

ALASKA LEGISLATURE COMMITTEE FILES 1997-1998 8672

9695 SENATE RESOURCES

reserves in Montana, no oil and gas drilling -- ANWR, severely restricted drilling in the Lewis & Clark and Helena Deerlodge National Forest, the American Heritage Rivers Initiative, signing the Global Warming Protocol, Al Gore's Clean Water Initiative, administrative rewrite of the BLM 3809 regulations governing hard rock mining, and most recently the emergency moratorium of timber harvest within "roadless areas."

I encourage Alaska to sign the resolution opposing the American Heritage Rivers Initiative, **House Joint Resolution NO. 52**. Congress needs support to stop the Administration from usurping their constitutionally delegated responsibilities.

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# ALASKA MINERS ASSOCIATION, INC.

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Honorable Jcannette James  
State House of Representatives  
Capital Building  
Juneau, AK 99801

February 25, 1998

RE: House Joint Resolution 52, relating to the American Heritage Rivers Initiative

Dear Representative James,

Thank you for the opportunity to comment on House Joint Resolution 52 and thank you for introducing this measure. The Alaska Miners Association supports HJR-52 and we encourage its passage.

The American Heritage Rivers Initiative (AHRI) contains numerous problems. AHRI has not been authorized by the U.S. Congress and as a consequence the relationship between AHRI and existing laws and regulations has not been defined. The relationship between AHRI and the authorities of the land management agencies such as the Bureau of Land Management, Forest Service, U.S. Fish & Wildlife Service, etc. has not been defined. Also, the authorities of AHRI have not been defined as they relate to State and private property.

The system of laws in this country is one where the Congress provides the authority for an action which is then implemented by the Administration. Under this system, statutes and the resulting regulations and rights of the public to appeal or challenge those laws are well defined in law. This is not the case with AHRI and at least one example has already been identified that shows the danger of AHRI.

This example involves the procedure to "opt-out" of the AHRI. Last summer Ms. Katie McGinty, Director of the White House Council on Environmental Quality (CEQ), told the Western States Coalition meeting in Spokane, WA that if an area or community wanted to "opt-out" of AHRI they could do so by writing to her. Then just prior to the close of the nomination period, Ms. McGinty told selected Members of Congress that it was only by a letter from the applicable U.S. Congressman that an area could "opt-out" of the program.

In addition to the legal basis for the program, there are many other problems with AHRI including: 1) No justification has been given for this new program, why it is needed, or why does the current system of federal land management agencies and communities needs to be replaced with this new program. 2) The stated purposes of the program properly fall under local zoning issues and these are the responsibility of local governments, not the federal government. 3) No reference or acknowledgement is given to the fact that the lands under navigable waters are owned by the states and this would include most rivers in the country. 4) Elected representatives of local communities are not involved in the decision to list a river under AHRI.

These are a few of the many problems that have thus far been identified with the American Heritage Rivers Initiative. We urge passage of House Joint Resolution 52 opposing this Initiative for Alaska. If we can be of further assistance in this matter please contact me.

Sincerely,

Steven C. Borell, P.E.  
Executive Director



## Citizens' Advisory Commission on Federal Areas

3700 Airport Way  
Fairbanks, Alaska 99709-4699  
(907) 451-2775  
Fax: 451-2761

August 20, 1997

Kathleen A. McGinty, Chair  
Council on Environmental Quality  
Old Executive Office Building, Room 360  
Washington, D.C. 20501

Dear Ms. McGinty:

The Citizens' Advisory Commission on Federal Areas has reviewed the proposed American Heritage Rivers Initiative (AHRI), as published in the *Federal Register* on May 19, 1997 and re-issued on June 20, 1997 (62 FR 33647). We offer the following comments for your consideration.

Our review of this proposed initiative, along with the failure to define a clear need for such a program, and the spurious claims of its benefits, leads us to conclude that the proposal should be abandoned. If the actual goal of the initiative is merely to "support communities, within existing laws and regulations, by providing them with better access to information, tools and resources," we submit that creation of a new federal program to accomplish that goal is both unnecessary and undesirable.

The major deficiency of this proposal is its failure to explain adequately the need to create a new program in order to improve the manner in which federal agencies are supposed to conduct business. It is obvious that, despite claims to the contrary, this initiative constitutes a new federal program, not just a realignment of existing ones. Complete with an interagency task force of a dozen different federal departments and agencies, assignment of a federal "river navigator," creation of so-called Performance-Based Organizations, and the stated objective to reinvent federal programs, we believe the unstated goals of this proposal will ultimately result in greater federal control over state and private properties and greater regulatory burdens. Additionally, by siphoning off agency personnel and resources to provide special recognition and focused federal support for newly designated heritage rivers, other programs and projects will necessarily suffer. The result will be poorer, not better, delivery of services.

The Government Performance and Results Act (GPRA) of 1993 requires all federal agencies to submit a 5 year strategic plan and an annual performance plan to the Office of Management and Budget and Congress by September 30, 1997. In passing GPRA, Congress intended to improve federal program effectiveness and public accountability

by focusing on end results, service quality and customer satisfaction. Since each of the departments and agencies involved in the interagency task force must comply with GPRA, with the deadline only a few weeks away, have they not already addressed ways to improve their programs and delivery of services? If the real motivation behind the proposed American Heritage Rivers Initiative is simply to improve agency functions and provide better support to state and local governments by utilizing existing programs, would it not be more appropriate to address ways of accomplishing those goals in the GPRA performance and strategic plans, without the creation of this new federal program?

For example, how have the various federal agencies on the interagency task force addressed their responsibilities under the Wild and Scenic Rivers Act in their GPRA plans? That act states:

“The Secretary of the Interior, the Secretary of Agriculture, or the head of any other Federal agency, shall assist, advise, and cooperate with States or their political subdivisions, landowners, private organizations, or individuals to plan, protect, and manage river resources.... This authority applies within or outside a federally administered area and applies to rivers that are components of the National Wild and Scenic Rivers System and to other rivers.” 16 USC 1282(b)(1) (emphasis added)

The statutory mandate and authority for federal agencies to provide the same type of assistance and cooperation proposed by the AHRI is already found in the Wild and Scenic Rivers Act. Other statutes such as the Land and Water Conservation Fund Act and the National Historic Preservation Act contain similar provisions. This Commission is unconvinced that the AHRI will result in a miraculous improvement in agency compliance with these mandates and delivery of services. Perhaps more importantly, there is no statutory authority for the creation of this new program, nor for the expenditure of funds for its operation.

The proposed process for nomination of an American Heritage River is also highly suspect. The AHRI uses the term “river community” and states that it is self defined by the members of the community. Based upon this criteria and the discussion in the notice, it would appear that any group of two or more could define itself as a river community and submit a nomination to designate a river under the AHRI. While it is “highly recommended” that nominations for designation of a river be accompanied by letters of support from other members of the community, and a local mechanism that allow members of a community to comment on the nomination must be outlined, it is unclear how much community support is necessary for designation or what level of opposition would prevent designation.

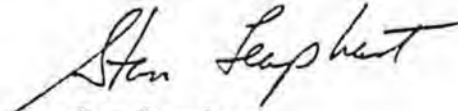
In spite of assurances to the contrary, we foresee the possibility of designation of a river or river area over the objections of the local city, county, borough or state

governments. President Clinton's proclamation creating the Grand Staircase Escalante National Monument over the objections of the state and local governments, as well as local residents and property owners in Utah, gives us no confidence that similar unilateral action could not be taken under the AHRI.

We recommend that, should the decision be made to implement this initiative, changes be made to allow nominations to be made only upon full approval by the legally recognized government(s) responsible for management of the nominated river or river area.

In summary, this Commission believes that the proposed American Heritage Rivers Initiative is an unnecessary duplication of existing programs that is being promulgated without the necessary statutory authority and will do little to enhance the functions of those programs or the delivery of services. It should not be adopted. As we have stated, if the goal is to improve agency efficiency and service to the public, this can best be done through mechanisms such as the GPRA rather than through the creation of a new and unneeded program.

Sincerely,



Stan Leaphart  
Executive Director

cc: Senator Ted Stevens  
Senator Frank Murkowski  
Representative Don Young  
Representative Helen Chenoweth  
Governor Tony Knowles  
Senator Mike Miller  
Representative Gail Phillips

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Monday  
September 15, 1997

**Executive Order**

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**Part IV**

**The President**

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**Executive Order 13061—Federal Support  
of Community Efforts Along American  
Heritage Rivers**

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**Presidential Documents**

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Title 3—

Executive Order 13061 of September 11, 1997

The President

**Federal Support of Community Efforts Along American Heritage Rivers**

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the National Environmental Policy Act of 1969 (Public Law 91-190), and in order to protect and restore rivers and their adjacent communities, it is hereby ordered as follows:

**Section 1. Policies.**

(a) The American Heritage Rivers initiative has three objectives: natural resource and environmental protection, economic revitalization, and historic and cultural preservation.

(b) Executive agencies ("agencies"), to the extent permitted by law and consistent with their missions and resources, shall coordinate Federal plans, functions, programs, and resources to preserve, protect, and restore rivers and their associated resources important to our history, culture, and natural heritage.

(c) Agencies shall develop plans to bring increased efficiencies to existing and authorized programs with goals that are supportive of protection and restoration of communities along rivers.

(d) In accordance with Executive Order 12630, agencies shall act with due regard for the protection of private property provided for by the Fifth Amendment to the United States Constitution. No new regulatory authority is created as a result of the American Heritage Rivers initiative. This initiative will not interfere with matters of State, local, and tribal government jurisdiction.

(e) In furtherance of these policies, the President will designate rivers that meet certain criteria as "American Heritage Rivers."

(f) It is the policy of the Federal Government that communities shall nominate rivers as American Heritage Rivers and the Federal role will be solely to support community-based efforts to preserve, protect, and restore these rivers and their communities.

(g) Agencies should, to the extent practicable, help identify resources in the private and nonprofit sectors to aid revitalization efforts.

(h) Agencies are encouraged, to the extent permitted by law, to develop partnerships with State, local, and tribal governments and community and nongovernmental organizations. Agencies will be responsive to the diverse needs of different kinds of communities from the core of our cities to remote rural areas and shall seek to ensure that the role played by the Federal Government is complementary to the plans and work being carried out by State, local, and tribal governments. To the extent possible, Federal resources will be strategically directed to complement resources being spent by these governments.

(i) Agencies shall establish a method for field offices to assess the success of the American Heritage River initiative and provide a means to recommend changes that will improve the delivery and accessibility of Federal services and programs. Agencies are directed, where appropriate, to reduce and make more flexible procedural requirements and paperwork related to providing assistance to communities along designated rivers.

(j) Agencies shall commit to a policy under which they will seek to ensure that their actions have a positive effect on the natural, historic, economic, and cultural resources of American Heritage River communities. The policy will require agencies to consult with American Heritage River communities early in the planning stages of Federal actions, take into account the communities' goals and objectives and ensure that actions are compatible with the overall character of these communities. Agencies shall seek to ensure that their help for one community does not adversely affect neighboring communities. Additionally, agencies are encouraged to develop formal and informal partnerships to assist communities. Local Federal facilities, to the extent permitted by law and consistent with the agencies' missions and resources, should provide public access, physical space, technical assistance, and other support for American Heritage River communities.

(k) In addition to providing support to designated rivers, agencies will work together to provide information and services to all communities seeking support.

**Sec. 2. Process for Nominating an American Heritage River.**

(a) *Nomination.* Communities, in coordination with their State, local, or tribal governments, can nominate their river, river stretch, or river confluence for designation as an American Heritage River. When several communities are involved in the nomination of the same river, nominations will detail the coordination among the interested communities and the role each will play in the process. Individuals living outside the community may not nominate a river.

(b) *Selection Criteria.* Nominations will be judged based on the following:

(1) the characteristics of the natural, economic, agricultural, scenic, historic, cultural, or recreational resources of the river that render it distinctive or unique;

(2) the effectiveness with which the community has defined its plan of action and the extent to which the plan addresses, either through planned actions or past accomplishments, all three American Heritage Rivers objectives, which are set forth in section 1(a) of this order;

(3) the strength and diversity of community support for the nomination as evidenced by letters from elected officials; landowners; private citizens; businesses; and especially State, local, and tribal governments. Broad community support is essential to receiving the American Heritage River designation; and

(4) willingness and capability of the community to forge partnerships and agreements to implement their plan to meet their goals and objectives.

(c) *Recommendation Process.*

The Chair of the Council on Environmental Quality ("CEQ") shall develop a fair and objective procedure to obtain the views of a diverse group of experts for the purpose of making recommendations to the President as to which rivers shall be designated. These experts shall reflect a variety of viewpoints, such as those representing natural, cultural, and historic resources; scenic, environmental, and recreation interests; tourism, transportation, and economic development interests; and industries such as agriculture, hydropower, manufacturing, mining, and forest management. The Chair of the CEQ will ensure that the rivers recommended represent a variety of stream sizes, diverse geographical locations, and a wide range of settings from urban to rural and ensure that relatively pristine, successful revitalization efforts are considered as well as degraded rivers in need of restoration.

(d) *Designation.*

(1) The President will designate certain rivers as American Heritage Rivers. Based on the receipt of a sufficient number of qualified nominations, ten rivers will be designated in the first phase of the initiative.

(2) The Interagency Committee provided for in section 3 of this order shall develop a process by which any community that nominates and has its river designated may have this designation terminated at its request.

(3) Upon a determination by the Chair of the CEQ that a community has failed to implement its plan, the Chair may recommend to the President that a designation be revoked. The Chair shall notify the community at least 30 days prior to making such a recommendation to the President. Based on that recommendation, the President may revoke the designation.

**Sec. 3. Establishment of an Interagency Committee.** There is hereby established the American Heritage Rivers Interagency Committee ("Committee"). The Committee shall have two co-chairs. The Chair of the CEQ shall be a permanent co-chair. The other co-chair will rotate among the heads of the agencies listed below.

(a) The Committee shall be composed of the following members or their designees at the Assistant Secretary level or equivalent:

- (1) The Secretary of Defense;
- (2) The Attorney General;
- (3) The Secretary of the Interior;
- (4) The Secretary of Agriculture;
- (5) The Secretary of Commerce;
- (6) The Secretary of Housing and Urban Development;
- (7) The Secretary of Transportation;
- (8) The Secretary of Energy;
- (9) The Administrator of the Environmental Protection Agency;
- (10) The Chair of the Advisory Council on Historic Preservation;
- (11) The Chairperson of the National Endowment for the Arts; and
- (12) The Chairperson of the National Endowment for the Humanities.

The Chair of the CEQ may invite to participate in meetings of the Committee, representatives of other agencies, as appropriate.

(b) The Committee shall:

- (1) establish formal guidelines for designation as an American Heritage River;
- (2) periodically review the actions of agencies in support of the American Heritage Rivers;
- (3) report to the President on the progress, accomplishments, and effectiveness of the American Heritage Rivers initiative; and
- (4) perform other duties as directed by the Chair of the CEQ.

**Sec. 4. Responsibilities of the Federal Agencies.** Consistent with Title I of the National Environmental Policy Act of 1969, agencies shall:

(a) identify their existing programs and plans that give them the authority to offer assistance to communities involved in river conservation and community health and revitalization;

(b) to the extent practicable and permitted by law and regulation, refocus programs, grants, and technical assistance to provide support for communities adjacent to American Heritage Rivers;

(c) identify all technical tools, including those developed for purposes other than river conservation, that can be applied to river protection, restoration, and community revitalization;

(d) provide access to existing scientific data and information to the extent permitted by law and consistent with the agencies mission and resources;

(e) cooperate with State, local, and tribal governments and communities with respect to their activities that take place in, or affect the area around, an American Heritage River;

(f) commit to a policy, as set forth in section 1(j) of this order, in making decisions affecting the quality of an American Heritage River;

(g) select from among all the agencies a single individual called the "River Navigator," for each river that is designated an American Heritage River, with whom the communities can communicate goals and needs and who will facilitate community-agency interchange;

(h) allow public access to the river, for agencies with facilities along American Heritage Rivers, to the extent practicable and consistent with their mission; and

(i) cooperate, as appropriate, with communities on projects that protect or preserve stretches of the river that are on Federal property or adjacent to a Federal facility.

*Sec. 5. Responsibilities of the Committee and the Council on Environmental Quality.* The CEQ shall serve as Executive agent for the Committee, and the CEQ and the Committee shall ensure the implementation of the policies and purposes of this initiative.

*Sec. 6. Definition.* For the purposes of this order, Executive agency means any agency on the Committee and such other agency as may be designated by the President.

*Sec. 7. Judicial Review.* This order does not create any right or benefit, substantive or procedural, enforceable by any party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.

*William Clinton*

THE WHITE HOUSE,  
September 11, 1997.

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Washington, D.C. 20002-4999  
(202) 546-4400  
<http://www.heritage.org>



# F.Y.I.

No. 171  
February 2, 1998

## GOOD POLITICS, BAD POLICY: CLINTON'S AMERICAN HERITAGE RIVERS INITIATIVE

Alex Annett  
Research Assistant

"The AHRI creates, by executive fiat, the most all encompassing regulatory regime ever to be imposed on private landowners. Most other land use programs have been designed to protect Federal Land. And in the case of the Clean Water Act and the Endangered Species Act, Congress passed these regulations. Never has an executive dared to assert so much control over private property through his own declaration."

— Nancie Marzulla, *president and chief counsel,*  
*Defenders of Property Rights*

**D**uring the 1997 State of the Union address, President Bill Clinton announced a new federal program entitled the American Heritage Rivers Initiative (AHRI), which he intended to support communities in their efforts to restore and protect rivers across the United States. To many, this lofty goal sounds good. But, on closer inspection, the pristine image it paints becomes murky, revealing a program that violates many constitutional and statutory provisions, involves the federal government further in local and state environmental issues, is inefficient and wastes tax dollars, and threatens personal property rights.

Nevertheless, President Clinton appears ready to begin implementing his initiative, although he has neither the constitutional authority to do so nor the intention of asking Congress for such authority. He also appears unconcerned that promoting this initiative could suggest to many that, for his Administration, the "era of big government" is not over. Congress should consider taking immediate action to block Clinton's river initiative before it floods America's communities with layers of federal bureaucracy and further muddies the balance of power in Washington, D.C.

## IMPLEMENTING A NEW FEDERAL PROGRAM BY DECREE

President Clinton unveiled new details about how he plans to implement his new American Heritage Rivers Initiative when he issued Executive Order 13061 on September 11, 1997.<sup>1</sup> Through executive order, Clinton has established an American Heritage Rivers Interagency Committee to oversee implementation of the initiative. Members of the committee will include the secretaries of the Departments of Agriculture, Commerce, Defense, Energy, Housing and Urban Development, Interior, and Transportation; the attorney general; the administrator of the Environmental Protection Agency; the chairpersons of the Advisory Council on Historic Preservation, the National Endowment for the Arts, and the National Endowment for the Humanities; or designees at the assistant secretary level or their equivalent.

To nominate a river for designation as an American Heritage River, a local community must submit a river nomination packet to the President's Council on Environmental Quality. The packet must include: a description of the river or river area<sup>2</sup> to be considered, its notable resource qualities,<sup>3</sup> a clearly defined vision for protecting the area and a specific plan of action to achieve it, evidence that a range of citizens and organizations in the community support the nomination and plan of action, and evidence that individuals in the community have had an opportunity to discuss and comment on the nomination and plan of action.

The Council on Environmental Quality will select a panel of experts to review the nominations and make recommendations to the President. From these recommendations, the President would select ten rivers or river areas to designate as American Heritage Rivers. These American Heritage Rivers would receive preferential treatment for federal dollars and the support of other federal programs.

On the surface, President Clinton's program looks appealing. Rivers have played a vital role in the country's history, culture, recreation, health, environment, and economy. Finding ways to encourage states and local communities across the country to become involved in improving the water quality of their rivers and revitalizing their waterfronts is commendable. The AHRI, however, will amount to little more than a surface ripple in accomplishing these goals.

Impediments to achieving the AHRI's lofty goals have more to do with the design of the program than with the intentions of communities. The notable problems with President Clinton's initiative are that:

1. It violates a number of constitutional and statutory provisions;
2. It is wasteful and inefficient;
3. It reduces the role and authority of the states;
4. It threatens property rights; and
5. It "serve[s] political purposes."

Upon close examination, it becomes clear that the AHRI is bad policy and unconstitutional and, like many of President Clinton's other initiatives, will become another political pork-barrel program designed to send federal dollars to politically important jurisdictions across the United States.

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1. *Federal Register*, Vol. 62, September 15, 1997, p. 48445.

2. The nominated "river" may vary from a short stretch of a river to its entire length. The designated area can include land immediately adjacent to the river, such as the waterfront and streamside areas, or span the entire watershed. It may also cross jurisdictional boundaries.

3. "Resource quality" refers to how the natural, economic, agricultural, scenic, historic, cultural, or recreational resources connected with the river are distinctive or unique.

## HOW THE AMERICAN HERITAGE RIVERS INITIATIVE VIOLATES THE U.S. CONSTITUTION

Above almost all else, Americans love the beauty and resources of their country. They clearly understand that the U.S. Constitution establishes a system of government to protect their individual rights, and that the federal government should be expressly limited in its ability to usurp those rights. They may disagree, at times, about how much power is given each branch of the federal government to settle disputes and to limit personal freedoms, but there is no dispute that the Founding Fathers intentionally and explicitly designed a balance of power to prevent legislative, judicial, or executive arrogance and abuse of power. Americans expect their elected leaders to abide by the separation of powers delineated in the Constitution, and they want the federal judiciary on guard to make sure they do.

Rather than honor these expectations, President Clinton's American Heritage Rivers Initiative violates both the intent and the letter of the U.S. Constitution. It gives the President as well as his executive agencies authorities that clearly and constitutionally belong to the legislative branch of government, and it confiscates the land use and zoning powers of the states.

### Altering the Constitutional Separation of Power

"The Constitution protects us from our own best intentions: It divides power among sovereigns and among branches of government precisely so that we may resist the temptation to concentrate power in one location as an expedient solution to the crisis of the day."

—*New York vs. United States*, 112 S.Ct. 2408 (1992)

Under the U.S. system of checks and balances, the legislative branch has the power to create laws and appropriate funding, the executive branch is authorized to implement and enforce the laws, and the judiciary is given power to interpret those laws in disputes.<sup>4</sup> To explain to hesitant colonists why this separation of powers was important, James Madison wrote in *Federalist* No. 47 that the "accumulation of all powers legislative, executive and judiciary in the same hands, whether of one, a few or many, and whether hereditary, self appointed or elective, may justly be pronounced the very definition of tyranny."<sup>5</sup>

The Supreme Court historically has recognized the importance of the separation of powers among the President, Congress, and the judiciary. In the case of *Youngstown Sheet & Tube Co. v. Sawyer*,<sup>6</sup> the Supreme Court was asked to decide whether President Harry S Truman (during the Korean War) was acting within his constitutional power when he issued an executive order directing the Secretary of Commerce to take possession of and operate most of the country's steel mills. The government's position was that the president's action was necessary to avert a national disaster that inevitably would result from the stoppage of steel production, and that in meeting this grave emergency, the President was acting within the aggregate of his constitutional powers. The Supreme Court found in *Youngstown* that, even with the threat of a national catastrophe, the President's order could not be sustained as an exercise of his authority. In this case, the Supreme Court found no statute that expressly authorized the President to take property as President Truman's executive order intended, or any act of Congress from which such authority could be inferred. The Supreme Court concluded that the power to adopt such public policies as those proclaimed by the executive order is beyond question by Congress, and that the Constitution does not subject this law-making power of Congress to the President.<sup>7</sup>

4. U.S. Constitution, Articles I, II, and III.

5. Alexander Hamilton, James Madison, and John Jay, *The Federalist Papers* No. 47 (Madison).

6. *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952)

7. *Ibid.*

Supreme Court precedent suggests that President Clinton's Executive Order No. 13061 runs contrary to the separation of power provisions of the Constitution. To implement the AHRI, President Clinton is claiming for himself and future Presidents powers that belong to Congress: specifically, authority over interstate commerce, water rights, property rights, and the appropriation of money. Through executive order, Congress would be relegated to a role of trying to stop presidential programs from being implemented, rather than creating and approving them based on the will of the people and funding them as authorized in the Constitution.

### **Walking Around the Property Clause**

The Property Clause in Article IV of the Constitution states that "Congress shall have power to dispose of and make all needful Rules and Regulations respecting the territory or other property belonging to the United States."<sup>8</sup> Executive Order No. 13061, however, gives the executive branch control and authority over the country's rivers and their associated resources located on federal lands, a power specifically assigned to Congress. In order for the executive branch to have authority to govern and control these rivers and associated resources, this power must be delegated to it by an act of Congress. Congress has not given the executive branch such authority.

### **Trampling the Tenth Amendment**

The Tenth Amendment to the Constitution stipulates that the "powers not delegated to the United States [federal government] by the Constitution, nor prohibited by it to the States, are reserved to the States respectively or to the people."<sup>9</sup> Under the Tenth Amendment, then, state and local governments retain the authority to engage in land use planning and local zoning for public health, safety, and welfare. President Clinton's program, however, sets a new precedent by giving federal regulators a greater role in land use planning, local zoning, and other aspects of a river's surroundings, including "characteristics of the natural, economic, agricultural, scenic, historic, cultural, or recreational resources of a river that render it distinctive or unique."<sup>10</sup> The President has no authority under the Constitution to engage in land use planning and local zoning; thus, Executive Order No. 13061 violates the Tenth Amendment.

## **HOW THE AHRI VIOLATES NUMEROUS STATUTES**

In addition to altering the constitutional separation of powers, the AHRI implementation process outlined in Executive Order No. 13061 also conflicts directly with two significant environmental laws: the National Environmental Policy Act (NEPA) and the Federal Land Management and Policy Act (FLMPA).

### **The National Environmental Policy Act**

The Clinton Administration has cited the National Environmental Policy Act of 1969 as the legal basis for establishing the AHRI. The NEPA is primarily a policy statute mandating that federal government agencies consider the environmental effects of major federal actions. The idea behind the NEPA is that, by requiring federal agencies to consider and gather information about the environmental consequences of proposed actions, the agencies will make wiser environmental decisions.<sup>11</sup> President Clinton states that the NEPA provides a grant of authority to establish the AHRI under authority of Section 101(b) of the NEPA. This section only sets out the broad goal to be achieved by the NEPA, however; it provides no authority for action. The only authorities mandated to the executive branch under the NEPA are to prepare reports; interpret and administer federal policies, regulations, and public laws in accordance with the NEPA; provide information, alternatives, and recommendations; and provide international and national coordination efforts.<sup>12</sup> President Clinton apparently has interpreted these duties to mean that the NEPA

8. U.S. Constitution, Article IV, Section 3, Clause 2.

9. U.S. Constitution, Amendment 10.

10. Executive Order 13061, September 11, 1997, Section 2(b)(1).

11. 42 U.S.C. § 4321.

also gives the executive branch broad authority to develop programs. Such authority, however, was given specifically to Congress, not the President, and Congress has not delegated such powers explicitly to the President. Consequently, citing the NEPA as the legal basis for implementation of the AHRI is questionable.

### The Federal Land Management and Policy Act

Even if it can be argued successfully that President Clinton's action is consistent with the purpose of the NEPA, the NEPA, as written, does not trump the requirements of other statutes. And, in the case of the Federal Land Management and Policy Act, the President is expressly restricted in his ability to designate or manage federal lands. Congress enacted the FLMPA in 1976 in order to reestablish its authority over the designation or dedication of federal lands for specified purposes, and to circumscribe the authority of the President and executive branch to manage federal lands.<sup>13</sup>

In the FLMPA, Congress declared that "it is the policy of the United States that Congress exercise its constitutional authority to withdraw or otherwise designate or dedicate Federal lands for specified purposes" and delineate the extent to which the executive branch may withdraw lands without legislative action.<sup>14</sup> Congress thus asserted its authority to create, modify, and terminate designations for national parks, national forests, wilderness, Indian reservations, certain defense withdrawals, national wild and scenic rivers, national trails, and other national recreational areas and national seashores.<sup>15</sup>

In fact, Congress has not withdrawn, designated, or dedicated any federal lands for President Clinton's American Heritage Rivers Initiative, nor has it authorized the development of the program by the executive branch. The legislative process for obtaining a favored status designation for federal land and resources is clearly established. Consider, for example, the Wild and Scenic Rivers Act adopted by Congress on October 2, 1968.<sup>16</sup> The act provides for the selection, by Congress, of American rivers that, along with their immediate environments, possess outstandingly remarkable scenic, recreational, geologic, fish and wildlife, historic, cultural, or other similar values. The rivers selected are protected for the benefit and enjoyment of present and future generations.<sup>17</sup> Since 1968, Congress has designated 154 Wild and Scenic Rivers under this act, amounting to 10,814 miles of river.<sup>18</sup> In fact, Congress acted as recently as November 12, 1996, when it designated 11.5 miles of the Lamprey River in New Hampshire and 6.4 miles of the Elkhorn Creek in Oregon,<sup>19</sup> following the designation of 51.4 miles of the Clarion River in Pennsylvania on October 19, 1996, as part of the Wild and Scenic Rivers program.<sup>20</sup> Congress is currently considering legislation to designate three more rivers. Representative Norman Dicks (D-WA) introduced H.R. 1477 to designate 51 miles of the Columbia River in Washington State; Senator Patty Murray (D-WA) introduced a companion bill (S. 200) in the Senate. Representative Martin Meehan (D-MA) introduced H.R. 1110 to designate the Sudbury Assibet and Concord Rivers in Massachusetts for the Wild and Scenic Rivers program, and Senator John Kerry (D-MA) introduced the companion bill (S. 469) in the Senate. Clearly, when Members of Congress believe there is reason to act, they will act.

If President Clinton wants to see his initiative implemented properly, then he first should propose legislation to Congress and allow Congress to approve or reject the initiative based on the merits of the proposal and the will of the people. Because Congress has not designated or dedicated any federal lands for the AHRI, or authorized the development of the AHRI, the actions of the President in creating and implementing the AHRI through Executive Order No. 13061 violate the FLMPA.

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12. *Ibid.*

13. 43 U.S.C. § 1701(a).

14. 43 U.S.C. § 1701(a)(4).

15. Legislative History, *The Federal Land Policy and Management Act of 1976* (Public Law 94-579), Vol. 1 at 439 (1978).

16. 16 U.S.C. §§ 1271 *et seq.*

17. *Ibid.*

18. *Wild and Scenic Rivers Reference Guide*, Interagency Wild and Scenic Rivers Coordination Council, 1997.

19. Public Law 104-333.

20. Public Law 104-314.

## HOW THE AHRI THREATENS PROPERTY RIGHTS

The protection of personal property in the Constitution is under increasing assault by all levels of government. The right to own and use property free from unreasonable or arbitrary government interference is fundamental to American freedom and the U.S. Constitution. In fact, the Framers of the Constitution considered the protection of property rights so important that they included it in the Third, Fourth, Fifth, and Sixth Amendments. Today, in an era of almost daily documented cases of unreasonable and arbitrary interference by government agencies, it is not surprising that the Clinton Administration does not seem to recognize or agree with the Founders on the importance of individual property rights.

This lack of appreciation for personal property rights is an undercurrent in President Clinton's AHRI. The right of individuals who own property along designated rivers to use their property free from unreasonable and arbitrary government interference is threatened by the AHRI. The Administration has resisted adding a mandatory opt-in provision to allow the property of landowners along designated American Heritage Rivers to be included in a nomination only in cases in which owners have given their written permission. Such a provision would have shown that President Clinton indeed was concerned about the property rights of those Americans whose land is located along designated rivers. The lack of such a provision means property owners have no guarantee that their property rights are protected.

The regulation of wetlands under the Clean Water Act affects hundreds of thousands of acres of property across the United States. Implementing the AHRI will add hundreds of thousands of acres of dry land to the federal government's control in perpetuity. Rather than increase the access of people to federal resources and protect their rights, the AHRI will increase the access of federal bureaucrats to private property across the United States.

## HOW THE AHRI TREADS ON STATES' RIGHTS

The Founders believed that government closest to the people works best. The Tenth Amendment addresses the empowerment of state and local communities to govern. It recognizes that the federal government—as an entity—should have only limited powers, and that its powers should be specifically enumerated. Water rights and land-use planning are not stipulated powers of the federal government; historically they are subject to regulation and control at the levels of state and local elected government. As Chief Justice William Rehnquist has argued, taking the control of water from the legislatures of the various states and territories at the present time would be nothing less than suicidal. If the appropriation and use were not under the provisions of state law, the utmost confusion would prevail.<sup>21</sup>

President Clinton, through his executive order, is attempting to establish and exert federal control over something that clearly is under state jurisdiction. By allowing the intervention of the federal government through federal bureaucrats, known as "river navigators," who are appointed by the President, Executive Order No. 13061 will interject the federal government heavily into the local decision-making process.

The Clinton Administration claims that river navigators will not interfere in the local planning and zoning process, yet it resists incorporating a provision to prohibit them and all other federal employees involved with the initiative from intervening in local zoning and other decisions affecting private property and water rights. Such a provision would ensure that the states and local communities continue to control areas that are rightfully under their jurisdiction. The AHRI appears to be the program of a President who believes Washington, D.C., knows best and can govern best every aspect of life in every American community.

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21. *California v. U.S.*, 438 U.S. 645 (1978).

## HOW THE AHRI IS WASTEFUL, DUPLICATIVE, AND INEFFICIENT

The Clinton Administration claims that the AHRI will help "reinvent government." But President Clinton's understanding of reinventing government seems to mean creating additional layers of bureaucracy. The American Heritage Rivers Initiative, in fact, is similar to an existing program, the National Rural Development Partnership (NRDP) established by President George Bush in 1991 by executive order. The NRDP is a flawed program: President Bush had no congressional authority over water rights, property rights, or the appropriation of funding when he initiated it; therefore, it also violates a number of constitutional provisions.

Like the AHRI, the NRDP planned to create a collaborative relationship among federal, state, local, and tribal governments, and private, nonprofit, and community-based organizations within each state and some territorial areas, in order to establish a comprehensive and strategic approach to rural development efforts in each state. A comparison of the descriptions of these programs from their respective World Wide Web sites reveals further similarities.

According to the Web site of the National Rural Development Partnership,<sup>22</sup> the NRDP's objectives are to:

- Encourage and support innovative approaches to rural development and more effective resolution of rural development issues;
- Develop innovative approaches;
- Build partnerships among, federal, state, local, and tribal governments and the private sector;
- Encourage local empowerment;
- Involve the Departments of Agriculture, Commerce, Defense, Energy, Housing and Urban Development, Interior, Justice, and Transportation, the Environmental Protection Agency, and the Army Corps of Engineers; and
- Use existing federal personnel and funds to work with the states to bring public and private resources together for solutions to local problems.

According to the Web site of the American Heritage Rivers Initiative,<sup>23</sup> the AHRI is supposed to:

- Encourage community revitalization by providing federal programs and services more efficiently and effectively;
- Develop strategies that lead to action;
- Build a partnership between federal, state, tribal, and local officials, as well as private for-profit, non-profit, and community-based organizations;
- Encourage community-led efforts;
- Involve the secretaries of the Departments of Agriculture, Commerce, Defense, Energy, Housing and Urban Development, Interior, and Transportation; the attorney general; the administrator of the Environmental Protection Agency; and the chairs of the National Endowment for the Arts, the National Endowment for the Humanities, and the Advisory Council on Historic Preservation; and
- Use existing federal staff, resources, and programs to assist communities.

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22. "National Mission and Goals Statement," National Rural Development Partnership, at [www.rurdev.usda.gov/nrdp/goals.html](http://www.rurdev.usda.gov/nrdp/goals.html).

23. Council on Environmental Quality, "American Heritage Rivers Initiative," at [www.epa.gov/rivers/fedreg2.html](http://www.epa.gov/rivers/fedreg2.html).

Reinventing government usually does not imply duplicating a federal program already operating in 38 states that has the same objective: promoting community involvement and development. Besides sharing the NRDP's objective, the AHRI will create three new costly layers of bureaucracy. The AHRI:

1. Creates an American Heritage Rivers Interagency Committee that will be responsible for implementing the AHRI;
2. Establishes a panel to review the river nomination packets and recommend rivers to the President for designation. The panel will include representatives from natural, cultural, and historic resources concerns; scenic, environmental, and recreation interests; tourism, transportation, and economic development interests; and industries such as agriculture, hydropower, manufacturing, mining, and forest management.<sup>24</sup>
3. Gives the Interagency Committee the authority to transfer funds from other legitimate and congressionally authorized federal programs to fund ten new river navigators appointed by the President. The new bureaucrats would be paid approximately \$100,000 each year to assist officials in the ten communities selected by the President to locate existing federal programs and money that would be used to improve their waterfronts and rivers. Funds also would be transferred to compensate engineers, biologists, and foresters who would provide studies and expertise in implementing the initiative. The salaries of the river navigators would cost \$1 million per year (which would be compounded annually because ten new river areas would be designated per year), and the cost of the engineers, biologists, and foresters would be added to the already estimated \$4 million annual cost of the program. It is unclear whether such authority on the part of the Interagency Committee is a violation of the Spending Clause in Article I of the Constitution because the Spending Clause gives Congress—and only Congress—the power and authority to “draw [monies] from the Treasury.”<sup>25</sup>

President Clinton is planning to implement the AHRI at a time when the country is clamoring for Congress to downsize the federal government and give more control back to the states. The true definition of reinventing government is to make government smaller and more efficient. It is difficult to comprehend how creating another federal program—and one that is similar to an existing program—and adding new layers of federal bureaucracy will facilitate an efficient method of cleaning up America's great rivers. Secretary of the Interior Bruce Babbitt, in a recent speech entitled “United by Waters—How and Why the Clean Water Act Became the Urban Renewal Act That Actually Works,” stated:

Finally in 1972 Congress enacted a new law....[t]he Clean Water Act proclaimed a simple if awkwardly stated goal; make the nation's rivers, lakes, and shores “swimmable and fishable.” As American cities used the Act to clean up and restore their waters, those waters, in turn have begun to heal and restore our American cities.

Even as the Clinton Administration touts the effectiveness of the Clean Water Act in restoring and protecting American rivers, it boldly declares that the country also needs the AHRI. If Secretary Babbitt believes the goals of the Clean Water Act already are being achieved, then one must ask: What is the real reason behind the Clinton Administration's new initiative?

## AHRI'S POLITICAL AGENDA FROM A WHITE HOUSE MEMO

One of the best ways to build or strengthen political support in a community is by selecting it to receive a massive infusion of federal funds. Representative Christopher Cannon (R-UT) stated on July 15, 1997, at a House Resources Committee hearing on the AHRI that three to five congressional districts could be covered by each of the ten rivers designated by President Clinton. Using these figures, by the next presi-

24. *Ibid.*

25. U.S. Constitution, Article I, Section 9, Clause 7.

dential election in 2000, the President would have targeted federal funds to go to between 90 and 150 political districts. The American Heritage Rivers Initiative is classic pork-barrel politics.

At the same House Resources Committee hearing, a memo from the Council on Environmental Quality surfaced that read:

Selection committee will recommend more AHR's [American Heritage Rivers] than are actually designated, giving someone else (the President?) a further choice. This could ensure that designated AHR's:

- SERVE POLITICAL PURPOSES
- Are located where agencies can staff them
- Are diverse (river, landscape, community, geography, etc.)<sup>26</sup>

The Administration memo indicates that politics could well play a role in the designation of 10 rivers in early 1998, as well as the designation of an additional 20 rivers before the 2000 presidential election. The AHRI allows the White House to target federal dollars to communities in a way that could be politically advantageous.

## CONCLUSION

At a time when the country wants to downsize government and revitalize the importance of the Tenth Amendment, and Congress is recognizing the necessity of empowering local communities and states even more, the American Heritage Rivers Initiative chooses the wrong approach for preserving some of America's great resources, its many rivers. Although there often has been a lack of political will in Congress to tackle these kinds of issues—even with flagrant violations of law and terrible policy—several Members of Congress recognize the problems with President Clinton's initiative and have begun to focus their attention on it.

For example, on June 10, 1997, Representative Helen Chenoweth (R-ID) and 46 cosponsors introduced H.R. 1842 to terminate funding by any federal agency for the AHRI. The bill passed the House Resources Committee by voice vote on November 5, 1997. In addition, on December 10, 1997, Representatives Chenoweth, Richard Pombo (R-CA), and Bob Schaffer (R-CO), and House Resources Committee chairman Don Young (R-AK) filed a lawsuit in U.S. District Court for the District of Columbia to challenge the constitutional authority of the President to implement this initiative.

Because President Clinton plans to designate the first ten rivers in early February, the time has come for every Member of Congress to take a long, hard, and honest look at the AHRI program. It is an indefensible waste of taxpayer dollars. Through its Wild and Scenic Rivers Program and numerous other water quality initiatives, Congress already has devoted considerable resources to cleaning, restoring, and enhancing America's rivers with great success. But even more disturbing than the waste, the AHRI program seriously undermines congressional authority and upsets the delicate balance of power so carefully crafted in the U.S. Constitution.

Congress must exercise its proper statutory and constitutional authority to bring this program to an end before it is launched.

26. Council on Environmental Quality, Draft Memo, "The American Heritage Rivers Initiative," provided to the House Resources Committee and the basis for questioning at a hearing on the Initiative. See *Oversight Hearing on the Clinton Administration's American Heritage Rivers Initiative*, House Report 105-36, 105th Congress, 1st Session, July 15, 1997, pp.81-82.



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~~Paul C. Jones~~  
Executive Director

DATE: February 18, 1998

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RE: Draft Copy of remarks on  
House Joint Resolution No. 52  
Copy of the Heritage Foundation paper  
"Good Politics, Bad Policy: Clinton's American  
Heritage Initiative," by Alex Annett.

14 pages with cover. If there are problems with this fax please call  
Kathy at 406/259-3861.

For Immediate Release  
July 17, 1997

Contact Glenna Hodge  
(512) 463-0644

The American Heritage Rivers Initiative Makes No Sense  
by Rep. Bob Turner

On May 19, 1997, the White House Council on Environmental Quality (CEQ) published a notice in the *Federal Register* announcing the American Heritage Rivers Initiative (AHRI), following up on a promise by the President in his State of the Union address to designate 10 rivers as American Heritage Rivers in 1997. The CEQ had allowed a scant 21 days for public comments, after which the President would issue an executive order making the new federal program official. Since then, citizens and elected officials from the county level to the U.S. Senate have been scrambling to make sense of the initiative, in order to submit meaningful comments by the deadline.

Toward that end, my office called the CEQ on May 22 to learn more. What problem does the AHRI seek to solve? What are its goals and purposes? These questions are relevant to Texas, because Land Commissioner Garry Mauro is working with the White House to have the entire Rio Grande designated as one of the first 10 American Heritage Rivers. So far, neither the phone call to the CEQ, my June 10 letter to Garry Mauro, nor a July 9 briefing by the CEQ's Ray Clark and Assistant Land Commissioner Ty Fain have yielded many, if any, specifics about the initiative. No one can explain what will be possible with a federal designation that is not possible now.

According to the CEQ, the problem is poor performance by federal agencies. The AHRI will reinvent government and thereby improve the delivery of services by 13 federal agencies using existing budgets and no new regulations. Apparently, there is money enough for local projects such as water and wastewater treatment plants and economic development, but federal agencies are doing a poor job of getting the money back to the communities. Somehow, the CEQ reasons, a federal designation will cause the agencies to do better.

Since this is a "bottom-up" initiative, the goals and purposes of the AHRI will be left to the imagination of local communities, within specified parameters. A petition must be based upon some aspect of restoring the river. What does that mean? According to the CEQ, a petition might be based upon restoring stream flow which would be accomplished by removing impediments (dams, levees, impoundments) to natural flow of water. When asked how that might impact drinking water supplies, surface water permits for irrigation, hydroelectric power or flood control, the CEQ employee allowed that restoration of stream flow by actually removing obstructions might be going too far, but could not suggest other ways a river's original stream flow might be restored. From that, I took it that a petition for the purpose of restoring stream flow would not be looked upon favorably by the CEQ.

If a petition were based upon a goal of restoring water quality, we asked, how would that be accomplished? For example, we have a Clean Water Act which governs water quality. The U.S. Environmental Protection Agency (EPA) and the Texas Natural Resource Conservation Commission (TNRCC) are charged with carrying out the mandates imposed by that federal act. Does the AHRI suggest these agencies are failing at their jobs as well? Furthermore, if the AHRI involves no new regulations, what more can be done under a federal designation that is not already possible under the Clean Water Act?

In 1994, we rejected an effort to designate five Texas water bodies as Outstanding National Resource Waters. We understood then that the federal designation would severely and unnecessarily restrict land use surrounding the designated water body. The fact that the water bodies contained such high quality water was testament enough that the state already was doing an excellent job managing our natural resources.

Also in 1994, we managed to fend off the federal designation of 33 central-Texas counties as critical habitat for the endangered golden-cheeked warbler. Again, Texans understood that the designation would deny them of the right to own, maintain and transfer their private property without federal involvement. And again, the fact that the creatures were thriving in these counties was testament to the fact that Texans do an excellent job of taking care of their land.

No one yet has explained how the federal designation of the Rio Grande River as an American Heritage River will be different from any other federal designation. Yes, water quality in the Rio Grande needs to be improved, but we need to be honest about the source of the pollution. Texas is doing its share. Mexico still dumps raw sewage into the river. And, yes, we need good clean economic development projects in communities along the Rio Grande. But we don't need a federal designation to make that happen, either.

In my humble view, the American Heritage Rivers Initiative makes no sense. Based upon everything we know about federal designations, I cannot imagine why anyone would offer up the Rio Grande as a federal American Heritage River for any reason, much less as an incentive for federal agencies to shape up.

The new deadline for public comments on the initiative has been extended to August 19. After that time, it is my understanding President Clinton will sign the executive order breathing life into the AHRI. We in Texas may not be able to change that, but we can and should adopt a wait and see approach before requesting the federal designation of any Texas river.

In the meantime, I suggest we invite the heads of those 13 federal agencies to Texas and ask them to outline for us the array of federal programs which offer assistance to local communities. We need to have them tell us how much money is available for infrastructure and other projects and ask them why we can't have it - now.



**U.S. REPRESENTATIVE**  
**HELEN CHENOWETH**  
*First District - Idaho*

**NEWS RELEASE**

FOR IMMEDIATE RELEASE  
October 22, 1997

CONTACT: Chad Hyslop  
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## **Chenoweth leads victory for state sovereignty, property and water rights**

WASHINGTON, D.C. – A growing federal bureaucracy suffered a blow today when the House Resources Committee passed U.S. Rep. Helen Chenoweth's (R-Idaho) bill to stop the Clinton Administration's American Heritage Rivers Initiative (AHRI).

The Chenoweth bill (HR1842) was passed by a 15-8 vote. The measure would eliminate funding for the AHRI. Supporters of Chenoweth's bill believe the AHRI is unnecessary, wasteful and will allow the federal government to interfere in the management of state- and privately owned lands.

"Offering handfulls of federal dollars, President Clinton's Initiative is an attempt to lead the American people down a primrose path," Chenoweth said. "This Initiative is a publicity ploy, when in reality, funds for improving water quality and restoring riverfront communities are already available through programs created by Congress."

"This Initiative is unneeded, misappropriates funds Congress mandated for valid projects, has not met public comment requirements, usurps individual water rights, private property rights, the sovereignty of all fifty states, consolidates power in the administration, and defies the Constitutional separation of powers," Chenoweth said.

(Note: For technical reasons, the committee will vote again on the bill next week, before sending it to the House floor. But given the large majority of today's vote, there is no reason to expect a different outcome.)

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VOICE ACTUALITY AVAILABLE AT 202-225-2355

## AMERICANS AREN'T FOOLS, MR. PRESIDENT

By Glenna Hodge

Reprinted from *Liberty Matters Journal* 7/4/97

On May 19, the White House Council on Environmental Quality (CEQ) published an innocent-looking notice in the *Federal Register*. It was like a birth announcement in a way, heralding the arrival of the President's new baby, the American Heritage Rivers Initiative. The first public glimpse of this, his latest land-grab scheme, came during the State of the Union address when the President unveiled his plan to designate 10 American Heritage Rivers in 1997. The designations, he said, would "help communities alongside them revitalize their waterfronts and clean up pollution, proving once again that we can grow the economy as we protect the environment." Americans weren't fooled. It was *deja vu*.

Last year, with the stroke of his pen, the President had simply taken Utah's Grand Staircase-Escalante as a National Monument. Neither the majority of elected officials nor the people whose assets were instantly frozen had any advance warning of the seizure. Who would have seen it coming? The President of the United States does not just fly in and take people's property. Well, OK, now we know this President does, but then he does a lot of things that would make our forefathers shudder.

Earlier, Congress tried to pass the National Heritage Areas Act, which was abandoned when it became clear that passage would have to be over the furious objection of the American people. There it was, though, in black and white, the *Federal Register* notice. Unfazed by the will of the people, the President was back again. This time, though, he would leave Congress out and bypass the democratic process. Instead, he would use the Grand Staircase-Escalante National Monument method and simply seize vast amounts of American soil and water by presidential proclamation.

That was the plan, at least, until May 28. That was the day Liberty Matters faxed an Alert that sparked a firestorm of indignation and created an incredible backlash against the President, his CEQ office and the federal agencies involved in the American Heritage Rivers Initiative. White House telephone operators were swamped with more incoming calls than the system could handle. The grassroots' response generated such a torrent of protest that Katy McGinty, chairman of the CEQ, said in a press release that she was "bewildered and perplexed" by the amount of opposition to their plan.

The callers simply wanted to know what would keep this presidential initiative from having the same chilling effect on commerce, industry and private property rights as the Utah initiative. The CEQ had allowed a scant 21 days for the public to comment on the *Federal Register* notice. Worse still, Memorial Day fell within the already too-short comment period. Congressmen were in their home districts celebrating freedom and honoring Americans who had fought and died defending it for the rest of us. Little did they know that the President had chosen this moment to launch a scheme that, if enacted, would rob Americans of that hard-won liberty by controlling every inch of American soil from the White House.

Because they responded to the Alert by the hundreds of thousands, the American people did their part for liberty. They complained loudly that there was too little information and that the White House had allowed too little time for meaningful comments. The CEQ, even under the crushing weight of public scrutiny, had been willing only to say what the Initiative would not do. It would not involve new federal regulations, they said, and it would not involve the appropriation of new federal dollars. Things just didn't add up. A federal program without regulations that wouldn't cost the taxpayers more money? Do you think we're fools, Mr. President?

The White House said that the American Heritage Rivers Initiative stemmed from Vice-President Al Gore's National Performance Review, the administration's plan to re-invent government. Federal agencies weren't communicating among themselves very well and because of their poor communications, they were not delivering services (federal funds) as fast as the President and Vice President would like. This Initiative would solve the problem, they said. Somehow, a new federal designation would cause the agencies to communicate. Somehow, the presidential designation of a river and its watershed would cause agencies to redirect taxpayer dollars that are languishing in their coffers and to refocus their efforts toward the support of the first 10 river communities because they would now be under federal control.

The administration wanted to create another layer of federal bureaucracy, take control of vast amounts of American soil and

water, and paste a patriotic label across the front of this pork barrel in the hope that federal agencies would improve their performance. No problem. States should be happy to give up their rivers and the people their private property rights in order to inspire federal employees to do their jobs, right? Even if the people didn't buy the line about improving the delivery of services, they certainly couldn't be opposed to saving our rivers.

The President had under-estimated the intelligence of the American people once again. They recognized that this was the same dance, just a different partner. They hadn't bought the National Heritage Areas Act land-use scheme, though, and to the dismay of the White House, the President's new scheme wasn't selling either. Maybe it was the fact that Clinton was bypassing Congress and the democratic process that didn't sit well. Or maybe it was the part about the designations being perpetual. The information was sketchy, but the American people knew something was very wrong.

The growing controversy prompted legislation by Congressman Helen Chenoweth (R-Idaho) who delivered two impassioned speeches from the House floor. She cited the need for Congress to question the purpose of the American Heritage Rivers Initiative. Since the designations would be made by presidential proclamation, Congress would not be given a chance to debate the Initiative unless it took control of the issue. She reminded the members that "this Congress is about less government, self-determination and freedom. It's about states rights, property rights, and the right of the people to be free of federal entanglements." The American Heritage Rivers Initiative, she said, did not fit that bill. Chenoweth, along with eleven other Congressmen, then introduced HR1842 which would prohibit the Clinton Administration from spending federal funds for the American Heritage Rivers Initiative.

Congressman Don Young, (R-Alaska), Chairman of the House Committee on Resources, and four other committee chairmen also took a stand. They delivered a letter to the CEQ pointing out that because the Initiative was a major federal action, it violated the National Environmental Policy Act of 1969. Furthermore, its short comment period violated the Administrative Procedures Act. They requested that the CEQ extend the public comment period and deliver a detailed briefing to that Committee no later than June 27.

Two days later, in a surprising show of bipartisan concern, 30 members of Congress signed a letter to the CEQ requesting an extension of the comment period, citing potentially detrimental implications to property rights in the initiative. They too complained that the initial comment period was too short to allow members to prepare meaningful comments.

Because liberty still matters to millions of Americans who refused to let the President take it without a fight, politicians who are sworn to uphold and defend our Constitution joined in the chorus of criticism. Finally, the President's staff announced they would grant a 60-day reprieve. They re-issued their proposal in the *Federal Register* on June 20 and the new deadline for public comment is August 20.

In usual form, CEQ assured critics that they had taken care of property rights concerns with their new rules which are "intended to clarify issues raised over the last month." But, on closer inspection, no mention of, nor any specific protections for property rights were included.

More pressure must now be applied to stop this Initiative within the new 60-day window, or an Executive Order will follow. The American Heritage Rivers Initiative will be confirmed and river communities will be asked to submit their petitions for designation by January.

Although this program is not dead, it has been stalled because the American people spoke up. They demanded to know who would stop the President from putting rivers and communities under federal control. They demanded to know what problem the American Heritage Rivers Initiative would solve that could not be solved without a federal designation. They demanded to know what need would be met by the initiative that could not be met now. If federal agencies had money to give away, they wanted to know what was preventing them from doing their job that a federal designation would cure.

Most of all, the American people demanded to know what would make any presidential initiative worth the ensuing loss of freedom. Thank you, America, for asking. Keep asking, for they do not now and never will have a good enough answer.

*Glenna Hodge is a freelance writer on property rights issues and is a legislative assistant to State Representative Bob Turner in Texas.*



# ALASKA MINERS ASSOCIATION, INC.

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February 23, 1998

Honorable Craig Thomas  
Chairman  
Subcommittee on Parks, Historical Preservation and Recreation  
354 Senate Office Building  
Washington, DC 20510

RE: H.R. 901, the American Land Sovereignty Protection Act

Dear Senator Thomas,

Thank you for the opportunity to comment on House Resolution 901 which would require Congressional approval of all international designations that involve any lands or waters owned by the United States. The Alaska Miners Association supports H.R. 901 and urges its passage at the earliest possible date.

H.R. 901 is possibly the single most important land management issue now before the U.S. Congress. This Act is needed to protect and help insure the sovereignty of our country. This Act is also needed to reduce the opportunity for foreign governments and foreign companies to dictate and adversely impact the policies and economy of the United States. It is crucial that the U.S. Congress and only the U.S. Congress be allowed to offer any area of land or water of the United States or any of its territories as part of an international designation that could, or may, in any way affect the use or management of that area.

World Heritage Sites and Biosphere Reserves have been used in the past and are now being used by environmental groups to harass and stop projects. This occurred at the New World Mine located in Montana just outside Yellowstone National Park. Yellowstone has been designated as both a World Heritage Site and a Biosphere Reserve. The New World Mine was on private property about three miles outside the park and on a watershed that drained away from the park. The Department of Interior invited the United Nations World Heritage Committee to visit the Park with the pre-determined goal of getting the Committee to oppose the mine and thereby add international pressure to block development of the mine. After the visit and without any scientific basis or evaluation of the facts, the Committee predictively came out against the New World Mine.

4/11/98  
In the Kamchatka area of the Russian Far East, immediately after designation of the "Volcanoes of Kamchatka World Heritage Site", environmental groups issued a press release attacking OPIC (Overseas Private Investment Corporation) support for a mine project near the newly designated site. This project and the surrounding area had been extensively explored for more than a dozen years and was strongly supported by the local communities. The people of the Russian Far East are desperate for jobs and a means to support their families. But because of the international World Heritage Site designation, outside groups were given a tool to harass the project and add outside international pressure to block development that would be a tremendous benefit to the area.

It has been argued that World Heritage Sites and Biosphere Reserves are only "symbolic" and that such designations do not have any impact on a nation's sovereignty over its lands and waters. We submit that for the New World Mine and the residents of Kamchatka such designations are far more than just "symbolic".

Where World Heritage Sites or Biosphere Reserves are established there exists an undefined "buffer" around the designated area that is also subject to outside influence. In both the New World Mine and the Kamchatka instances, the projects were several miles outside the boundaries of the respective World Heritage Sites. This means that not only is the designated Site subject to outside influence, but that private and government lands and waters around the Sites are also susceptible to harassment.

This "buffer" aspect is of extreme importance in Alaska. Specifically, about 165 million acres of Alaska (an area equal to the combined acreage of New York, New Jersey, Pennsylvania, West Virginia, Ohio, Indiana, and Illinois) is already in federally designated parks, preserves, monuments, refuges, and wild & scenic rivers which are often given the general name of Conservation System Units or CSUs. If any of these CSUs are given international designations, the adjacent State-owned or Native-owned lands would be in jeopardy. How wide is the buffer? Is it three miles as occurred at the New World Mine? Or is it 10 miles or 20 miles? We have calculated that each one-mile width of buffer around the federal CSUs in Alaska would cover another 8 million acres of mainly State or Native owned lands.

The "buffer" affect constitutes a danger to privately owned Native lands in Alaska which total about 45 million acres. Most of these lands were selected because they have the highest mineral potential and therefore the greatest opportunity to create jobs and economic development opportunities for the Native people. The opportunities presented by these lands are essential for the Native people, many of whom live in remote villages that are plagued with chronic unemployment. State and federal programs to create jobs and improve the lives and self-worth of the Native people have utterly failed. It is therefore essential that debate and an act of Congress be required before any international designation is allowed that could in any way be used to harass or block the Native people from normal use and enjoyment and developing their resources.

The impacts of Biosphere Reserves would be even worse than those of World Heritage Sites. The reason is that boundaries of Biosphere Reserves are not defined. They do not have specific clearly established boundaries but rather are made up of a core area where no development can occur and surrounding intermediate "buffer" areas where minimal development can occur. Neither the Congress nor a private citizen can predict what can or cannot be done in the non-core areas or on lands adjacent to a Biosphere Reserve. All of the problems and uncertainties of World Heritage Sites continue and some new dangers are added.

We have focused on World Heritage Sites and Biosphere Reserves. However, are there any other international designations that we do not know about? Are there any other designations that could in any way be construed to result in some measure of compromise of sovereignty? H.R. 901 would require Congressional approval of all international designations.

We believe that international designations could be used to disrupt and hurt U.S. business and industry. If international pressure can be exerted on development in the U.S. through World Heritage Sites or Biosphere Reserves, it is a small step for our international competitors to fund environmental groups to harass and block projects in the U.S.

One example of the danger posed by an international designation involves Native owned private lands in Northwest Alaska. The Red Dog Mine is one of the greatest success stories for the Native people of Alaska. In 1985 the U.S. Congress passed a Act that provided a right of way for the NANA Regional Corporation (a Native corporation) to build a road from its Red Dog Mine across Cape Krusenstern National Monument to the only feasible port site in the area. This mine is now the largest private employer in Northwest Alaska and provides high-quality, skilled, year-around jobs to more than 450 people, 54% of which are Native shareholders. This single mine now produces more than 8% of the world's zinc concentrate.

However, if back in 1985 Cape Krusenstern had been a World Heritage Site, or if the off-shore area had been a Biosphere Reserve, the outcome may have been very different. Environmental groups fought against the road right of way and would have used international pressure to block it if international designations had been in place. Also, it is likely that international competitors would have done everything possible, including funding groups like Greenpeace, in an attempt to block the right of way needed for the mine. World Heritage Sites and Biosphere Reserves expose any area, and especially Alaska, to this type of economic harassment from foreign competitors.


Furthermore, if an international designation is in place, nothing would keep foreign governments from using such designations and the same tactics to advance their political agendas at the expense of the U.S. interests.

Another aspect that must be addressed is the ability of the international community to change the definitions, management regime or use requirements for World Heritage Sites or Biosphere Reserves. If such changes occur, the U.S. could find itself bound to some new requirements and added limitations.

One final point must be raised. All governments have the propensity to grow and continually reach for more power and control. When this occurs in the United States, we the people can elect representatives that will curb this expansion of government without the need for a revolution. There is no such mechanism in place to change the direction of the United Nations. Also, under the U.S. Constitution the Congress has the authority and responsibility for such lands issues and any international designation without Congressional approval is an usurpation of that authority.

For all of the reasons and situations discussed above, it is essential that only the U.S. Congress have the power to allow a World Heritage Site, Biosphere Reserve or any other international designation over our lands or waters.

Sincerely,



Steven C. Borell, P.E.  
Executive Director

cc: Senator Ted Stevens  
Senator Frank Murkowski  
Congressman Don Young  
Governor Tony Knowles

**HJR**

**68**

# SENATE COMMITTEE REPORT

DATE: 5/6/98

FURTHER:

DATE TURNED IN TO OFFICE: 5/12/98

Resources Committee considered HOUSE JOINT RESOLUTION NO. 68 am

Relating to continued operation of the McKinley Park airstrip for general aviation and access to Denali National Park and Preserve.

and recommends:

- be replaced with \_\_\_\_\_ CS \_\_\_\_\_ (\_\_\_\_\_)
- adopt previous \_\_\_\_\_ CS \_\_\_\_\_ (\_\_\_\_\_)
- attached amendment(s)
- adopt Letter of Intent by \_\_\_\_\_ Committee
- further referral to the \_\_\_\_\_ Committee

- Senate Bill:**
- same title
  - new title
- House Bill:**
- same title
  - technical title
  - new: SCR# \_\_\_\_\_

| SIGNING DO PASS                   | DP                                  | OTHER RECOMMENDATIONS     | NR                                  | DNP | AM |
|-----------------------------------|-------------------------------------|---------------------------|-------------------------------------|-----|----|
| <i>John L. ...</i>                | <input checked="" type="checkbox"/> | <i>Amendment with ...</i> | <input checked="" type="checkbox"/> |     |    |
| <i>Kevin ...</i>                  | <input checked="" type="checkbox"/> |                           |                                     |     |    |
| <i>[Signature]</i>                | <input checked="" type="checkbox"/> |                           |                                     |     |    |
| <i>[Signature]</i>                | <input checked="" type="checkbox"/> |                           |                                     |     |    |
| <b>CHAIR:</b> <i>Rick Halford</i> | <input checked="" type="checkbox"/> | <b>CHAIR:</b>             |                                     |     |    |

**NEW FISCAL NOTE(S):**

| Department | Date | Zero | Fiscal |
|------------|------|------|--------|
|            |      |      |        |
|            |      |      |        |
|            |      |      |        |
|            |      |      |        |
|            |      |      |        |

**PREVIOUS FISCAL NOTE(S):\***

| Department  | Date        | Zero     | Fiscal   |
|-------------|-------------|----------|----------|
| <i>HTCA</i> | <i>4/30</i> | <i>0</i> | <i>2</i> |
|             |             |          |          |
|             |             |          |          |
|             |             |          |          |
|             |             |          |          |

APPROPRIATION -- no fiscal note

\*include fiscal notes accompanying Governor's bill

# FISCAL NOTE

No: 1

STATE OF ALASKA  
1998 LEGISLATIVE SESSION

BILL NO.                      Bill Version: HJR 68  
(H) Publish Date: 5/2/98

Title: Continue Operation of McKinley Park Airstrip  
Sponsor: House Finance  
Requestor: House Transportation

Dept. Affected: Legislature  
BRU:                                       
Components:                                       
Serial #:                                     

**EXPENDITURES/REVENUES: (THOUSANDS OF DOLLARS)**

| OPERATING              | FY 99      | FY 00      | FY 01      | FY 02      | FY 03      | FY 04      |
|------------------------|------------|------------|------------|------------|------------|------------|
| Personal Services      | 0.0        |            |            |            |            |            |
| Travel                 | 0.0        |            |            |            |            |            |
| Contractual            | 0.0        |            |            |            |            |            |
| Supplies               | 0.0        |            |            |            |            |            |
| Equipment              | 0.0        |            |            |            |            |            |
| Land & Structures      | 0.0        |            |            |            |            |            |
| Grants, Claims         | 0.0        |            |            |            |            |            |
| Miscellaneous          | 0.0        |            |            |            |            |            |
| <b>TOTAL OPERATING</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> |
| <b>CAPITAL</b>         | <b>0.0</b> |            |            |            |            |            |
| <b>REVENUE</b>         | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> |

**FUNDING: (THOUSANDS OF DOLLARS)**

|              |            |            |            |            |            |            |
|--------------|------------|------------|------------|------------|------------|------------|
| General Fund | 0.0        |            |            |            |            |            |
| Federal Fund | 0.0        |            |            |            |            |            |
| Other        | 0.0        |            |            |            |            |            |
| <b>TOTAL</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> |

**POSITIONS:**

|           |   |  |  |  |  |  |
|-----------|---|--|--|--|--|--|
| Full-Time | 0 |  |  |  |  |  |
| Part-Time | 0 |  |  |  |  |  |
| Temporary | 0 |  |  |  |  |  |

**ANALYSIS: (ATTACH A SEPARATE PAGE IF NECESSARY)**

Prepared by: Peter Ecklund, Staff  
House Transportation Committee  
*Bill Williams*, Chairman

Date: 4/30/98  
Phone: 465-3424  
Phone:                                     

**COMMITTEE COPY**



U.S. Department  
of Transportation  
Federal Aviation  
Administration

Office of the Regional Administrator  
Alaskan Region

222 W. 7th Avenue #14  
Anchorage, AK 99513-7587  
Phone: (907) 271-5645  
Fax: (907) 271-5113

APR 30 1998

Mr. Robert G. Stanton  
Director, National Park Service  
1849 C Street NW  
Washington, D.C. 20240

Dear Mr. Stanton:

I am writing to express my concern relative to the proposed closure of the McKinley National Park airstrip. I am aware that there has been considerable opposition to this proposal both from the standpoint of public access to the park as well as from the aviation safety perspective. It is the latter issue which causes me considerable concern.

We in the Federal Aviation Administration are keenly aware of the high number of aviation accidents which occur in Alaska each year. Unlike the "lower 48" states, Alaska is highly dependent upon aviation as the sole means of accessibility to much of the entire state, and a significant number of Alaska residents are pilots and airplane owners. One of every 70 residents in Alaska is a pilot, and there is one registered aircraft to every 68 people in the state. Alaska has approximately 7 times as many pilots per capita and 12 times as many aircraft per capita as the rest of the United States.

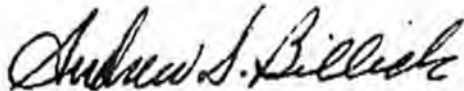
The corridor between Anchorage and Fairbanks, two of the largest population centers in the state, is used extensively by both general aviation and air taxi operators throughout the year. Unfortunately, the number of available airports along this route is very limited which does pose a problem when weather conditions deteriorate or other emergencies arise which necessitate the termination of a flight. Additionally, Mt. McKinley attracts a large number of aircraft throughout the year associated with both public and private flightseeing activities, resulting in a relatively large number of aircraft which are in the area of the McKinley National Park airstrip at various times during the year. Given the important role which this airport has played for many years, I feel it is a compromise of safety to consider closing this very important aviation facility.

I realize that the Healy River airport is less than fifty miles to the northwest of the McKinley National Park airstrip. However, due to the frequency of high winds in this area, it oft times is not possible for small aircraft to safely proceed (or return) to the Healy River facility. Nor is it sometimes feasible to proceed (or return) to the Cantwell airstrip, which is slightly further in distance at the southern entrance to Windy Pass. The McKinley National Park airstrip is critically situated along this route and has, no doubt, saved the

lives of many pilots and passengers who have had to make unscheduled landings due to weather conditions or other emergencies which have occurred in this area.

Based on the foregoing, I am asking that you reconsider this proposal and allow the McKinley National Park airstrip to remain in operation which will greatly assist in meeting the needs of the many aviators who fly in this area on a daily basis. Your decision to keep this airport open has the potential to save both lives and property in a land that is so dependent on aviation. Thank you for your consideration of this very important aviation safety consideration. If I can be of further assistance, please call me at your convenience.

Sincerely,



Andrew S. Billick  
Regional Administrator,  
FAA Alaskan Region

(11)

By:  
Introduced:  
Adopted:

Mike Young  
03/26/98  
03/26/98

RESOLUTION NO. 98-023

A RESOLUTION OPPOSING THE NATIONAL PARK SERVICE'S DECISION TO  
CLOSE THE MCKINLEY PARK AIRSTRIP

WHEREAS, the National Park Service (NPS) has determined in their current Frontcountry Plan that the McKinley Park Airstrip should be closed; and

WHEREAS, the NPS suggested five alternatives in their original draft plan and only one alternative suggested that the McKinley Park Airstrip be closed (Alternative C), one alternative (Alternative E) called for expansion of the current airstrip and Alternatives A and B maintained the existing airstrip; and

WHEREAS, the NPS also determined in this plan that the McKinley Park Airstrip will remain open until suitable alternatives become available; and

WHEREAS, Fairbanks residents and pilots use the McKinley Park Airstrip for immediate access to Denali National Park; and

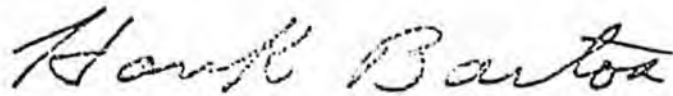
WHEREAS, the other two airstrips in the area are not as convenient or as accessible to Denali National Park and do not qualify as suitable alternatives; the Healy Airport is located approximately 10 miles away and is owned by the State of Alaska; the Denali Private Airstrip is owned privately and is also approximately 10 miles away; and

WHEREAS, the NPS owns the McKinley Park Airstrip and it would appear to be more economical to continue operations there than to close the airstrip and pay to use either the Denali Private Airstrip or the Healy Airport; and

WHEREAS, the NPS needs both wheel-plane and ski-plane access for its operations and neither the Healy Airport or the Denali Private Airstrip currently allow access for planes to land on snow; in the winter the NPS flies Piper Cubs which only have skis and need snow access to land; and currently those planes are able to land at the McKinley Park Airstrip.

NOW, THEREFORE, BE IT RESOLVED that the Fairbanks North Star Borough Assembly opposes the closure of the McKinley Park Airstrip and requests the NPS to either keep the airstrip open indefinitely or build another airstrip within the Park, which would allow pilots and other visitors closer access to existing Park facilities.

PASSED AND APPROVED THIS 26TH DAY OF MARCH, 1998.



Hank Bartos  
Hank Bartos  
Presiding Officer

ATTEST:



Mona Lisa Drexler, CMC/AAE  
Mona Lisa Drexler, CMC/AAE  
Municipal Borough Clerk

Ayes: LaSota, Sattley, Solie, Sonaf Frank, Prax, Webb, Young, McBride, Bartos  
Noes: None



Greater Fairbanks

**Chamber**

of Commerce

(10)

250 Cushman Street, Suite 2D

(907) 452-1105

Fairbanks, Alaska 99701-4655

FAX: (907) 456-6968

Introduced by: Transportation Committee  
Date Introduced: January 19, 1998  
Dated Passed: January 26, 1998  
Date Transmitted: January 28, 1998

### RESOLUTION 98-0126

#### A RESOLUTION BY THE GREATER FAIRBANKS CHAMBER OF COMMERCE IN SUPPORT OF KEEPING THE MCKINLEY NATIONAL PARK AIRSTRIP OPEN FOR GENERAL AVIATION USE.

WHEREAS, Denali National Park and Preserve (Denali Park) is the top visitor destination in Alaska and a critical element in the Alaska visitor/tourism industry and access into Denali Park is extremely restricted due to the limited existing transportation infrastructure; and

WHEREAS, visiting Denali Park is a high priority for many Alaskan citizens and many of the Alaskan visitors who fly their personal aircraft to Alaska; and

WHEREAS, the McKinley National Park airstrip (McKinley airstrip) has served public aviation users since it was constructed in the early 1940's; and

WHEREAS, the McKinley airstrip offers intermodal connections such as access to the National Park entrance area by foot, and direct convenient access to the Alaska Railroad and the Parks system of surface transportation; and

WHEREAS, the McKinley airstrip as a public airport facility operates well as a multi-nodal transfer point; and

WHEREAS, the McKinley airstrip AWOS supplies invaluable weather information to pilots traveling through Windy Pass, and the airstrip provides an emergency landing area in otherwise forbidding terrain in the event a pilot experiences bad weather conditions, or mechanical problems with their aircraft; and

WHEREAS, the closest public alternative, the Healy River Airport, has limited space available for transient aircraft, limited transient service facilities, is 10 miles from the entrance to Denali Park, and often experiences severe winds that pose a flying hazard; and

#### CHAMBER BENEFACTORS

*Dedicated to Fairbanks' Economic Future*



Alaska pipeline

MAPCO



AT&T Alascom



**WHEREAS**, the Denali Landing Strip is 8 miles south from the entrance to Denali Park, operates only as a private airstrip; and is not open for public use; and

**WHEREAS**, the potential closure of the McKinley airstrip was not included as part of the proposed alternative in the Entrance Area and Road Corridor Development Concept Plan (Frontcountry Plan) during public hearings in 1996, and this action has therefore not received the benefit of proper public scrutiny and review; and

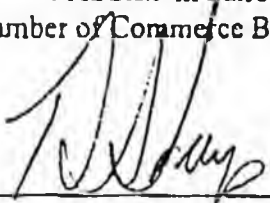
**WHEREAS**, the Alaska Department of Transportation and Public Facilities' Planning Section has determined that closure of the McKinley airstrip is not recommended at this time.


**NOW, THEREFORE BE IT RESOLVED** that the Greater Fairbanks Chamber of Commerce urges the National Park Service to reconsider and reverse it's decision to close the McKinley National Park Airstrip and keep it open to citizens and available to fulfill its' very important function for general aviation and visitor convenience.

**BE IT FURTHER RESOLVED** that this resolution be distributed to:

Steve Martin, Superintendent, Denali National Park and Preserve  
Bruce Babbitt, Secretary, U.S. Department of the Interior  
Senator Ted Stevens  
Senator Frank Murkowski  
Representative Don Young  
The Honorable Tony Knowles, Governor of the State of Alaska  
Alaska State Legislature  
Alaska State Chamber of Commerce  
The Fairbanks Convention and Visitors Bureau  
The Alaska Airmen's Association

**PASSED** in Fairbanks, Alaska this 26th Day of January 1998 by the Greater Fairbanks Chamber of Commerce Board of Directors.

  
\_\_\_\_\_  
Therese Sharp  
Chairwoman of the Board

  
\_\_\_\_\_  
Pamela J. Held  
President/CEO



## FAIRBANKS INDUSTRIAL DEVELOPMENT CORPORATION

Airport Marketing • 6450 Airport Way • Fairbanks, Alaska 99709 • Phone: (907) 479-8700 • Fax: (907) 479-7090 • SITA: FAIAPXH

January 21, 1998

Mr. Robert Stanton  
Director of National Park Services  
National Park Service  
1849 C Street, NW  
Washington, DC 20240

Dear Mr. Stanton,

I am writing to express my concern and dismay over the National Park Service's decision to close the McKinley Park Airstrip.

I only learned of the airstrip's possible closure as a rumor last August. Now, having read the October 7, 1997, Briefing Statement by Park Superintendent Mr. Stephen P. Martin (copy enclosed), I see the closure was a "done deal" as of the February, 1997, signing of a record of decision.

Through my job and personal interests I keep up to date on general aviation-related issues in Alaska. To my knowledge the NPS did not make any substantive effort to inform the State's aviation community (or the general public) of the airstrip's possible closure in the course of your agency's solicitation of public comment on the Frontcountry Plan. This failure to communicate to affected users via any of several readily available media (e.g., direct mail to licensed Alaskan pilots, news releases or display ads in the Alaska Flyer, the Alaska Airmen's Association Newsletter, or AOPA Pilot, etc.) should in itself warrant a review of your decision.

Indeed, if you had genuinely solicited the flying (and non-flying) public's perspective you would have heard unanimous opposition to the closing the airstrip. I do not know of anyone, inside or outside the aviation community, who supports the airstrip's closure.

Nevertheless, closing the current McKinley Park Airstrip would be acceptable when "suitable alternatives," as noted in Mr. Martin's Briefing Statement, become available. If indeed the current airstrip is needed, as he stated, "for potential expansion of the railroad depot" [despite being on the "wrong" side of the tracks], a new NPS-constructed replacement airstrip in the same immediate area would amply meet all general aviation safety and access needs.

A key criterion for any "suitable alternative" is a reasonable walking distance (a mile or less) from the airstrip to the park entrance facilities and attractions (Visitor Reception Center, park hotel and restaurants, nature and other hiking trails such as Horseshoe Lake and Mt. Healy, etc.). On a personal note, our family has enjoyed innumerable day trips by air from Fairbanks to the park - in our experience, it's the best wheeled aircraft-accessible excursion in Alaska, and we would be very sorry to lose Frontcountry air access to the park.

*A cooperative program with the Fairbanks International Airport*

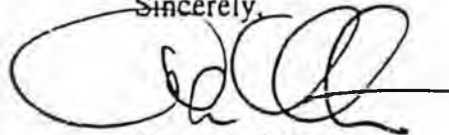
Mr. Robert Stanton  
January 21, 1998  
Page 2 of 2

In this regard, neither the Healy nor Denali Private airstrips qualify as a "suitable alternative" for general aviation access to the park. The Denali Private airstrip is off-limits to the general public, and the Healy airstrip is about ten miles from the park entrance and thus well beyond walking distance.

Finally, how does the NPS reconcile its stated Frontcountry Plan objective, by Mr. Martin's report, of "increased visitor access" with "working to implement the highest priority items, including airstrip closure"? Obviously, the airstrip's closure will decrease, not increase, visitor access.

I trust you and your staff will see fit to reconsider your decision, this time with meaningful aviation user input, on the future of the McKinley Park airstrip.

Sincerely,

A handwritten signature in black ink, appearing to read 'DC', written over a large, loopy flourish that starts with a large 'C' and ends with a horizontal line.

Dave Carlstrom  
Director of Airport Marketing

cc: The Honorable Ted Stevens, U.S. Senator  
The Honorable Frank Murkowski, U.S. Senator  
The Honorable Don Young, U.S. Congressman  
The Honorable Tony Knowles, Governor, State of Alaska  
Mr. Phil Boyer, President, AOPA  
Ms. Dee Hanson, Executive Director, Alaska Airmen's Association  
Mr. Tom George, Alaskan Aviation Safety Foundation  
Ms. Pam Held, President & CEO, Greater Fairbanks Chamber of Commerce  
Ms. Sheila Romero, Executive Director, Fairbanks Convention and Visitors Bureau  
Mr. Bruce Babbitt, Secretary, U. S. Department of the Interior  
Mr. Stephen P. Martin, Park Superintendent, Denali National Park

Encl.



IN REPLY REFER TO:

# United States Department of the Interior

(9)

## NATIONAL PARK SERVICE

Alaska Regional Office  
2525 Gambell Street, Room 107  
Anchorage, Alaska 99503-2892

L38 (DENA-S)

FEB 26 1998

Mr. Dave Carlstrom  
Director of Airport Marketing  
6450 Airport Way  
Fairbanks, Alaska 99709

Dear Mr. Carlstrom:

Thank you for your letter expressing your concerns about closing the McKinley Park Airstrip in the entrance area of Denali National Park. Closing the airstrip was a carefully considered decision that is part of an overall development concept plan for the entrance area. I will ensure that the issues you raised are considered as the plan is implemented. We hope to ensure that acceptable alternatives exist for those visitors wishing to travel to Denali National Park by aircraft.

The Entrance Area and Road Corridor Development Concept Plan ("frontcountry plan"), for which the Record of Decision was signed in February 1997, calls for closing the park airstrip to provide for potential expansion of the railroad depot and also to reduce the overall level of resource impacts in the entrance area. Relocating the airstrip within the entrance area of the park is not included as an option in the final plan because of the need to limit development in this critical wildlife habitat (over 20 years of research have shown it to be an important moose calving area). Space for development is therefore at a premium in this part of the park, and the priority has been placed on new visitor facilities that would ultimately serve over 500,000 visitors during the summer season alone.

The possibility of closing the park airstrip was discussed during public scoping for the plan in summer and fall 1995. Open houses on Denali National Park planning were held in several Alaska communities, including Fairbanks, during August 1995. The airstrip closure alternative was discussed along with other information presented during the Fairbanks meeting at the Alaska Department of Transportation and Public Facilities building. This and other open houses were advertised throughout the state in posters, newspaper advertisements, and public service announcements.

The planning alternative that included airstrip closure was also in the draft plan that was available for public review from June 21 through August 19, 1996. The availability of the draft plan and public comment period were announced in the *Federal Register* and in press releases issued statewide and to national news organizations. Public meetings were similarly publicized and were held at various locations throughout Alaska between

August 5 and 14, 1996. One of these meetings was held at the Westmark Hotel in Fairbanks on August 8 and was advertised in the *Fairbanks Daily News-Miner*, the *Anchorage Daily News*, and on Alaska public radio.

A small percentage of over 300 public comments received addressed the airstrip. Several substantive comments were received on the overall level of resource impacts in the entrance area, raising the issue of using the airstrip location for other functions or rehabilitating the area after removal.

In response to concerns that you and others in the aviation community have raised, we are now planning to phase out use of the McKinley Park airstrip as other options for air access to the park are identified. The Healy Airport and the Denali Private Airstrip are both within 10 miles of the park strip and are being considered for future National Park Service operations. The Healy Airport is paved and is available for commercial use and general aviation. The Denali Private Airstrip is used mainly for flightseeing operations but is also available for emergency use, and at 5000 feet is substantially longer than either of the other two in the area.

The frontcountry plan calls for construction of several new facilities in the entrance area such as a new interpretive center, a visitor services building, additional campsites, and a camper conveniences center. Recognizing that a wide range of overnight accommodations and restaurants are being provided by the private sector immediately outside the park entrance, the park hotel and restaurant are scheduled for removal in 2002. When these buildings were moved into the park in 1973, they were intended as a temporary replacement for the permanent hotel that had been destroyed by fire. The frontcountry plan calls for replacement of these buildings with an environmental education and science center.

As the briefing statement issued by the park indicates, the McKinley Park airstrip will remain open for National Park Service and general aviation use until suitable alternatives become available. Shuttle bus service and taxi service are now available to the Healy and McKinley Village areas, so transportation to the park and to visitor facilities just outside the park entrance is available for visitor who do not travel by private vehicle. Many of our visitors who arrive by train or bus use these services.

Flightseeing operations are no longer based at the park airstrip and remaining commercial use will be phased out in the next two years in keeping with the direction in the frontcountry plan. Suitable alternatives for flightseeing and commercial use are currently available at the Healy and Denali Private airstrips.

The frontcountry plan calls for retaining helipads in the entrance area after airstrip closure to allow for medical evacuations by helicopter. Medical evacuations by fixed wing aircraft will continue to use the Healy and Kantishna airstrips.

We do not wish to reduce access to Denali National Park, and we are working to ensure that other options are available for visitors who choose to travel to the park by aircraft. Thank you again for your comments.

Sincerely,

A handwritten signature in cursive script that reads "Paul R. Anderson".

~~for~~ Robert D. Barbee  
Regional Director

cc:  
Deborah Williams  
Supt, Denali National Park and Preserve

TEO STEVENS, ALASKA CHAIRMAN

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| Post-It™ brand fax transmittal memo 7871 |                 | # of pages |
| To <i>Tom George</i>                     | From <i>Doc</i> |            |
| Co.                                      | Co.             |            |
| Dept.                                    | Phone #         |            |
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CO

November 21, 1997

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John Spalding  
President  
Alaska Airmen's Assn., Inc.  
P.O. Box 241185  
Anchorage, Alaska 99524-1185

Dear John:

Thanks for contacting me to express your opposition to the proposed closure of the airstrip near the entrance to Denali National Park and Preserve.

In January, the National Park Service released its Final Entrance Area and Road Corridor Development Concept Plan ("Plan") for Denali. According to the Plan, the McKinley Park airstrip would be closed for "potential expansion of the Alaska Railroad Depot and to reduce resource impacts in the entrance area." The Park Service wants to phase out the McKinley Park airstrip and shift Park Service, flightseeing and air taxi service flights to a strip in Healy and a privately-owned strip near the park entrance. According to Park Superintendent Steve Martin, the closure is two to five years in the offing.

Unfortunately, the Plan does not consider the many people who use the strip for private flights or emergency landings into the Park. Also, closing the strip and requiring the use of another ten miles away begs the question of whether adequate land transportation will be available between the alternative strips and the Park. Mr. Martin has advised me that final closure will not occur until a suitable alternative for private traffic is found.

Proposals to restrict access to public lands in Alaska concern me greatly. I will continue to monitor developments regarding the McKinley Park airstrip and will keep your comments in mind when the Park Service's budget request next comes before the Appropriations Committee for review. Thanks again for bringing this matter to my attention.

With best wishes,

Cordially,

*Ted Stevens*


TED STEVENS



Mr. Robert D. Barbee  
National Park Service  
Oct. 8, 1997 page two

The diverse and rugged geographic nature of Alaska and the adverse weather conditions found in this state provide enough of an unforgiving environment for aviators to operate in--we don't need to take away the few established safety nets the aviation community depends upon.

Sincerely,



Kimberly S. Ross  
Executive Director

cc: Senator Ted Stevens  
Senator Frank Murkowski  
Congressman Don Young  
Federal Aviation Administration  
National Transportation Safety Board  
Alaskan Aviation Safety Foundation  
Alaska Visitors Association  
Alaska Almen's Association  
AACA Board of Directors



AIRCRAFT OWNERS AND PILOTS ASSOCIATION

421 Aviation Way • Frederick, MD 21701-4798  
Telephone (301) 695-2000 • FAX (301) 695-2375  
www.aopa.orgCOPY FOR YOUR  
INFORMATION  
AASF

7 (3)

September 25, 1997

Mr. Robert D. Barbee  
Alaska Regional Director  
National Park Service  
2535 Gambell Street  
Anchorage, AK 99503

Dear Mr. Barbee:

The Aircraft Owners and Pilots Association (AOPA) represents the general aviation interests of more than 340,000 individual pilots and aircraft owners in the United States, more than 4,200 of whom reside in the state of Alaska. The organization provides advocacy for the betterment of the general aviation industry including accessibility to airports where general aviation operators will be a primary beneficiary.

It is our understanding that there have been recommendations to close the airport at the McKinley Park Hotel site. AOPA strongly opposes the closure of that facility.

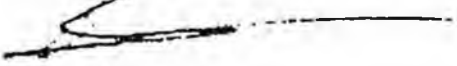
As you well know, Alaska's operational conditions are not the same as the conditions found in the rest of the continental United States. Weather and terrain are major considerations in flying in Alaska. In the case of the McKinley Park Airport, the issue is even more important because of the scarcity of landing facilities in that area.

The importance of this airport, besides being a part of the local transportation system and being beneficial to the local area, is accentuated by safety. The McKinley Airport is a "safety net" for aircraft that encountered unforeseen weather in that area. Furthermore, the difficult accessibility of the area by other means not only justifies but requires an airport in case of emergencies and medical evacuations.

We urge you to actively pursue other options in coordination and cooperation with the users in an attempt to insure that the facility is given due process and consideration.

Should you require any additional information on this or any other related issue, please feel free to contact me at (301) 695-2206. Thank you for your consideration of our views.

Sincerely,

  
Miguel Vasconcelos  
Director  
Regional Affairs

①



September 16, 1997

Mr. Robert D. Barbee  
Alaska Regional Director  
National Park Service  
2525 Gambell Street  
Anchorage, AK 9950

Dear Barbee:

In the interest of public convenience and safety this organization requests reconsideration of the recommendation to close the airport at the McKinley Park Hotel site.

This airport is very strategically located between Cantwell and Healy, the two places where adverse weather frequently occurs for low level flights through Windy Pass, one of Alaska's busiest flyways for small airplanes. The airport has served the National Park Service and the public very well for more than fifty years.

I have flown very high-level foreign government officials to the Park several times at the service of the U.S. State Department. These people include the Vice Premier of South Korca and the West German equivalent of our Department of Interior Secretary, in addition to several members of the U. S. Senate and Congress. The U.S. public includes many pilots (some of whom are very influential persons) who come to and tour Alaska in personally owned aircraft. No convenient public transportation is available or affordable from Cantwell or Healy. Flying tours of the Park are the only practical way for severely handicapped visitors to enjoy the beauty of this unique Parkland.

The significance of the airport to the Alaska Railroad is difficult to quantify but I have personally flown the Trackmaster and Railroad Manager to the Park airport to help in emergency derailment instances where rail or highway travel was not timely.

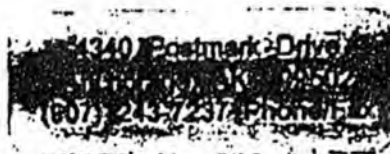
The small amount of labor and material required to maintain this airport is surely repaid in the public interest of aviation safety, for medical evacuation of staff or visitors, and convenience of that portion of the visiting population who are handicapped and unable to enjoy the hiking or bus tours available there.

Sincerely,

*Thomas H Wardleigh*

Thomas H. Wardleigh, Chairman  
Board of Directors

cc: Babbitt, Williams, Sen. Stevens, Sen. Murkowski  
Congressman Young, Steve Martin/Denali Park, AOPA.



②



## United States Department of the Interior

NATIONAL PARK SERVICE  
Denali National Park and Preserve  
Post Office Box 9  
Denali Park, Alaska 99756

IN REPLY REFER TO:

L38 (DENA-S)

October 23, 1997

Thomas H. Wardleigh  
Chairman, Board of Directors  
Alaskan Aviation Safety Foundation  
4340 Postmark Drive  
Anchorage, Alaska 99502

Dear Mr. Wardleigh:

On behalf of the Regional Director we would like to thank you for your letter expressing your concerns about closing the McKinley Park Airstrip in the entrance area of Denali National Park. Closing the airstrip was a carefully considered decision that is part of an overall development concept plan for the entrance area. As we implement the plan, we will consider the issues you raised so that we can ensure acceptable alternatives exist for those visitors wishing to travel to Denali National Park by aircraft.

The Entrance Area and Road Corridor Development Concept Plan (Frontcountry Plan), for which the record of decision was signed in February 1997, calls for closing the park airstrip to provide for potential expansion of the railroad depot and also to reduce the overall level of resource impacts in the entrance area. The possibility of closing the airstrip was discussed during public scoping for the plan in summer and fall 1995, and it was part of one alternative of the draft plan that was available for public review from June 21 through August 19, 1996. Public meetings were also held at various locations throughout Alaska between August 5 and 14, 1996. Only a small percentage of public comments received addressed the airstrip. Several substantive comments were received on the overall level of resource impacts in the entrance area, raising the issue of using the airstrip location for other functions or rehabilitating the area after removal.

We believe the Frontcountry Plan provides for an even better visitor experience, increased visitor access, and improved resource protection, and we are working to implement the highest priority items, including airstrip closure. However, we recognize the concerns you and others in the aviation community have raised and are now planning to phase out use of the McKinley Park airstrip as other options for air access to the park are identified. The Healy Airport and the Denali Private Airstrip are both within 10 miles of the park strip and are being considered for future National

*TW*  
*McKinley?*

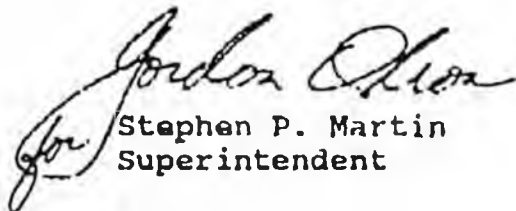
Park Service operations. The Healy Airport is paved and is available for commercial use and general aviation. The Denali Private Airstrip is used mainly for flightseeing operations but is also available for emergency use and, at 5000 feet, is substantially longer than either of the other two in the area.

The McKinley Park airstrip will remain open for National Park Service and general aviation use until suitable alternatives become available. Flightseeing operations are no longer based at the airstrip and remaining commercial use will be phased out in the next two years in keeping with the direction in the frontcountry plan. Suitable alternatives for flightseeing and commercial use are currently available at the Healy and Denali Private airstrips.

The Frontcountry Plan also calls for retaining helipads in the entrance area after airstrip closure to allow for medical evacuations by helicopter. Medical evacuations by fixed wing aircraft will continue to use the Healy and Kantishna airstrips.

We do not wish to reduce access to Denali National Park, and we are working to ensure that other options are available for visitors who choose to travel to the park by aircraft. Thank you again for your comments.

Sincerely,



Stephen P. Martin  
Superintendent

cc:  
Deborah Williams  
Bob Barbee

⑤



November 17, 1997

Mr. Stephen P. Martin, Superintendent  
Denali National Park and Preserve  
P.O. Box 9  
Denali Park, AK 90755

Ref: McKinley Air Strip

Dear Sir:

Thank you for your letter of October 23, 1997, and the assurance that the McKinley Park airstrip will remain in place for public use until "suitable alternatives" are available. Our members who have recently visited Healy and Cantwell report that no public services are available at either airport, with the exception that fuel is available at Cantwell. There are no taxi, rental car, or even public telephones convenient to the runways. The Denali private airstrip does not cater to the general aviation fleet. There are no transient tie down facilities for visitors.

We regret that we were not in receipt of the notice of opportunity to comment during 1995 and 1996. It is easy to imagine that public meetings in Cantwell and Healy would not generate concerned responses as to the safety of flight for itinerant pilots or aviation groups from the "outside" locales who plan to visit the Park as part of a flying tour of Alaska. We note that the Aircraft Owners and Pilot's Association (AOPA), with 340,000 members, the Seaplane Pilot Association, the National Aeronautic Association (NAA), Alaska Air Carrier Association and Alaska Airmen, Alaska Ninety-nines (International association of women pilots) were not solicited for their input to the scoping and planning process for these changes to the Park. It is recommended that future publicity include information to the General Aviation News & Flyer - P.O. Box 39099-Tacoma, WA 98439-0099, \* AOPA Pilot Magazine-421 Aviation Way-Frederick, MD 21701, The Alaska Air Carriers Assoc.- 929 E. 81st #108-Anchorage, AK 99518\* The Cessna Pilots Assn.-P.O. Bx 5817-Santa Maria, CA 93456. These are the people most affected by changes in the airport availability for enjoying this National Park. Without their input the planning process appears to be seriously flawed.

The Alaskan Aviation Safety Foundation is available as a resource

for you to assist with future planning concerning the accommodations for the flying public at the Park. It is essential that the Visual Flight Rules (VFR) flight safety in this busy corridor connecting Alaska's largest cities not be diminished.  
Sincerely,



Thomas H. Wardleigh, Chairman  
Board of Directors

4346 Postmark Drive  
Anchorage, AK 99502  
(907) 243-7237 Phone/Fax

Post-It\* Fax Note

7671

Date

12/9/97

# of pages

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|          |               |         |              |
|----------|---------------|---------|--------------|
| To       | Don Lowell    | From    | Mike Tranel  |
| Co./Dept | Alaska DOT&PF | Co.     | NPS - Denali |
| Phone #  | 951-2325      | Phone # | 683-9552     |
| Fax #    | 951-2313      | Fax #   | 683-9639     |

Department of the Interior  
National Park Service  
Briefing Statement

(7)

October 7, 1997

Region/Park: Alaska Region/Denali National Park and Preserve

Project/Issue: Closing McKinley Park Airstrip

**Background:** The McKinley Park Airstrip was constructed with National Park Service funds. It is owned by the U.S. Government and is maintained by Denali National Park staff. The Entrance Area and Road Corridor Development Concept Plan (Frontcountry Plan), for which the record of decision was signed in February 1997, calls for closing the park airstrip to provide for potential expansion of the railroad depot and also to reduce the overall level of resource impacts in the entrance area. The possibility of closing the airstrip was discussed during public scoping for the plan in summer and fall 1995, and it was part of one alternative of the draft plan that was available for public review from June 21 through August 19, 1996. Public meetings were also held at various locations throughout Alaska between August 5 and 14, 1996. Only a small percentage of public comments addressed the airstrip. Several substantive comments were received on the overall level of resource impacts in the entrance area, raising the issue of using the airstrip location for other functions or rehabilitating the area after removal.

**Current Status:** The National Park Service is planning to phase out use of the McKinley Park airstrip as other options for air access to the park are identified. The Healy Airport and the Denali Private Airstrip are both within 10 air miles and are being considered for future NPS operations. The Healy Airport is paved and is available for commercial use and general aviation. The Denali Private Airstrip is used mainly for flightseeing operations but is also available for emergency use, and at 5000 feet it is substantially longer than either of the other two in the area.

The McKinley Park airstrip will remain open for NPS and general aviation use until suitable alternatives become available. Flightseeing operations are no longer based at the airstrip and remaining commercial use will be phased out in the next two years in keeping with the direction in the frontcountry plan. Suitable alternatives for flightseeing and commercial use are currently available at the Healy and Denali Private airstrips.

**Service Position:** The NPS believes that the Frontcountry Plan provides for an even better visitor experience, increased visitor access, and improved resource protection, and the park is working to implement the highest priority items, including airstrip closure. Because of concerns that have been raised, the NPS is also working to ensure that

acceptable alternatives exist for those visitors wishing to travel to Denali National Park by aircraft.

**Position of Other Interested Parties:** During August and September 1997, the park received approximately 15-20 comments by telephone and letter opposing closure of the McKinley Park Airstrip. The primary issues raised have been that the airstrip is needed for continued access to the park and for an additional margin of safety for private pilots. Groups expressing opposition have included the Alaska Air Carriers Association, the Alaska Aviation Safety Foundation, and the Alaska Ninety-Nines.

*Also more recently: Alaska Airman's Association*

Contact: Stephen P. Martin, Superintendent, Denali National Park and Preserve (907) 683-2294

or Mike Tranel  
683-9552

\* up to 30-40 comments  
by Dec. 8.