

ALASKA LEGISLATURE SPECIAL COMMITTEE / SUBJECT FILES 86 / 2 / 9

719 SCOMM22: ALASKA LANDS FILE 1977-78

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I. INTRODUCTION

Rights-of-way across federally owned lands are necessary for the development of transportation facilities in the United States, especially in the eleven contiguous western states¹ and Alaska. Roads, railroads, electrical power and communication facilities, water distribution facilities, and oil and gas pipelines constructed over any substantial distance cannot ordinarily avoid crossing federally owned lands in those states for several reasons. Natural resources related to such projects are found in abundance on federally owned lands. Minerals, oil and gas, hydroelectric power and timber produced on these lands require transportation facilities in order to reach their market. Federally owned lands are sometimes situated so that the only reasonable access to private or state owned lands is across the federal lands. The federal government owns approximately one-third of the nation's lands and nearly eighty percent of the land in the eleven contiguous western states and Alaska.² State³ and Native⁴ selection rights in Alaska will

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

2. BUREAU OF LAND MANAGEMENT, UNITED STATES DEPT. OF THE INTERIOR, PUBLIC LAND STATISTICS 10 (1975) [hereinafter cited as STATISTICS]. The State of Alaska is especially dependent on the availability of rights-of-way across federally owned lands for transportation purposes. In 1974, 96% of the 365 million acres of land in Alaska was in federal ownership. By the terms of the Alaska Statehood Act, Pub. L. No. 85-508 § 6(a),(b), 72 Stat. 340 (1958), and the Alaska Native Claims Settlement Act (ANCSA), 43 U.S.C. §§ 1611, 1613(h) (Supp. IV 1974), this figure will eventually be reduced to approximately 57%. Section 17(d)(2) of ANCSA provides for the withdrawal of 80 million acres of public lands by the Secretary of the Interior (d-2 lands) for possible inclusion into the national parks, forest, wildlife refuge, and wild and scenic rivers systems (the four systems). The Secretary has made recommendations as to the disposition of those lands and Congress is required to act on these recommendations by 1978. 43 U.S.C. § 1616(d)(2) (Supp. IV 1974).

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

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

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

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

The federal government has a long standing policy of granting rights-of-way across federal lands. Right-of-way statutes presently in force date as far back as 1891.⁵ Congress, in establishing the Public Land Law Review Commission (PLLRC) in 1964, recognized that:

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

This statement was, and to some extent, still is indicative of the state of the public land laws dealing with rights-of-way. Grants of rights-of-way under the older statutes have recently been challenged as being beyond the scope of the authority granted by Congress to the land managing agencies.⁷ One such challenge⁸ resulted in a 1973 revision of the right-of-way section of the Mineral Leasing Act in order that the trans-Alaskan pipeline could be constructed.⁹

The Federal Land Policy and Management Act of 1976¹⁰ (BLM Act) represents a major revision in public land law, including the law dealing with rights-of-way. The BLM Act grants to the Bureau of Land Management (BLM) comprehensive authority to manage the public lands pursuant to extensive policy guidelines. Public lands are to be retained in federal ownership unless disposal "will serve the national interest."¹¹ The BLM Act sets up a program of land and resource inventory in conjunction with a land use planning process.¹² Management is to be according to multiple use¹³ sustained yield principles¹⁴ with a strong emphasis on protection of environmental and wilderness values.¹⁵ The right-of-way provisions of the BLM

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

5. 43 U.S.C. § 946 (1970).

6. 43 U.S.C. § 1392 (1970).

7. See, e.g., *Wilderness Soc'y v. Morton*, 479 F.2d 842 (D.C. Cir. 1973), cert. denied 1, 411 U.S. 917 (1973); *Sierra Club v. Hickel*, No. 51434 (D. Cal. July 23, 1969), vacated for lack of standing, 443 F.2d 24 (9th Cir. 1970), aff'd sub nom, *Sierra Club v. Morton*, 405 U.S. 727 (1972).

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

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

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

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

12. *Id.* §§ 1711-12.

13. *Id.* § 1702(c).

14. *Id.* § 1702(h).

15. *Id.* §§ 1701(a)(7,8), 1732.

Act¹⁵ represent a comprehensive system for the grant and management of such rights-of-way. One purpose of this article is simply to identify the significant aspects of these right-of-way provisions. Another purpose is to compare the BLM Act provisions, which govern public lands and national forest system lands, with the statutes applicable to the national wildlife refuge and park systems, military reservations, and national wilderness preservation and wild and scenic rivers systems.

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

16. *Id.* §§ 1761-71.

17. *Id.* § 1702(e).

18. See *United States v. Colstine*, 215 U.S. 278, 285 (1909); *United States v. Myers*, 206 F. 387, 391 (3d Cir. 1913).

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

(1) reservoirs, canals, ditches, flumes, laterals, pipes, pipelines, tunnels and other facilities and systems for the impoundment, storage, transportation, or distribution of water;

(2) pipelines and other systems for the transportation or distribution of liquids and gases, other than water and other than oil, natural gas, synthetic liquid or gaseous fuels, or any refined product produced therefrom, and for storage and terminal facilities in connection therewith;

(3) pipelines, slurry and emulsion systems, and conveyor belts for transportation and distribution of solid materials, and facilities for the storage of such materials in connection therewith;

(4) systems for generation, transmission, and distribution of electric energy, except that the applicant shall also comply with all applicable requirements of the Federal Power Commission under the Federal Power Act of 1935 (49 Stat. 547; 16 U.S.C. 791);

(5) systems for transmission or reception of radio, television, telephone, telegraph, and other electronic signals, and other means of communication;

(6) roads, trails, highways, railroads, canals, tunnels, tramways, airways, livestock driveways, or other means of transportation except where such facilities are constructed and maintained in connection with commercial recreational facilities on lands in the National Forest System, or

(7) such other necessary transportation or other systems or facilities which are in the public interest and which require rights-of-way over, upon, under, or through such lands.

II. PUBLIC LANDS

Management of the public lands is primarily governed by one statute. The Federal Land Policy and Management Act of 1976²⁰ gives the Bureau of Land Management (BLM) comprehensive authority to administer the public lands. Some of the provisions of the BLM Act apply to the Forest Service administration of national forest system lands as well. The BLM Act repeals partially or totally thirty statutes²¹ which previously authorized rights-of-way and replaces them with a single title, Title V. This title authorizes the Secretaries of the Interior and Agriculture to grant rights-of-way across public lands and forest system lands, respectively. This authority does not extend to areas designated as wilderness.²² The BLM Act is not the only statute governing rights-of-way on public lands. Section 28 of the Mineral Leasing Act,²³ the acts relating to federally funded highways,²⁴ and the Federal Power Act²⁵ also authorize certain rights-of-way on public lands.

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

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

A. GENERAL RIGHT-OF-WAY PROVISIONS OF THE BLM ACT

1. Application

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

20. Pub. L. No. 94-579, 90 Stat. 2743 (1976) (codified in scattered sections of 7, 16, 30, 40, 43 U.S.C.A.). See J. Carver and C. Carver, *Federal Land Policy and Management Act of 1976*, 9 Rocky Mtn. Min. L. Newsletter (1976), for a summary of the provisions of the Act.

21. Pub. L. No. 94-579, § 706, 90 Stat. 2793 (1976).

22. 43 U.S.C.A. § 1761(a) (West Supp. 1977).

23. 30 U.S.C. § 185 (Supp. IV 1974).

24. 23 U.S.C. §§ 101-322 (1970).

25. 16 U.S.C. §§ 791a-825r (1970).

26. 43 U.S.C.A. § 1732 (West Supp. 1977).

27. *Id.* § 1761(b).

28. *Id.* § 1761(d).

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

2. Limits on Size and Duration

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

3. Controls on Use and Occupancy

The Secretary has at his disposal several means by which he may exert control over the use and occupancy of rights-of-way. Environmental concerns are of great importance, but other conditions may serve as a basis for control as well. Section 505 requires each right-of-way to contain terms and conditions which will minimize damage to the environment, require compliance with applicable federal or state air or water quality standards, and require compliance with similar state standards for the use of rights-of-way if those standards are more stringent than federal standards.³² Further conditions may be included if deemed necessary to protect federal interests, manage the surrounding lands, and protect the interests of subsistence users. In addition, location of a route that will cause the least damage to the environment, taking into consideration the feasibility of that route, may be required.³³ The Secretary may include a liability clause in the terms of the right-of-way³⁴ and may require the posting of security for obligations imposed upon the holder of the right-of-way.³⁵ The BLM Act permits the use or disposition of minerals or vegetative materials, including timber, located on or around rights-of-way, only if authorization has been obtained pursuant to other applicable laws.³⁶

29. *Id.* § 1764(j).

30. *Id.* § 1764(a).

31. *Id.* § 1764(b).

32. *Id.* § 1765(a).

33. *Id.* § 1765(d).

34. *Id.* § 1764(h).

35. *Id.* § 1764(i).

36. *Id.* § 1764(f).

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

4. *Right-of-Way Corridors*

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

5. *Payment for Use*

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

6. *Suspension or Termination*

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

37. 16 U.S.C. 1767.

38. 16 U.S.C. 1763.

39. 16 U.S.C. 1751(g).

40. 5 U.S.C. § 551 (1970).

41. Neither the BLM Act nor its legislative history shed any light on how an easement differs from a right-of-way. The language in 43 U.S.C.A. § 1701(a)(5) and 1702(a) indicates that there is a difference between a right-of-way and an easement (see the text accompanying note 12 *supra*) but that both are right-of-way and an easement. But see the BLM interim guidelines for the use of right-of-way, which require a right-of-way grant to contain language stating that it is an easement if issued pursuant to the BLM Act. BLM Circular Act 77-001-10, 70-15 (December 14, 1975). Further confusion is created by § 1021(c) of the BLM Act, 43 U.S.C.A. § 1721(c) (1974 Supp. 1977), which states: "[t]he Secretary [of the Interior] shall insert in any instrument providing for the use, occupancy, or development of the public lands a provision authorizing revocation or suspension, after notice and hearing, of such instrument upon a finding that

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

B. SPECIFIC PURPOSES FOR RIGHTS-OF-WAY

1. Transportation

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

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

Rights-of-way across public lands for the purpose of constructing federally funded highways⁴⁷ may be obtained by the states.⁴⁸ The routes for federal-aid highways are designated by state or local officials⁴⁹ subject to approval by the Secretary of Transportation.⁵⁰ The Secretary of Transportation is required to cooperate with the Secretaries of the Interior, Housing and Urban Development, and Agriculture and with the states "in developing transportation plans and programs that include measures to maintain or enhance the natural beauty of the lands traversed."⁵¹ Once the Secretary of

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

42. 43 U.S.C.A. § 1766 (West Supp. 1977).

43. *Id.* § 1769(a).

44. See note 19 *supra*.

45. 43 U.S.C.A. § 1764(g) (West Supp. 1977).

46. *Id.* § 1769(b).

47. This term includes federal-aid highways, 23 U.S.C. §§ 101(a), 103, (1970), and other federally funded highways, 23 U.S.C. Ch. 2 (1970), including forest and public land highways, development roads and trails, parkways and defense access roads, as defined at 23 U.S.C. § 101(a) (1970).

48. 23 U.S.C.A. § 103 (West Supp. 1977); 23 U.S.C. § 317 (1970).

49. *Id.* § 103(b)(1), (c)(1), (d)(1), (e)(1).

50. 23 U.S.C. § 103(f) (1970).

51. *Id.* § 133 (also codified at 43 U.S.C. § 1653(f) (1970)).

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

2. *Electric Energy, Communication, and Water Facilities*

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

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

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

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

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

23 U.S.C. § 317(b) (1970).

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

54. 16 U.S.C. §§ 791-825r (1970).

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

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

57. 16 U.S.C. § 803(a) (1970).

58. *Id.* § 797(e).

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

...⁵⁹

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

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

3. Pipeline Systems

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

59. 18 C.F.R. § 2.2 (1976).

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

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

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

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

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

64. H.R. Rep. No. 1163, 94th Cong., 2d Sess. 19, reprinted in [1975] U.S. Code Cong. & Ad. News 6175, 6193.

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

66. *Id.* § 1761(a)(5).

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

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

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

Section 28 of the Mineral Leasing Act (MLA) governs rights-of-way for pipelines for the transportation of natural gas and petroleum.⁷⁰ A right-of-way for a purpose associated with an oil or gas pipeline, such as communication facilities, may possibly be obtainable under either Act. Section 28 of the MLA generally applies to "Federal lands,"⁷¹ a term which excludes lands in the national park system, but includes other types of reserved lands. Any agency head⁷² has the authority to grant a right-of-way if the surface which is the subject of the right-of-way application falls entirely under that agency's jurisdiction.⁷³ Otherwise, the Secretary of the Interior is empowered to make the decision. In the event the lands covered by the right-of-way in question are controlled by more than one department of the federal government, the Secretary of the Interior must consult with the appropriate Secretaries before making a decision.⁷⁴ In contrast, the BLM Act requires a separate right-of-way grant from the Secretaries of Agriculture and the Interior, where the right-of-way crosses lands administered by both Departments.⁷⁵ In all cases, if a Secretary or agency head determines that a right-of-way through a federal reservation under his jurisdiction is inconsistent with the purposes of the reservation, a right-of-way will not be granted.⁷⁶

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

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

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

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

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

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

74. *Id.* § 185(c)(2).

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

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

77. *Id.* § 185(i)(6).

78. *Id.* § 185(i)(1)-(5).

79. *Id.* § 185(k).

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

b. Limits on Size and Duration. The Secretary has less discretion under the MLA than under the BLM Act to set the maximum size and duration of rights-of-way. The width is limited to fifty feet plus the ground occupied by the facilities, unless the Secretary of the Interior or an agency head makes a written determination that additional lands are necessary for the operation of the project and protection of the environment.⁸³ Both statutes authorize the temporary use of additional lands⁸⁴ and require the consideration of the same factors in determining the duration of the right-of-way,⁸⁵ but the MLA permits an absolute maximum term of thirty years.⁸⁶

c. Controls on Use and Occupancy. The use and occupancy of rights-of-way may be controlled in much the same way under the Mineral Leasing and the BLM Acts. Each allows the Secretary to include a liability clause in the right-of-way⁸⁷ and require the posting of security.⁸⁸ Both Acts specify certain terms which must be imposed on rights-of-way, but the BLM Act also lists certain terms which may be imposed at the Secretary's discretion.⁸⁹ One major difference between the Acts is in the emphasis the BLM Act places on the compliance with state standards which are more stringent than the federal standards.⁹⁰ The MLA merely requires the Secretary or agency head to comply with state standards for right-of-way construction, operation and maintenance to the extent practical.⁹¹

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

80. *Id.* § 185(n)(2). There is a similar requirement under the BLM Act, see text accompanying note 23 *supra*.

81. 30 U.S.C. § 185(w)(2) (Supp. IV 1974).

82. *Id.* § 185(j); see text accompanying note 29 *supra*.

83. *Id.* § 185(d).

84. *Id.* § 185(e); see text accompanying note 30 *supra*.

85. *Id.* § 185(n); see text accompanying note 31 *supra*.

86. *Id.* § 185(n).

87. *Id.* § 185(x); see note 34 *supra*.

88. *Id.* § 185(m); see note 35 *supra*.

89. *Id.* § 185(n)(2); see text accompanying note 34 *supra*.

90. 43 U.S.C.A. § 1765(a)(IV) (West Supp. 1977).

91. 30 U.S.C. § 185(v) (Supp. IV 1974).

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

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

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

III. NATIONAL FOREST SYSTEM

The sections of the BLM Act dealing with policies and planning do not apply to the national forest system lands. Instead, the policy guidelines and planning requirements for the Forest Service are set forth in a number of other statutes. Congress has authorized the Secretary of Agriculture to administer national forests.⁹⁶ The purposes of the national forests are "to improve and protect the forest," to secure "favorable conditions of water-flows . . . , to furnish a continuous supply of timber,"⁹⁷ and to provide for outdoor recreation, range, and wildlife and fish. Mining is also a generally accepted use.⁹⁸ Renewable resources of lands in the national forest system⁹⁹ are to be managed on a multiple use sustained yield basis.¹⁰⁰ To this end, the Forest and Rangeland Renewable Resource Act of 1974 requires an assessment of the renewable resources and the preparation of a renewable resource program.¹⁰¹

92. *Id.* § 185(p); 43 U.S.C.A. § 1763 (West Supp. 1977).

93. 30 U.S.C. § 185(i) (Supp. IV 1974); see text accompanying note 39 *supra*.

94. 30 U.S.C. § 185(o) (Supp. IV 1974); see text accompanying notes 40-42 *supra*.

95. 30 U.S.C. § 185(o)(1)(C) (Supp. IV 1974); 43 U.S.C.A. § 1766 (West Supp. 1977).

96. 16 U.S.C. § 471 (1970).

97. *Id.* § 475.

98. *Id.* § 528.

99. The national forest system is defined as:

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

16 U.S.C. § 1609 (Supp. IV 1974).

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

101. 16 U.S.C. §§ 1601, 1610 (Supp. IV 1974).

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

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

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

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

IV. OTHER RESERVED LANDS

A. STATUTES OF GENERAL APPLICABILITY

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

102. *Id.* § 1603.

103. 43 U.S.C.A. § 1761(a) (West Supp. 1977).

104. *Id.* § 1761(a)(6).

105. *Id.* § 1762(a).

106. 16 U.S.C. § 535 (1970) [hereinafter the 1964 Act].

107. 20 U.S.C. § 185(a), (b)(1) (Supp. IV 1974).

108. *Id.* § 185(b)(3).

109. 16 U.S.C. § 533 (1970).

110. *Id.* § 478.

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

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

The 1901 Act presently authorizes the Secretary of the Interior to grant rights-of-way through federal reservations and certain national parks¹²² for structures used in the generation and distribution of electrical power and for telephone and telegraph purposes. The statute also authorizes structures for the transportation and storage of water.¹²³ The interest granted is denoted as a "right of way", but because the Secretary of the Interior can revoke the right-of-way at his discretion, the courts have construed the interest as a permit or license.¹²⁴ The maximum size is specified by the Act and no such right-of-way may be granted through a reservation without the approval of the chief officer of the supervising department. Such approval is contingent upon a finding by him that the proposed right-of-way is not incompatible with the public interest.¹²⁵

111. See text accompanying notes 53-59 *supra*.

112. See text accompanying notes 70-95 *supra*.

113. See text accompanying notes 47-52 *supra*.

114. 43 U.S.C. §§ 945-954 (1970).

115. Act of Feb. 15, 1901, 43 U.S.C. § 959 (1970) (also codified at 16 U.S.C. §§ 79, 522 (1970)).

116. Act of March 11, 1911, 43 U.S.C. § 951 (1970) (also codified at 16 U.S.C. §§ 5, 420, 523 (1970)).

117. 43 U.S.C. § 946 (1970).

118. *Id.* § 951.

119. *Id.* § 946.

120. *Id.* § 950.

121. *Id.* § 946.

122. Yosemite and Sequoia National Parks, and the General Grant Grove section of Kings Canyon National Park, 43 U.S.C. § 959 (1970).

123. 43 U.S.C. § 959 (1970).

124. *United States v. Colorado Power Co.*, 240 F. 217, 220 (D. Colo. 1916), *United States v. Lee*, 15 N.M. 362, 110 P. 607, 610-611 (1910).

125. 43 U.S.C. § 959 (1970).

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

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

B. MANAGEMENT SYSTEMS

1. National Wildlife Refuge System

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

In contrast to the public lands, there is no unified statute which sets forth management policies and the purposes for the NWRS. Regulations for administering the NWRS¹²⁸ cite as management authority the National Wildlife Refuge System Administration Act¹²⁹ and seven other statutes which deal with administrative procedures, individual units of the NWRS, and game and fish management.¹³⁰

126. *Id.* § 561.

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

128. 50 C.F.R. § 29.1-29.22 (1976).

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

130. The statutes cited include: 5 U.S.C. § 301 (1970) which provides general authority to promulgate regulations; 16 U.S.C. §§ 655, 725, 690d (1970) which are portions of acts establishing specific NWRS areas; 16 U.S.C. § 715(p) (1970) from the Migratory Bird Conservation Act; 16 U.S.C. § 654 (1970) from the Fish & Wildlife Coordination Act; 43 U.S.C. § 315a

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

There are several statutes of broad applicability which may apply to the NWRS. The ditches and canals acts,¹³⁴ and the 1901¹³⁵ and 1911¹³⁶ Acts have not been repealed insofar as they apply to the NWRS, but the F&WS regulations no longer cite them as authority for granting rights-of-way.¹³⁷ In any case, project works subject to FPC jurisdiction must be licensed by the FPC.¹³⁸ This license may be granted only if the FPC finds that the licensing will not interfere with the purposes of the refuge, and any such license is subject to the conditions the Secretary of the Interior deems necessary to protect the reservation.¹³⁹ Rights-of-way for federally-funded highways may be acquired across NWRS lands,¹⁴⁰ but special protection is granted NWRS lands and other publicly owned lands of special significance. For example, the Secretary of Transportation

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

(1970) from the Taylor Grazing Act and 16 U.S.C. § 460 (1970) from the Act of Sept. 28, 1952, as amended by the Act of Oct. 15, 1966 which provides for recreational use of NWRS lands, fish hatcheries and other conservation areas administered for fish and wildlife purposes. Measures have been introduced in recent sessions of Congress to establish a governing agency and organic act for the NWRS. *E.g.*, S. 984, 95th Cong., 1st Sess., 123 Cong. Rec. S4020 (daily ed. March 11, 1977); H.R. 2082, 95th Cong., 1st Sess., 123 Cong. Rec. H477 (daily ed. Jan. 19, 1977).

131. 16 U.S.C.A. § 668dd(a)(1)(B) (West Supp. 1977).

132. *Id.* § 668dd(d)(2).

133. *Id.* § 668dd(d)(1)(B).

134. 43 U.S.C. §§ 946-954 (1970); see text accompanying notes 117-21 *supra*.

135. 43 U.S.C. § 959 (1970); see text accompanying notes 122-25 *supra*.

136. 43 U.S.C. § 961 (1970); see text accompanying note 126 *supra*.

137. 50 C.F.R. § 20.21-22 (1976).

138. See text accompanying notes 53-59 *supra*.

139. 16 U.S.C. § 797(a) (1970).

140. See text accompanying notes 47-52 *supra*.

141. 23 U.S.C. § 138 (1970) (also codified at 49 U.S.C. § 1653(f) (1970)).

There are also special provisions which apply to oil and gas pipeline rights-of-way in the NWRS. Under section 28 of the MLA, rights-of-way may be issued across a refuge¹⁴² unless the Secretary or agency head determines that such a right-of-way is inconsistent with the purposes of the refuge.¹⁴³

2. National Park System

The national park system is administered by the Secretary of the Interior through the National Park Service (NPS).¹⁴⁴ The NPS is charged with promoting and regulating the use of national park system¹⁴⁵ lands "by such means and measures as conform to the fundamental purpose of the said [lands] . . . , which purpose is to conserve the scenery and the natural and historic objects and the wild life therein and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations"¹⁴⁶ A statute which applies specifically to a particular area within the park system will control, in the event of a conflict, over a statute generally relating to the administration of the park system.¹⁴⁷

There is no comprehensive right-of-way authority for the national park system. Instead, a patchwork system of outdated laws supplies the right-of-way authority. The ditches and canals acts¹⁴⁸ and the 1911 Act¹⁴⁹ are applicable to lands in the national park system. The 1901 Act specifically applies to Yosemite and Sequoia National Parks and other reservations.¹⁵⁰ Other reservations, in this context, probably would include national recreation areas and national monuments but not other national parks. The FPC has no authority to license project works within national parks or monuments. Instead, Congress must license projects located within parks or monuments.¹⁵¹ The FPC can license projects on reservations, other than parks and monuments, if it finds that the licensing will not interfere or be inconsistent with the purposes of the reservation.¹⁵²

142. In its final version, the amendment to section 25 of the MLA excluded only national park system lands, lands held in trust for Indians or Indian tribes and outer continental shelf lands from the authority to grant rights-of-way. The Senate version of the bill also excluded wilderness areas and wildlife refuges. H.R. Rep. No. 624, 93d Cong. 1st Sess. 21-22, *reprinted in* [1973] U.S. Code Cong. & Ad. News 2523.

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

144. 16 U.S.C. § 1 (1970).

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

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

147. 16 U.S.C. § 1c(b) (1970).

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

149. 43 U.S.C. § 961; 16 U.S.C. § 5 (1970); see text accompanying note 126 *supra*.

150. 43 U.S.C. § 959 (1970); 16 U.S.C. § 73 (1970); see text accompanying notes 122-25 *supra*.

151. 16 U.S.C. § 797a (1970).

152. *Id.* § 797(e) (1970); see text accompanying notes 53-59, 133-39 *supra*.

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

3. Military Reservations

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

Military reservations are subject to some of the statutes of broad applicability. In particular, the 1911 Act¹⁶¹ has specifically been recognized as applying to military reservations.¹⁶² The ditches and canals acts¹⁶³ and the 1901 Act¹⁶⁴ apply to such lands, but the specific statute governing military reservations would take precedence in the event of a conflict. The FPC licensing authority applies to military reservations with the special condition that the FPC find that such a license is not inconsistent with the purposes of the reservation.¹⁶⁵ The MLA pipeline provisions allow the grant-

153. See text accompanying notes 47-52, 141 *supra*.

154. See text accompanying note 141 *supra*.

155. 23 U.S.C.A. § 133 (West Supp. 1977).

156. 16 U.S.C. § 8 (1970).

157. See text accompanying note 71 *supra*.

158. 10 U.S.C. § 2663(a) (1970).

159. *Id.*

160. 10 U.S.C. § 2663 (1970).

161. 43 U.S.C. § 961 (1970); 16 U.S.C. § 420 (1970); see text accompanying note 126 *supra*.

162. 10 U.S.C. § 2668(a)(10) (1970).

163. 43 U.S.C. §§ 946-54 (1970); see text accompanying notes 117-21 *supra*.

164. 43 U.S.C. § 959 (1970); see text accompanying notes 122-25 *supra*.

165. 16 U.S.C. § 797(e) (1970); see text accompanying notes 53-59, 133-39 *supra*.

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

4. National Wilderness Preservation System

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

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

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

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

167. 10 U.S.C. §§ 2658-2659 (1970) grant rights-of-way for oil and gas pipelines under much different standards than the MLA.

168. 16 U.S.C. §§ 1131-1136 (1970).

169. *Id.* § 1131(a).

170. *Id.* § 1133(a).

171. 16 U.S.C.A. § 1762(c) (West Supp. 1977).

172. 16 U.S.C. § 1131(b) (1970).

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

A wilderness, in contrast with those areas where man and his own works dominate the landscape, is hereby recognized as an area where the earth and its community of life are untrammeled by man, where man himself is a visitor who does not remain. An area of wilderness is further defined to mean in this chapter an area of undeveloped Federal land retaining its primeval character and influence, without permanent improvements or human habitation, which is protected and managed so as to preserve its natural conditions and which (1) generally appears to have been affected primarily by the forces of nature, with the imprint of man's work substantially unnoticeable; (2) has outstanding opportunities for solitude or a primitive and unconfined type of recreation; (3) has at least five thousand acres of land or is of sufficient size as to make practicable its preservation and use in an unimpaired condition; and (4) may also contain ecological, geological or other features of scientific, educational, scenic, or historical value.

Id. § 1131(c).

174. *Id.* § 1133(c).

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

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

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

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

5. National Wild and Scenic Rivers System

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

175. *Id.* § 1133(d)(4).

176. *Id.* § 1134(a).

177. *Id.* § 1134(b).

178. 30 U.S.C. § 185(b)(1) (Supp. IV 1974). See text accompanying notes 70-95, 143 *supra*.

179. 43 U.S.C.A. § 1762(c) (West Supp. 1977); *c.f.* *Parker v. United States*, 448 F.2d 793 (10th Cir. 1971), *cert. denied* 405 U.S. 989 (1971), which involved addition of contiguous areas to a national forest primitive area.

180. See text accompanying notes 174-78 *supra*.

181. 16 U.S.C. § 1271 (1970).

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

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

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

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

182. *Id.* § 1281(a).

183. *Id.* § 1273(b).

184. 16 U.S.C.A. § 1273(a) (West Supp. 1977).

185. *Id.* § 1273(a)(ii).

186. 16 U.S.C. § 1281(b) (1970).

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

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

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

V. CONCLUSION

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

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

188. 16 U.S.C. § 1284(g) (1970).

189. 30 U.S.C. § 185(a)(3)(1) (Supp. IV 1974), see text accompanying note 71 *supra*.

190. See text accompanying note 183 *supra*.

191. See text accompanying notes 53-59, 133-39 *supra*.

192. 16 U.S.C.A. § 1273(a) (West Supp. 1977).

193. *Id.* § 1278(b).

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

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

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

31-4

Federal-State
Land Use Planning Commission
For Alaska

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

October 3, 1977

MEMORANDUM

TO: Commission

FROM: John W. Katz, Counsel *JWK*

SUBJECT: Existing Law Concerning Access Across Federal Lands

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

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

JWK:go

Enclosure (1)

1. Chart

Notes:

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

16 U.S.C. § 193 § 225 § 349 § 393	Rocky Mtn. Grand Canyon Mt. McKinley Hawaii	Makes § 79 applicable to these parks.	Same as § 79, generally, except must be consistent with primary purpose of the park.	1. If § 79 is applicable to all parks by virtue of § 1c(b), these provisions become irrelevant.
16 U.S.C. § 393	Hawaii National Park	Easements or rights-of-way for: 1. Steam, electric or similar transportation.	In Sec. discretion and subject to conditions he may deem wise.	
16 U.S.C. § 273d	Capitol Reef	Easements and rights-of-way, apparently for any purpose.	1. Shall grant: a. Nondiscriminatory basis; b. Unless - route would have <u>significant</u> adverse effects on administration of the park.	1. Only general authority to any unit.
16 U.S.C. 406d-2	Grand Teton	Rights-of-way for persons and property to and from State and private land in and adjacent to Park.	1. Sec. shall designate and open; 2. Location and use subject to regulation by Sec.	
16 U.S.C. § 410n	Everglades	Drainage through natural waterways or limited construction of drainage facilities.	1. Sec. shall allow-unless; 2. After public hearing he finds it <u>seriously</u> detrimental to preservation and propagation of the flora and fauna of the park.	
16 U.S.C. § 420 (Game P.L. no § 5)	Military Parks	Identical to § 5.		

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

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

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

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MEMORANDUM

To: Tom Williams, Esquire

Date: July 14, 1978

Access Issues in Wilderness Areas

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

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

ACCESS ACROSS WILDERNESS

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

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

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

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

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

ACCESS TO INHOLDINGS IN WILDERNESS AREAS

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

At issue was the construction of two conflicting sections of the Wilderness Act e.g., no logging in wilderness versus the exception made for the Boundary Waters Canoe Area. The 8th Circuit's precedent is of limited aid to Alaskan lumber interests. The Wilderness Act specifically excepted the Boundary Waters Canoe Area to accommodate those uses. The Department of Agriculture is required to manage the Boundary Waters Canoe Area so as to retain its primitive character without unnecessary restrictions, (16 U.S.C. §1133(d)(5)). Moreover, statutory history supported continuation, of logging and the Forest Service agreed. In contrast, Alaska's commercial logging is limited to Southeast Alaska and has been frozen pending the outcome of the Forest Service's RARE II study.

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

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

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

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

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

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

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

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

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

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

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

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

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

MOTORIZED VEHICLES

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

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

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

POINT FOUR

Notes:

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

- (1) Seek as much autonomy as possible for the State's management of fish and wildlife including subsistence programs.
- (2) Minimize to the extent possible federal oversight or sign off authority over our management programs.
- (3) In varying degrees, the Natives, Carter Administration, State of Alaska, and the Alaska Coalition have all accepted the idea of establishing regional subsistence zones with corresponding regional subsistence advisory councils.

POINT FIVE

Notes:

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

- (1) The evaluation process which is implicit in point five should not be left to the Secretary alone. In our freedom of information act search of the Department of Interior regarding mineral information we clearly established that the secretary had sent misleading mineral information to the President and Congress justifying his withdrawals.
- (2) In order to comply with point five a comprehensive resource inventory is needed (which (d) (2) designations would in many cases preclude), so we would know where the resources are which should be excluded from the preservation units.
- (3) For those areas which are presently known to be of high commodity value we simply (ha) need to elicit commitments from those with whom you speak to support the redrawing of boundaries to exclude those areas.

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

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

Section 817 of the new FIR 39 states the Secretary of Interior shall "assess" oil, gas and other minerals potential on all public lands except national park lands and the program "may" include such techniques as core and test drilling. However, the section goes on to say "notwithstanding any restriction on such drilling under other law"--which the prohibitive Wilderness Act would be.

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COMMITTEE ON INTERIOR AND INSULAR AFFAIRS

U.S. HOUSE OF REPRESENTATIVES

WASHINGTON, D.C. 20515

January 22, 1979

RECEIVED

JAN 31 1979

ALASKA

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

STEERING COUNCIL
FOR ALASKA LANDS

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

Prepared by Bill Horn, Minority Consultant, Alaska Lands

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

THE PERCENTAGE GAME

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

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

IMPACT ON EXISTING DISCOVERIES AND EXISTING LANDS

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

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

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

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

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

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

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

MINERAL ECONOMICS

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

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

SUMMARY

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

- (1) The bill withdraws 70 percent of lands rated Highly Favorable for mineral occurrence by the U.S. Bureau of Mines;
- (2) The mineral provinces which produced all seven of the major discoveries in Alaska are largely withdrawn;
- (3) Three of the seven major finds -- Bohemia Basin, Greens Creek, and U.S. Borax' Quartz Hill -- are included within proposed Wilderness areas; and
- (4) Alaska's minerals are economic as demonstrated by the Stanford Research Institute study and the fact that over 200 firms spent over \$70 million on mineral exploration in Alaska in 1977.

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

SEDIMENTARY BASINS

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

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

ARCTIC NATIONAL WILDLIFE RANGE

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

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

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

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

ACCESS FOR PIPELINES

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

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

SUMMARY

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

- (1) The bill includes approximately 40 million acres of lands which overlay oil and gas basins in conservation system units;
- (2) Because of extremely limited work on these basins, our information regarding their oil and gas potential is almost nonexistent;
- (3) The existing Arctic Range, which is the finest on-shore and gas prospect area in the U.S., is made a Wilderness; &
- (4) Many routes for new pipelines are blocked by the bill's land designations and no mitigating rights-of-way procedures are set forth.

POINT SIX

Notes:

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

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

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

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

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

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

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

POINT SEVEN

Notes:

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

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

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

SEE ATTACHED COPY OF ANTIQUITIES ACT.

NATIONAL MONUMENTS ESTABLISHED UNDER PRESIDENTIAL PROCLAMATION—Continued

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

	National Monument	Proc.	Stat.
			at Large
	Montezuma Castle National Monument, Arizona	699	31 Stat. 2265
	Mound City Group National Monument, Ohio	1653	42 Stat. 2298
	Muir Woods National Monument, California	793	35 Stat. 2174
2988	Natural Bridges National Monument, Utah	594	35 Stat. 2183
2295	Navajo National Monument, Arizona	873	36 Stat. 2191
1761	Old Kasaan National Monument, Alaska	1351	29 Stat. 1812
	Oregon Caves National Monument, Oregon	876	33 Stat. 2197
2558	Pinnacles National Monument, California	796	35 Stat. 2177
1441	Pipe Spring National Monument, Arizona	1653	43 Stat. 1943
1965	Rainbow Bridge National Monument, Utah	1643	36 Stat. 2791
	Russell Cave National Monument, Alabama	3113	75 Stat. 1954
	Saguaro National Monument, Arizona	2932	47 Stat. 2757
	Scotts Bluff National Monument, Nebraska	1547	41 Stat. 1779
1859	Shoshone Cavern National Monument, Wyoming	889	36 Stat. 2591
1792	Sitka National Monument, Alaska [redesignated as Sitka National Historical Park by Pub.L. 92-591, Oct. 18, 1972, 86 Stat. 901]	359	36 Stat. 2901
1818	Statue of Liberty National Monument, New York	1713	43 Stat. 1968
1963	Sunset Crater National Monument, Arizona	1511	46 Stat. 3923
17-5	Timpanogoes Cave National Monument, Utah	1639	42 Stat. 2285
2119	Tonto National Monument, Arizona	787	35 Stat. 2164
1541	Tumacacori National Monument, Arizona	821	35 Stat. 2295
1023	Tuzigoot National Monument, Arizona	2314	34 Stat. 2568
1946	Walnut Canyon National Monument, Arizona	1318	49 Stat. 1791
1681	Wheeler National Monument, Colorado	851	37 Stat. 2214
1947	White Sands National Monument, New Mexico	2925	47 Stat. 2551
1715	Wupatki National Monument, Arizona	1721	43 Stat. 1977
	Yucca House National Monument, Colorado	1519	41 Stat. 1781
3236	Zion National Monument, Utah [combined with Zion National Park into single national park unit by Act July 11, 1936, c. 568, 50 Stat. 527. See section 346b et seq. of this title]	2221	50 Stat. 1089
1752			

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. 2588
Aztec Ruins National Monument, New Mexico	1223	42 Stat. 2295
Bandelier National Monument, New Mexico	1322	39 Stat. 1761
Black Canyon of the Gunnison National Monument, Colorado	2033	47 Stat. 2558
Buck Island Reef National Monument, Virgin Islands	3113	76 Stat. 1191
Cabrillo National Monument, California	1255	38 Stat. 1965
Capitol Reef National Monument, Utah [abolished and funds thereof made available to Capitol Reef National Park by Pub.L. 92-207, § 1, Dec. 18, 1971, 85 Stat. 739. See section 273 of this title]	2216	59 Stat. 1876
Capulin Mountain National Monument, New Mexico	1310	39 Stat. 1792
Casa Grande National Monument, Arizona	1470	40 Stat. 1818
Castillo de San Marcos National Monument, Florida	1713	43 Stat. 1968
Cedar Breaks National Monument, Utah	2954	48 Stat. 1705
Chaco Canyon National Monument, New Mexico	749	35 Stat. 2119
Channel Islands National Monument, California	2281	52 Stat. 1541
Chesapeake and Ohio Canal National Monument, Maryland	3391	75 Stat. 1023
Chiricahua National Monument, Arizona	1692	43 Stat. 1939
Colorado National Monument, Colorado	1126	37 Stat. 1681
Craters of the Moon National Monument, Idaho	1691	43 Stat. 1917
Devil Postpile National Monument, California	1166	37 Stat. 1715
Devils Tower National Monument, Wyoming [Act Aug. 9, 1935, c. 617, 69 Stat. 575 provided for addition of approximately 150 acres to monument and for exchange of monument lands]	658	31 Stat. 3236
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. c19
Effigy Mounds National Monument, Iowa	2869	61 Stat. A371
El Morro National Monument, New Mexico	695	31 Stat. 3294
Fort Jefferson National Monument, Florida	2112	49 Stat. 3710
Fort Laramie National Monument, Wyoming [redesignated as Fort Laramie National Historic Site by Pub.L. 86-441, § 3, Apr. 29, 1969, 74 Stat. 84]	2292	53 Stat. 2191
Fort Pulaski National Monument, Georgia	1713	43 Stat. 1995
Gila Cliff-Dwellings National Monument, New Mexico	781	35 Stat. 2103
Glacier Bay National Monument, Alaska	1733	43 Stat. 1954
Grand Canyon National Monument, Arizona	2022	47 Stat. 2547
Gran Quivira National Monument, New Mexico	882	36 Stat. 2594
Great Sand Dunes National Monument, Colorado	1091	47 Stat. 2994
Holy Cross National Monument, Colorado	1877	46 Stat. 2903
Hovenweep National Monument, Colorado	1651	42 Stat. 2269
Jackson Hole National Monument, Wyoming	2578	57 Stat. 731
Jewel Cave National Monument, South Dakota	709	35 Stat. 2189
Katmai National Monument, Alaska	1487	40 Stat. 1855
Lava Beds National Monument, California	1755	41 Stat. 2591
Lehman Caves National Monument, Nevada	1618	42 Stat. 2299
Marble Canyon National Monument, Arizona	3889	83 Stat. 924
Meriwether Lewis National Monument, Tennessee [included, along with Ackia Battleground National Monument, in Natchez Trace Parkway by Pub.L. 87-131, Aug. 19, 1961, 75 Stat. 335. See section 460-1 of this title]	1825	36 Stat. 899

NATIONAL MONUMENT

The following National Monuments are continued:

National Monument	Stat.
Montezuma Castle National Monument	1792
Monument City Group National Monument	1818
Muir Woods National Monument	1968
Natural Bridges National Monument	1705
Navajo National Monument	2119
Old Kasaan National Monument	1541
Oregon Caves National Monument	1876
Pinnacles National Monument	1792
Pipe Spring National Monument	1818
Rainbow Bridge National Monument	1968
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Scotts Bluff National Monument	1541
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Sitka National Monument, Alaska	1792
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Tumacacori National Monument	1541
Tuzigoot National Monument	1876
Walnut Canyon National Monument	1792
Wheeler National Monument	1818
White Sands National Monument	1968
Wupatki National Monument	1705
Yucca House National Monument	2119
Zion National Monument, Utah	1541

NATIONAL MEMORIALS

National Memorial	Authorization
Arkansas Post National Memorial, Arkansas	Authorized by Pub.L. 84-565, July 5, 1966, 74 Stat. 233.
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.
Custis-Lee Mansion National Memorial, Virginia	Authorized by Act Mar. 4, 1925, c. 562, 43 Stat. 1356. Made permanent memorial by Act June 20, 1955, c. 223, 69 Stat. 199.
Federal Hall National Memorial, New York	Designated May 26, 1929. Designation changed from Federal Hall Memorial Historic Site by Act Aug. 11, 1955, c. 779, 69 Stat. 622.
Fort Caroline National Memorial, Florida	Authorized by Act Sept. 21, 1954, c. 573, 64 Stat. 897. Established Jan. 16, 1955.
House Where Lincoln Died National Memorial, District of Columbia	Authorized by Act June 17, 1896, c. 429, 29 Stat. 429.
Johnstown Flood National Memorial, Pennsylvania	Authorized by Pub.L. 88-546, Aug. 31, 1964, 78 Stat. 752.
Lincoln Boyhood National Memorial, Indiana	Authorized by Pub.L. 87-497, Feb. 19, 1962, 76 Stat. 9.
Lincoln Museum National Memorial, District of Columbia	Authorized by Act Apr. 7, 1896, c. 28, § 1, 11 Stat. 23.
Lincoln National Memorial, District of Columbia	Authorized by Act Feb. 9, 1911, c. 42, 36 Stat. 498.
Mount Rushmore National Memorial, South Dakota	Authorized by Act Feb. 25, 1929, c. 315, 45 Stat. 1309.
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, 1931, c. 763, 48 Stat. 1213.
Washington Monument National Memorial, District of Columbia	Authorized by Act Aug. 2, 1879, 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, 41 Stat. 1261. Name changed to Wright Brothers National Memorial, Dec. 1, 1953.
Miscellaneous National Monuments. Agate Fossil Beds National Monument, Nebras- ka, was authorized by Pub.L. 89-33, June 5, 1965, 79 Stat. 123. Abilates Flint Quarries and Texas Panhandle Pueblo Culture National Monument, Texas, was authorized by Pub.L. 89-454, Aug. 31, 1965, 79 Stat. 587. Big Hole Battlefield National Monument, Montana, was established by Ex.Ord.No. 1216 on June 23, 1910 and redesignated as Big Hole National Battlefield by Pub.L. 88-24, § 1, May 17, 1963, 77 Stat. 18.	

Custer Battlefield Nat-
tary of Custer's Battle-
to Custer Battlefield Na-
Florissant Fossil Beds
Aug. 20, 1962, 82 Stat. 10
Fort Mifflin National
Fossil Butte National
1972, 86 Stat. 1029.
Hohokam Pima Nation
21, 1972, 86 Stat. 1017.
Pecos National Monum
1965, 79 Stat. 195.

Armed Services 255.
Woods and Forests 255.

National cemeteries, see
Special regulations for p

Abolishment of monument
Declaratory Judgment. If
Designation of area in
Grounds for proclaiming
Jurisdiction. 8
Objects which may be
ments. 1
Pleadings. 9
If revocation of monument
Suits against United States
Transfer of monuments.

1. Objects which may be
ments.

Under this section, the
authorized to establish a
serve embracing the Gr
the Colorado River; it b
of scientific interest." Cal
Ariz. 1929, 10 S.Ct. 419, 252
Ed. 659.

2. Grounds for proclaim
Proclamation No. 2578, 31
Stat. 731, declaring the
Country in Wyoming a r
ment because of its histo
prehistoric structures, and
of historic or scientific in
shown to be arbitrary
interference by the court
oming v. Franke, D.C.A.
Supp. 890.

The court cannot take
interest in the motives whic
spired Proclamation No.
1943, 57 Stat. 721, declarin
Hole Country in Wyoming
monument, which proclama

Authorization

by Pub.L. 86-595, July 6, 1960, 73 Stat. 403.

by Pub.L. 92-551, Oct. 25, 1972, 86 Stat. 1061.

by Pub.L. 89-479, July 12, 1966, 80 Stat. 132.

by Act Mar. 4, 1925, c. 562, 43 Stat. 156. Made permanent memorial by Act June 29, 1955, c. 223, 69 Stat. 632.

by Act May 26, 1929. Designation of Federal Hall Memorial Site by Act Aug. 11, 1955, c. 632, 69 Stat. 632.

by Act Sept. 21, 1950, c. 973, 64 Stat. 97. Established Jan. 10, 1953.

by Act June 11, 1956, c. 429, 70 Stat. 439.

by Pub.L. 88-546, Aug. 31, 1964, 78 Stat. 752.

by Pub.L. 87-407, Feb. 19, 1962, 76 Stat. 9.

by Act Apr. 7, 1890, c. 28, § 1, 26 Stat. 23.

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

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

by Pub.L. 92-422, Sept. 18, 1972, 86 Stat. 673.

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

by Act Aug. 2, 1870, c. 250, § 1, 16 Stat. 123.

by Act Mar. 2, 1927, c. 251, 44 Stat. 1261. Name changed to Wright-Patterson National Memorial, Dec. 1, 1948.

by Act Mar. 2, 1927, c. 251, 44 Stat. 1261. Name changed to Wright-Patterson National Memorial, Dec. 1, 1948.

by Act Mar. 2, 1927, c. 251, 44 Stat. 1261. Name changed to Wright-Patterson National Memorial, Dec. 1, 1948.

by Act Mar. 2, 1927, c. 251, 44 Stat. 1261. Name changed to Wright-Patterson National Memorial, Dec. 1, 1948.

Custer Battlefield National Monument, Montana, was established by Proclamation No. 2578, Mar. 15, 1913, 57 Stat. 731. The area was transferred to Custer Battlefield National Monument by Act Mar. 22, 1948, c. 410, 62 Stat. 20. Florissant Fossil Beds National Monument, Colorado, was authorized by Pub.L. 91-40, 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. 1069.

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

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

Library References

Armed Services ☞ 51.
Woods and Forests ☞ 8.

U.S. Army and Navy § 107.
U.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 monument 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 9
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.1929, 40 S.Ct. 410, 252 U.S. 450, 61 L.Ed. 659.

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. 890.

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. 890.

4. Reservation of mineral interests

To bring a lode mining claim within the saving clause in the withdrawal of public lands for a monument reserve, under this section, in respect of any "valid" mining claim theretofore acquired, the discovery must have preceded the creation of that reserve. *Cameron v. U. S.*, Ariz.1929, 40 S.Ct. 410, 252 U.S. 450, 61 L.Ed. 659.

5. Abolishment of monuments

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

6. Transfer of monuments

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

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

7. Suits against United States

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

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

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

8. Jurisdiction

An action by the State of Wyoming challenging the validity of Proclamation No. 2578, Mar. 15, 1943, 57 Stat. 731, with respect to the creation of the Jackson Hole National Monument, was an action arising under the laws of the United

States" of which the federal district court had jurisdiction. *State of Wyoming v. Franke*, D.C.Wyo.1945, 58 F.Supp. 899.

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

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

9. Pleadings

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

10. Declaratory judgment

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

ANOTHER POINT

Notes:

13

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

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

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

January 19, 1979

MEMO TO: Minority Members, Interior and Insular
Affairs Committee

FROM: Bill Horn, Minority Consultant - Alaska Lands

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

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

LAND DESIGNATIONS

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

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

The following chart illustrates the various land designations:

H. R. 39 -- 1979 VERSION

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

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

Affected Lands

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

PARKS/PRESERVES

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

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

REFUGES

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

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

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

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

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

FORESTS

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

WILD AND SCENIC RIVERS

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

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

WILDERNESS - GENERAL

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

WILDERNESS - SOUTHEAST ALASKA

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

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

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

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

WILDERNESS AND FISHERIES

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

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

ACCESS

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

TRANSPORTATION RIGHTS-OF-WAY

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

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

OVERLAP WITH EXISTING STATE LANDS

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

STATE SELECTION INTEREST LANDS

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

LAND CONVEYANCES

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

OIL AND GAS

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

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

MINERALS

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

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

COOPERATIVE MANAGEMENT

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

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

SPORT HUNTING

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

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

SUBSISTENCE HUNTING

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

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

SUBSISTENCE RESOURCE DAMAGE

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

CLAIMS ACT AMENDMENTS

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

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

ALASKANS UNITED
are mandating
NO COMPROMISE
on All Alaska Lands



■ Lands not available for private use

□ Lands for private use

File D2

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

ALASKANS UNITED
5705 DeBarr Road
Anchorage, Alaska 99504

LEGAL (or illegal) FEDERAL LANDS?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

U.S. CONSTITUTION BILL OF RIGHTS

Article IX

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

Article X

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

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

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

ALASKANS UNITED
5705 DeBarr Road
Anchorage, Alaska 99504

Stand Up Alaskans

FOR OUR CONSTITUTIONAL RIGHTS.

Your freedom depends on it.



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

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

— Abraham Lincoln

QUESTIONS

- Are you satisfied with Steven's handling of the Alaska Land problem?
- Is Hammond mishandling the Alaska Lands issue?
- Do you believe in the U.S. Constitution's land policy?

Yes/No

Do you want antiquities? _____

Do you want d-2? _____

Do you want Alaska to
maintain ownership of
its land? _____

ALASKANS UNITED

5705 DeBarr Rd.
Anchorage, Alaska 99504

Member

(907) 276-0677

Clark Engle
Chairman

"To Protect Our Constitutional Rights"
NO COMPROMISE!

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Contribution \$

Member:

Address:

City State. Zip.

Please return this stub with your contribution

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SCOMM

#22:54

...the people of Alaska ... the people of Alaska ... the people of Alaska ...

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...the people of Alaska ... the people of Alaska ... the people of Alaska ...

THE UNIVERSITY OF CHICAGO

THE

100

P. O. Box 7
Fairbanks, Alaska 99707
January 11, 1977

TO ALL AMERICANS

Every human activity is dependent in some way upon the mineral industry.

It should be apparent to everyone by now what it means to have the gas pumps go dry. It will be even more chaotic if we should have to do without the aluminum that carries the electricity to the consumer or the same aluminum which forms the wings and air frame of the planes we travel in.

Take away chromium, manganese, tin and the many more which we import to make our industrial civilization tick and it becomes catastrophic.

It is axiomatic that the less we mine domestically, the more we must import from uncertain foreign sources. With the rapidly changing international picture, friendly nations today may be in an opposing camp tomorrow.

Call it good business, economic blackmail or military strategy to unreasonably increase the price of raw materials or to deny access at any price in times of international stress; but under any label, it only spotlights the importance of exploring for and determining our domestic sources of every mineral that we use and to developing them for the nations normal demand and an emergency stockpile.

Only this action will prevent the unwarranted price increases and economic blackmail that now threatens our national welfare and international role.

As all international trade is in effect, only barter, it is both advisable and necessary that we use some foreign produced minerals as they are available at reasonable prices and are in effect traded to us for our excess products.

To fail this will deny the developing world the opportunity and tools to raise their standards of living and more ominous, hasten the day when our domestic sources are exhausted with all that portends.

Every instinct of self preservation and national survival demands that we avoid any position of vulnerability in the supply of minerals.

With these basic truths in mind, it is most apparent that our National Interest is being dangerously neglected in this prime area.

We are now considering the withdrawal of D-2 lands in Alaska for National Interests, Parks, Wild and Scenic Rivers, Wildlife and Wilderness Refuges and Forests. These are without doubt, worthy projects; but are they not all, combined, ,

of much less importance to our National Interest than the mineral reserves which are to be found in Alaska?

Our survival as an industrial civilization is dependent upon the one, a fuller life upon the others. Without the first, there is no occasion for the latter. It is the egg before the chicken.

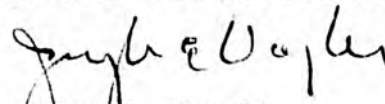
Because it is also axiomatic that minerals can only be produced from the sites where they were placed by a provident God, does it not follow that the Administration and the Congress in dealing with the D-2 withdrawals, give top priority to this First National Interest by establishing a National Mineral Lands reserve to include all known mineralized areas within Alaska whose principal use shall be for the exploration, development, and production of minerals to meet the needs of the United States of America; that recognizing the impossibility of the inclusion of all mineral deposits in such Mineral Lands which might be discovered by future exploration, that a permanent program of mineral prospecting and exploration be instituted and maintained in all Federal Lands including the National Interest lands; and when a mineralized area or deposit is discovered, that this area be added to the National Interest Mineral Lands, and shall then be available to the people for development and production? This is the only rational conclusion!

To fail this accomplishment is to abandon our present standard of living, our Nations security and our international role in assisting the developing third world in its climb toward a better life for its peoples.

History will bear solemn witness to our wisdom or folly in dealing with these paramount and fundamental truths.

Respectfully submitted,

ALASKANS FOR INDEPENDENCE



JOSEPH E. VOGLER
Chairman

tained in section IV of the Act of January 2, 1976 (90 Stat. 1156) are desired to be used by the authorized officer, the classification will not become final without the specific approval of the Secretary.

Subpart 2483.1—Applications

- 2483.1-1 Application or Bureau Motion.
- 2483.1-2 Filing.
- 2483.1-3 Rejection or suspension.
- 2483.1-4 Administrative Review.

Subpart 2483.2—Proposed Classification

- 2483.2-1 Commencement of Classification Action.
- 2483.2-2 Proposed Classification Decisions.
- 2483.2-3 Protests.

Subpart 2483.3—Classification

- 2483.3-1 Involving an environmental impact statement.
- 2483.3-2 In absence of protest.
- 2483.3-3 With protests.
- 2483.3-4 Classification by Secretary without certain procedures.
- 2483.3-5 Administrative Review.

Subpart 2483.1—Applications

- § 2483.1-1 Application or Bureau Motion.

Land may be classified for appropriation in response to either an application for appropriation or on Bureau Motion.

§ 2483.1-2 Filing.

(a) An application must be on an approved form. Application forms and lists indicating the proper office for the filing of applications may be obtained from any office of the Bureau. All applications must be submitted in accordance with the applicable provisions of Subpart 1821 of this chapter and all other regulations concerning filing.

(b) The filing of an application gives no right to enter, occupy, or settle upon the lands.

(c) All filing fees which accompany applications submitted in accordance with the regulations of this Subpart shall be earned upon the filing of such applications with any office of the Bureau.

§ 2483.1-3 Rejection or suspension.

The classification authorities cited in § 2480.0-3, authorize classification action and applications requesting classification may be rejected without classification action at the discretion of the authorized officer or as provided by other regulations of this chapter.

(b) If the requested lands have already been classified and the application is for a type of appropriation not allowable by the existing classification, the application shall be rejected.

(c) An application for a type of appropriation not allowable under a proposed classification decision shall be suspended until the proposed decision is vacated or a final decision is issued.

(d) Applications shall also be rejected where the provisions of Subpart 2001 and other regulations of this chapter concerning segregation apply. However, applications shall not be rejected solely on the basis that the land is withdrawn pending classification under this Part.

(e) Upon finality of a classification decision, any inconsistent applications, which are then pending, will be rejected.

(f) Decisions rejecting applications will contain a statement giving the reasons for rejection and advising the applicant of corrective steps, if any, that may be taken.

(g) Upon finality of a decision rejecting an application, any advance payments on other such monies, except filing fees and reimbursement payments, submitted with the application will be returned or refunded.

§ 2483.1-4 Administrative review.

A rejection or suspension of an application pursuant to § 2483.3(a) through (e), supra, shall not be appealable to the Board of Land Appeals.

Subpart 2483.2—Proposed Classification

§ 2483.2-1 Commencement of classification action.

If an application is not rejected or suspended, or if the classification action is initiated by Bureau motion, the authorized officer shall proceed to examine the lands and prepare a proposed classification decision.

§ 2483.2-2 Proposed classification decision.

(a) Before issuing a proposed classification decision, the authorized officer shall determine whether the proposed action requires preparation of an environmental impact statement (an EIS) under section 102(2)(c) of the National Environmental Policy Act (43 U.S.C. 4332 (2)(c)). In those instances where he determines that an EIS is required, the authorized officer shall proceed to prepare an EIS based on the proposed classification decision.

(b) The authorized officer shall make and issue a proposed classification decision which shall (1) state whether the lands will be retained or offered for appropriation; (2) if appropriation, state the extent or under which authority (ies) appropriation will be allowed as provided in § 2482.1 of Subpart 2482 of this part; (3) state whether an EIS has been or is being prepared; (4) identify any and all applications filed for the land; (5) if no application has been filed and disposition is contemplated, state that the land will be open to application by all qualified persons on an equal-opportunity basis after public notice; (6) contain a statement of reasons in support of the decision proposed; and (7) specify a period of not less than 30 days during which protests shall be received. Should the authorized officer find good cause, the protest period may be shortened, and, if so shortened, the proposed decision shall contain the reason(s) in support of such lesser period of time.

(c) Such decisions shall be served upon (1) each applicant for use or appropriation of the land; (2) each permittee, licensee, or lessee using the land; (3) the local governing board, planning commission or other official body having

land-use control authority in the area where the land is located; (4) any governmental officials or agencies from whom written comments concerning future use of the lands have recently been received; and (5) such other persons as the authorized officer deems appropriate.

(d) A proposed classification decision that would classify more than 2,500 acres shall be published in the *Federal Register* and in a newspaper having general circulation in the vicinity of the lands. A proposed classification decision for 2,500 acres or less may be also so published if it is deemed appropriate by the authorized officer.

(e) The authorized officer shall hold a public meeting on the proposal if the proposed classification is for more than 100,000 acres, or he determines that sufficient public interest exists to warrant the time and expense of a meeting.

§ 2483.2-3 Protests.

After a proposed classification decision has been issued, any interested party may file a written protest with the State Director during the period specified in the proposed decision. No particular form of protest is required. The protest must be sufficient to identify the specific proposed decision being protested.

Subpart 2483.3—Classification

§ 2483.3-1 Involving an environmental impact statement.

If, under § 2483.2-2(a) of Subpart 2483.2 of this part, it was determined that an EIS is necessary, no classification will become final until the final EIS has been filed. In such cases, the authorized officer shall issue a final classification notice or decision as appropriate.

§ 2483.3-2 In absence of protests.

If no protest is filed within the time allowed, the proposed classification shall become final, and the authorized officer shall serve a notice of final classification upon those served with the proposed decision. A notice shall also be published in the *Federal Register* and a local newspaper if the proposed decision was so published.

§ 2483.3-3 With protests.

If a protest to the proposed classification decision is timely filed, the following procedures shall apply:

(a) The protest shall be reviewed by the State Director. At the conclusion of the review, the State Director shall either vacate, affirm, or modify the proposed classification decision. Notice of his decision shall be served upon those served with the proposed classification decision and upon all protestants. It shall also be published in the *Federal Register* and a local newspaper if the proposed classification decision was so published.

(b) For a period of 30 days after service of the notice of the State Director's decision, any interested person may petition the Secretary for review. Notice of the filing of a petition with the Secretary

must be served on the State Director within the 30-day period.

(c) If within the 30-day period, the State Director does not receive notice of petition to the Secretary, the decision shall become the final classification decision.

(d) If a petition is timely received, including service on the State Director, the State Director's decision shall be suspended. Notice of suspension shall be given to the same persons and in the same manner as notice of the State Director's decision. Therefore, the Secretary shall make the final classification decision. Notice of the Secretary's action shall be given to the same persons and in the same manner as the notice of suspension.

§ 2483.3-4 Classification by Secretary without certain procedures.

Where the Secretary determines that the public interest would be served thereby, he may issue a final classification decision without following any or all of the procedures in §§ 2483.2-3(b) through 2483.2-3 of Subpart 2483.2 of this part and §§ 2483.3-2 and 2483.3-3 by publishing his decision in the *FEDERAL REGISTER* and a newspaper having general circulation in the vicinity of the lands being classified.

§ 2483.3-5 Administrative Review.

No person shall be entitled to any administrative review of a classification decision other than that provided by § 2483.3-3.

Subpart 2484—Opening of Lands

Sec.

2484.1 Preference rights.

2484.2 Appropriation in absence of preference rights.

2484.3 Right to enter, occupy, or settle.

Subpart 2484—Opening of Lands

§ 2484.1 Preference rights.

(a) No applicant shall have a preference right unless it is expressly provided by law.

(b) If it should be necessary for any reason to reject the application of the first applicant entitled to a preference right, other qualified applicants who filed prior to classification shall succeed to the preference right in order of filing.

§ 2484.2 Appropriation in absence of preference rights.

Where there is no preference right, the authorized officer shall, in accordance with the specifics of the classification:

(a) Seek application for the land from an applicant where there is only one possible qualified applicant, e.g., the State of Alaska.

(b) Publish a notice setting a time and place at which the land will be sold to the highest bidder.

(c) Publish a notice providing for a period during which applications may be filed, with the successful applicant to be determined by a drawing among all qualified applicants.

(d) In the event there is no response to the specific notices given in paragraphs (b) and (c) of this section, the

authorized officer, in his discretion may cancel the classification or allow the classification to stand until the first qualified applicant submits a proper application, or the classification terminates for other reasons.

§ 2484.3 Right to enter, occupy, or settle.

(a) A classification for appropriation does not give a right to enter, locate, occupy, or settle upon the lands unless the classification decision expressly opens the lands. If a classification decision does not so provide, no person shall be entitled to possession or use of the land until otherwise expressly authorized by the authorized officer. Entry, location, occupancy, or settlement on the land prior to that time constitutes a trespass.

(b) After lands have been classified, all the laws and regulations governing the particular type of appropriation must be complied with in order for title to vest or other interest to pass. No final determination on whether an applicant has satisfied all requirements of law for appropriation need be made until the lands have been classified. No conveying instrument or lease shall be executed until the lands are opened.

Subpart 2485—Termination of Classification

§ 2485.1 Continuance.

A final classification shall continue in full force and effect until it is revoked, until it terminates by its own terms or by operation of law, or until the lands are reclassified. Lands may be reclassified at any time.

§ 2485.2 Recreation and public purpose classifications.

If no application is received for lands classified for appropriation under the Recreation and Public Purposes Act, as amended (43 U.S.C. 860-869-4), within 18 months of the date of classification, the classification shall automatically terminate.

[FR Doc. 77-1781 Filed 1-18-77; 8:48 a.m.]

These proposed regulations would allow the Secretary of the Interior to classify or reclassify lands presently withdrawn under Section 17(d)(1) of the Alaska Native Claims Settlement Act.

Copies of these regulations are available from Bureau of Land Management offices in Anchorage and Fairbanks.

Written comments should be submitted **MAY 23 1977**

to: Director (210)
Bureau of Land Management
U.S. Department of the Interior
Washington, D. C. 20240



DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[43 CFR Part 2400]

ALASKA

Proposed Amendment of Principles and Procedures for Land Classification

This proposed amendment of and addition to the regulations contained in Part 2400 of Title 43 of the Code of Federal Regulations is being made to add the authority for classification and reclassification of lands in Alaska contained in section 17(d)(1) of the Alaska Native Claims Settlement Act (43 U.S.C. 1616(d)(1)), and to place all classification criteria and procedures relating to lands in Alaska under the proposed Subpart (2400).

It is hereby determined that the publication of this proposed rulemaking is not a major Federal action significantly affecting the quality of the human environment and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required.

The Department of the Interior has determined that this document does not contain a major proposal requiring preparation of an inflation impact statement under Executive Order 11821 and OMB Circular A-1071.

In accordance with section 310 of the Federal Land Policy and Management Act of 1976, public participation is invited in rulemaking. Interested parties may

submit written comments, suggestions, or objections with respect to the proposed rules to the Director (210, Bureau of Land Management, Department of the Interior, Washington, D.C., on or before February 22, 1977.

Copies of comments, suggestions, or objections made pursuant to this notice will be available for public inspection at the foregoing address during regular working hours (7:45 a.m. to 4:15 p.m.).

It is therefore proposed to revise Chapter II, Subchapter B, Group 2400 of 43 CFR as set forth below.

JACK O. HORTON,
Assistant Secretary of the Interior.

JANUARY 14, 1977.

PART 2400—LAND CLASSIFICATION

1. Section 2400.0-2 is amended by designating the existing paragraph as paragraph (a) and adding a new paragraph (b) to read as follows:

§ 2400.0-2 Objectives.

(b) Procedures for land classification in Alaska are contained in Subpart 2400 of this part.

§ 2400.0-3 [Amended]

2. Section 2400.0-3 is amended by deleting the words "in the case of Alaska;" from the first sentence in paragraph (1).

3. Section 2400.0-3 is amended by deleting paragraph (h) and renumbering paragraphs (i) and (j) accordingly.

4. Part 2400 is amended by adding new Subparts 2400 to 2405 to read as follows:

Subpart 2400—Land Classification; Alaska

Sec.

2400.0-2 Objectives.

2400.0-3 Authority.

2400.0-4 Responsibility.

2400.0-5 Definitions.

2400.0-7 Applicability.

Subpart 2400—Land Classification; Alaska

§ 2400.0-2 Objectives.

Various statutes, many of which are cited in § 2400.0-3, authorize the Secretary of the Interior to classify Federal lands. The objectives of this subpart are (a) to specify these values and principles that will be considered in the exercise of the Secretary's authority and (b) to establish procedures for the prompt and efficient exercise of this authority with the knowledge and participation of interested parties, including the general public.

§ 2400.0-3 Authority.

The Secretary of the Interior, or his delegate, is authorized by 43 U.S.C. 2 to perform all executive duties in anywise respecting the public lands of the United States. He is also authorized by 43 U.S.C. 1634 to enforce and carry into execution by appropriate regulations every part of the provisions of the Alaska Native Claims Settlement Act (ANCSA). The following statutes, among others, authorize land classification by the Secretary:

(a) Section 17(d)(1) of the ANCSA (43 U.S.C. 1616(d)(1)) authorizes the

Secretary to classify or reclassify lands in Alaska withdrawn for classification and to open such lands to appropriation in accord with such classification. By various Public Land Orders, lands have been withdrawn from all forms of appropriation under the public land laws, including State selections (some exceptions); from location and entry under the mining laws, with some exceptions for locations for metalliferous minerals (30 U.S.C. Ch. 2); and from leasing under the Mineral Leasing Act of February 25, 1920, as amended (30 U.S.C. sections 187-387 (1970)). By these Orders, all such lands not otherwise withdrawn or appropriated are subject to classification and reclassification.

(b) The Recreation and Public Purposes Act, as amended (43 U.S.C. 860-869-4), authorizes the Secretary to classify lands for lease or sale for recreation or public purposes.

(c) The Act of August 30, 1946, as amended (43 U.S.C. 687h), authorizes the Secretary to sell at public auction lands that he classifies as suitable for industrial or commercial purposes, including construction of housing.

(d) Section 6(d) of the Wild and Scenic Rivers Act (16 U.S.C. 1277(d)) authorizes the Secretary to exchange federally owned property which he classifies as suitable for exchange or other disposal for nonfederal property within the authorized boundaries of any federally administered component of the national wild and scenic rivers system.

§ 2480.0-4 Responsibility.

Except where specified to the contrary in this subpart, the authority of the Secretary to classify lands and make other determinations in accordance with the regulations of this part has been delegated to officials of the Bureau of Land Management.

§ 2480.0-5 Definitions.

As used in the regulations of this subpart—

(a) "Agricultural" refers to the growing of cultivated crops; it does not include grazing or the production of native grasses or native forage plants.

(b) "Authorized Officer" refers to the head of a Bureau of Land Management field office who has been delegated authority to make classification decisions.

(c) "Bureau" means the Bureau of Land Management.

(d) "Classification" means a positive determination as to whether certain Federal lands will be subject to appropriation under specified law(s) or will remain in Federal ownership and control.

(e) "Appropriation" means, but is not limited to, grant, sale, exchange, selection, entry, or location for purposes of transfer of title from Federal ownership; or a lease under the Recreation and Public Purposes Act (43 U.S.C. 869, et seq.) or under the Act of May 24, 1920, as amended (40 U.S.C. 211-214).

(f) "Land Use Plan" means a plan, as of a given point in time, that sets out the future use(s) of the land based upon a systematic analysis of physical, environ-

mental, and socioeconomic factors affecting the land.

(g) "Secretary" means the Secretary of the Interior.

(h) "State Director" means the Director of the Alaska State Office, Bureau of Land Management.

§ 2480.0-7 Applicability.

The regulations of this Subpart govern all classification of lands administered by the Bureau that are made pursuant to the authorities described in § 2480.0-3. They also apply to lands not administered by the Bureau where the head of the administering agency agrees and the specific classification authority applies; e.g., the Recreation and Public Purposes Act (43 U.S.C. 869, et seq.). Classification is a prerequisite to the approval of all appropriations and entries under the following parts, among others, of this chapter: Exchanges—Group 2700; Original, Additional, Second, Adjoining Farm, and Enlarged Homesteads in Alaska—Subparts 2511, 2512, 2513, 2514, and 2567; Indian Allotments—Part 2530; Trade and Manufacturing Sites—Subpart 2563; State Grants—Subpart 2627; Recreation and Public Purposes—Part 2740 and Subpart 2912; Airports—Subpart 2911.

Subpart 2481—Classification Principles

Sec.

2481.1 General.

2481.2 Requirements.

Subpart 2481—Classification Principles

§ 2481.1 General.

The authorities in § 2480.0-3 of Subpart 2480 of this part grant the Secretary full discretion, subject to statutory guidelines and limitations, to determine whether to classify any particular tract of Federal Lands for appropriation. The regulations in this subpart contain the principles and procedures which personnel of the Department of the Interior shall consider and follow in the exercise of land classification authority delegated to them by the Secretary.

§ 2481.2 Requirements.

(a) In arriving at the classification decision the authorized officer must find that the lands involved have the geographical, physical, and economic attributes to support the use or values upon which the classification decision is based.

(b) In arriving at a classification decision under the regulations of this part, the authorized officer shall consider:

(1) Federal uses, policies, programs and plans, including Bureau Land use plans and applicable policies and objectives set forth in Group 1700 of this chapter;

(2) State and local governmental uses, policies, programs, plans and laws, including zoning and other land use regulations, to the extent such are consistent with Federal uses, policies, programs and plans;

(3) Reasonably ascertainable present and potential uses and users of the lands;

(4) Environmental effects, including economic and social impacts;

(5) Relative scarcity of values that could be lost or impaired and availability of alternate means and sites for accommodation of those values;

(6) Effects on the administration of other public lands;

(7) The impact on resources utilized for subsistence purposes.

Subpart 2482—Classification for Appropriation

Sec.

2482.1 General.

2482.2 Relative values for types of appropriation.

2482.3 Lands classified for appropriation under particular laws.

Subpart 2482—Classification for Appropriation

§ 2482.1 General.

When lands are classified for appropriation, the classification decision shall specify the particular public land law(s) under which they may be appropriated and, where applicable, the particular type(s) of use and appropriation for which the lands will be open under such law(s).

§ 2482.2 Relative values for types of appropriation.

Where lands are found to have value for more than one type of nonfederal use or appropriation under more than one public land law, the law or laws specified in the classification decision shall be chosen so as to give the most benefit to the public, as determined by the authorized officer, with particular regard to the considerations in § 2481.2 (b) of Subpart 2481 of this part.

§ 2482.3 Classification for appropriation under particular laws.

(a) A Classification allowing appropriation for a homestead (Part 2510 and Subpart 2567 of this chapter) may be made if the lands are (1) chiefly valuable for agriculture, (2) suitable for development as a home and farm, (3) sufficient to provide an adequate return anticipated for the farm family, and (4) in an area where rainfall or groundwater and/or irrigation water is adequate and available under Alaskan law in sufficient quantity to permit agricultural development of the particular lands.

(b) A classification allowing appropriation for an Indian allotment (Part 2530 of this chapter) may be made if (1) the lands are chiefly valuable for agriculture, (2) the lands are, on the whole, suitable for a home, and (3) the anticipated agricultural use would support the allottee and the allottee's family.

(c) Needs in relation to subsistence living will be considered in investigations of the classification of lands for possible appropriation for headquarter sites, homesites, or trade and manufacturing sites (Subparts 2563 and 2562 of this chapter).

(d) The authorized officer will not finalize a proposed classification allowing appropriation solely for exchange unless the estimated fair market values of the offered and selected lands are approximately equal. Where the exceptions con-



United States Department of the Interior

IN REPLY REFER TO

2650 (010)

BUREAU OF LAND MANAGEMENT
Anchorage District Office
4700 East 72nd Avenue
Anchorage, Alaska 99507

Honorable Mike Colletta
Pouch V
Juneau, Alaska 99811

APR 15 1977

Dear Senator Colletta:

As you may know, the Department of the Interior recently published proposed regulations for classifying lands in Alaska. With the comment period extended until May 23 at our request, the Anchorage District Office of the Bureau of Land Management seeks to involve the State and the public in an analysis of these proposed regulations. We intend to do so through a series of meetings and workshops in communities throughout the district.

The schedule of meetings is as follows: May 3, 1 p.m. to 4 p.m. and 7 p.m. at the Anchorage District Office, 4700 East 72nd Avenue; May 5, 7 p.m. Glennallen High School; May 6, 7 p.m. BLM Mess Hall, McGrath; and May 19 on the BLM Land Report on KYUK television in Bethel.

Enclosed is a copy of the proposed regulations. We ask that you come to the meeting prepared to identify and discuss those areas of major concern to your organization. My staff has already identified several concepts it would like to address at the workshop including the need for more clarity in the way the regulations are written, the need for the regulations to conform with the standards of the recently enacted Federal Land Policy and Management Act, and the need for more specific opportunities for public involvement in the classification process.

We propose to conduct the meetings as workshops in the hope of obtaining from the participants some meaningful modifications of these regulations.

Sincerely,

Richard W. Tindall
District Manager

Enclosure:
Proposed rules



Save Energy and You Serve America!

CMAL

CITIZENS FOR MANAGEMENT OF ALASKA LANDS

P.O. Box 3256DT
Anchorage, AK 99510

February 21, 1977

Senator Mike Colletta
Capitol - Rm. 111
Pouch V
Juneau, Alaska 99811

Dear ^{Mike} ~~Senator Colletta~~:

Here is some basic information about a new organization which has formed in Anchorage to deal with the (D)(2) land issue. I hope you will find it of interest as the outcome of this question is now shaping up as one which will mold Alaska's future for many decades to come.

The organization is mandated to seek a statewide consensus and is in the process of acquiring affiliates in all parts of Alaska.

If you have any questions, or if we may be of help to you in any manner, please call on us.

Sincerely,
CMAL


Cameron Edmondson
Executive Director

/jb

**STATEMENT OF POLICY OF
CITIZENS FOR MANAGEMENT OF ALASKA LANDS**

Citizens for Management of Alaska Lands (CMAL) is a broad-based coalition of Alaskans and others interested in the wise use of Alaska lands and resources. Its philosophy, to the extent it can be expressed simply, can be paraphrased as "land for peoples' needs."

CMAL believes in the multiple-use concept, wherein land can be managed to produce both the basic needs--such as, food and shelter--and important, yet secondary, needs--such as, recreation. CMAL believes that this concept makes sense for the bulk of Alaska's land which has strong multiple-values or potentials, as it allows use of the land to produce the greatest good for the greatest number.

By recognizing that peoples' needs also include solitude and aesthetic values, CMAL is also in favor of preservation of certain wild lands whose uniqueness is widely acclaimed in units of the National Park and Wildlife Refuge systems. It proposes, however, that all the resource values be professionally evaluated and inventoried, so there is a clear understanding of benefits and costs of those lands placed in restricted withdrawals.

It is the policy of CMAL that stable land ownership and management practices be paramount to any decision relating to Alaska's land and resources. Thus there must be no doubts about Alaska's statehood and Native entitlements, as new land decisions are made.

Finally, CMAL believes that the vast area of Alaska--if dynamically managed to take into account changing needs of man--will play an increasingly important role in the national destiny with room for recreation, wildlife, timber, energy and food production, mining, and human habitat.