

SENATOR MIKE GRAVEL

PROPOSED AMENDMENT TO ALASKA LANDS BILL ON MINING AND ACCESS

KANUTI REFUGE BOUNDARY ADJUSTMENT

The amendment alters the southwestern boundary of the proposed Kanuti Refuge to exclude about 48,000 acres of federal land (3% of the unit total). This is an upland area containing no waterfowl habitat characterizing most of the refuge area. The proposed exclusion also contains 50,000 acres of land selected by Doyon Native Regional Corporation, including Sithylenkat Lake. This Lake is noted in the Senate Committee bill as a special value of the refuge, but Doyon's selection will effectively remove the Lake from the unit even if this boundary adjustment is not adopted.

The lands to be excluded contain significant deposits and occurrences of chromium and tin, which are strategic minerals important to the nation's economy and defense, since the U.S. is dependent upon foreign sources for 92% of the chromium and 81% of the tin consumed. The area's proximity to an existing transportation route (only 20 miles from the North Slope Haul Road) makes the development of these valuable resources very likely. This development outside the proposed unit would have no impact upon the key waterfowl habitat of the remaining refuge unit.

MINERAL LEASING PROVISIONS

The amendment substitutes the Act of August 7, 1947 (30 U.S.C. 315-359) for the Act of August 4, 1939 (43 U.S.C. 387) as the authorized means for disposal of nonleasable minerals within areas designated by the bill as Wild and Scenic Rivers (except "Wild" rivers) and National Recreation Areas, if such disposal is authorized by the Secretary. Research has revealed that the 1939 Act provides legally insufficient authority for such extraction under the Dept. of Interior's own interpretation of the statute. Thus, it is our understanding that a new Solicitor's opinion will rule that the 1939 Act, which authorizes the disposal of sand and gravel for the construction of reclamation projects, cannot be utilized in the future to dispose of hardrock minerals.

Accordingly, the proposed amendment would authorize the use of the Mineral Leasing Act for Acquired Lands for the disposal of hardrock minerals located within national recreation areas in Alaska. This Act gives the Secretary ample discretion to permit leasing and provide regulations for such use.

VALIDITY CONTESTS OF PROPERLY LOCATED CLAIMS

The amendment clarifies the legal situation for thousands of existing mining claims located within conservation unit boundaries. These claimants, most of them small operators, cannot afford an immediate validity contest against claims which were lawfully located, but have been difficult to develop due the uncertainty of the ultimate land status, rapidly changing governmental regulation, and the short work seasons in Alaska. The amendment would not validate any claims which were invalid when first located, but would only place a 4-year moratorium on the ability of the government to contest the validity of the claim, thus allowing the claimant sufficient time to "prove up" his claim and demonstrate a valuable ore discovery once the land status is determined by the bill. Since the proposed language requires that claims, once validly located, must be maintained in compliance with applicable State and Federal law, the government would not be denied the opportunity to challenge claims on other grounds, such as the claimant's failure to perform annual assessment work.

This provision recognizes the more complex nature of mineral discovery today, when outcrop deposits are rare and locations are made on the basis of geologic inferences and time-consuming scientific analyses. At the same time, the Secretary's authority to adopt regulations to protect conservation units from degradation due to mining operations is preserved, and the validity of the claims can still be challenged (pursuant to the stringent criteria now being utilized) after the moratorium expires. Moreover, the massive nature of the proposed withdrawals and certain inadequacies in existing law which are exacerbated by the present situation in Alaska provide further justification for the language just discussed.

The language of this provision is adapted directly from language currently in the bill dealing with claims on national conservation areas and the White Mountain National Recreation Area.

MILLSITES

The location of millsites is a dilemma created by land withdrawals and uncertain land status surrounding validly-located mining claims. Without the ability to obtain a site to extract or process minerals from otherwise valid claims, a miner may well be prevented by economics from producing from his valid claim. This indirect means of thwarting operations on a valid claim is resolved by the amendment, which allows the claimant to lease adjacent land, if necessary for milling or mining operations, subject to regulations to protect the values of the conservation unit.

ACCESS TO CLAIMS AND PREFERENCE RIGHTS

Another provision of the amendment guarantees reasonable access to unperfected mining claims for the purpose of "proving up" a valid discovery during the moratorium period, and another section establishes a system of preference rights between mining claimants to re-record unperfected claims on lands closed to mining, if the Secretary, pursuant to authority granted him in the bill, later decides to open certain areas to mineral location.

Another component would clarify the status of access to valid mining claims and other property interests. In accordance with existing case law, this provision would make it clear that inholders possess legally recognizable access rights which, however, are subject to reasonable regulation by the Secretary.

The proposed minor change is accomplished by stating that inholders have access rights by virtue of their vested property interests, but that the exercise of such rights can be conditioned upon reasonable regulations which the Secretary deems necessary to ensure adequate environmental protection.

SPECIAL STATE ACCESS

The amendment would add a new section to Title XI which deals with transportation and utility systems across conservation system units. It supplements the process in the bill by including a separate procedure for the granting of access when the applicant is the State of Alaska.

Upon an application by the State, an economic and environmental analysis would be conducted jointly by the Department of Interior and Transportation (where appropriate) and other federal agencies with decision-making authorities. A draft must be completed within nine months and a final within one year. After completion of the analysis, a joint agency selection of a route and the issuance of the necessary permits would be made within 60 days. If no decision is made within 60 days, the application of the State would be considered approved.

This amendment, patterned closely after the special access language for the "boot" in the Gates of the Arctic National Recreation Area, would only apply to the State of Alaska, not private companies or local units of government. The other access provisions in the bill would still apply to these other entities.

Special access provisions are needed for the State because the circumstances relating to transportation and utility systems are unique in Alaska. The rudimentary existing transportation and utility systems, the large amount of federal ownership--particularly in restrictive conservation systems designated in the bill--and the very real potential for future energy and other resource developments on non-conservation system lands contribute to the great need for an access process that is truly workable.

Unlike other western states, which even up to 10 years ago merely filed a notice with the Bureau of Land Management to construct a road across public domain lands, when future needs arise for a road or pipeline in Alaska, the State will be presented with nearly insurmountable legal, regulatory, and judicial barriers to obtain access across federal lands to adjacent State and private lands. By the designation of over 100 million acres of conservation system units--some of which link up to form barriers several hundred miles in length--major areas of Alaska in State and private ownership could be rendered economically unusable by the denial of access.

The State of Alaska, unlike private companies or other entities, has sovereign powers afforded it under the Statehood Compact, has sophisticated planning processes, and has a demonstrated environmental concern and body of law (tied into existing Federal laws and regulations) warranting this specialized access procedure.

This provision is not a carte blanche for the State; ultimate authority for the choice of routes and terms and conditions of any right-of-way or other permit remain with the federal agencies.

MISCELLANEOUS

Included is a minor amendment adding Fairbanks municipal officials to those consulted prior to any agreements on uses of the North Slope Haul Road. Also included is a technical amendment correcting two section cross-references in the "boot" access language.