million acres.

H.R. 1652 (Dingell): Proposes as part of the 6.2 million acre Kuskokwim National Wildlife Refuge.

H.R. 2082 (Leggett): Proposes a refuge of 1.0 million acres.

LUPC: Proposes as a 3.52 million Alaska National Lands with Forest Service as the manager.

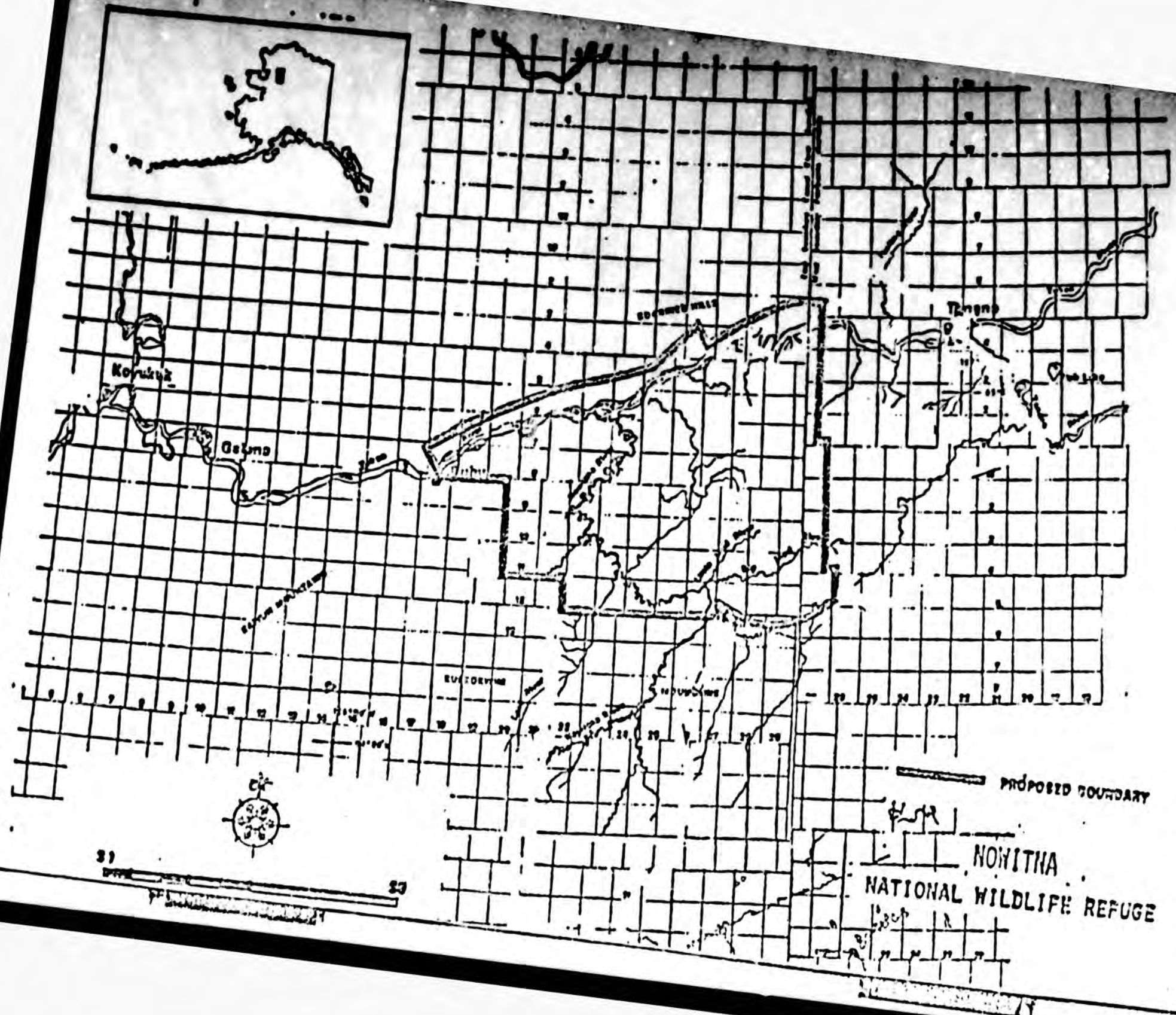
Decision Rationale:

The Nowitna River Drainage, from its upper reaches to the floodplain lowlands near the Yukon River is primarily important for significant breeding populations of waterfowl—whitefronted geese utilize nearly all of the riverine flats for nesting and brooding sites. Within the lower flats where over 75 percent of the surface area is water, hundreds of thousands of ducks along with trumpeter swans nest annually. The Nowitna River floodplains are of high importance for poose, providing the essential winter range for a wide ranging population. Trapping of furbearing

animals has always been an important activity in the proposal area both for subsistence and for commercial purposes. Salmon spawning, sheffish, and northern pike contribute to the high fishery values of the drainage basin. Complete ecosystem management, essential to the Nowitna area in order to preserve and perpetuate the high fish and wildlife values, will be achieved by Wild river designation for the Nowitna which will help protect goose habitat along that river.

The northern portion of the Nowitna National Wildlife Refuge proposal is a low lying flat consisting of lakes, ponds, potholes, sloughs, and streams. The area is a typical interior floodplain habitat community with a mixed vegetative community of willow, birch, cottonwoods, and scattered spruce. Small areas within the proposal have been identified as having potential commercial timber values adjacent to the river. However, these are within areas which are not normally logged because of the potential negative impacts on water quality and soil erosion.

Refuge designation would permit no new mining claims. Oil and gas exploration and development would be subject to Secretarial decision and classification and permit requirements. However, the boundary has been withdrawn in the northwest from around State selections in a hardrock mineral province, and no other mineral conflicts occur within the proposal area.



NOWITNA
NATIONAL WILDLIFE REFUGE

September 1, 1977

SELAWIK NATIONAL WILDLIFE REFUGE

Recommended Proposal:

To designate the Selawik National Wildlife Refuge containing approximately 2.09 million acres of federal lands and waters within the boundary described by the accompanying map. The boundary also would extend administrative jurisdiction over the navigable waters within the proposal, including bays and sounds as indicated.

Objectives:

To perpetuate, for the benefit of all people, the significant migratory bird resources utilizing the lands and waters of the refuge; to lp maintain fish and wildlife resources of the Selawik basin; to protect the habitat utilized by these species such that it will continue to provide the opportunity for the people of the Selawik basin to continue their current subsistence lifestyle; and to initiate cooperative management mechanisms for refuge, State and private lands and interests in the Selawik basin.

Comparison with other proposals:

H.R. 6564 (Morton): Proposes a refuge of 1.4 million acres with addit on of Chamisso NWR.

H.R. 39 (Udall): Proposes a refuge of 2.5 million acres.

H.R. 1652 (Dingell): Proposes a part of a 7.7 million acre refuge in the Kotzebue Sound area.

H.R. 2082 (Leggett): Proposes a part of an 8.3 million acre refuge in the Noatak-Selawik area.

S. 1787 (Stevens): Proposes a 730,000 acre refuge.

IUPC: Proposes a refuge of 1.5 million acres.

Decision Rationale:

National and international migratory bird as well as fish and wildlife resources are widely known today and warrant refuge protection to ensure perpetuation of these resources and our treaty obligations. (See IUPC d(2) recomm., 1974 USDI EIS, HR 39, HR 1652, HR 2082, S 1787.)

SELAWIK NATIONAL WILDLIFE REFUGE

Selawik lowlands have a low metallic mineral potential, although the possible occurrence of buried alkaline complexes with associated rare earth deposits cannot be dismissed. The area has a low to moderate petroleum potential. Hydroelectric power potential is known to exist in the area. Boundaries have been drawn to avoid mineral values in the south and southeast and geothermal values in the west, although this eliminated significant migratory bird nesting habitat and caribou in the east. Oil and gas exploration or development of nationally significant deposits could be permitted according to Secretarial decision and classification and under strict permit requirements.

Administrative jurisdiction will protect the bays and sounds included within the refuge boundaries.

The State of Alaska has identified possible surface transportation routes crossing the proposed area for which feasibility, demand and socioeconomic studies have not been made. Designation of the area as wildlife refuge does not necessarily preclude the establishment of transportation corridors where such activity is not inconsistent with refuge purposes.

Reindeer grazing must be strictly regulated to control the size of the herds, areas to be grazed, seasonal patterns of grazing, and methods and extent of predator control in the vicinity.

September 1, 1977

TETLIN NATIONAL WILDLIFE REFUGE

Recommended Proposal:

To designate all of the federal lands and waters within the boundary described by the accompanying map totaling approximately 765 thousand acres, as the Tetlin National Wildlife Refuge. Within the boundary could be an administrative site of not more than 5 acres and an access road operated and maintained by the National Park Service in conjunction with the Wrangell-St. Elias National Park operations to the south. Both will be compatible with the purpose for which the area is established.

Objectives:

To perpetuate and provide for internationally significant migratory birds which utilize the Tetlin area as well as all other forms of fish, wildlife and their habitats. To provide a variety of opportunities for interpretive, educational, scientific and other fish and wildlife-wildlands oriented recreational uses. In addition, a cooperative management agreement will be sought with the Tetlin Native Corporation regarding fish and wildlife management activities on the refuge and their reservation.

Comparison with other proposals:

H.R. 6564 (Morton): Proposed inclusion as a unit of the Wrangell Mountain National Forest.

H.R. 39 (Udall): A portion of the area proposed for national park.

H.R. 1652 (Dingell): Proposed 320,000 acre Snag Creek National Wildlife Refuge.

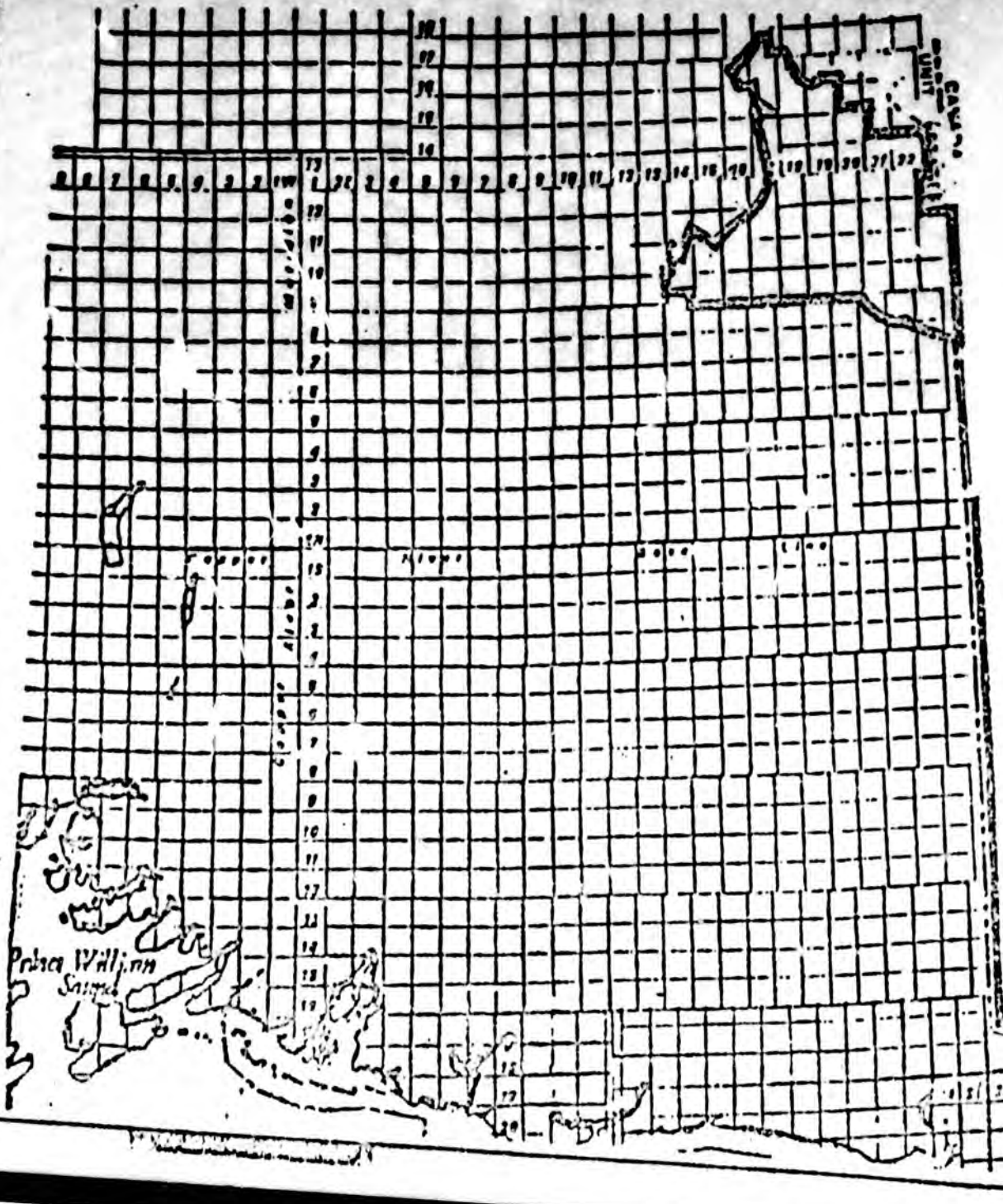
H.R. 2082 (Loggett): Proposed 3.1 million acres Tetlin National Wildlands (FWS management).

H.R. 1787 (Stevens): Proposed inclusion on Wrangell-St. Elias Federal Cooperative Lands.

LUPC: Portions proposed on 2.9 million acre Alaska National Lands Classification (NPS management).

Decision Rationale:

This area has been proposed as a unit of the National Forest System. On the other hand, mineral potential is minimal and oil and gas potential is low.



Proposed boundary

TETLIN
NATIONAL WILDLIFE REFUGE



TOGIAK NATIONAL FISH AND WILDLIFE REFUGE**Recommended Proposal:**

To designate the existing Cape Newenham National Wildlife Refuge and all federal lands and waters described by the accompanying map, totaling approximately 3.84 million acres, as the Togiak National Wildlife Refuge. The Kanaktok River is recommended as a National Wild River.

Objectives:

To perpetuate, for the benefit of all people, the significant marine bird and mammal, other migratory bird and fishery resources of the mountain, river and marine habitats of the Togiak area; to enhance and restore the large mammal populations historically inhabiting the area; to protect the watershed of Bristol and Kuskokwim Bays; to protect the habitats utilized by these fish and wildlife resources in such abundance that will continue to provide the opportunity for the people of the Togiak area to continue their current subsistence lifestyle; and to initiate cooperative management mechanisms for refuge, State and private lands and interest within the area of ecological concern.

Comparison with Other Proposals:

H.R. 6564 (Morton): Proposes a refuge of 2.74 million acres and adds Cape Newenham NWR.

H.R. 39 (Udall): Proposes a refuge of 3.5 million acres and adds Cape Newenham NWR.

H.R. 2082 (Leggett): Proposes a refuge of 4.2 million acres, the addition of Cape Newenham NWR and 3 miles offshore including Hagemeister Island.

S. 1787 (Stevens): Proposes a FWS managed cooperative area of 240,000 acres.

Decision Rationale:

The potential for reindeer grazing also denotes a capacity for the habitat to sustain caribou—a species being considered for reintroduction in the proposal. These two activities are not compatible, but discussions with Native groups generally reveal a greater desire to hunt caribou than to herd reindeer.

September 1, 1977

TOGIAX NATIONAL FISH AND WILDLIFE REFUGE

The proposed refuge is located adjacent to a major hard rock mineral province containing known and potential deposits of mercury, antimony, gold, platinum, palladium, zinc, copper, and silver. These mineral hot spots were accommodated by removing them from the proposed refuge area. 11-

The boundary also excludes State selected lands in the northeast part of the ecosystem.

September 1, 1977

YUKON DELTA NATIONAL WILDLIFE REFUGE

Recommended Proposal:

To designate the existing Clarence Rhode National Wildlife Range and Hazen Bay National Wildlife Refuge and all other federal lands and waters within the boundary described by the accompanying map, totaling approximately 11.11 million acres, as the Yukon Delta National Wildlife Refuge. As with all other proposals, the boundary would confer administrative jurisdiction over the navigable waters included within the refuge.

Objectives:

To perpetuate, for the benefit of all people, the internationally significant migratory bird, fish and marine mammal resources utilizing the lands and waters of the YukonKuskokwim Delta; to maintain the resident fish and wildlife resources of the Delta; to protect the habitat utilized by the many species such that it will continue to provide fish and wildlife resources in such abundance that will continue to provide the opportunity for the people of the YukonKuskokwim Delta to continue their current subsistence lifestyle; and to initiate cooperative management mechanisms for refuge, State, and private lands and interests in the YukonKuskokwim Delta.

Comparison with other proposals:

H.R. 6564 (Morton): Proposes a refuge of 5.16 million acres.

H.R. 39 (Udall): Proposes a refuge of 6.3 million acres.

H.R. 1652 (Dingell): Proposes a refuge of 19 million acres.

H.R. 2082 (Leggett): Proposes a refuge of 6.4 million acres with 3 mile offshore jurisdiction.

S. 1787 (Stevens): Proposes a core refuge of 3.6 million acres and two FWS managed cooperative areas of 5.0 million acres.

LUPC: Proposes a core refuge of 5.7 million acres with an FWS managed cooperative area of 3.5 million acres.

Delta Natives: The 56 village member Association of Village Council Presidents (AVCP) has adopted a resolution to include all federal lands west of 161 degrees longitude in the refuge (approximately 20 million acres); the

YUKON DELTA NATIONAL WILDLIFE REFUGE

Decision Rationale:

The entire Delta area lies in a potential petroleum province. The highest oil and gas potential within the proposal lie within the existing units of the Clarence Rhode N.W.R. and are subject to Secretarial classification and permitting for exploration or extraction, provided that there is a National need, NEPA requirements are complied with, and it can be done compatibly with refuge objectives.

The State of Alaska has identified possible surface transportation routes crossing the proposed area for which feasibility, demand, and socioeconomic studies have not been made. The Yukon and Kuskokwim Rivers are major navigation routes, the use of which is guaranteed by treaty with Canada. This use, at current levels, would not conflict with objectives. Results of actions to increase navigation, such as the proposed Yukon-Kuskokwim connecting channel, could create some conflict, particularly if dredging of new channels is requested.

Reindeer grazing would be reviewed during the 3 year management planning process with recommendations developed at that time.

The Andreafsky River area and the East Fork area are the primary nesting ground for 90 percent of this country's bristle-thighed curlew, are qualified for wild and scenic river designation and provide habitat to a local caribou herd. Other migratory bird values are notable in this portion of the proposal.

Hagemeister Island will not, as previously contemplated, be included within this refuge, but will be included in the Alaska Marine Control NWR.



BERING SEA

Lake Cushman
Air Force Station

Kuskokwim Bay

Proposed Boundary

YUKON DELTA NATIONAL WILDLIFE REFUGE

September 1, 1997

YUKON FLATS NATIONAL WILDLIFE REFUGE

Recommended Proposal:

To designate as the Yukon Flats National Wildlife Refuge all federal lands and waters comprising approximately 8.45 million acres within the boundary described by the accompanying map. The Sheenjek River is recommended as a National Wild River.

The Rampart Dam withdrawal would be revoked by this action.

Objectives:

To perpetuate, for the benefit of all people, internationally significant waterfowl and other migratory bird resources that utilize the lands and waters of the Yukon Flats; to protect the migration and spawning habitats of the salmon fishery; to protect the resident mammal population; to protect and manage habitat utilized by these species such that it will continue to provide fish and wildlife resources in such abundance that will continue to provide the opportunity for residents of the villages within the boundary to continue their current subsistence lifestyle; and to provide cooperative management mechanisms for refuge, State and private lands and interests in the Yukon Flats area.

Comparison with other proposals:

H.R. 6564 (Morton): Proposes 3.59 million acres as a Refuge and 5.50 million acres as a National Forest.

H.R. 39 (Udall): Proposes a refuge of 12.3 million acres.

H.R. 1652 (Dingell): Proposes a refuge of 3.6 million acres.

H.R. 2082 (Leggett): Proposes a refuge of 16.8 million acres.

S. 1787 (Stevens): Proposes a 2.59 million acre National Forest and a 3.94 million acre USFS-managed cooperative area.

LUPC: Proposes two refuge units totaling 2.3 million acres with 5.5 million acres to be managed by USFS as National lands.

Decision Rationale:

Commercial timber harvest along streams and in wetland areas would be detrimental to wildlife habitat if not conducted under strict controls.

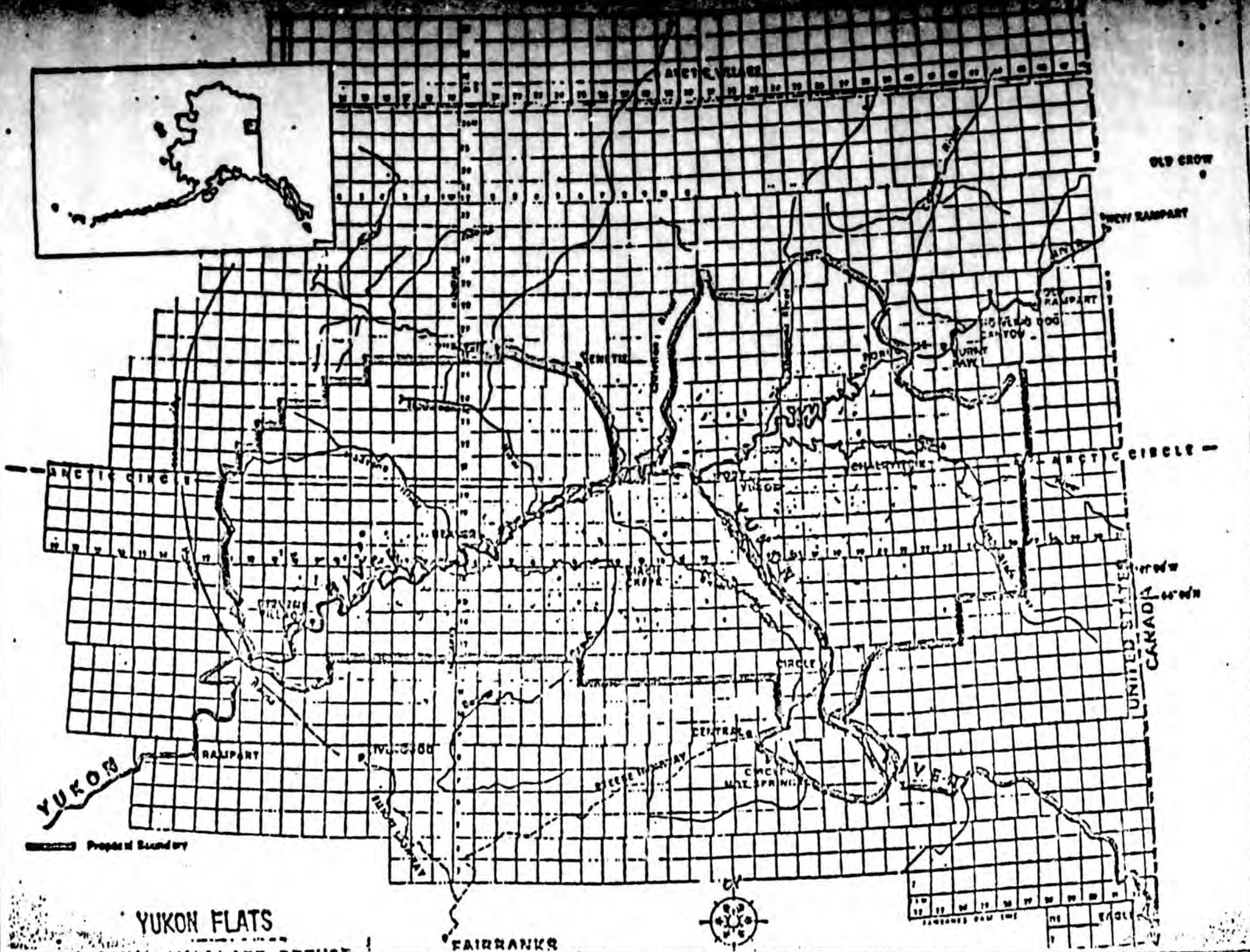
and would conflict with existing subsistence use of timber resources.

The Krutilla-Brubaker report commissioned by the MUPC discusses the favorable opportunity costs of d(2) designation in areas containing some timber values but lacking reasonable rotation capability, transportation, markets, etc. The 1974 Final EIS's for Yukon Flats National Wildlife Refuge and Porcupine National Forest also contain excellent discussions on the relative resource values of this area. Refuge designation does not preclude house logging or timber harvest for wildlife management purposes. Conflict is therefore judged to be minor.

Parts of the Yukon Flats have been suggested as agricultural lands, development of which would be inimical to wildlife habitat protection. The feasibility and cost effectiveness of agriculture in this area has yet to be demonstrated. Currently, investment costs including clearing, leveling, draining, etc., would appear to present matters requiring careful analyses prior to full acceptance as "high" agricultural potential. Much of the agricultural land will be within Native (private) land areas where the above matters could be thoroughly tested. These corporations have financial capability to develop if found feasible. Due to impacts such development would have on a high portion of the most important wetland habitats, particularly the use of fertilizers and pesticides, the need for refuge status on adjacent lands and waters is greatly increased. Management programs to permit refuge lands to harbor large numbers of displaced wildlife, should extensive agricultural development occur, will be essential.

The refuge lies within potential oil and gas and uranium provinces. Any exploration or extraction for oil and gas would be permitted only pursuant to Secretarial decision and classification and under strict permit requirements. No new mining claims would be allowed.

The proposed Ramparts Dam hydroelectric project withdrawal would be revoked as it would destroy the subsistence, and fish and wildlife values of Yukon Flats and is not considered a viable project at this time.



**NATIONAL WILDLIFE RESOURCES
STATE AND NATIVE SELECTIONS
WITHIN D-2 PROPOSALS**

	Currently Available Federal Acreage	Native Selection	Estimated Future Refuge Acreage	State Selection	Navigable Waters
Kaska Marine Resources	430,000	Unknown	430,000	Unknown	Unknown
Petic	8,354,566	16,125	8,354,566	1,182,500	0
Charof	1,031,480	1,830	1,031,480	0	20,000
Copper River	1,335,814	404,000	1,537,814	61,100	49,500
Amoko	2,839,763	319,000	2,839,763	0	0
Anuti	1,052,000	297,000	1,200,000	10,000	0
Enal	183,556	30,550	214,106	24,444	0
Oyukuk	3,244,275	640,000	3,326,775	44,000	40,000
Awitna	1,450,000	170,500	1,450,000	66,000	17,700
Clawik	1,727,000	1,120,450	2,091,550	0	682,000
Etlin	763,096	99,377	765,096	100,000	0
Ogisk	3,447,863	793,000	3,844,863	0	0
Ukon Delta	10,863,000	8,000,000	11,107,000	0	932,000
Ukon Flats	7,310,222	3,715,421	8,449,792	4,000	214,400
TOTALS	44,034,372	8,407,253	46,642,807	1,502,044	1,955,000

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CORRECTION

• MEMO

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9/12/77

Made for the

DARE

per lecture,
quibbling

Memorandum

To: Cynthia Wilson
Special Assistant to the Secretary

From: ²⁰¹⁹ Assistant Secretary - Energy and Minerals *AS/C.P. Eddy*

Subject: Discussion of Hard Rock Minerals in Secretary's Testimony
and Briefing Book for D-2 Lands

As you know, it is our view that the Secretary's decision on D-2 lands considered the mineral potential of each area as fully as possible given the limited state of mineral data; and that he made extensive boundary adjustments to accommodate areas of known mineralization. At the same time, we should take care to be as accurate as possible concerning the mineral potential of those areas included in the Secretary's recommendations. We should not detract from a good decisionmaking process by what might be taken as post facto justifications.

In general, the testimony should clearly recognize that there are a number of areas of known mineralization and areas favorable or highly favorable for discoveries in the Secretary's recommendation, but on balance that the other resource values outweigh allowing future exploration and production.

The briefing book needs substantial correction to accurately reflect the mineral values of the proposed areas. Attached is a list of specific changes we believe should be made. In particular, referring primarily to existing claims and their appraised values is not necessarily a realistic indication of mineral potential. Please let me know if you would like to discuss these recommendations.

*Told John
that Bill Prinz
& I put this together
with Dale*

Attachment

cc: Secy's File (2) *AS/CL*
Secy's Reading File
A/S - LW
A/S - FW&P
A/S - EM (2)
Director, Geological Survey
Acting Director, Bureau of Mines

Admiralty Island: Statement that no major mineral values have been identified is incorrect. Mining, primary for gold, has occurred mainly in the Funter Bay area. A new significant discovery of nickel-copper-cobalt has been made in the same area. Another copper-zinc-silver discovery valued at \$120 million has been made this year in the Green Creek area and the prospects for finding additional deposits is excellent. At least two other silver-zinc-lead deposits are under active exploration, and two of several copper deposits are being prospected. Recent reconnaissances on Admiralty have identified two previous unknown areas of mineralizations.

Aniakchak: Although no deposits have been located in the proposed area, the southeastern slope of most of the Alaska Peninsula is highly favorable for the occurrence of minerals.

Bering Land Bridge: We agree that most of the best mineralized area for berglium, tungsten, tin and fluorspar have been excluded. However, it is not possible to say that the remaining area with some claims has low potential, Part of the Kongarok district remains in the proposal area.

Cape Krusenstern: The briefing statement says that the area has low potential and that there are no claims. We would say that the geologic environments indicate favorable potential although no discoveries have been made.

Denali National Park: Although there is no significant mining at this time, an area of 400,000 acres in the northern addition that includes the Kantishna mining district is very favorable for the occurrence of metallic mineral deposits and is part of a larger mineral trend now being recognized along the north flank of the Alaska Range. Three areas in the southern addition are also highly mineralized.

Gates of the Arctic: This is coincident with one of the highest potential hardrock mineral areas in Alaska. Contrary to the statement in the briefing book, the southern one third of the proposed area has a high mineral potential. All of the potential mineralized areas have not been excluded. The proven discoveries to date were made in open ground and there is every indication that similar discoveries could be made in the closed area to the east.

Glacier Bay: Area is not presently under exploration, but southeastern part of northern addition contains strong indications of nickel-copper-cobalt deposits similar to the important deposit in ~~Glacier Bay NM.~~ Isolation is not a factor. Industry was ready to develop deposit to the south which is in similar terrain prior to withdrawal of monument.

Kenai Fjords: The briefing statement refers to low mineral potential. We believe that the southwest corner is favorable where gold mining has occurred in the past. We don't consider area highly favorable.

Kobuk Valley: Statement is incorrect. Few deposits have been found to date because area has been closed to exploration during time discoveries were made in adjacent Kobuk-Ambler district. Area has same highly favorable geology for copper-lead-zinc-silver-gold discoveries as Kobuk-Ambler district. Two claim groups do not indicate lack of potential. "No market value" can presently apply to much of Alaska in sense of lack of access.

Lake Clark: Statement understates importance of minerals. About one-third of the area running generally north-south through the center is highly mineralized with potentially significant occurrences of copper, molybdenum, lead, zinc, iron, and antimony. A significant copper deposit, Kasna Creek, and a molybdenum discovery occur a few miles inside the south boundary. Considerable drilling, including a program by our Department, has been done at the Kasna Creek deposit. Most mineral discoveries have been made at the north and south ends of the proposed park because of easier access but there are many anomalous areas indicating equally high potential through the proposed park itself. "No marketable minerals" has little meaning in the sense of long-range mineral adequacy. Considerable interest has been shown by industry within the last three years.

Noatak: The statement that the area has low potential is incorrect. Closed to mineral exploration during the recent active period in the Kobuk-Ambler area, no deposits have been proven by drilling but the geology of the area is highly favorable to favorable for discovery. Particular areas of highest interest are believed to contain lead-zinc-buxite deposits, copper-zinc-barite deposits, as well as significant deposits of chromium, nickel, iron, copper and platinum group metals.

Wrangell-St. Elias: The briefing book understates the mineral potential of this area when it says that the preserve unit has some concentrations of minerals that may have high potential. Much of the proposed park and preserve is heavily mineralized. Existing mining claims indicate only part of the potential, probably a relatively small part. Areas much broader than the 71 claim groups are known to contain important deposits of copper and/or molybdenum, and chromium, zinc, silver and gold. This is one area in which Interior has done considerable work.

Yukon-Charlie: Statement reports that there is some potential for gold. It would be better to replace some with favorable. There has been production over the years. Also, the placer deposits contain tin and tungsten.

Alaska Peninsular Study Area: The briefing book contains no mineral information. The southeastern ridge of the peninsula has a high potential for precious metal deposits and the porphyry copper-molybdenum deposits. Eight significant deposits are known in the southern part of the area.

Arctic National Wildlife Refuge: There are other areas with potential for the occurrence of copper, lead, and zinc deposits other than the Chandalar district described in the briefing book. In fact the mineral potential map mutually agreed-to by the State, Commission, and Interior shows the Chandalar district as favorable for mineral discoveries whereas a large area to the north and a belt along the Canadian border is shown to be highly favorable. Two important copper and copper-molybdenum deposits are known and another significant copper prospect has been found.

Becharof Lake: The briefing book should read that the potential of this area is unknown because very little prospecting and exploration has been carried out. What is important is that the area is highly favorable for discoveries.

Kanuti: We agree that no significant mineral deposits are known but the east half of the unit is considered highly favorable for metallic and related nonmetallic mineral deposits.

Koyukuk: As noted in the briefing statement, the northern boundary has been modified to exclude the highly favorable area for discovery of uranium-thorium gold, and platinum deposits.

Selawik: The briefing statement notes that boundaries have been drawn to avoid mineral values in south and southwest. Although parts of the highly favorable belt along the south was excluded, much of it remains in the proposed refuge.

Togiak: As noted in the briefing book, the known "mineral hot spots" were excluded. However, the intervening ground in a narrow belt of highly favorable ground trending northwest mostly in the northwest corner was not excluded.

PRESS

PRESS RELEASE

The Steering Council for Alaska Lands is currently following up a freedom of information request made by their chairman, Steven Cowper this November. Attorneys employed by the Steering Council are going through the files of the Bureau of Mines in an attempt to determine whether any information regarding mineral potential and evaluation of potential D-2 areas has been suppressed.

Chairman Cowper also stated that if indeed any information of the Bureau of Mines was intentionally omitted from study by the agencies asked to comment on the administration's D-2 proposal that the bill recommended by the President was predicated on false information and is meaningless.

The Council also announces that Congressman Seiberling has agreed to amend his bill, HR-39 to include language which would guarantee access to people with valid mining claims or other valid claims on land surrounded by public lands. The exact language is attached.

Mike Colletta, of the Council stated that although this does not make HR-39 acceptable to the Steering Council, it is a step in the right direction and he is glad to see that Congressman Seiberling is willing to negotiate on important issues in good faith.

December 29, 1977

PRESS RELEASE

Accusations that the Department of the Interior suppressed information vital to the (d)(2) issue are false and seem to be part of a deliberate campaign to distort the truth about the Carter Administration's Alaskan lands proposal, an Interior spokesman said today.

"The entire process by which the federal government developed its national park-refuge-wild rivers proposal for Alaska was very open," said Cynthia Wilson, special assistant to Interior Secretary Cecil D. Andrus. "In fact, we received compliments from the State of Alaska, among others, for our willingness to listen and consider various viewpoints in arriving at a decision."

The Interior statement came after the Steering Council for Alaska Lands last week announced it is following up a Freedom of Information request to determine whether any information regarding mineral potential and evaluation of potential (d)(2) areas has been suppressed.

"The Steering Council statement is inaccurate and seriously misstates the facts as they occurred," she said.

"Far from suppressing information either from other agencies or from Alaskans, the Interior Department has gone out of its way to make information on the (d)(2) issue available to all concerned," Wilson said.

"The Freedom of Information request that was recklessly reported to be in the 'follow up' stage was, in fact, completely answered nearly a week before the report appeared," she said. "Here are the facts:

"On Dec. 8, the Bureau of Mines received a request for information from Mr. Cowper. Three days later a lawyer for the Steering Council met with Bureau of Mines employees to state the Council's needs. On Dec. 16, two Steering Council lawyers were given total access to files they had identified as containing materials they wanted. On Dec. 21, the bureau mailed out copies of all 18 documents they lawyers asked for. Since the cost of copying was less than \$25, copying charges were waived.

"The request was received, complied with and documents were mailed out within two weeks. The request could have been handled more quickly if Steering Council lawyers had not had scheduling conflicts.

ANCHORAGE, Alaska (AP) —

PRESS RELEASE _ PAGE TWO

"While there may be genuine disagreements between some Alaskans and the Interior Department," she said, "Apparently deliberate distortions of facts such as this do nothing to resolve them. Instead such distortions simply poison the atmosphere and make it more difficult to deal with problems in a factual way."

"Mineral potential of lands proposed for national park or refuge status was closely examined and, in some cases, boundaries were redrawn to exclude potent mineral rich areas," she said.

"For instance, in proposed Gates of the Arctic National Park, the Killik River area was removed from original proposals to allow oil exploration and development," Wilson noted. In the Wrangells, a special classification was proposed to allow exploration and development in two high potential mineralized pockets within the park proposal, she added.

"In some areas, there were hard decisions to be made such as wilderness status rather than oil exploration in the proposed Arctic Wildlife Refuge," she said. "But these decisions were made with all the available information at hand."

ALASKA'S LARGEST NEWSPAPER

Christmas Daylight
5 hours 30 minutes
Sunrise 9:15 a.m.
Sunset 2:45 p.m.

The Anchorage Times

Christmas Tides
High
6:23 a.m. 25.8 ft.
6:01 p.m. 25.6 ft.
Low
12:39 a.m. -1.4 ft.
12:40 p.m. 4.9 ft.

Volume 63 No. 354 32 Pages ★

Anchorage, Alaska, Saturday, December 24, 1977

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STATE PROBING D2 DATA

Panel Seeks Federal Records

The state's special legislative committee on D2 land says it is probing federal records to see if the Interior Department withheld mineral data when it prepared the Carter administration's proposals for new parks in Alaska.

The Steering Council for Alaska Lands says it is following up a formal request under the federal Freedom of Information Act. The request was made in November by state Rep. Steve Cowper, D-Fairbanks, council chairman.

The record request apparently was filed after reports that Interior officials siding with environmental groups on the D2 land issue side-tracked agency reports indicating high mineral development potential for Alaska land proposed for park withdrawals.

Attorneys employed by the council are examining Bureau of Mines files in an attempt to determine whether any information regarding mineral potential and evaluation of potential D2 areas has been suppressed, the council said in a prepared statement yesterday.

Cowper said if any information of the Bureau of Mines was intentionally omitted from study by the agencies asked to comment on the Carter administration's D2 proposal, the bill recommended to the president was predicated on false information and is meaningless.

The council also announced yesterday that U.S. Rep. John Seiberling, D-Ohio, has agreed to D2 bill amendments guaranteeing access to persons with valid mining claims or other valid claims on land surrounded by public lands.

Seiberling is chairman of the House subcommittee which early next year will act on a bill to withdraw more than 100 million acres of federal land in Alaska for new parks, wildlife refuges, national forests and wilderness areas.

State Sen. Mike Colletta, R-Anchorage and a member of the council, said in the same release that although this does not make the current D2 land bill acceptable to the Steering Council for Alaska Lands, it is a step in the right direction.

He also said he is glad to see that Seiberling is willing to negotiate on the mining claims issue.

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17(d) (2) LAND PROPOSAL, June 1977

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November 11, 1977

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

Dear Mike:

For your information I have included these two memoranda to keep you informed of the d-2 events in Washington. Judge John Pratt's decision in National Chamber of Commerce v. the Department of Interior came as no surprise but I do not know if they plan to appeal it.

Sincerely,

BIRCH, HORTON, BITTNER & MONROE

Constance E. Brooks

Constance E. Brooks

CEB/mb

Enclosures - As indicated

cc: Sharon Long

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MEMORANDUM

To: Ronald G. Birch

Date: November 9, 1977

**National Chamber of Commerce
versus
Department of Interior**

On November 3, Judge Pratt ruled that the National Chamber of Commerce had no standing to challenge the Department of Interior's failure to comply with §102(2)(C) of the National Environmental Protection Act. Even though the Plaintiff lacked standing to sue, the Court addressed the substantive issues which pertained to the question of standing. More specifically, the Court found that the Plaintiff failed to prove that it would in fact suffer injury because the Department of Interior failed to file an environmental impact statement. Even if the Plaintiff had proven injury in fact, thereby meeting the standing requirements, the Court could not grant the relief which the Plaintiff sought without violating the constitutional doctrine of Separation of Powers by involving the judiciary in a political question.

While Judge Pratt never reached the question of whether the Morton Environmental Impact Statement met the requirements of NEPA, the Court did state, in its statement of facts, that the Morton Environmental Impact Statement covered the same areas as H.R. 39. The court also found that the Subcommittee asked the Department of Interior to appear to present its views on H.R. 39. Both of these findings are contradicted by the record. The court ignored

November 9, 1977

Commerce versus Interior

the fact that Secretary Andrus prepared comments on H.R. 39 pursuant to the statutory requirements of ANCSA, as a continuation of Secretary Morton's report to Congress in 1973. Interior was still under a statutory obligation to advise Congress on the classification of Alaskan public lands. The Subcommittee's formal invitation on August 2, 1977 for Secretary Andrus to appear was only a formality so Andrus could complete the presentation which he made in April. Similarly, the Judge did not dig very deeply into the substantive differences between the Andrus proposal and the Morton proposal. Nevertheless, the inaccuracy of these findings of fact are irrelevant because the holding is limited to the Plaintiff's failure to show that Interior would in fact injure his asserted economic injuries.

The Plaintiff won one aspect of the standing issue because the Court did find that the National Chamber of Commerce had asserted interests which were within the zone of interests protected under NEPA. However, the Court also required that Plaintiff show a causal connection between the Defendants' actions and the alleged injury to its own asserted interests. Despite the fact that the Chamber's economic interests may be adversely affected by the passage of H.R. 39, they failed to show that they were directly injured by Interior's failure to prepare an environmental impact statement for its report. In fact, the only injury actually shown was that of being excluded from the decision-making process in Congress and the Administration, and the Court found that the exclusion was not necessarily related to Interior's failure to file an EIS. Therefore, the Court ruled that the Plaintiff failed to show that it had a personal and individualized stake in the filing of an EIS by Interior and that any injury asserted was both speculative and conjectural.

Judge Pratt followed one of his most recent standing decisions, Harrington v. Bush, 553 F.2d 190 (D.C. Cir. 1977) which the D.C. Circuit Court affirmed, holding that the Plaintiff, a member of the United States House of Representatives, lacked standing to challenge the failure of the Central Intelligence Agency to submit detailed budget to the House Appropriations Committee. The decision divides

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Commerce versus Interior

standing into four elements, each of which must be established. The first two are the requirements found in Associated Data Processing Companies Inc. v. Camp, 397 U.S. 150, (1970), injury in fact and that the Plaintiff's interests fall within the zones of interest protected by the particular statute. The third element requires that a causal relation exist between the Defendant's actions and the alleged injury to the protected interest. Fourth, a favorable decision should remedy the injury.

The D.C. Circuit is split on whether the last two elements must be proven separately or whether they are only aspects of the question of injury in fact. Judge Pratt chose to consider the four elements separately, and found that the Plaintiff failed to show a causal relation between injury to their asserted interests and the Defendant's failure to file an EIS. Further, Plaintiff never established how an injunction or declaratory judgment ordering Interior to prepare an EIS would protect the Plaintiff's economic interests in Alaska when Congress is not required to obey the recommendations in the EIS.

While discussing the consequences of possible remedies requested by the Plaintiff, Judge Pratt concluded that the Chamber's request for relief raised a political question, since the Plaintiff was asking the Court to enjoin a Congressional Subcommittee from conducting its investigations. The Court decided that such an injunction or even a declaratory judgment would violate the Doctrine of Separation of Powers, because the judiciary would be entering the political arena of Congress. It would be especially inappropriate for a District Court to enjoin a Congressional Subcommittee from considering information provided by Interior and, any ruling with respect to that information would interfere with Congress' broad power of investigation. Since Congress can act regardless of whether Interior files an environmental impact statement, and regardless of the recommendations in the EIS, Congress is also in the best position to correct any errors in the proposed legislation. The Court analogized this case to Ogunquit Village Corporation v. Davis, 553 F.2d 243, (1st Cir. 1977), in which the 1st Circuit denied relief to the Plaintiff because it should have been granted earlier to have done any good and the Court declined to require the Defendant to do a useless thing.

November 9, 1977

Commerce versus Interior

Judge Pratt's reliance on standing issue is not surprising in light of the present trend to limit access to federal courts by requiring the Plaintiff to prove a more particularized interest and injury. Here, the National Chamber of Commerce, like Representative Harrington, was held to lack a particular, specific, and concrete injury. Also like Harrington, the Chamber was held to have not shown a direct harm in the Defendant's illegal actions such as Interior's refusal to file an EIS. In fact, the National Chamber of Commerce went one step further than Harrington, because the Judge did find that the Plaintiff's interests were within the zones of interest protected by NEPA. In the Harrington decision, the Representative's asserted interest were held not necessarily to have been within the contemplated harms that the statutes sought to avoid.

At this time, the Plaintiff has not made a decision on whether to appeal.

Constance E. Brooks

Constance E. Brooks

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MEMORANDUM

To: Ronald G. Birch, Esq.

Date: September 28, 1977

**National Chamber of Commerce
versus
Department of Interior**

Judge Pratt heard oral argument on plaintiff's motion for a preliminary and permanent injunction on September 22. Mr. Schroeder of the Department of Justice, Division of Lands, appeared for the Interior. Mr. Ray Peck and Mr. Stanley Kaleczyc appeared for the National Chamber of Commerce. The Judge declined to make a formal ruling from the bench and set a hearing for Friday, September 30 at 10:00 a.m. to hear additional evidence on the following questions:

1. The circumstances under which Secretary Andrus appeared before Seiberling's subcommittee to determine whether the Andrus proposal originated from Interior or Congress; and
2. Whether the Morton Environmental Impact Statement is sufficient compliance with the NEPA requirements that a new environmental impact statement is not necessary.

The Court permitted the Plaintiff to defer the issue of standing and did not raise further questions on it. Consequently, the Plaintiff and Defendant addressed the questions of which agency initiated the proposal and the sufficiency of the Morton environmental impact statement. The Plaintiffs

September 28, 1977

Chamber of Commerce versus Department of Interior

did reach the standing question when they argued that they would suffer economic injury and that NEPA is not limited to federal action which is adverse to the environment. Since NEPA mandates a balanced assessment of the environmental effects, any significant federal action which has an environmental impact either beneficial or adverse is subject to NEPA.

The court's decision to focus on the origin of Interior's proposal presents two problems. First, the statutory language of §102(2)(C) does not expressly limit EIS requirement to agency-originated proposals or legislation. Nor does the Congressional history indicate that it was intended to apply to only agency-originated reports. Consequently, neither the regulations nor CEQ guidelines have made that distinction. Another significant point is that the Morton proposal which was mandated by ANCSA was believed to require an environmental impact statement and the Department of Interior spent two years preparing it. Even though the Morton proposal clearly originated with Congress, Interior still believed that an EIS was necessary. The second problem is that this question has not been resolved judicially. There are cases such as Wingfield v. OMB, which have held that to require an EIS would delay the consideration of legislation and would be an impermissible interference with the legislative branch.

In support of the argument that Andrus is responding to a Congressional mandate, the Defendants introduced the subcommittee's formal invitation to Secretary Andrus to present Interior's recommendations on H.R. 39. Even though the invitation to appear is more of a formality, the Department of Interior's decision to offer amendments to d-2 legislation is relevant to the question of the origin of the proposal. On the other hand, the purpose of NEPA should not be ignored merely because the sequence of events were such that the subcommittee asked the Department to make comments rather than the Department submitting a report as part of an administration proposal.

September 28, 1977

Chamber of Commerce versus Department of Interior

Assuming that the Plaintiffs are able to show that Interior is not merely responding to a request by Congress for information, the Plaintiffs must then prove that the Morton Environmental Impact Statement is no longer valid. This is probably the easier evidentiary problem due to the substantial revisions of the Morton proposal. The Plaintiffs effectively argued that Andrus proposes additional acreage, different classification of the land, and a different form of cooperative management, especially with respect to provisions for areas of ecological concern. Finally, the Morton EIS is no longer sufficient because there is much more information available on Alaska since 1973. For example, pursuant to the BLM Organic Act of 1976, Interior is conducting mineral and resource studies, whereas in 1973 Morton declined to designate more land for wilderness because of the lack of information. The Morton EIS proposal is clearly outdated and Interior's more current studies in no way resemble the indepth analysis required by NEPA.

The Defendants attempted to show that the information the Department of Interior has amassed since that time meets the spirit and requirements of NEPA. For example, Interior has 6,000 pages of comments with respect to the Andrus proposal and yet it is unclear from whom these were solicited or who solicited the comments. Similarly, while Interior held public hearings on the Andrus proposal, which were well attended by the Alaska Coalition, other interest groups failed to make their views known.

The sufficiency of the Morton Environmental Impact Statement will turn on how much overlap there is between the Morton proposal and the Andrus proposal. No one at the hearing really knew, especially the Justice Department. The Judge did not want to go over the proposals acre-by-acre, but he was interested in learning more about the substantive differences between the two proposals.

September 28, 1977

Chamber of Commerce versus Department of Interior

Judge Pratt is inclined to rule against the Plaintiffs on the grounds that the court cannot require the Department of Interior to file an environmental impact statement with respect to pending legislation which is not originated by the agency. He will rely on either or both of two grounds. One, that this is a political question because it pertains to legislation pending in Congress and that it is improper for the court to intervene and delay the political processes. Secondly, the doctrine of separation of power precludes the court from enjoining the right of a Congressional subcommittee to exercise its power of investigation. If Seiberling's subcommittee requested Interior to respond to H.R. 39, then they can argue that the environmental impact statement for the Morton proposal meets the requirements of NEPA and that the court cannot require additional environmental impact statement without infringing on Congress' power of investigation. In addition, the Judge can hold the case is not justiciable on other threshold issues, such as ripeness because nothing has been done and nothing will be done for quite some time.

The evidentiary hearing is to make certain that the record is complete because Judge Pratt expects the Plaintiffs to appeal the case. Theoretically, the Judge could rule on the two foregoing questions without additional evidence.


Constance E. Brooks

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September 20, 1977

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Senator Mike Colletta
 Steering Council for Alaska Lands
 1016 West Sixth Avenue, Suite B
 Anchorage, Alaska 99501

Dear Senator Colletta:

As you know, the National Chamber of Commerce filed suit against the Department of the Interior on September 14, 1977, seeking the enjoin the Secretary of Interior from testifying on his D-2 proposal.

Attached please find a memorandum which delineates the action that occurred in Court.

We will continue to monitor this action, but I strongly suggest that the Steering Council not intervene as a party in this suit at this time. If it becomes necessary, at a later date, to consider intervention, the Steering Council might be better served by filing an action in Alaska.

We will continue to report to you as the case develops.

Yours very truly,

BIRCH, HORTON, BITTNER & MONROE

Ronald G. Birch

RGB:lra
 encl.

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MEMORANDUM

To: Ronald G. Birch

Date: September 20, 1977

National Chamber of Commerce versus The Department of Interior

On September 14, the National Chamber of Commerce filed suit against the Department of Interior to enjoin Secretary Andrus from testifying on the d-2 proposal to the Subcommittee on General Oversight and Alaska Lands, on the grounds that the Department of Interior must file an environmental impact statement as required by NEPA §102(2)(C). The National Chamber of Commerce represents the various industries whose economic interests will be affected by d-2 legislation now pending before Congress. They petitioned for a temporary restraining order, a preliminary injunction, and declaratory judgment requiring the Department of Interior to file an environmental impact statement before recommending changes in H.R. 39 to Congress. The temporary restraining order was denied and a preliminary hearing was set for September 22.

The National Chamber of Commerce has several problems with respect to their lawsuit against the Department of Interior. Their first hurdle is to establish standing, and next, in order to get the injunction, they must show irreparable harm and injury in fact. While Judge Pratt only

made a brief ruling from the bench it was clear that he questioned whether the Plaintiff had standing. In order to win even a declaratory ruling that the Department of the Interior must file an environmental impact statement, the Plaintiff will have to establish its standing which will require proof that its interests are within the zone of interests protected by NEPA and that it will suffer injury in fact if relief is not granted. The National Chamber of Commerce will have difficulty in proving that their interests are within the zone of interests protected by NEPA, because its underlying purpose is to protect the environment and it only applies to any significant federal action affecting the quality of the environment. The statutory language does not distinguish between economic and environmental interests, so arguably anyone who may be adversely affected by proposed federal action should be able to compel filing of an EIS, so long as that federal action affects the quality of the environment. However, there is limited authority for trade associations or businesses to have standing under NEPA. Furthermore, under the Administrative Procedures Act, standing also requires that the Plaintiff's interests be within the zone protected by the particular piece of legislation. The Plaintiffs represent the economic interests which would be adversely affected by H.R. 39, and these interests are often at odds with the environmental interests that NEPA is generally read as intended to protect.

Possible arguments in favor of NCC's standing would include the fact that the statutory language does not exclude economic interests and the d-2 legislation may have an adverse impact on the Plaintiff's interests. On the other hand, d-2 has a direct impact on the interests of the Steering Council, so they would be able to meet the standing requirements of zone of interest and injury in fact more easily. A second argument is to find legislative history which would tend to show that Congress did not intend to limit the remedies under NEPA to environmental groups.

September 20, 1977

National Chamber of Commerce versus Department of Interior

Even if NCC can show that their interests are within the zone of interests protected by NEPA, injunctive relief will probably be denied because NCC cannot show injury in fact. The National Chamber of Commerce (NCC) is asking the court to enjoin Department of Interior from testifying before a Congressional subcommittee, with respect to legislation which has not been enacted and probably will not be for quite some time. The impact that d-2 will have on the Plaintiff's asserted economic interests is both indirect and speculative. Therefore, it is almost impossible for the NCC to show how Andrus' testimony before the Subcommittee will in fact injure the Plaintiffs' interests at this time.

The Plaintiff might argue that failure to enforce NEPA, the regulations written by the Department of Interior, and the guidelines written by the Council on Environmental Quality (CEQ) injures the Plaintiff's economic interest, and nullifies entirely the purpose of NEPA. NCC would further contend that the Plaintiff's own participation in the legislative process has less weight than that of Department of Interior. Thus, the Plaintiff is effectively precluded from protecting its economic interests, and is also unable to make informed business decisions without an environmental impact statement. Again, the adverse impact on NCC's interests is an indirect injury which probably was not intended to be protected under NEPA and will not be protected by the courts.

In questioning NCC on the issue of injury in fact Judge Pratt also asked why the Morton EIS and the other reports on d-2 did not already comply with the spirit of the law. The only relevant EIS was written with respect to the Morton d-2 proposal which varies from that proposed by Secretary Andrus. Plaintiffs were able to show that the Morton proposal differed substantively on provisions for interior forests and reclassification of land. In addition the Andrus proposal does not account for departmental reports on minerals and oil reserves in the wilderness and refuge areas. The Plaintiffs' repeatedly stressed that the Interior had made no effort to comply with NEPA, even though with the Department of Interior has written its own regulations with respect to preparation of EIS.

September 20, 1977

National Chamber of Commerce versus Department of Interior

Assuming that NCC could prove that they had standing to enforce the NEPA regulations, it is possible that the court will find this to be a nonjusticiable question because it involves legislation pending before the Congress. The question of whether an EIS is required for recommendations made on pending legislation remains unclear, and Judge Pratt also raised this issue. This has been a source of conflict because the statute itself does not distinguish between pending or enacted legislation. Nor does NEPA distinguish between the case where an agency makes a report or where it has actually submitted proposed legislation. However, the courts have held that when legislation is pending before Congress there is no need for an agency to file an EIS because that would be too much judicial interference in the legislative process. Moreover, a court order which would effectively delay the legislation would constitute judicial interference in Congress' power of investigation. This is judicial gloss on the statutory language and without more authority it cannot be read as a controlling rule of law.

Department of Interior's arguments were consistent with Judge Geselle's opinion in *Wingfield v. OMB*, 8 ERC 1011, 1976, which held that NEPA §102(2)(C) did not apply with respect to legislation pending before Congress. Without citing the *Wingfield* case, Interior also argued that NEPA requirement of an EIS did not apply to pending legislation which had not originated in the federal agency. There is judicial authority for this position and neither side raised the question of legislative history, to support or rebut it. By asserting that the Interior's regulations and the CEQ guidelines were limited to agency-originated proposals, the Department seeks to exempt agency reports or recommendations from NEPA merely because they relate to legislation originating in Congress.

This final argument is too simplistic because it would limit the EIS requirement to agency-originated legislation and thereby undercut the purpose of NEPA, because an agency would be able to avoid filing an EIS by merely asking a

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National Chamber of Commerce versus Department of Interior

Congressman to introduce the bill. Furthermore, the statutory language does not indicate that this was the intent of Congress and the regulation or guidelines do not limit their application to agency-originated legislation.

The chances of the Plaintiff getting a preliminary injunction are remote to say the least. The relatively small number of cases indicate that an injunction would be inappropriate because the courts are reluctant to put any limitation on Congress' power of investigation. This power has its origin in the Constitution and what judicial limits that have been imposed relate to cases where the investigative power violated individual civil rights. Otherwise, the Congressional authority of investigation has always been construed broadly. The interests asserted by the Plaintiffs here do not involve individual civil rights. Thus even if the Plaintiff could prove that the protection of economic interests was also contemplated under NEPA, that the failure to file an EIS is indirect injury causing irreparable harm, it is unlikely the Plaintiff would get an injunction in this case. Not only would the injunction give the plaintiff the ultimate relief that they seek, it would change the status quo which goes beyond the purpose of an injunction.

However the NCC would have a better chance of getting a declaratory judgment ordering the Department of Interior to file an EIS. The courts are willing to issue declaratory judgments with respect to pending legislation because it does not interfere with the Congressional power of investigation. Thus, the courts can avoid any questions of a nonjusticiability or violation of the doctrine of separation of powers. In this case, the declaratory judgment is better because it will lower the burden of proof for NCC. Otherwise it is very difficult for the Plaintiffs to show that the Andrus proposal will have a direct and adverse effect upon the economic interest of Plaintiffs. The courts are more than aware of the slowness of Congress in considering and enacting legislation and so that the need for immediate relief is difficult to prove even if the Plaintiffs would be able to show standing and irreparable harm.

CB

Constance Brooks

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TELEX 28-386

September 15, 1977

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* NOT ADMITTED IN ALASKA

Steve Cowper
D-2 Steering Council
Suite D, Nerland Building
Fairbanks, Alaska 99701

Dear Steve:

Enclosed, please find a copy of a telex which I received from Ronald G. Birch this morning. The telex is self-explanatory. Please contact Ron Birch with further directions.

Sincerely yours,

BIRCH, HORTON, BITTNER & MONROE

Bill
William H. Bittner

WHB/kpo
Enclosure
cc: Mike Collett

file D-2

ON SEPTEMBER 14, THE NATIONAL CHAMBER OF COMMERCE FILED SUIT AGAINST THE DEPARTMENT OF INTERIOR TO ENJOIN THE SUBMISSION OF THE AGENCY'S PROPOSALS TO CONGRESS ON HR 39 BECAUSE THE DEPARTMENT HAS NOT PREPARED AN ENVIRONMENTAL IMPACT STATEMENT AS REQUIRED UNDER NEPA. PETITION FOR TEMPORARY RESTRAINING ORDER WAS DENIED AND A HEARING ON THE PETITION FOR A PRELIMINARY INJUNCTION WAS SET FOR SEPTEMBER 22. DENIAL OF THE TEMPORARY RESTRAINING ORDER WAS BASED ON THE FAILURE OF THE PLAINTIFF TO SHOW THAT WITHOUT A TEMPORARY RESTRAINING ORDER IRREPARABLE HARM WOULD RESULT TO THE PLAINTIFF'S ASSERTED ECONOMIC INTERESTS.

THE NATIONAL CHAMBER OF COMMERCE SEEKS TO DELAY THE ADMINISTRATION'S REPORT ON THE D-2 LEGISLATION BY REQUIRING THE DEPARTMENT OF INTERIOR TO FILE AN ENVIRONMENTAL IMPACT STATEMENT WHICH NEPA SECTION 102(2)(C) REQUIRES..."IN EVERY RECOMMENDATION OR REPORT ON PROPOSALS FOR LEGISLATION OR FOR OTHER MAJOR FEDERAL ACTIONS SIGNIFICANTLY AFFECTING THE ENVIRONMENT." NO ENVIRONMENTAL IMPACT STATEMENT HAS BEEN PREPARED REGARDING THE CARTER ADMINISTRATION'S POSITION ON D-2 AND TO REQUIRE IT WOULD DELAY THEIR REPORT SUBSTANTIALLY. THE ADMINISTRATION'S POINT OF VIEW IS THAT NONE IS REQUIRED BECAUSE ONE ENVIRONMENTAL IMPACT STATEMENT WAS PREPARED FOR MORTON'S D-2 PROPOSAL AND THE ANDRUS PROPOSAL IS ONLY AMENDMENTS TO HR 39-----

-----RATHER THAN LEGISLATION ORIGINATING FROM THE AGENCY. THE NATIONAL CHAMBER OF COMMERCE WILL HAVE DIFFICULTY IN WINNING ITS INJUNCTION NEXT WEEK BECAUSE IT IS DIFFICULT TO PROVE THAT THEY WILL SUFFER DIRECT INJURY IF THE DEPARTMENT DOES NOT FILE AN IMPACT STATEMENT BEFORE ANDRUS INCLUDES THE PROPOSED AMENDMENTS TO D-2 ALTHOUGH IT REPRESENTS THE ECONOMIC INTERESTS OF INDUSTRIES WHICH MAY BE ADVERSELY AFFECTED BY THE D-2 LEGISLATION, THE ANDRUS PROPOSAL IS IN THE FORM OF A REPORT WHICH WILL GO TO THE SUBCOMMITTEE CONSIDERING HR 39. HR 39 WILL AFFECT THE PLAINTIFF'S ECONOMIC INTERESTS ONLY IF IT IS PASSED. FURTHERMORE, SINCE HR 39 IS ONLY IN SUBCOMMITTEE THE NEED FOR A PRELIMINARY INJUNCTION IS MUCH LESS IMMEDIATE. FINALLY COURTS ARE RELUCTANT TO ENJOIN CONGRESSIONAL INVESTIGATIONS WHICH RELATE TO PENDING LEGISLATION AND THE ANDRUS PROPOSAL IS CONSIDERED TO BE PART OF THE INVESTIGATIVE PROCESS.---

---THE PETITION FOR DECLARATORY RELIEF ORDERING THE DEPARTMENT OF INTERIOR TO PREPARE AND FILE AN ENVIRONMENTAL IMPACT STATEMENT MAY BE MORE SUCCESSFUL.

WE ARE MONITORING THIS LITIGATION BUT HAVE NOT FILED AN APPEARANCE.

WE WILL NOT INTERVENE IN THIS CASE UNLESS THE COUNCIL SO DIRECTS.

END OF MESSAGE.

#72.39

SCOMM

Jack Anderson

The Alaskan Mineral Controversy

Buried in the files Bert Lance left behind may be the biggest mineral controversy since the Great Gold Rush.

Before he left the White House, the former budget boss was refereeing a dispute over 92 million acres of unspoiled Alaskan wilderness that Interior Secretary Cecil Andrus wants to set aside as a national preserve.

This vast, virgin tract, known as the D-2 lands, would be kept off limits to the mining interests. The stakes are enormous, involving oil, natural gas and mineral deposits worth billions.

For years, environmentalists and developers have been battling over how much Alaskan forest and tundra should be closed off from future exploration. Lance's office was trying to help settle the multibillion-dollar argument.

We have now seen evidence that Lance and other federal officials may have been misled. Interior Department documents, intended for official eyes only, indicate that the mineral riches were deliberately, drastically underestimated. The value of the unexplored acreage was downplayed in a briefing book that the Interior Department sent to Lance's office.

He circulated it to other government agencies for their comments. Back came a blunt memo from a Commerce Department official challenging the briefing papers. "The present draft," he informed Lance, "is not ready for presentation to Congress, and this department cannot support it."

The memo noted that "significant

portions of land, which have not been adequately surveyed for mineral resources, are proposed for re-designation as wilderness." The Commerce Department, therefore, urged: "We believe adequate provision should be made for prospecting and exploration."

The Interior Department's Cynthia Wilson, a special assistant for D-2 lands, prepared the misleading papers. She maintained that the mineral bonanza wasn't deliberately hidden. "There wasn't a conspiracy to hide anything," she told us. "In fact, much of the D-2 land was dropped from protected areas due to mineral values."

Yet the briefing book conflicts with previous expert testimony from Interior's own minerals office. The mineral experts, many of who conducted on-site inspections in Alaska, rated most of the D-2 lands "favorable" to "highly favorable" for mineral potential.

The disagreement on mineral estimates became so heated that one Interior official, Charles Eddy, dashed off an 11th-hour memo to Wilson saying, "The briefing book needs substantial correction to accurately reflect the mineral values of the proposed areas."

Salt and Pepper.—The White House has dispatched an urgent, eyes-only cable to our strategic arms limitation talks (SALT) negotiators in Geneva insisting that they say nothing to the press about the delicate arms reduction talks without direct presidential authorization.

Anyone who disregards the order to button up, the instructions emphasize, will be subject to instant dismissal.

The directive mentions no names, but government sources say it is aimed at Lt. Gen. Edward Rowley, who represents the Joint Chiefs of Staff on the SALT team.

He gave The Washington Post's veteran correspondent Walter Pincus an interview, questioning the competence and motives of the non-military members of the U.S. delegation.

This drew a sizzling, secret response from an official congressional observer at the talks, Rep. Robert Carr (D-Mich.), who demanded that Rowley be cashiered as a SALT negotiator. Rowley must go, Carr wrote President Carter, because he has "undercut United States national security posture" and has displayed "a startling lack of professionalism."

The hand-delivered letter to the President charged that Rowley had spoken "in derogatory, disparaging and divisive terms of the competence and policies of the other members of the delegation." Carr contended that "the successful conduct of negotiations requires our delegation to work as a team and to speak with one voice to the Soviet negotiators, just as they speak with one voice with us."

Responding for the President, White House national security adviser Zbigniew Brzezinski agreed that U.S. delegates should "not discuss any aspect of the negotiations with those who are not cleared" and acknowledged that "this policy has not been followed." The still presidential directive was sent to Geneva, therefore, blacking out the SALT talks.

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

REP. STEVE COWPER
CHAIRMAN
REP. ALVIN OSTERBACK
REP. JOE L. HAYES
SEN. CHANCY CROFT
SEN. MIKE COLLETTA
SEN. JOE ORSINI
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MEMO: TO ALL COUNCIL MEMBERS
FROM: SHARON LONG
RE: BUREAU OF MINES INFORMATION
DATE: JANUARY 3, 1978

Pursuant to the Council passed statement regarding "U.S.G.S. and Bureau of Mines Mineral Potential Maps and Data", Chairman Cowper filed a Freedom of Information Act request with the Bureau of Mines. The enclosed documents show discoveries made as a result of that request and a search made by the BIRCH, HORTON, BITTNER, and MONROE law firm in Washington D.C.

ENCLOSURES:

- (1) MEMORANDUM FROM RONALD G. BIRCH
- (2) CHART OUTLINING DISCREPANCIES IN VARIOUS DOCUMENTS

TO: D-2 STEERING COUNCIL *Liberal*
FROM: RONALD G. BIRCH
RE: FREEDOM OF INFORMATION REQUEST
AT BUREAU OF MINES
DATE: DECEMBER 30, 1977

Pursuant to the Freedom of Information Act Request by Representative Steve Cowper, we were given access to all documents pertaining to D-2 in the Washington offices at the Bureau of Mines. The documents we searched tend to show that the Department of Interior specifically and intentionally withheld pertinent mineral information with respect to the specific D-2 withdrawal sites under consideration for the administration's final position on H.R. 39. Furthermore, these documents indicate that the Department of Interior failed to correct these understated mineral descriptions when the inaccuracies were raised, despite a September 12, 1977 recommendation to Special Assistant to the Secretary for D-2, Cynthia Wilson, from the Acting Assistant Secretary For Energy and Minerals, Charles Eddy, that "the briefing book needs substantial correction to accurately reflect the mineral values of the proposed areas."¹

1

In its suit against the Department of Interior to enforce the National Environmental Protection Act, the National Chamber of Commerce asked for discovery of the September 12 memorandum from Charles Eddy. The Department not only denied that it existed, but both Wilson and Tony Raspolic, Deputy Assistant Secretary of Energy and Minerals, testified that they had no knowledge of site-specific mineral data other than what was reflected in the briefing paper. The Eddy memo contradicts the above testimony because it was addressed to Wilson and copies were sent to all the assistant secretaries, the Secretary, and the Director of the Geological Survey.

in reaching a consensus D-2 position is necessary to put the documents discovered in the Bureau of Mines search into perspective. On July 29, 1977, Buff Bohlen, who was then the Special Assistant to the Secretary of Interior on Alaska asked all of the affected divisions and bureaus within the Interior to comment on the issues which he had delineated in a D-2 option paper. The Bureau of Mines, through the Assistant Secretary for Energy and Minerals, sent its complete report to Cynthia Wilson, who had replaced Buff Bohlen. This final report summarized all of the known mineral deposits and mineral potential areas for each site recommended for inclusion in the D-2 proposals. John Morgan, Acting Director of the Bureau of Mines, transmitted the report to the Assistant Secretary for Energy and Minerals on August 22, who in turn transmitted the report to Cynthia Wilson by August 25.

During the last week of August, Interior's Alaska Policy Group, which consisted of all the Assistant Secretaries, the Special Assistant to the Secretary on Alaska, the Solicitor, and the Secretary of Interior met to develop Interior's final position on H.R. 39. Between mid-August and the last part of August, the Alaska Policy Group held many briefings and meetings in order to discuss and disseminate all the necessary information.² It was during this period that the Bureau of Mines forwarded the final data to Wilson on the location of hardrock minerals, as well as some oil and gas deposits, on proposed D-2 lands.

2

At the evidentiary hearing of National Chamber of Commerce v. Department of Interior, Guy Martin, Assistant Secretary for Land and Water Resources, testified that during the latter part of August, sufficient information on the proposed D-2 areas was finally made available.

On September 1, 1977, the Department of Interior distributed its final position on D-2 lands to all of the concerned federal agencies and to the Office of Management and Budget for their comments, criticisms, and other input. The Interior position was transmitted in the form of a "D-2 Briefing Book". The Book stated the proposed withdrawals and a rationale for each withdrawal, which included an assessment of known minerals and mineral potential.

Each federal agency receiving the briefing book was given approximately two working days to submit written comments on the Interior proposal to the Office of Management and Budget. OMB's responsibility was to collect and compare all of the comments received on the Interior proposal and then to conduct an inter-agency meeting at which each commenting agency would advocate its position. The purpose of the inter-agency meeting was to reach a consensus. The Carter Administration D-2 position would be announced by Secretary of Interior Andrus at a September 15 hearing before the House Interior Committee's Subcommittee on Alaska Lands. The inter-agency meeting was held at the Office of Managements and Budget on September 9, 1977.

The significance of our document search of Bureau of Mines and the attached chart is as follows: The Bureau of Mines Memorandum transmitted to the Special Assistant to the Secretary on Alaska, Cynthia Wilson, between August 22 and August 25 details

the Department of Interior's most comprehensive and accurate data on mineral deposits and potentials in the D-2 withdrawal areas. These data are described in Column 2 of the attached chart. The briefing book distributed to all other federal agencies included mineral assessments for the same withdrawal areas that diverged drastically from the input received by Ms. Wilson's office from the Bureau of Mines. In each and every case, the disparity between the Bureau of Mines data and the data that Interior distributed to the other agencies for their review understated the mineral values in the withdrawal areas. Column 3 of the attached chart quotes the mineral assessments distributed to the other federal agencies in the Department of Interior's September 1 briefing book. The unmistakable conclusion is that the federal agencies receiving Interior's Briefing Book were misled as to the mineral values in the proposed withdrawal areas and they were misled into believing that each of the areas had substantially less mineral value than had been reported by the Bureau of Mines and the Assistant Secretary of Interior for Energy and Minerals.

The timing of the decision-making process also indicates that the Department of Interior had an opportunity to correct its inaccurate minerals assessments but chose to let the inaccuracies stand. On September 12, 1977, the Acting Assistant Secretary for Energy and Minerals transmitted a memorandum to Cynthia Wilson entitled "Discussion of Hard Rock Minerals in Secretary's Testimony and Briefing Book for D-2 Lands". In a cover letter attached to the memorandum, the Acting Assistant Secretary states that "The briefing book needs

substantial correction to accurately reflect the mineral values of the proposed areas." The memorandum contains a list of the specific changes that the Energy and Minerals Section of Interior felt were necessary. The cover letter went on to state that "In particular, referring primarily to existing claims and their appraised value is not necessarily a realistic indication of mineral potential." The site specific corrections necessary to make the briefing book conform to the Interior Department's most accurate and up-to-date mineral data for the withdrawal access are quoted in Column 4 of the attached chart. Once again, they indicate that the mineral descriptions in the briefing book substantially understate the mineral values in the proposed withdrawal areas.

Despite having the corrected mineral data three days before Secretary Andrus was to announce and document the administration's position before the House Interior Committee's Alaska Lands Subcommittee, the Interior Department chose to ignore the corrections to the recipient agencies, the House Interior Committee, or the public. The extensive descriptive material distributed by Secretary Andrus with the administration's September 15 announcement of its consensus position deletes all site-specific reference to mineral values in the withdrawal areas.

To my knowledge, no correction to the briefing book errors have ever been issued by the Interior Department. In