Testimony of
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Madam Chairman, Members of the Committee, I am honored to address you on this 35th Anniversary of the signing of the Alaska National Interests Lands Act of 1980. My name is J. P. Tangen. I am an attorney in active practice in the State of Alaska. I was first drawn to Alaska in 1975, in no small part because of the pending determination that "up to, but not to exceed, eighty million acres of unreserved public lands in the State of Alaska … [should be withdrawn] for addition to or creation as units of the National Park, Forest, Wildlife Refuge, and Wild and Scenic Rivers Systems…" To a young attorney-advisor with the Department of Commerce here in DC, 80 million acres of land seemed like an awful lot of land.

Accordingly, I relocated to Alaska and have fought in the trenches ever since. My primary vocation over the decades has been on behalf of the mining industry, although I did serve as Alaska Regional Solicitor for the Department of the Interior in the 1990's. I have served for many years as co-chairman of the Alaska Miners Association's Federal Oversight Committee, and in that capacity have participated in the analysis and comments on hundreds of initiatives from federal agencies that would unilaterally burden or preclude development on federal land in Alaska in direct violation of the clear language in ANILCA.

In 2000, I had the privilege of participating in the publication of a collection of essays entitled d(2), Part 2, A Report to the People of Alaska on the Land Promises Made in ANILCA, 20 Years later …. I commend that book to you for your bedtime reading; it is relatively short and can easily be digested in an hour or so.

Among the articles included in d(2), Part 2 is the testimony of Steve Borell, then Executive Director of the Alaska Miners Association, before this very Committee on August 10, 1999. It can be seen by his testimony that there were many open wounds on the table after 20 years of experience under ANILCA. Everything Mr. Borell said then remains true to this day, but the egregious misconduct of the USFS, the BLM, the NPS and the FWS has been compounding over the ensuing 15 years.

I was asked to offer testimony at this time on ANILCA, including perspectives on the Act's impacts in Alaska and suggestions for improvements to the Act. I shall attempt to do so in the most positive way possible.

When discussing ANILCA, the primary concern of many Alaskans, certainly those in the resource development industries, is that ANILCA was held out to be a great compromise, with two cornerstone guarantees: first, that there would never be any more withdrawals of public land from "the economic and social needs of the State of Alaska and its people." That language is in section 101 of the Act. Second, that under section 1110, in exchange for restrictive burdens on what turned out to be well over 100,000,000 acres of federal land in Alaska, there would be "adequate and feasible access for economic and other purposes to the concerned land."

There are many other promises contained in ANILCA. As Senator Ted Stevens observed in his Preface to d(2), Part 2, during the twenty years after passage Alaskans had witnessed many disappointments and continued to do so.

Pursuant to mandate, I will list some of the problems that have emerged over the past 15 years and are ongoing to this day; then I will propose suggested remedies, with the hope that this bitter battle can be brought to a conclusion before resource development on federal land in Alaska is totally destroyed.

IMPACTS OF ANILCA

1. Resource Development is blocked on Federal Lands in Alaska by USFS, BLM, NPS and FWS.

a. The National Park Service has employed a variety of tools to ensure that valid existing rights to develop mineral resources within NPS units in Alaska are never developed. In the case of Orange Hill, for instance, an extremely valuable copper deposit, comprising patented land, was deprived of access by the Park Service, on the one hand; and, on the other, because it had no authorized access, the owners were denied adequate compensation.

b. The owners literally went through the administrative process twice, to Congress twice and to the courts twice seeking redress. Finally they gave up.

c. Do not assume, however, that because a specific in-holding is referred to it is an isolated event. Comparable sagas occurred in other areas of the Wrangell-St. Elias National Park, Denali National Park, Glacier Bay National Park, Cape Krusenstern National Monument and Bering Land Bridge National Reserve.

d. The methodology used by the NPS is very predictable.

i. First a permit must be applied for. That often requires an Environmental Impact Statement for which, among other things, requires the applicant to pay;

ii. Then, the permit is denied and the applicant is told that he can never get a permit no matter what he says and that he should sell the property to the NPS;

iii. Then an NPS-approved appraisal is conducted which disregards any value for the resource that cannot be developed under NPS rules;

iv. Then the applicant turns to the courts, where unsympathetic federal judges, arbitrarily constrained by the Administrative Procedures Act (hereafter "APA") and at the instance of Department of Justice attorneys with an agenda, rule against the applicant;

v. Then the applicant is reduced to appealing to the Ninth Circuit which never saw a resource development project it didn't want to scuttle.

e. This dance has various mutations, but the end result is always the same.

2. Access Across Federal Lands in Alaska is blocked by USFS, BLM, NPS and FWS.

a. A similar exercise occurs with regard to access.

b. The National Forest Service has the right and obligation to permit logging roads throughout the Chugach and Tongass National Forests.

c. Although referred to as logging roads, they also are used by miners, hunters, and local communities, many of which are dependent upon logging and other resource development projects to support their very infrastructure.

d. Both National Forests are known to be replete with marketable timber and mineral resources; however, as the result of the stridence of the USFS and the APA's insistence that the agencies are the best arbiters of their own mandates, the ability of Alaskans to use the forests for resource development is vitiated.

e. This is not to suggest that the NPS is any better with regard to access, witness the Hale v. NPS case and the Sturgeon case; or that the Fish and Wildlife Service is sympathetic, witness the King Cove Road problem.

f. The BLM, in its unique way, has determined to create gigantic "Areas of Critical Environmental Concern" that have all the earmarks of barred restrictions on land use and access across public lands, even though there is no particular justification for doing so other than their "planning process."

g. The BLM most recently has dedicated teams of people with apparently unlimited resources to prepare reports that run to the thousands of pages to gut the purpose and language of ANILCA. The expense of analyzing and opposing these works is astronomical and, ironically, doing so is a total waste of time, because critical comments fall on deaf ears, and the agency does what it pleases without fear of reprisal.

SUMMARY

Although blocking access across and development on federal lands was thought to be clearly precluded by ANILCA, these preclusions have been ignored or actively resisted by the land managing agencies.

RECOMMENDATIONS

Congress should prepare legislation that makes it clear:

1. That ANILCA is an action-forcing statute that is binding on the federal land managing agencies in Alaska and under the direct supervision of the inspectors general of the respective agencies;

2. That implementation of FLPMA and other agency organic acts are deemed to have been amended by ANILCA and are to be interpreted consistently with the legislative intent of ANILCA, facilitating access across and resource development on federal lands in Alaska managed by the USFS, the BLM, the NPS and the FWS;

3. That notwithstanding the APA, the federal courts are directed to exercise plenary authority over the land managing agencies and to consider applications for review of decisions that deny private citizens access through and across Conservation System Units (often called "CSUs") created or enlarged by ANILCA *de novo* and upon request;

4. That all waters, rivers, streams and lakes in Alaska are hereby deemed navigable and subject to the exclusive jurisdiction of the State of Alaska, unless the affected land managing agency can prove by a preponderance of the evidence in federal district court that a specific reach or impoundment is not navigable;

5. That all existing logging roads and all historic RS 2477 rights-of-way already identified by statute by the State of Alaska across federal public lands in Alaska are hereby deemed granted, including alternative routes dictated by weather and topographic conditions, and including a 50-foot-from-the-centerline width and such borrow pits of sufficient proximity and size as may be required by the builder to ensure economic maintenance;

6. That permits, environmental impact statements and all other studies and documentation required by an agency shall be paid for exclusively by the lead agency out of appropriated funds;

7. That applications and amendments to applications for access or development activities on inholdings shall be deemed approved unless denied for cause within one year after having been initially filed;

8. That all Public Land Orders issued under the authority, in whole or in part, of ANCSA or ANILCA or related to ANCSA or ANILCA are revoked effective one year after the passage of this legislation unless renewed by reference to other authority;

9. That wetlands within CSUs and Wilderness Areas in Alaska be deemed sufficient to fully satisfy the Clean Water Act's mitigation requirements in lieu of replacement or monetary compensation for any resource development projects regardless of federal, state, local, or private ownership.

10. That the Alaska Land Use Council as described in ANILCA Title XII is re-established and charged with the responsibility of ensuring that the promises of ANILCA are kept;

11. That the Quiet Title Act shall not apply to the transfer to the State of public lands in Alaska; and

12. That the Mining in the Parks Act shall not apply to CSUs in Alaska.

I very much appreciate the opportunity to present these few points and look forward to supplementing these comments for the record.

Thank you.