The largest year-round employer in Southeast Alaska. Ketchikan Pulp Company produces high quality dissolving pulp, paper pulp and lumber. Operations contribute substantially (about $5 million monthly) to the economy of Ketchikan, Metlakatla, and the communities on Prince of Wales Island. There are 950 year-round jobs at logging camps, sawmills and the pulp mill. KPC is proud to be a part of the greater Southeast Alaska community.

An Equal Opportunity Employer

New federal rules redefine access across remote areas

Proposed Rule seeks to clarify access under RS-2477 law

Proposed federal regulations dealing with rights-of-way on public lands in Alaska and the Lower 48 have drawn sharp criticism from Alaskans who disagree with the new rules which could preclude access along Alaska trails historically achieved by snow machines, sled dog teams, pack animals and foot. The U.S. Department of Interior issued the proposed rules as part of an effort to settle long-standing confusion over the existence and management of many rural Western "highways" across public lands. If adopted, the regulations would establish a process for three Interior agencies, the Bureau of Land Management, the National Park Service and the U.S. Fish and Wildlife Service, to verify highway rights-of-way claimed by state and local governments under a now-repealed 1866 law (Revised Statute 2477).

Originally designed to encourage people to move West by allowing them access through public land, the RS-2477 rights-of-way law was repealed in 1976, but under a grandfather provision roadways created before then can still be developed. Because no documentation was required to legally create a roadway, the federal government has no idea how many there are, and both state and federal public land managers have disputed which rights-of-

Extension requested on public comments for Proposed Rule

The U.S. Department of the Interior has opened a 60-day public comment period on the new regulations dealing with RS-2477 rights-of-way in Alaska and the Lower 48. The proposed regulations appeared in the Federal Register August 1. Comments will be accepted through September 30. Governor Wally Hickel has asked Interior Secretary Bruce Babbit to extend the public comment period by 90 days. The Governor noted that the comment period was not long enough to consider all the problems.

(Continued to page 4)
RDC watching and working on ANILCA Title XI access issue

1980: Alaska National Interest Land Claims Act (ANILCA) passed. Title XI of ANILCA concerned transportation and utility systems including roads, highways, railroads, airstrips, pipelines, canals, radio and television transmission lines, and power and utility systems.

1986: In September, six years after ANILCA passed, the Department of Interior finally promulgated regulations under Title XI of the Act. The Trustees for Alaska, Alaska Center for the Environment, National Parks and Conservation Association, American Wilderness Alliance, Northeast Alaska Environmental Center, Southeast Alaska Conservation Council, and Denali Citizens Council filed a lawsuit against the regulations naming U.S. Department of Interior and (then Interior Secretary) Don Hodel and raising a variety of issues.

1988: Through the Pacific Legal Foundation (PLF), on June 27, a court order granted intervenor status to RDC, the Alaska Miners (AMA) and the Alaska Loggers Associations (ALA) in the litigation. The Arctic Slope Regional Corporation (ASRC) also intervened. The regulations were upheld by the U.S. District Court in final judgment on March 16, a significant victory for the future of access in Alaska.

On May 17, Trustees file its Notice of Appeal to the Ninth Circuit Court naming the new Secretary of the Interior, Bruce Babbit. On behalf of RDC, AMA and ALA, PLF responded by filing an opening brief on the appeal also stressing interest in the inholder access rights challenged by the Trustees.

1994: In February, a new team for President Clinton came to Alaska and explored the situation with the various groups involved in the lawsuit, under the leadership of Molly Ross, a National Park Service attorney currently working directly for George Frampton, Assistant Secretary for Fish, Wildlife and Parks.

In March, in a brief declaration issued by George Frampton, the Department stated it had "decided to propose revisions to the Title XI regulations that are the subject of this litigation." In July, while in Anchorage, Frampton said the proposed regulations would be made public by October 1994 and that Title XI would be the model by which Alaska access issues are addressed (Continued to page 3).

We all remember the tale of the boy who cried wolf; he kept conjuring up calamities that never materialized. In Alaska, we have a federal agency that is crying wolf... and goshawk, too.

Without public input, and outside of procedures established by law, the U.S. Forest Service is endeavoring to save two species that are neither endangered nor even threatened in Alaska; the Alexander Archipelago wolf and the Queen Charlotte goshawk.

Although the Forest Service has no evidence that either species is declining in number, it is waging an all-out war on the timber economy of Southeast Alaska. The agency is pursuing its goal by delaying timber sales, creating no-harvest zones out of thin air, and reducing the amount of new timber that would go to Southeast Alaska mills by more than 50 percent.

A lower 48 extreme environmental group has filed a petition to list the wolf and the goshawk under the Endangered Species Act without scientific evidence of declining populations. That's the slender reed the Forest Service's current acts are based upon, but its true goal is to end logging on the Tongass National Forest.

Let's look at the facts: This year, the Forest Service canceled the Alaska Pulp Corporation's long-term timber contract, putting more than 450 Alaskans out of work. The agency offered no assistance whatsoever to the people of Sitka who wanted to replace the APC mill with an environmentally-friendly, medium-density fiberboard plant.

The agency did not follow-up on its promise to negotiate a new ten-year timber contract, and it has put up only 145 million board feet (MMBF) of new timber offerings this fiscal year. The average harvest over the past five years in the Tongass is approximately 400 MMBF.

In the Forest Service's mission to "save" species that aren't even threatened, it has marched into the Tongass and begun drawing 3 to 10-mile no-harvest circles around every tree with a goshawk nest. Each of those circles is 30 to 300 square miles. Nobody knows how much land the agency will require for "habitat conservation areas" to protect the non-threatened wolf.

The Forest Service is taking all these actions in the small portion of the Tongass specifically left for timber production by Congress. The Tongass National Forest — our nation's largest forest — consists of 17 million acres. Only 1.5 million acres are available for timber harvest, and if the Forest Service gets its way, that number will be dramatically reduced.

The Forest has imposed its no-harvest mandates by edict, ignoring the Tongass Timber Reform Act, the Alaska National Interest Lands Conservation Act, the National Forest Management Act, and the National Environmental Policy Act.

The Tongass Timber Reform Act mandates the Forest Service to provide timber to meet the demand of the mills in the Tongass. This year, ignoring the law, the agency will offer less than half of the timber necessary to meet that demand.

The Forest Service's actions also violate a specific section of ANILCA designed to stop the federal government from unilaterally withdrawing land in Alaska. The "no more" clause of that law makes clear that no agency can make land withdrawals in Alaska that exceed a total of 5,000 acres without public notice and congressional approval. The goshawk circles and the wolf areas clearly violate this law.

The Forest Management Act requires public participation in forest planning before management procedures are implemented. So, the state, or any other interested party, can buy land within the no-harvest zones to protect protected species.

The story is the same. The agency has been caught red-handed by the courts, and the agencies continue to infringe on legitimate timber harvest rights.

The agencies have tried to cover their tracks by making vague, vague claims about the effectiveness of their actions. In the long run, this is a waste of taxpayer dollars and a federal agency's time that could be spent doing real work for Alaska.

We sincerely hope that the Forest Service and the Interior Department will take heed of the facts and stop the insatiable efforts to end logging and a way of life in Southeast Alaska.
RDC comments on Proposed Rule for controlling tanker vapor emissions

The Resource Development Council has urged the Environmental Protection Agency to regulate the Valdez Marine Terminal separately from other terminals. In extensive comments on a newly-proposed rule for controlling emissions from oil tanker loading operations, RDC also supported a proposal by Alyeska Pipeline Service Company to install vapor emissions controls on two berths and to implement federally-enforceable operational limitations on a third berth which would have only temporary use due to declining throughput.

Factors such as the Valdez terminal's enormous size, its remote location, extreme climate, the complexity of controlling crude oil vapors, declining throughput and other aspects warrant treatment of the Valdez terminal as a separate subcategory, RDC said. Valdez is the largest of the four marine terminals in the United States, and it loads crude oil exclusively. By placing the Valdez terminal in a separate subcategory, the EPA would be in a position to establish a Maximum Available Control Technology standard that takes all these factors into account.

Because of declining throughput, the third berth is projected to be needed for only limited routine loading until 2001. After that, Alyeska proposes to use the third berth only during maintenance or other short-term shutdowns of the other two berths. The ability to use the third berth while the others are down is necessary to provide operational flexibility. The vapor control process at Valdez will be the most expensive one ever installed anywhere. According to Alyeska, the capital expense to install controls on two berths is $92 million. The additional cost to install controls to a third berth is $28 million in capital expense alone. Because 90 percent of throughput will be loaded from the two controlled berths when averaged over the remaining life of the terminal, it would cost considerably more on a per megagram basis to install controls on the third berth. In fact, it would cost more than three times as much per megagram of pollutant emissions on the third berth as it would on the other two.

An Alyeska analysis showed that the average cost to remove a megagram of pollutant between compliance and the year 2015 is $239,225 at the two controlled berths and $766,060 at the third berth. Given its limited use, it would not be cost-effective to install controls at the third berth, RDC noted. RDC urged the EPA to apply benefit/cost considerations to ensure expensive controls are not installed on berths with limited remaining life.

Alyeska has chosen a vapor control technology that will remove 99 percent of volatile organic compounds and hazardous air pollutants. Loading emissions overall would be reduced by about 90 percent between compliance date and 2015 since more than 80 percent of throughput would be loaded at controlled berths.

Minning Law reform ...

(Continued from page 5)

"Chairman's Mark" that is closer to Rahall's position, said Borell. "Johnston's mark right now is not workable, it leaves too much discretion to the Secretary of Interiors," said Borell. "The chairman's mark, like H.R. 322, appears to be written specifically to eliminate exploration and mining on the public lands."

A billbuster by mining supporters would be difficult to pull off this fall. There are roughly 25 senators who have indicated their support, but 41 are needed to sustain a filibuster. If the billbuster fails, say good-bye to most mining in the West. According to Borell, the billbuster in Senate is likely to be tougher to get done than the one in the House. The billbuster in Senate would have to hold up the bill one hour for every hour of debate. Senators must hold up the bill for at least six hours to sustain a filibuster.

Title XI access regulations ... (Continued from page 2)

would be decided.

On Aug. 1, 1993, after substantially limiting access under a RSAS77 directive (see related story this issue), Department of Interior officials again underscored the importance of Title XI of ANILCA in the future of access decisions. As you can see, Alaska has a great deal riding on the outcome of the Title XI access regulations revisions. While we are all waiting, I hope you will continue to support RDC and its affiliate PLF in this worthy and potentially important pursuit which is of the greatest significance to the future of access in Alaska.

Just to give you a taste of the litigation, there are some points from PLF's arguments against Trustees:

1. The regulations are consistent with ANILCA, namely, Congress intended that there be reasonable and feasible access across Federal Conservation System Unit Lands in Alaska.
2. Congress intended for ANILCA to provide practical procedures for the creation of transportation utility systems.
3. The regulations' general approach to holdings conforms to the statute. Specifically, ANILCA allows pipelines and transmission line access to holdings; the government is not required to provide access to all holdings; the government is not required to provide access to all holdings; and the government is not required to provide access to all holdings.
4. The special access provisions of ANILCA were properly constrained. Specifically, there is no statutory requirement to unduly restrict airline and motorboat access. There is no pre-existing use test for special access, and helicopter and off-road vehicle use is permitted by ANILCA.

Thoughts from the President by David J. Parish

The state's budget situation was mentioned by all of the candidates, only the method for diagnosing which state expenditures should be cut differed. All of the candidates stressed the need for the next governor to show strong leadership on the budget issue, and be willing to take the heat for doing so.

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Candidates brief RDC

Be an informed voter

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way are valid.

The issue is big in Alaska where RS-2477 rights-of-way have historically been used throughout the state for travel between villages and to access mining claims, mineral royalties and other valuable fishing grounds. Although representing only one component of the access equation, RS-2477 rights-of-way are considered the most secure and feasible form of access across federal areas.

"It doesn't intend, in any way, to take away access rights," said Deborah Williams, Alaska Assistant to Interior Secretary Bruce Babbitt. "The important thing to remember is that this is a proposed rule and the language could change." Williams also said that Title 11 of ANILCA will allow new access to public lands if it is derived through the RS-2477 process.

But Alaska land managers note that Title 11 has not worked in reality and that RS-2477 must be preserved along with every available mechanism for providing rights-of-way, transportation and utility systems across the state.

The Proposed Rule would move the official procedure for granting a right-of-way from the judicial arena to the administrative realm. Claimants, such as state and local governments, would have two years to submit evidence to a federal land manager for recognition.

Definitions used to determine valid rights-of-way are expected to be the sharpest points of contention with the new rule. These definitions narrow past policy by requiring "highways" to "be a public thoroughfare as used for the passage of vehicles carrying people or goods from place to place." In the Proposed Rule, the definition of "construction" would be defined to require evidence of "an intentional physical act" to prepare "a durable, observable physical modification of land for use by high wheels or for travel by vehicles that would have adopted mere use or passage as sufficient to "construct" a "highway." The proposed regulation would supersede the previous policy.

Sen. Frank Murkowski said the definitions don't fit Alaska.

"When Alaskans used the state's historic trails for access, they did so by foot or pack animal. They did not pave trails because that would have made no sense in a land of permafrost," said Murkowski.

"We've got a bunch of city slickers trying to figure out what a highway is in the West," said Dan Kish, a spokesman for Rep. Don Young. "If we take the federal criteria of state, private and Native corporate lands. The State administration and Alaska's congressional delegation opposes the proposed rule.

The Proposed Rule not only affects Alaska but many roads across the West. "We have thousands of roads across rural Utah that are used by the public everyday and according to these regulations many of those roads would be shut down," said Rep. James V. Hansen, R-UT.

Although a U.S. Senate-House Conference Committee has met only once this summer to hash out a federal Mining Law reform package, backdating activity is furious and committee chairman Sen. Bennett Johnston (D-LA) has made it clear he wants the bill out before the August recess. The future of the mining industry in Alaska and across the Western U.S. is on the line as the conference committee considers House and Senate legislation that would drastically affect mining on public lands, according to Steve Borell, Executive Director of the Alaska Miners Association. Borell said Alaskans must encourage their U.S. Senate to move closer to the Senate conference position. S-775, a bipartisan compromise bill sponsored by Senators Larry Craig (R-ID) and Harry Reid (D-NV), in addition, he urges Alaskans to contact any senators they know outside Alaska and ask them to support the major components of the Craig bill. The senators should also be asked to support a filibuster, if necessary.

"We need all the help we can get on a filibuster because it looks like its heading that direction," Borell said.

The State fears that if Interior proceeds with this new rule, the future of the mining industry in Alaska and across the Western U.S. is on the line as the conference committee considers House and Senate legislation that would drastically affect mining on public lands, according to Steve Borell, Executive Director of the Alaska Miners Association.

There are 59 potential votes in the Senate to support a filibuster against irrational Mining Law reform (41 votes are needed). Anyone not listed here is deemed a definite "no" on support of a filibuster. Only 28 on this list are considered solid supporters. The rest all need work, and they ALL need our phone calls and faxes of encouragement. Address for all senators is: The Honorable (name), U.S. Senate, Washington, D.C. 20510.