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May 18, 1987

Ms. Carol McCoy
Land Resources Division (660)
National Park Service
P.O. Box 37127
Washington, D.C. 20013-3127

Dear Ms. McCoy:

The State of Alaska has reviewed the April 3, 1987 proposed amendment to 36 CFR Part 9 Mining and Mining Claims. In general, the state believes a requirement for a plan of operations for all mining claims within National Park Service (NPS) units is probably appropriate. However, due to the widespread public confusion and dissatisfaction surrounding this amendment, we request that the NPS address public concerns identified to date prior to issuance of final regulations. This proposed rule, in combination with the final Title XI regulations issued last fall, appears to reverse NPS policy without adequate acknowledgement of the fact or without adequate justification.

In the Interim Access regulations of 1981 (see Attachment A: Chronology), the Department of the Interior provided a specific exception for the requirement of plans of operations in Alaska. Section 13.15(d)(1) stated that:

"Since section 1110(b) of ANILCA guarantees adequate and feasible access to valid mining claims within park areas notwithstanding any other law, and since the 36 CFR 9.3 requirement for an approved plan of operations prior to the issuance of an access permit may interfere with needed access, 36 CFR 9.3 is no longer applicable in Alaska park areas. However, holders of patented or unpatented mining claims under the 1872 Mining Law (30 U.S.C. 22 et seq.) should be aware that 36 CFR 9.9, 9.10 independently require an approved plan of operations within a park area (except that no plan of operations is required for patented claims where access is not across federally owned parklands)."

In September 1986, according to the NPS April 1987 Environmental Assessment for this proposed rule, the Title XI regulations repealed this specific exemption without explanation, and without the benefit of public review, since the repeal first appeared in final regulations. The current proposed regulations were issued

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to clarify the previous regulatory action, yet the fact remains that NPS has reversed its intent with a minimum of analysis.

The state therefore recommends that the NPS withdraw the proposal until such time as a more thorough analysis can be presented for public scrutiny. If the NPS wishes to continue with the current proposal, revised draft or proposed final regulations should be issued which comprehensively address the repeal of Section 13.15(d)(1) and the subsequent clarification. Any such regulatory proposal should address the concerns and questions that have been raised by the public during the current review period. Attachment B outlines concerns that were raised at the Alaska Land Use Advisors Meeting of May 5, 1987. The state does not necessarily support these assertions; however, we believe they raise questions which should be addressed. Since the NPS is currently in the process of developing Mineral Management Plans and Environmental Impact Statements for mining within three NPS units in Alaska, it may be appropriate to delay further regulatory action until completion of these documents.

On behalf of state agencies, thank you for your consideration of these comments.

Sincerely,

Robert L. Grogan
Director



by Sally Gilbert
State CSU Coordinator

cc: Rod Swope, Governor's Office, Juneau
Martha Fox, Governor's Office, Washington, D.C.
Members, Alaska Land Use Council
Members, Alaska Land Use Advisor's Committee
Curt McVee, Alaska Miner's Association
Bill Horn, Assistant Secretary of the Interior

Attachments

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ATTACHMENT A

State of Alaska letter of May 18, 1987 Regarding
Proposed Changes to 36 CFR Part 9 - Mining and Mining Claims

Chronology of Applicable Laws and Regulations

- 1976 Mining in Parks Act passed: Closed all parks nationwide to new mineral entry under the 1872 Mining Act and directed NPS to promulgate regulations governing all mining activity on NPS lands.
- 1977 Promulgation of 36 CFR Part 9 Subpart A, Mining in Parks regulations: Requires an approved plan of operations as a condition for access to all mining inholdings. "Operations" includes surface disturbing exploratory activities.
- Dec 1980 ANILCA passed: Includes Section 1110(b) which guarantees adequate and feasible access to inholdings in Alaska NPS units subject to reasonable regulations.
- June 1981 Promulgation of 36 CFR 13.10-15, "Interim Access regs:" Address access in and across NPS units in Alaska, including guaranteed access to valid inholdings pursuant to ANILCA Section 1110(b). Section 13.15(d)(1) indicated that the access section of the Mining in Parks regulations do not apply in Alaska park units and stated ". . . no plan of operations is required for patented claims where access is not across federally owned parklands."
- July 1983 Interior issues draft Title XI regulations which focus on transportation and utility corridors. There is little emphasis on access to inholdings and Section 13.15(d)(1) is not addressed.
- Oct 1986 Promulgation of final Title XI regulations, 43 CFR Part 36: Repeals 13.15(d)(1) without explanation.
- April 1987 Interior issues draft amendment to Mining in Parks regulations - 36 CFR 9 A: Clarifies that the original regulations under the Mining in Parks Act apply throughout the National Park system to all claims, patented or unpatented, without regard to method or route of access.

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ATTACHMENT B

State of Alaska Letter of May 18, 1987 Regarding
Proposed Changes to 36 CFR Part 9 - Mining and Mining Claims

Assertions Made at Alaska Land Use Advisor's Meeting of 5/8/87

I. Regulations infringe on existing state authorities:

- NPS is asserting regulatory jurisdiction over state lands including Omnibus Act Roads, RS 2477 Rights-of-Way, and submerged lands under navigable waterways.
- Regulations may interfere with state regulatory authority over patented mining claims in Alaska by providing additional opportunities for NPS to apply more stringent standards.

II. Administrative and regulatory procedures have been violated:

- NPS did not demonstrate the need or rationale for this regulatory intent in September 1986 or in this clarification; nor has NPS conducted an economic analysis of this proposal.
- These regulations are oriented toward one miner on the Nabesna Road in the Wrangell-St. Elias National Park and Preserve. It is inappropriate to use the regulatory process to restrict the activities of a single individual.
- Federal regulatory authority can only be exercised if actions would have an effect on federal land. Since no NPS lands are involved, these regulations are inappropriate.

III. Regulations violate the spirit and intent of ANILCA:

- Section 1110(b) of ANILCA guarantees access to all inholdings without unnecessary regulatory burden. Miners must show unnecessary burden of proof through detailed plans of operations.
- Such stringent regulatory action is a taking which would better be accomplished through a negotiated acquisition.
- NPS should address what affect (if any) these regulations will have on mining activities conducted by Native corporations inside the boundaries of NPS units.

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Title: State Comments to Land Resources Division
RE: Mining & Mining Claims Proposed Regulations

[1272] Mr. Mike Abbott, Resource Development Council, Anchorage
[1304] Ms. Susan Alexander, The Wilderness Society, Anchorage
[1266] Ms. Gail Baker, U.S. Fish & Wildlife Service, Anchorage
[1317] Dr. Robert Baker, Anchorage
[1312] Mr. James Barkeley, Esq., Land Use Advisors Committee, Anchorage
[1252] Mr. Michael Barton, U.S. Forest Service, Juneau
[1037] Ms. Joyce Beelman, Department of Environmental Conservation, Fairbanks
[1] Mr. Jay Bergstrand, Department of Transportation and Public Facilities, Anchorage
[120] The Honorable Judy Brady, Department of Natural Resources, Juneau
[248] The Honorable Don Collinsworth, Department of Fish and Game, Juneau
[1373] Mr. Donald D'Onofrio, National Ocean Service, Anchorage
[1293] Mr. Bart Englishoe, Land Use Advisors Committee, Anchorage
[1286] Mr. Boyd Evison, National Park Service, Anchorage
[1117] The Honorable Jan Faiks, Anchorage
[975] Mr. Darryl L. Fish, Bureau of Land Management, Anchorage
[203] Mr. Peter Freer, Department of Community and Regional Affairs, Juneau
[1263] Mr. Joseph W. Geldhof, Department of Law, Juneau
[1407] Mr. Harold Gillam, Land Use Advisors Committee, Fairbanks
[1325] Mr. Charlie Green, Department of Commerce and Economic Development, Fairbanks
[1243] Mr. Robert D. Heath, Alaska Power Authority, Anchorage
[1268] The Honorable Mark Hickey, Dept. of Transportation & Public Facilities, Juneau
[1406] Reverend J. Michael Hornick, Land Use Advisors Committee, Anchorage
[1271] Ms. Sharon Jean, Land Use Advisors Committee, Soldotna
[444] Mr. John Katz, Office of the Governor, Washington, D.C.
[1288] The Honorable Dennis Kelso, Department of Environmental Conservation, Juneau
[1298] Dr. John Choon Kim, Land Use Advisors Committee, Anchorage
[1270] Mr. Larry Kimball, Alaska Federation of Natives, Anchorage
[1250] Mr. Stan Leaphart, Citizens Advisory Commission on Federal Areas, Fairbanks
[937] Ms. Janie Leask, Alaska Federation of Natives, Anchorage
[1258] Mr. Craig Lindh, Division of Governmental Coordination, Juneau
[945] Ms. Janet McCabe, National Park Service, Anchorage
[946] Mr. Ron McCoy, Alaska Land Use Council, Anchorage
[847] Mr. Curtis McVee, U.S. Department of Interior, Anchorage
[1400] Ms. Cynthia Meyer, Division of Governmental Coordination, Juneau
[1269] Mr. Mike Mitchell, Alaska State Library, Juneau
[947] Mr. Ron Morris, U.S. Department of Interior, Anchorage
[1253] Ms. Linda Nebel, National Park Service, Anchorage
[499] Mr. Donald Nielsen, Bristol Bay Native Corporation, Anchorage
[1244] Capt. James R. Nutgrass, Department of Public Safety, Anchorage
[1408] Mr. Richard Ogar, ARCO Alaska, Inc., Anchorage
[1287] Mr. Michael J. Penfold, Bureau of Land Management, Anchorage
[1279] Mr. Gerald Rafson, Dept. of Transportation & Public Facilities, Fairbanks
[1409] Mr. John Rense, NANA Development Corporation, Anchorage

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Title: State Comments to Land Resources Division

RE: Mining & Mining Claims Proposed Regulations

- [1273] Mr. Randy Rogers, Northern Alaska Environmental Center, Fairbanks
- [1299] Mr. Wayne Ross, Land Use Advisors Committee, Anchorage
- [1372] Ms. Marianne See, Department of Fish and Game, Anchorage
- [1378] Mr. Thyes Shaub, Department of Commerce and Economic Development, Juneau
- [948] Mr. Walt Sheridan, U. S. Forest Service, Juneau
- [1285] Mr. Walter Stieglitz, U.S. Fish & Wildlife Service, Anchorage
- [1013] Mr. Rod Swope, Office of the Governor, Juneau
- [1242] Mr. Ike Waits, Department of Community & Regional Affairs, Anchorage
- [1239] Mr. Rob Walkinshaw, Department of Natural Resources, Anchorage
- [1240] Mr. Dan Wilkerson, Department of Environmental Conservation, Anchorage
- [994] Mr. Geoff Wistler, Department of Commerce and Economic Development, Juneau