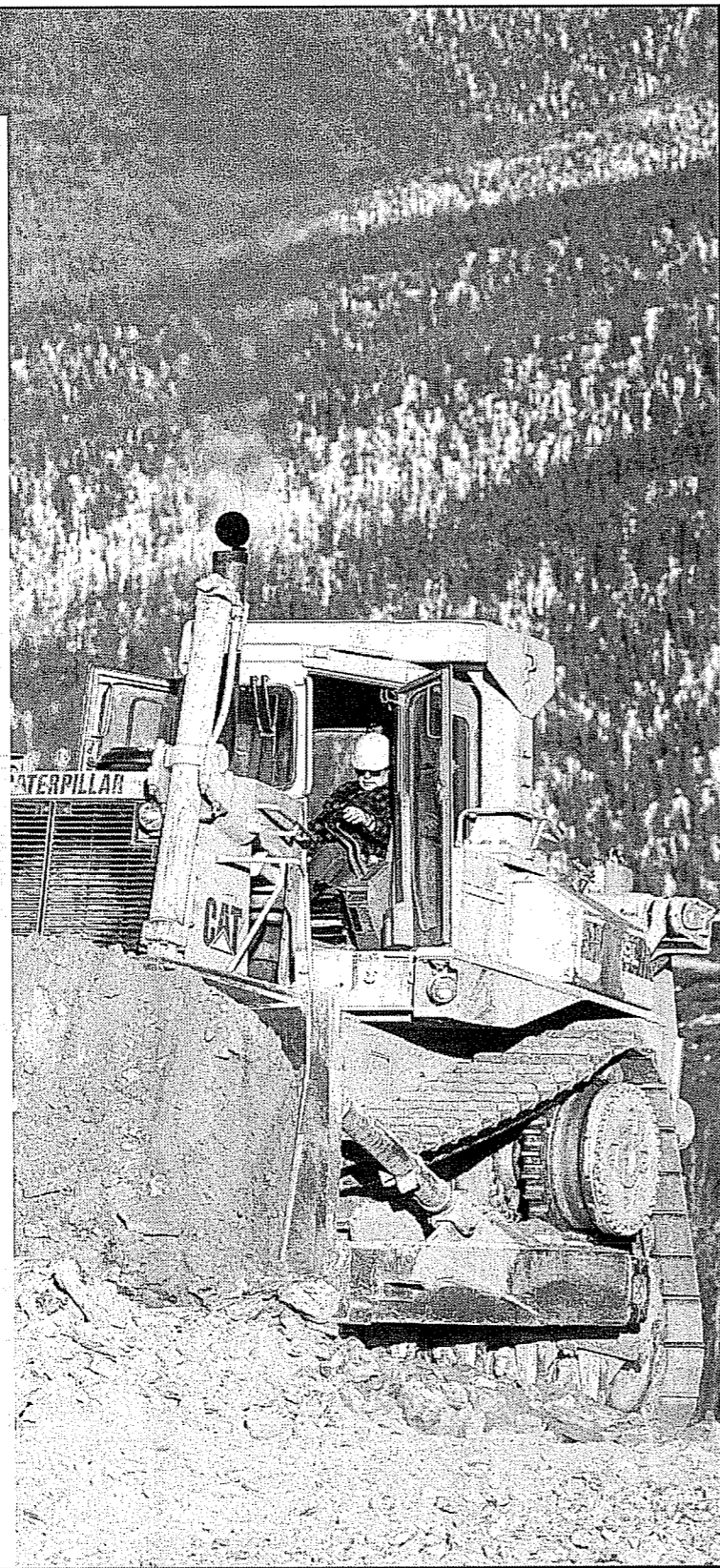


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# Resource Review

July 1995

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## ANILCA's broken promises

*Alaskans claim rights violated by federal managers*

At Senate field hearings across Alaska earlier this summer, Senator Frank Murkowski heard one horror story after another from Alaskans who claim their rights have been violated by federal land managers.

Despite 11 years of effort, a Kodiak man has still not received a permit to build a road to a lodge on land he owns inside the Kodiak National Wildlife Refuge.

A fishing lodge operator said federal officials won't let him use a silent battery-operated water pump in his camp because they claim it would impair one's wilderness experience.

Another fishing guide described how eight pounds of paperwork were required to get a permit for a remote camp site. And a Fairbanks miner pointed out that federal officials would not let him transport fuel across six miles of park land last summer, so he spent \$3,800 to fly in \$2,700 worth of fuel to his claim.

There were many other stories from Alaskans who charged that their right of access, right to work their mining claims and right to

**"We are not going to tear down ANILCA, but if it is broken, we are going to fix it."**

- Senator Frank Murkowski



RDC's Paul Glavinovich, second from left, testifies before the Senate Energy and Natural Resources Committee hearing in Anchorage last month on Title XI access provisions.

make a living was being denied by overzealous land managers violating federal laws specific to Alaska's parks and wildlife refuges.

Murkowski, Chairman of the Senate Energy and Natural Resources Committee, held the June hearings in Anchorage, Wrangell and Fairbanks to hear testimony on the regulation of the use of federal lands by inholders, miners, guides, tour opera-

tors, hunters, fishermen and others who have access and use rights protected by the Alaska National Interest Lands Conservation Act (ANILCA) and the Alaska Native Claims Settlement Act (ANCSA).

Murkowski was told that federal land agencies are not following the intent of the laws and the assurances they provide for access and traditional activity. He heard

how government regulations make it difficult for Alaskans to earn a living on mining claims and personal property consumed by the expansion of conservation units. He also heard reports of BLM officials conducting personal vendettas against some miners in the Forty-Mile District.

Murkowski has not decided on whether to open up ANILCA for amendments, but is now evaluating it.

"We are not going to tear down ANILCA, but if it is broken, we are going to fix it," Murkowski said.

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## Message from the Executive Director by Becky L. Gay

# Opening ANWR: It's been a long time coming

Having worked as the Science Research Aide at the Naval Arctic Research Lab outside Barrow during 1979-80, it was logical that my first "issue" after joining RDC in 1983 was working on ANWR.

In 1991-92, I was given a leave of absence from RDC to work for the Governor as Alaska's state ANWR Coordinator, helping to make the case for ANWR in Congress, as well as across the nation in editorial meetings and other venues.

Although uninformed people think resource development is a short term project, here it is 13 years later and we are still working together to open the 1002 area.

Now dubbed the Arctic Oil Reserve (AOR), the basic issues really haven't changed, the merits are more clearly defined, many of the decision makers are the same, but the politics are more encouraging than ever before.

RDC has stepped up its efforts to help the Alaska delegation successfully win the debate. This time around we may finally reap the rewards of years of hard work we have all spent building the case, explaining the merits and correcting the misinformation which abounds on AOR.

Here is a synopsis of what RDC is doing on ANWR/AOR these days and with your help, we will be successful at last.

RDC is again spearheading the collection of Alaska community resolutions supporting opening the 1002 area. As of June 1995 resolutions from Bristol Bay Borough, Fairbanks North Star Borough, and Kodiak Island Borough, and the cities of Kaktovik, Valdez, Hoonah, Sitka, Ruby, Wainwright and Wrangell are available at RDC. Big Lake Chamber of Commerce and Community Council also recently passed resolutions. Most importantly, the Alaska Federation of Natives has passed a resolution supporting development.

ANWR was the lead story in the June 1995 issue of *Resource Review*. A special editorial by North Slope Borough Mayor George Ahmaogak, Sr. appeared in the May issue and was quoted in a Anchorage Times editorial. The call to action is underscored in RDC speeches, as well as this newsletter.

Board and staff members advocate and educate on ANWR nationally, in Washington, D.C. and other critical sites. RDC networks with other states, both at the grassroots level, directly with members Outside Alaska and with other pro-development organizations

around the country. RDC maintains a speakers' bureau statewide on ANWR.

RDC hosted all three of Alaska's Congressional delegation (a rare event) in May to a crowd of 460 to publicly address ANWR/AOR, as well as other federal issues.

Media education efforts include RDC board and staff responding to editorials, talk radio, debates on air, direct interviews, and print stories. RDC provides camera-ready materials such as accurate maps, photos and footage on ANWR, as well as slide shows and videos for others to use.

RDC is supported by and works closely with the North Slope Borough and the Arctic Slope Regional Corporation, both in membership and its ANWR efforts. Jacob Adams, President of ASRC, serves on RDC's Executive Committee. RDC assists with VIP and Congressional tours of the North Slope and ANWR.

RDC maintains an "Adopt-a-Congressman" program to help others educate their elected officials. We are also stepping up a "friends and family for ANWR" campaign nationwide.

RDC conducts an annual statewide essay contest at the junior high and high school level, with ANWR being one topic on which to write. This year the winning essay was on ANWR and Speaker of the House Gail Phillips presented the award.

RDC maintains its publications library to distribute ANWR materials of all types to any source requesting it, from schools to speakers. RDC's ANWR brochure is in its seventh printing.

RDC works directly with AFL-CIO, as well as the oil and gas industry, to make the case on ANWR at every level possible. Leading officials from labor and industry serve on RDC's statewide board, several on RDC's policy body—the Executive Committee.

## In brief

### State exports top \$5 billion

The booming air freight business in Alaska boosted the value of state exports last year to \$5 billion, according to the University of Alaska's Center for International Business.

Air freight exports, mainly products manufactured in the Lower 48 and shipped through the state, rose to more than \$2.6 billion, up 30% the year before.

Exports that originate in Alaska, including timber, fish, minerals and petroleum, dropped to \$2.45 billion, down 5% from 1993. Rising exports of minerals and petroleum last year were not enough to offset declines in fish and timber.

Increased zinc production at the Red Dog mine and higher zinc prices in 1994 pushed mineral exports to \$141 million, up 32% over 1993. Petroleum exports totaled \$337 million, up 15% over 1993.

Salmon exports fell \$40 million to \$308 million as the harvest of red salmon declined

by 85 million pounds. Total fish exports dropped to \$1.4 billion, a decline of 8% from 1993.

Timber exports showed a decline of 13% to \$566 million due to the closing of mills in Southeast Alaska. Withdrawal of productive timber land in the Tongass National Forest into no-harvest zones has sparked the mill closures. More than two-thirds of the forest is closed to logging.

In Anchorage and Fairbanks, more than 1,000 jobs are attributed to the booming air freight business. Those jobs involve off-loading, sorting and repackaging freight for shipment worldwide.

### Placer Dome back in Alaska

Placer Dome mining company has returned to Alaska to study a possible gold mine in a remote area of western Alaska.

Two years after closing its Alaska office, Placer Dome won the right to explore the Donlin Creek site from Calista Corporation and the Kuskokwim Corporation, which both own the site.

Placer Dome plans to spend \$1 million this year exploring the site. Company officials say the mine would need to contain at least 1 million ounces of gold to be economic.

The company said it returned to Alaska partly because the state government appears increasingly pro-development.

### ANILCA

## Access to mineral deposits...

(Continued from page 6)

corridors from the Ambler Mining District to the Dalton Highway and from State and Native-owned lands in Northwest Alaska across the CSUs to a deep water port area on Norton Sound and to the Alaska Railroad at Nenana. Access corridors should also be provided between the villages of Aniak

and Tuluksak, Russian Mission and Kalskag, Eagle and Central, Taylor and Deering, and between Deering, Shishmaref and Wales.

The AMA recommended that each of the corridors should be removed from the CSUs and placed under State management.

## Wetlands reform in Senate ...

(Continued from page 6)

lands.

Other provisions which affect Alaska include exemptions from 404 permitting for log transfer facilities, ice pads and roads, and for the construction of tailings impoundments utilized for treatment facilities for mining.

S.851 has been assigned to the Environment and Public Works Committee (EPW), chaired by Senator John Chafee of Rhode Island. A hearing will be conducted in mid-July in Washington by an EPW subcommittee, chaired by Senator Faircloth of North Carolina.

RDC staff was recently in Washington D.C. and had the unique opportunity to meet with Senator Faircloth to discuss the importance of the wetlands issue to Alaska. Staff also met with staff members from key committees with jurisdiction over wetlands.

While meeting with key staffers in Washington, RDC pointed out that current wetlands regulation was originally enacted to address a greater than 50 percent wetlands loss in the contiguous United States. In Alaska, however, only about one-tenth of one percent of Alaska's original wetlands base has been filled over the past 200 years.

Critics of the bill contend it will repeal protection of all wetlands in Alaska, but they ignore the fact that wetlands in Alaska are protected by other environmental laws

and regulations besides the Clean Water Act, including the Fish and Wildlife Coordination Act, the Rivers and Harbors Act, and the Alaska Coastal Zone Management Program.

"S.851 provides the necessary tools to ensure future wetlands regulation in Alaska is tailored to provide flexibility commensurate with the vast amount of wetlands, the large amount of wetlands set-aside for special protection and the low historic loss of wetlands in Alaska," said RDC Executive Director Becky Gay.

Senators Ted Stevens and Murkowski, as well as Congressman Young have all taken a leadership role in the wetlands issue.

"The 404 program has overburdened the entire U.S. and certainly Alaska," explained Murkowski. "There's a lot of good in this Senate wetlands bill for Alaska and the Nation," Murkowski continued. "Senator Johnston and Faircloth were responsive to our requests by including provisions addressing Alaska's unique circumstances."

Through the efforts of the Alaska Wetlands Coalition, RDC has asked communities across Alaska to voice their support for wetlands reform in Congress. RDC has collected community resolutions in support of wetlands reform from Nome, Craig, Kenai, Wasilla, Fairbanks, Wrangell, the Municipality of Nenana, and the Boroughs of Sitka, Matanuska-Susitna, Aleutians East and Fairbanks North Star.

As resolutions arrive from other communities, RDC will forward them to Washington.

The Resource Development Council (RDC) is 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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Writer & Editor  
Carl Portman



## ANILCA designed to block access

ANILCA was designed by its authors to block access to some State and Native lands not included in conservation system units, charged Steve Borell, Executive Director of the Alaska Miners Association.

In testimony delivered to Senator Frank Murkowski at a Senate Energy Committee hearing in Anchorage last month, Borell said that some CSUs were positioned to block normal routes of access to mineral deposits in the Ambler Mining District of the Brooks Range.

"There are at least four major mineral deposits in this area that have already been discovered," Borell said. "These four deposits are Bornite, Arctic, Sun and Smucker. If they were located on a road system, they would already be in production, providing jobs and economic opportunity for Alaskans."

Borell requested that the intent of Congress be clarified by "amending Title XI of ANILCA to require approval of reasonable surface access to inholdings across a CSU within a specific time frame from the date of application. The agencies must be required to provide a route for reasonable surface access which would include pioneer roads that can later become improved roads."

Other recommendations included the establishment of infrastructure and transportation access

(Continued to page 7)

# Wetlands reform package now before Senate

Bill provides Alaska relief from avoidance, compensatory mitigation

By Ken Freeman

A comprehensive wetlands bill outlining major regulatory changes on wetlands in the lower 48 and Alaska is under consideration in the U.S. Senate.

S.851, the Wetlands Regulatory Reform Act of 1995, was introduced last month by Senators Bennett Johnston (D-LA) and Lauch Faircloth (R-NC) and co-sponsored by a coalition of other senators, including Alaska's Frank Murkowski.

The Senate bill is similar to the wetlands provisions of H.R. 961, Clean Water Act legislation recently passed by the U.S. House by a vote of 240-185. The Senate legislation, unlike the House bill, does not tackle the full reauthorization of the Clean Water Act, rather it deals solely with wetlands reform.

Another significant difference between the two bills is the absence of "Takings" provisions in the Senate bill. In the House legislation, compensation would be provided to property owners if wetlands regulation diminishes the fair market value of private property. The Senate legislation does contain several provisions that will minimize the adverse impact of the program on private landowners.

S.851 calls for classifying wetlands into three categories according to environmental significance. This is particularly important for Alaska where local commu-



RDC staff Carl Portman and Ken Freeman met with Congressman Jimmy Hayes (D-LA) in Washington, D.C. last month. Portman and Freeman also met with key congressional staff and committees to address Alaska issues, including wetlands, ANWR and Tongass. (Photo by John Doyle)

nities have been urging federal regulators to classify wetlands according to function and value.

Other comprehensive changes include directing the Corps of Engineers to establish regulations for a mitigation banking system, a 90-day deadline for permitting decisions and the issuance of general permits on a state, regional and nationwide basis. Changes in delineation will redefine federally-regulated wetlands to be those wetlands that have water on the surface for 21 consecutive days in the growing season.

States with "substantially conserved wetlands" would be relieved from the strictest requirements of wetlands permitting—the avoidance and compensatory mitigation requirements of mitigation sequencing. Developers would still be required to minimize the footprint of their project on wetlands.

Because of its abundance of wetlands in conservation units, Alaska is the only state that qualifies for relief in the mitigation sequencing process under the "substantially-conserved wetlands" provision. Avoiding wetlands in many regions of Alaska is nearly impossible, and compensatory mitigation was originally designed to compensate for the large losses of wetlands in the contiguous U.S.

General permits will be issued for Alaska Native and State of Alaska lands that balance the standards and policies of wetlands regulation with the obligations of the United States, allowing these lands to be beneficially used to create and sustain economic activity. Additionally, a general permit will be granted to support the development of critical infrastructure for Alaska Native

(Continued to page 7)



## Thoughts from the President by Elizabeth Rensch

"Thanks to years of hard work and effort, RDC and Alaska's congressional delegation are moving forward to reach closure on a host of issues, ranging from wetland regulations, mining law reform and timber harvesting in the Tongass to the oil export ban and drilling in the Arctic Oil Reserve. We've come a long way, but we still have a long way to go, and a tiny window of opportunity in which to work."

## Winds of change

Where to from here?

This was the thought and question I asked myself at the end of the RDC Annual Meeting last month. As your newly-elected President, I find myself smack in the middle of very exciting and evolutionary changes taking place in Alaska and Washington, D.C. Changes that to many Alaskans seem to have come in due course. But to those in our membership and other resource development organizations throughout Alaska, these changes are long overdue.

Resource industries in Alaska such as timber, oil and gas, mining, seafood and tourism have been plagued for years by overzealous and cumbersome constraints evolving from unbalanced regulatory legislation. Many times over these mandates have proven to run amok, and even the most liberal in Congress now cannot deny the need for addressing first the cost-benefit of

each. The time has come for reformation, and the winds of change are definitely blowing in Congress.

Thanks to years of hard work and effort, RDC and Alaska's congressional delegation are moving forward to reach closure on a host of issues, ranging from wetland regulations, mining law reform and timber harvesting in the Tongass to the oil export ban and drilling in the Arctic Oil Reserve. We've come a long way, but we still have a long way to go, and a tiny window of opportunity in which to work.

As your new President, I will rise to each new challenge and make the most of all opportunities for sensible and progressive resource development. Your membership is uniquely important to me and I will focus my efforts on your individual, as well as corporate needs. With one voice we can see beyond tomorrow and share each victory along the way.



HB 197, a bill designed to stimulate the Alaska mining industry by offering financial incentives to mining companies, was signed into law last month in Fairbanks by Governor Tony Knowles. The legislation grants a 100% credit for certain mining exploration costs against future taxes and royalties that miners would owe the state. The credit would be limited to no more than half of a miner's tax bill each year. "This legislation tells the mining industry that Alaska is willing to be a good partner, to share some of the risks and rewards of development in our state, while for Alaskans, it means jobs," Knowles said. At far right is House Speaker Gail Phillips. Also pictured is Steve Borell and Pat Pourchot.

Photo by Carl Portman

# Alaskans sound off on ANILCA

(Continued from page 1)

Murkowski noted that he heard a genuine commitment from federal land managers to work on the problems outlined at the hearings. Before amending the law, he said the National Park Service, the U.S. Fish and Wildlife Service and the Bureau of Land Management would be given a chance to change how they implement the law.

Roy Ewan, President of Ahtna, Inc., noted that the National Park Service has been easier to work with over the past year after it refused to allow the Glennallen-based Native corporation to take mineral samples on lands it had selected.

However, Steve Borell, Executive Director of the Alaska Miners Association, blasted federal land managers, charging them with breaking promises set forth in ANILCA.

"Throughout the d(2) lands debate that culminated in the passage of ANILCA, Alaskans were repeatedly promised that valid existing rights would be honored," Borell testified. "They were promised reasonable access and use of their property. These promises have been broken."

During the first several years after ANILCA became law, miners and others were generally allowed access and use of their property, Borell noted. But from 1985 through the present, "actions, especially by the National Park Service, toward inholders of valid existing rights appear to have been a

"We must ask whether the access provisions of ANILCA will be followed, or whether the regulations concerning that access should be so burdensome with restrictive language and interpretations that access will become an elusive goal rather than a practical reality."

- Paul S. Glavinovich



deliberate and calculated attempt to force these inholders out of the parks and preserves," Borell said. "These actions have cost many miners and their families their life savings, their property and their livelihood."

Borell warned there has been an ever-tightening noose of restrictions around miners. He said some restrictions were instituted without rulemaking.

"The primary tactic against miners has been one of dragging out the permitting process," Borell added. "They string them along by asking for more information, better designs, changes to designs, and the incorporation of new conditions."

The mines being affected are not large corporations, but small family operations that cannot fight a government with endless resources of funds, time and attorneys, Borell said.

"The large corporations gave up trying to work with the Park Service long ago."

## Title XI

Access to and across Alaska's federal conservation system units (CSUs) is a paramount concern of RDC,

noted RDC Executive Committee member Paul Glavinovich, who was invited to testify at the Anchorage hearing on Title XI of ANILCA. Title XI sets out authority for the granting of rights of way and covers transportation and utility systems, including roads, highways, railroads, airstrips, pipelines, docks, transmission lines and related facilities. It also protects individual rights of adequate and feasible access.

Glavinovich explained that with resource development prohibited or restricted on some 140 million acres of federal land in Alaska, Title XI takes on the increasingly important role of facilitating access to known resources, communities and inholdings surrounded by conservation units.

But Glavinovich pointed out that Alaskans seeking access to their inholdings and claims aren't getting beyond the federal agencies and land managers charged with implementing the regulations.

Title XI was the product of a Congressional compromise necessary to the pas-

sage of ANILCA. Congress intended that there be reasonable access across conservation units to balance the establishment of the vast CSUs. It represented the best outcome that could be expected given the diversity of interests and perspectives.

Congress also intended for ANILCA to provide practical procedures for the creation of transportation utility systems across these units.

Access provisions were included in the final Title XI regulations that were promulgated by the Department of the Interior in 1986. These regulations require federal agencies to grant a right of way for adequate and feasible access in response to legitimate requests, and they are clear that the access must be reasonably necessary and economically practicable.

## Access regulations challenged

After a legal challenge by Trustees for Alaska, the U.S. District Court upheld the regulations, ruling that they do carry out the legislative intent of Congress and are consistent with ANILCA.

Specifically, the Court ruled that ANILCA permits pipelines and transmission line access to inholdings, that validity examinations of mining claims are not required before allowing access, and that inholdings created after the enactment of ANILCA are included in its protections.

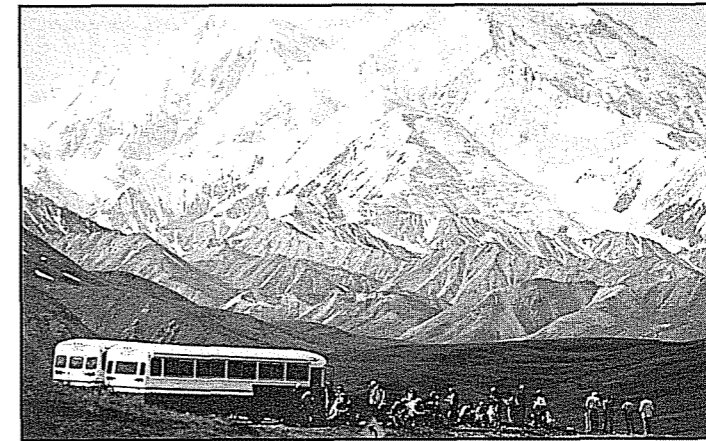
The Court also ruled that the special access provisions of ANILCA were properly construed. Specifically, there is no statutory requirement to unduly restrict airplane and motorboat access and there is no preexisting use test for special access. The Court also ruled off-road vehicle and helicopter use is permitted by ANILCA.

RDC, the Alaska Miners Association and the Alaska Forest Association were intervenors in the Trustees for Alaska suit challenging the regulations.

"We find it appalling that Assistant Secretary of the Interior George Frampton—an ardent opponent of the ANILCA provisions in his former position as President of the Wilderness Society—pulled the regulations off the shelf," Glavinovich noted in testimony submitted to the Congressional Record. "One has to wonder whether he took that action to appease the environmental community, especially given the fact that the regulations were upheld in the Court."

Glavinovich said the "new" regulations could be the most important regulatory agenda for the state since ANILCA and pointed out that they are being drafted without the active participation of those who will be most affected—Alaskans.

"By the time the regulations are released for public



Steve Borell of the Alaska Miners Association said restrictions on miners and inholders traveling the road to Kantishna (inside Denali National Park) have occurred without rulemaking. "In some instances, the person needing to travel to Kantishna did not learn of the 'new' rules until he got to the park," Borell testified.

comment, it will be, as a practical matter, too late to expect any substantive changes to be made," Glavinovich said. "We have long experienced that once a regulation reaches the public comment stage, the force of bureaucratic inertia makes it highly unlikely that any significant changes will occur."

Unlike the practice with prior administrations, there have been no regular scoping sessions, no updates on the progress of the regulatory proposals and no public hearings, Glavinovich told Murkowski. Even the attorneys litigating the existing regulations have been kept in the dark.

The only time that the Department of Interior listened to members of the public was a series of two or three meetings in 1993 when a few members of the public, including RDC and the Pacific Legal Foundation, were asked if there were any problems with the regulations. RDC said it preferred to leave them alone.

"We must ask whether the access provisions of ANILCA will be followed, or whether the regulations con-

cerning that access should be so burdensome with restrictive language and interpretations that access will become an elusive goal rather than a practical reality," said Glavinovich, a former RDC President.

**Erosion of access rights**  
Despite the access guarantees provided by ANILCA, RDC believes there continues to be a general deterioration of public access to federal lands and inholdings in Alaska. Inholders seeking access have typically been met with burdensome requirements and a less-than-honest attitude on the part of federal managers.

RDC cited a number of examples pointing to an increase erosion of public access to conservation units:

- The list of lakes on the Kenai Refuge which are closed to aircraft access continues to grow nearly every year with little or no notice, no finding of resource damage, and no opportunity for public comment, in spite of regulatory requirements.
- Certain closures contained in the compendia of superintendent's orders (which contain restrictions on

access and other public uses in various park units), were implemented without following the procedures contained in Title XI regulations. These are excellent examples of the agencies' abuse of the regulations.

- Proposed access restrictions for Kodiak Refuge similarly circumvent the required process for regulating access.

- The National Park Service has effectively closed airstrips in Katmai and Yukon-Charley Rivers park units by prohibiting use of mechanized equipment to perform required airstrip maintenance.

- Fixed-wing aircraft landings have been banned in the few level upland spots in the Kodiak Refuge.

- In the Tongass National Forest, the Forest Service is taking steps to limit helicopter access to sites traditionally opened to helicopters. The Tongass has been progressively put off-limits and helicopter access has developed as an environmentally-sound trade-off for roads.

- Access between Seward Peninsula villages across the Bering Land Bridge National Preserve and into Serpentine Hot Springs using ORVs has been prohibited by the National Park Service even though under the "generally occurring use" test discussed in the legislative history, such use should be allowed.

Other issues addressed in the RDC testimony were Kantishna inholdings, tourism and transportation, wilderness designations and defacto wilderness management.

See related story, page 6