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September 4, 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 further reviewed the April 3, 1987, proposed amendment to 36 CFR Part 9, Mining and Mining Claims. This letter extends and clarifies the state's previous correspondence on this amendment, dated May 18, 1987.

There is no question that miners operating within national park system units in Alaska have faced great difficulties in recent years. Enactment of the Alaska National Interest Lands Conservation Act (ANILCA) substantially increased the number of claims subject to the Mining in the Parks Act regulations. It also increased public interest in maintaining high environmental standards. These factors, plus economic and market conditions, have all combined to have a crippling effect on the Alaska mineral industry. For example, the past year has seen a 16% decrease in the volume of gold production statewide; and for the first time in 83 years, no gold was produced in the historic Kantishna mining district.

This particular regulatory proposal, as one element of the spectrum of state and federal regulations applicable to mining, has generated considerable concern and confusion which appear to reach beyond its specific scope and purpose. Since information regarding the original repeal of 36 CFR 13.15(d)(1) has been released incrementally by the National Park Service (NPS), it has been difficult for the public and the state to fully comprehend the intent of this amendment. The recent discussion and action at the August 25 meeting of the Alaska Land Use Council (ALUC) highlighted this confusion. For the record, this letter is presented to help clarify the state's position on these regulations.

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Regarding the current regulatory proposal, the state supports the NPS intent to clarify the repeal of 36 CFR 13.15(d)(1), as embodied in the amendment to 36 CFR Part 9. The state also interprets this clarifying regulation, by itself, as not extending NPS authorities beyond existing laws and regulations. Furthermore, the original repeal of 13.15(d)(1) is well within the authority of the NPS pursuant to the Mining in the Parks Act, and is not inconsistent with Section 1110(b) of ANILCA, which guarantees access to inholdings.

However, it is important to underscore that this regulation in no way triggers any jurisdiction by the NPS to dictate or limit use of state rights-of-way. The state retains the sole authority to manage state rights-of-way, regardless of underlying or adjacent landownership. If the NPS wishes to propose stipulations to the mining plans of operations that address access across state land or rights-of-way, NPS must seek state concurrence with such stipulations.

Throughout the debate surrounding these regulations, a number of related concerns have been raised by the Alaska mining community. To address these concerns, the NPS should use all available methods to ensure that regulatory requirements are reasonable and clear, and to assist miners in meeting these requirements. For example, the state requests that, in cases where NPS has already received an adequate mining plan of operations, and determined that the operation will not significantly contribute to the cumulative impacts of mining on park values, NPS petition the court to lift the injunction for those specific operations. (The court has already lifted the injunction for two operations.) Furthermore, it is imperative that NPS commit adequate resources as quickly as possible to speed up the completion of the mining environmental impact statements (EISs)--in consideration of the fact that miners within park boundaries will have difficulty surviving a prolonged moratorium on operations.

In a Federal Register notice of July 20, 1984, NPS indicated an interest in revising the national Mining in the Parks regulations. Because this Act and subsequent regulations were implemented prior to the passage of ANILCA, Alaska mining concerns were not specifically addressed. Since the 1984 notice, it has become increasingly apparent that revision of the mining regulations, including consideration of ANILCA and Alaska's unique physical, hydrological and climatic conditions, would be highly desirable. Accordingly, the state further recommends that, following completion of the mining EISs, NPS propose a comprehensive revision of the Mining in the Parks regulations which address these concerns. Such a comprehensive analysis is preferable to the piecemeal approach used in repealing 13.15(d)(1) and would give miners and the NPS an opportunity to simultaneously address a number of substantive concerns.

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In conjunction with this regulatory proposal, the Alaska mining community has raised yet another issue. According to recent testimony before the ALUC, the miners believe that NPS criteria regarding the adequacy of mining plans of operations are insufficient and unreasonable. Specifically, the NPS has not indicated in a comprehensive manner the information required of a claim holder which would be adequate for plan approval. The cost of gathering the requested data and preparing applications has also been cited as excessive. The state recommends that NPS work with the miners to increase mutual understandings regarding what constitutes an adequate mining plan of operations. Development of more specific written criteria for Alaska miners would assist in this process. Such criteria should be developed in cooperation with miners, the state, and other interested parties and should be subject to full public review.

The state appreciates the extension of the comment period for this proposed amendment. It is unfortunate that full public notice and dialogue did not occur prior to the original repeal in October 1986, as would have been more proper. Nonetheless, as requested by the state at the June 4 ALUC meeting, the recent NPS efforts to discuss and clarify the current regulations and the relationship to the final Title XI regulations are appreciated. Thank you for the additional opportunity to provide these comments.

Sincerely,



Robert L. Grogan
Director
Division of Governmental
Coordination

cc: Mr. Boyd Evison, Regional Director, National Park Service
Commissioner Judy Brady, Department of Natural Resources
Commissioner Don Collinsworth, Department of Fish and Game
Commissioner Mark Hickey, Department of Transportation and
Public Facilities
Commissioner Dennis Kelso, Department of Environmental
Conservation
Mr. Rod Swope, Office of the Governor
Alaska Land Use Council
Land Use Advisors Committee

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- [1312] Mr. James Barkeley, Esq., Land Use Advisors Committee, Anchorage
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- [1250] Mr. Stan Leaphart, Citizens Advisory Commission on Federal Areas, Fairbanks
- [937] Ms. Janie Leask, Alaska Federation of Natives, Anchorage
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- [940] Mr. Vernon R. Wiggins, Alaska Land Use Council, Anchorage
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