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 Single Copy \$5.00  
 Annual Subscription \$50.00  
 Payment in Advance  
 Please Allow 4-6 Weeks for Delivery

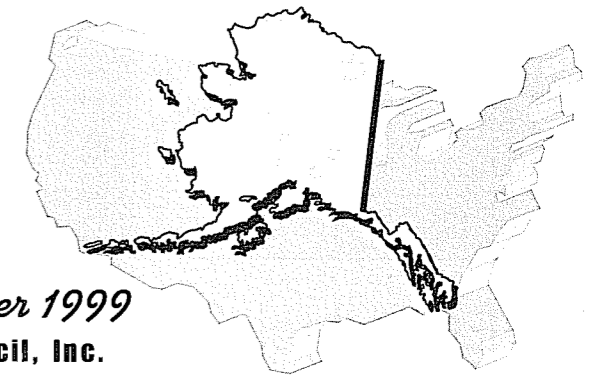
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# Resource Review

September 1999

A periodic publication of the Resource Development Council, Inc.



## ANILCA: 20 years of broken promises?

On December 2, 1980, President Jimmy Carter signed the Alaska National Interest Lands Conservation Act (ANILCA) into law, converting more than 100 million acres of Alaska, an area equal to the entire state of California, into national parks, refuges, wilderness areas and units of the Wild and Scenic Rivers System. With the stroke of a pen, almost one-third of the state was set off limits to mining, logging and many other uses.

ANILCA, however, promised that traditional uses prior to 1980 would be permitted and there would be no more withdrawals in Alaska. It also promised Alaskans continued access to the land and resource. These promises are contained in special provisions of the law which framed a compromise that was key to ANILCA's passage.

However, in the 19 years since ANILCA's passage, federal land managers on numerous occasions have withdrawn new lands, added more regulations and have progressively tightened restrictions -- in many cases through disputed interpretations of the lands act. In national parks alone, large areas have been put into the most restrictive land use categories, inholders have

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## RDC offers tips on how to make ANILCA better

### Murkowski plans to introduce legislation to revise Alaska lands act

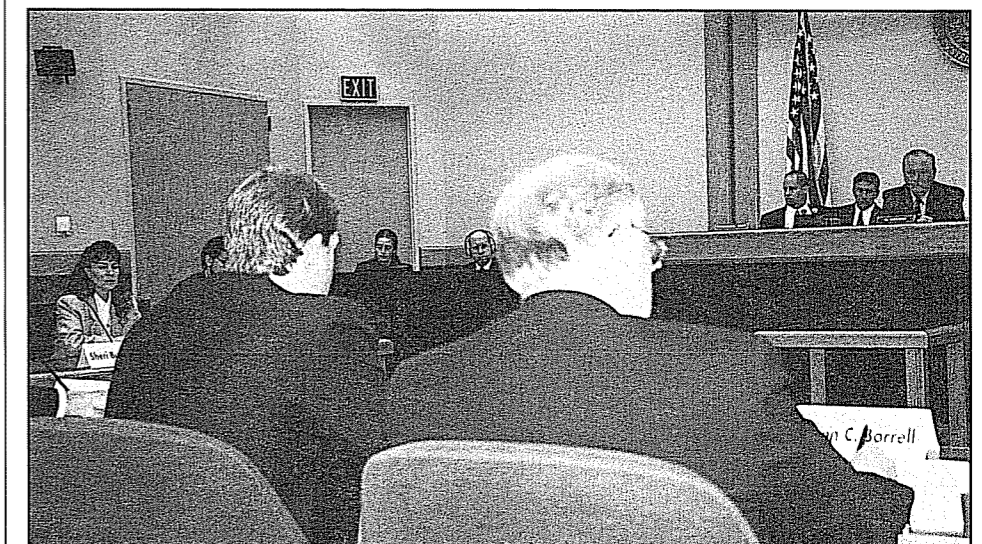
*Editor's Note: The following text is an excerpt from RDC's oral testimony presented by Executive Director Ken Freeman August 10 before a field hearing of the U.S. Senate Energy and Natural Resources Committee in Anchorage. More extensive written comments were submitted to the congressional record.*

With less than one percent of Alaska in conventional private ownership and 60 percent under federal jurisdiction, how federal land managers implement ANILCA is of paramount concern to RDC.

One primary issue of significance

to all Alaska resource industries is access. Despite the congressional intent embodied in ANILCA and its access provisions, there continues to be a general deterioration of public access to federal lands and inholdings. Unless we effectively challenge a creeping more restrictive federal mismanagement, much of which is inconsistent with ANILCA, major segments of Alaska will remain inaccessible and traditional uses guaranteed under the law will continue to disappear.

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RDC Executive Director Ken Freeman and Steve Borell, Executive Director of the Alaska Miners Association, address ANILCA issues before Senator Murkowski last month.



**Message from the Executive Director**  
by Ken Freeman

## DEC's decision to drop wastewater permitting raises serious concern in the regulated community

In response to a 56 percent cut in its budget since 1991, including a \$339,000 unallocated reduction in its 2000 budget, the Alaska Department of Environmental Conservation (DEC) has decided to defer key water quality permitting actions to the federal government. As a result, DEC will no longer issue 401 certifications on NPDES permits issued by the Environmental Protection Agency (EPA) and permits for dredge and fill in wetlands and waterways issued by the U.S. Army Corps of Engineers.

DEC's latest decision has very serious ramifications for Alaska's major resource industries and the economy as a whole. NPDES permits authorize

the disposal of domestic and industrial wastewater discharges. Facilities such as municipal sewage treatment plants, seafood processing plants, oil and gas exploration and development and mining activities will all be impacted. Permits for dredge and fill in wetlands and waterways involve construction projects ranging from road building and subdivision development to dredging for marine navigation and site development for the oil, gas and mining industries.

Activities that DEC will no longer perform for affected facilities include permit reviews and approvals, reviews of monitoring reports, inspections and enforcement of water quality standards. Moreover, DEC will no longer authorize mixing zones, zones of deposits (ZOD) and short-term variances. This poses a very serious problem to Alaska because these options will not be available under a federal program without state participation.

Mixing zones and ZODs are necessary because Alaska's water quality standards, if read literally, would prohibit virtually any economic and recreational activities in the state that discharge even the smallest quantities of waste water into jurisdictional waters. In the past, DEC has allowed for flexibility in the application of water quality standards, including mixing zones and ZODs.

While budget reductions have affected DEC's ability to fully maintain the level of services it has previously provided to the citizens, businesses and industries of Alaska, the agency's choice of priorities and its decision to drop wastewater permitting has raised deep concern in the regulated community.

If DEC makes good on its decision to no longer authorize mixing zones or zones of deposit, the economic

consequences for Alaska industry will be severe. Because DEC's decision could eventually close down much of Alaska's recreational and industrial base, it's clearly not good for business in Alaska.

RDC represents a wide range of Alaska businesses, industries and communities. Our collective believes economic reality needs to play a major or greater role in setting regulatory priorities.

DEC has recently convened a stakeholders working group on wastewater permitting. The agency has asked the group to review and assess what limited technical services DEC should perform to support Clean Water Act Section 402 and 404 federal permits with its current year funding and to discuss potential options for a renewed state effort in discharge permitting.

The agency is to be commended for taking the initiative to organize a broad-based debate on this critical regulatory issue. However, the agency may find it rough going in defending its new set of priorities. Some legislators and others have taken DEC to task for dropping wastewater permitting, especially after the Legislature appropriated \$4.3 million to the Water Quality Division, not including \$1.7 million for Non-point Source Pollution grants.

Likewise, legislators, federal agencies, industry and other stakeholders will be challenged to assist DEC in overcoming the agency's wastewater management dilemma and to accomplish needed regulatory reform and agency efficiencies.

With budget tensions growing, Alaska's water quality program is at a turning point. It's time to consider options for the future that will protect the environment while sustaining a healthy business climate in the 49th state.

## Resource groups wary as Chugach revision process moves forward

By Tadd Owens

As the Forest Service moves forward with its revision of the Chugach Land Management Plan, a broad range of interests supporting multiple uses in the nation's second largest national forest remains concerned with the process, as well as potential management outcomes. Both the manner in which the draft alternatives will be analyzed and how critical information will be displayed on maps has been called into question by members of the development community.

The Resource Development Council, the Alaska Forest Association, Alaska Miners Association, Alaska Visitors Association, Chugach Alaska Corporation, and the Anchorage Snowmobile Club continue to work closely with the U.S. Forest Service on the revision of the Chugach Land Management Plan. Currently the Forest Service's interdisciplinary team (IDT) is reviewing draft alternatives. A selected range of alternatives will be submitted to the Regional Forester in October. The Final EIS is scheduled to be released in June of 2000.

Members of the public and the IDT have submitted over 20 draft alternatives. From this pool, the IDT is looking to present a "reasonable range" of alternatives to the Regional Forester for consideration. The IDT has considerable flexibility in determining what makes up a reasonable range, including the ability to create additional alternatives if a suitable set cannot be generated from the existing drafts. Each alternative will undergo a formal screening process before a decision is made to drop the alternative, combine it with one or more similar alternatives, or recommend it to the Regional Forester.

Although the Forest Service has established a detailed screening process, RDC and others believe important analytical tools have been left out. For instance, the current screening process does not consider

the legal issues a given alternative might raise. RDC believes several of the proposed alternatives will require changes to federal law in order to be fully implemented. RDC recommends a legal screen be used to help present the Forest Supervisor with a truly balanced range of reasonable alternatives.

RDC also noted each proposed alternative should be reevaluated in light of the completed resource assessments. The development community believes the Forest Service is sacrificing important information in a rush to complete the EIS by June 2000. Although the IDT will never obtain "perfect information," many find it irresponsible to move forward when better information will be available soon. Moreover, the resource assessments may provide information critical to achieving some level of compromise on sensitive issues.

Concerns have also been expressed regarding the manner in which alternatives will be evaluated in terms of their merit in dealing with the important issues identified by the public during the initial public comment period. Current Forest Service maps require an entire watershed or sub-watershed be given only one management prescription.

For example, when the Resource Development prescription is applied to a specific watershed, the entire area is labeled Resource Development on Forest Service maps, even though only a fraction of the watershed may be suitable for development. In the Chugach, there is no suitable timber located above 1,500 feet of elevation. Nonetheless, an entire watershed or sub-watershed will be designated Resource Development in order for suitable timber below 1,500 feet to be accessed. The same situation applies to many of the areas of known high mineralization.

In order to be evaluated fairly, those alternatives which call for the Resource

Development prescription should break down the total acres of recommended Resource Development land into three categories: Suitable Timber, High Mineral Potential and Land Not Suited for Resource Extraction. Displaying the Resource Development lands in these three subcategories will give the public a more accurate understanding of the extent and location of activities that may realistically take place on any given piece of ground. Without a breakdown, the public will be led to believe much larger portions of the forest are available for development than reality dictates.

RDC has also proposed several changes to the information displayed on maps applying to each alternative. RS-2477 easements, proposed roads and Native land selections should all be displayed in an effort to provide "truth in advertising" to the public. There is serious concern the public will be misled regarding access issues if this information is not displayed.

### Steller sea lions: More restrictions sought

large areas to fishing and breaking up the traditional pollock season into four periods throughout the year.

Earlier this summer, Judge Zilly ruled that NMFS failed to explain its rationale for the regulations, giving environmentalists a first round win in their lawsuit. While the measures may protect the sea lions, the judge says NMFS has not provided an adequate analysis justifying that conclusion.

Alaska's pollock fishery is one of the world's largest with an annual harvest of about 2 billion pounds worth hundreds of millions of dollars. The fishery employs more than 4,000 people and is a critical component of many coastal communities. A significant cut in the harvest would be a serious economic setback to the fishing fleet and processing plants concentrated in Dutch Harbor and Kodiak.

**Resource Review** is the official periodic publication of the Resource Development Council (RDC), Alaska's largest privately funded nonprofit economic development organization working to develop Alaska's natural resources in an orderly manner and to create a broad-based, diversified economy while protecting and enhancing the environment.

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## More restrictions sought on pollock fishery to protect Steller sea lions

Environmentalists have asked a Seattle judge to further curtail pollock fishing in the Bering Sea and Gulf of Alaska, including a ban on harvests in critical habitat areas of the endangered Steller sea lions.

Greenpeace has asked U.S. District Judge Thomas Zilly to end all pollock fishing in the Steller sea lion critical habitat areas northeast of Unalaska Island, as well as cut the total allowable catch in the Gulf of Alaska by 30 percent and 20 percent in the Bering Sea. The pollock fishery, Alaska's richest and worth more than \$700 million, operated under emergency regulations during its latest

opening in August. However, the next season, set to begin September 15, would be gutted if the judge rules in favor of Greenpeace.

The North Pacific Fisheries Management Council (NPFMC) has banned factory trawlers from operating in critical habitat areas during the fall season, but catcher vessels are allowed to operate under strict measures and catch limits.

Greenpeace and the Sierra Club sued the National Marine Fisheries Service (NMFS) in 1998, claiming the agency had not done enough under the Endangered Species Act to protect the Steller sea lions, whose western

population has fallen sharply throughout the 1990s. The agency issued a "biological opinion" last year that pollock fishing in the Bering Sea and Gulf of Alaska could hinder the recovery of the sea lion populations since pollock is a food source for the mammals. The fishing industry sharply disagrees with the opinion and believes more study and peer review is required to accurately assess the impact fishing may have on sea lions.

NMFS, along with the NPFMC, imposed emergency regulations to protect the sea lions, including sharp cuts in allowable catches, closure of

*(Continued to page 7)*

## ANILCA: Alaskans give Murkowski grim assessment

*(Continued from page 4)*

Misty Fjords. "We are concerned that their engagement will impact our ability to operate profitable tours in this area," Beedle said. "We have had our timber economy taken away and now it appears just as we begin to make a profit that tourism will not be allowed in the Tongass Forest."

Chugach Alaska President Sheri Buretta said the Forest Service continues to drag its feet on granting the corporation an easement to reach its timber in the Chugach National Forest.

"As a result of pressure from environmental groups and the administration, we have had nothing but delays," Buretta said. "The outspoken opponents to Chugach getting our rights are heavily funded, although many have never even stepped foot on the land they are so driven to take from us," Buretta added.

In 1986 the Forest Service began work to provide Chugach with an easement for access to its land. The easement was guaranteed in a 1982 settlement that transferred 73,000 acres within the Chugach National Forest to the Native corporation. Recognizing that the entire value of the land depended on access, the agreement guaranteed

Chugach access across Forest Service land for the purpose of economic development.

Chugach has since spent more than \$1 million addressing environmental concerns and paid the Forest Service over \$100,000 to review studies and process the easement application. However, despite an agreement last year, the agency has not granted the easement.

Chugach officials note that their frustration is not with the Forest Service employees in Alaska who have worked hard to get the easement completed, but with high level administration officials in Washington, D.C.

Leslie Howell, Project Analyst and Permit Coordinator for Temsco Helicopters, requested Murkowski to fix a problem created by the Forest Service in its management of recreation access in wilderness areas. She noted that a 1997 decision by Regional Forester Phil Janik prohibited all general public helicopter access into all wilderness areas in Southeast Alaska, representing one-third of the forest and many of the region's prime recreational sites.

"Helicopters have operated in these wilderness areas for nearly 50 years,

and the Forest Service is improperly excluding them," Howell testified. She said the agency is ignoring ANILCA provisions which specifically permit use of helicopters where their uses have been established prior to 1980.

Howell asked, "How can the Forest Service justify this total ban when Congress spoke twice that it wanted access by aircraft to these very large unroaded areas to remain open?" She said the ban applies only to the general public, not to government use and management.

In response to sharp questioning from Murkowski, Regional Forester Rick Cables said the decision to ban helicopter landings from wilderness areas was based on maintaining a balance of uses in the Tongass and the fact that helicopter flightseeing had not yet reached the saturation point in non-wilderness areas of the forest. He indicated his agency would revisit the decision once the saturation point is reached outside wilderness.

However, in both the Tongass and the Chugach, the Forest Service has banned helicopters from landing in non-wilderness areas too, ensuring that the saturation point is never reached.



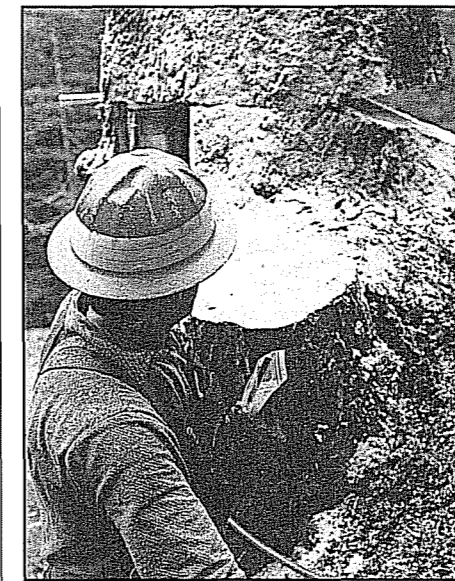
## Thoughts from the President by Jim Branch

## Timber supply deal good for Alaska

The Alaska congressional delegation and the Clinton administration recently reached an agreement that directs the Forest Service to make available a sufficient quantity of timber from the Tongass National Forest for what remains of the small logging operations in Southeast Alaska and for the proposed veneer plant in Ketchikan.

The deal provides for a consistent independent timber sale program in the Tongass for all timber purchasers over the next two years. It also provides flexibility for Louisiana Pacific Corporation to harvest its remaining timber volume on a schedule that is consistent with the plans of Gateway Forest Products to operate a veneer plant in Ketchikan at the site of the old pulp mill.

The agreement is a tangible step forward to preserve jobs and paychecks in Southeast Alaska's timber industry. With this agreement, there will be a sufficient timber supply to allow the veneer plant to proceed and to guarantee a market to sustain other components of the region's wood products industry.



*A mere one-half of one percent of the forested lands in the Tongass National Forest is available for logging. A recent agreement will allow for a consistent supply of timber to industry.*

Gateway is a new Alaska company that is currently negotiating with Louisiana Pacific to purchase assets of Ketchikan Pulp Company (KPC). Gateway hopes to complete its acquisition later this fall and to build the

veneer plant next summer. The agreement allows Gateway time to move forward with its plant and feed it with 100 million board feet of timber volume already purchased by KPC.

The Resource Development Council and the Alaska Forest Association believe this deal is good for all the operators in the Tongass. Forest Association Executive Director Jack Phelps pointed out that the independent timber sale program is of critical importance to the remaining industry in Southeast Alaska.

"This is an industry in transition," Mr. Phelps told RDC recently. "The most important issue for us is stability and consistency of volume. The delegation understands this and has worked very hard to get the Clinton administration to allow the Tongass National Forest to stabilize its offerings."

Both AFA and RDC are pleased with the broad support in Alaska leadership which came together to make this deal happen. The work of the delegation was critical and the support of the Governor's Office was also very important. We also applaud the Forest Service for its willingness to reach an agreement with our wood products industry that will lead to more value-added processing in Southeast Alaska.

## Home Depot announces new wood purchasing policy

The Home Depot, the world's largest home improvement retailer, took the occasion of its 20th anniversary to announce that it will stop selling wood products from environmentally-sensitive areas. By the end of 2002, the company will require that its wood products carry a "certified" label. To carry the label, a supplier's wood must be tracked from the forest, through manufacturing and distribution, to the customer and must ensure a balance of social, economic and environmental factors.

Home Depot also reported it will award more than \$750,000 in grants to nearly 60 environmental groups during 1999. The

company's focus areas will include forestry and ecology, green building practices and recycling.

## U.S. Forest Service faces another lawsuit over timber

Last summer, environmentalists sued the Forest Service, claiming it was allowing for the harvest of too much timber in the Malheur National Forest, and, in the process, harming streams that are home to endangered and threatened fish species.

Now, local government officials and business interests in the Eastern Oregon county are planning to sue the agency, too, claiming it isn't letting loggers take down enough trees. By not cutting more timber,

the agency is damaging streams and threatening the fish, local officials argue. They say the agency's meager offerings hurt the economy of a county that's heavily dependent on timber revenue.

At issue is how the Forest Service responded to a devastating fire in the Malheur and to the recent outbreak of the pine beetle, which colonized quickly among the remaining fire-weakened trees. Local officials claim the agency has ignored the infestation and that remaining trees are likely to die, leading to erosion into stream beds and increased water temperatures.

Both impacts would harm the fish and are violations of the Clean Water Act and Endangered Species Act, local officials contend.

## Alaskans give Murkowski grim assessment on ANILCA

(Continued from page 1)

been squeezed out of many areas and mining operations have been shut down completely.

Alaskans from all walks of life and economic sectors last month offered Senator Frank Murkowski a grim assessment of the federal government's track record of implementing ANILCA. Murkowski, Chairman of the Senate Energy and Natural Resources Committee, held a hearing in Anchorage August 10 to look into ANILCA and take testimony from Alaskans, many who claim promises in the lands act have been routinely broken by federal agencies.

Representatives from the state's resource industries and Native corporations charged that land managers have shot arrows into the heart of ANILCA's special provisions which recognize Alaska's unique access and traditional use considerations. They said that federal agencies, through their interpretation of the law and the discretion exercised in implementing the act, have essentially gutted key provisions.

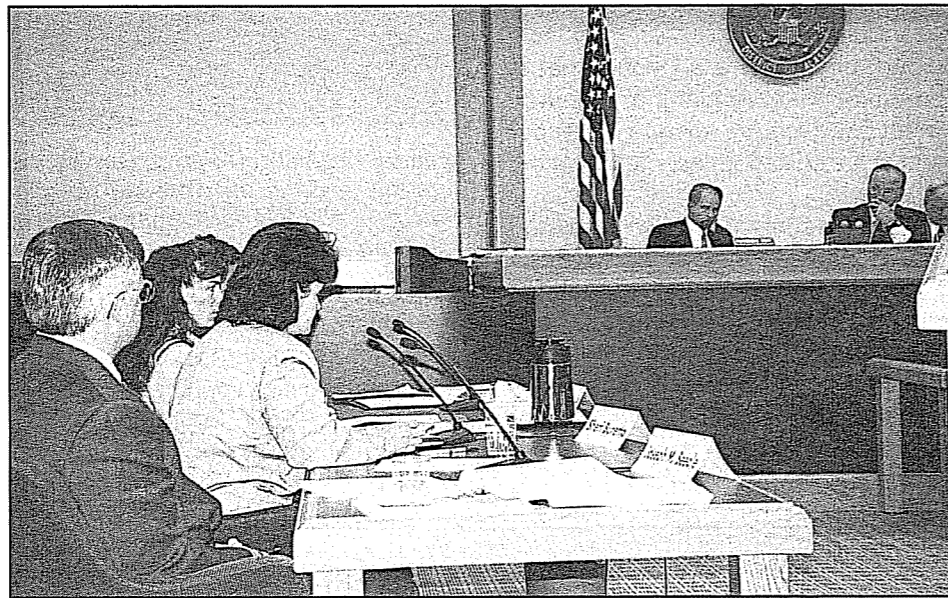
Murkowski said the hearing convinced him to introduce legislation later this year to revise the lands act. The amendments, he said, would include language directing federal agencies to provide better access to federal lands and private property surrounded by those lands.

### Broken promises

Steve Borell, Executive Director of the Alaska Miners Association, looks at next year's anniversary of ANILCA as 20 years of broken promises. In his testimony before Murkowski, Borell noted that several federal agencies have broken and continue to break promises made in ANILCA. He explained that ANILCA made a number of commitments to the mining industry and specifically pointed out that "no more" land

in Alaska would be considered for set-asides into special restrictive designations.

Borell targeted the National Park Service, insisting the agency has done everything possible to stop all mining activity within the boundaries of park units. He said the agency's actions have been calculated, deliberate and illegal efforts to deprive miners of their rights under ANILCA. He said the Park Service has been stringing miners along by continually asking for more data and it has refused to approve any plans of operations for mechanized mines. Borell said the agency has crafted environmental impact statements in a way that



Chugach Alaska Corporation President Sheri Buretta testifies at the August hearing of the Senate Energy and Natural Resource Committee hearing in Anchorage. Goldbelt President Joe Beedle is seated at left.

mining could not be permitted.

Officials from Goldbelt, Inc., and Chugach Alaska Corporation, two Native corporations, told Murkowski that the Forest Service has been taking steps to prevent them from using their land.

Goldbelt President Joe Beedle reported that the Forest Service is object-

*"We have had our timber economy taken away and now it appears just as we begin to make a profit that tourism will not be allowed in the Tongass Forest."*

**- Joe Beedle**

ing to an anchored float dock the corporation operates in Rudyerd Bay inside Misty Fjords National Monument. Goldbelt has been operating in Rudyerd Bay more than 20 years. Sea planes anchor at the floating dock to exchange and transfer tourists from a flight por-

tion of a tour to a cruise portion. The float is not attached to the land and is under the jurisdiction of the State of Alaska Division of Lands for Submerged lands involving an anchor permit.

The Forest Service is objecting to the issuance of a seasonal permit, even though no contact with land is made in

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## RDC reflects on ANILCA, offers recommendations

(Continued from page 1)

In the Chugach National Forest proposals are being made that will severely restrict access. These proposals, which include new Wilderness designations and additional wild and scenic rivers, are clearly at odds with the "No More" intent language contained in Title 1, Section 101(d) of ANILCA. Rivers designated as wild and scenic are, by definition, conservation system units and are not allowed under ANILCA.

Aside from the fact that additional wild and scenic river designations are not legal, access to private lands and numerous known and potential mineral reserves will be blocked.

The Forest Service is also encouraging public nomination of Wilderness outside the Chugach National Forest Wilderness Study Area designated through ANILCA. The Chugach National Forest was directed by ANILCA to study and provide recommendations to Congress for additional Wilderness within the Nellie Juan-College Fjords Wilderness Study Area. This recommendation was to be forwarded to Congress within three years of the passage of ANILCA. No recommendation was ever made to Congress. Meanwhile, the entire 1.97 million acre area continues to be managed as a de facto Wilderness area without Congressional designation. Further, there appears to be no time requirement for the Secretary of Agriculture to ever resolve this issue.

The primary ANILCA issue of significance to tourism and its future economic contribution to Alaska is also access. Federal agencies are attempting to preserve wilderness values in areas that are not congressionally designated Wilderness. Agency management strategies that emphasize wilderness values over other uses preclude access. As a result, the ability to accommodate visitor needs and provide for a diversity of visitor/recreational experiences is increasingly difficult.

The Chugach National Forest staff has proposed land use designations more restrictive than ANILCA provisions and more restrictive than the Tongass National Forest Plan. The proposed land use designations appear to lack a balance between preservation, conservation and development. The primitive designation allows no motorized use, regardless of traditional activities. Land use designations are also being proposed to ban traditional flightseeing fixed wing motorized activities in Wilderness and other designated areas.

Access for larger groups is not allowed

in areas managed for backcountry, primitive or more wild settings. Large groups can view the forest from the water, but they can't touch it.

Increasingly, federal agencies are adopting plans that ban or propose to ban traditional motorized fixed wing and helicopter flightseeing landings. The Chugach Forest Plan revision process proposes to ban or restrict helicopter as well as fixed wing flightseeing in many of the land use designations outside Wilderness Study Areas or recommended Wilderness.

*"A new mandate for a 'no net loss' of economic productive federal lands is needed in Alaska and should be considered as part of any package modifying ANILCA."*

It is very difficult to develop or upgrade surface (road) access to open public lands and disperse tourism and recreational activities. Many of the agencies appear to have a "no growth" philosophy, regardless of their legal mandate and are managing for wilderness-type values outside ANILCA designated areas.

### RECOMMENDATIONS:

1) **Similar to NEPA requirements, federal agencies should be required to document "cumulative impacts" of their management decisions on a larger, more regional scale.** For example, the Chugach National Forest Plan should take into account the thousands of acres of land purchased by the Exxon Valdez Oil Spill settlement funds, the Wrangell St. Elias National Park and Preserve, the Kenai Fjords National Park and the Chugach State Park which border the forest. These lands adjoining and within the national forest set aside huge areas that already prohibit or restrict resource development. By looking only at the lands each respective agency manages, the cumulative impacts of management decisions are ignored, resulting in more public lands being off limits to development.

There are growing social and environmental impacts when huge areas of public lands are withdrawn from multiple

use. Existing and proposed designations continue to reduce Alaska's timber and mineral resource base. Many designations also preclude opportunities to expand Alaska's tourism industry or sustain other industries.

A new mandate for a "no net loss" of economic productive federal lands is needed in Alaska and should be considered as part of any package modifying ANILCA.

2) **Full implementation of Section 1010 which mandates a thorough and accurate inventory of oil, gas and mineral resources on federal lands in Alaska should occur. The inventory should be expanded to include timber resources on federal lands.** Nearly twenty years after the passage of ANILCA, comprehensive resource inventories are still lacking.

3) **ANILCA should mandate and designate surface access corridors** to private lands and to lands important for public resource management.

4) **ANILCA should restate the intent of Congress with respect to future Wilderness and wild and scenic river designations.** The "No More" language of Section 101(d) is clear in expressing Congressional intent against the establishment of additional CSUs or other non-multiple use areas. The problem is that federal agencies have been working effectively to get around the clear intent of Congress. They argue that their evaluations are not for a "single purpose" and therefore studies for more Wilderness and wild and scenic rivers are allowed.

Federal agencies also have been justifying their studies and recommendations for additional CSUs by citing conflicts between different authorizing statutes. There is a justification for making it clear that ANILCA supersedes any earlier laws authorizing CSUs.

In regard to wilderness evaluations and designations, ANILCA should establish specific timelines that require federal agencies to provide recommendations to Congress and when Congress must act upon the recommendations.

5) **Modify the language in Section 1110 to read "aircraft" instead of "airplane."** Helicopter and fixed wing aircraft tour operations which include landings and overflights should generally be allowed. Where conflicts are identified, seasonal uses, frequency and routing options should dominate over an outright ban.

6) **Revise ANILCA to ensure aircraft landings and overflights of public lands are not prohibited.** Emphasize and clarify the ability to continue fixed wing landings.