



ALASKA LAND RIGHTS COALITION

<http://www.landrights.org/ak/lrc>



"Working for common-sense public lands management and justice for Alaska landowners and land users"

September 8, 2006

Marcia Blaszak, Alaska Regional Director
National Park Service
240 W. 5th Avenue
Anchorage, Alaska 99501

Re: FINAL COMMENTS – On March 27, 2006 “User’s Guide to Accessing Inholdings in a National Park Service Area in Alaska (2nd draft)”

Dear Ms. Blaszak:

Your unprecedented outreach and the obvious attention and management priority that you have recently been devoting to inholder access is generating optimism that we may be at a historic opportunity for the Alaska Region to make needed changes to resolve a festering issue that has consumed so much attention and energy.

For 26 years a long-standing management problem within the National Park Service Alaska Region has needlessly made Congressionally-mandated ANILCA landowner access into a chronic controversy. Not agreeing with the 1980 Congressional ANILCA compromise that protected economic use of private lands inside Alaska national parks, the NPS has used extreme and heavy handed environmental regulation to achieve its preferred outcome: acquisition of as much land as possible through extinguishing access and driving out owners that are inconvenient to the long range plans of the NPS.

In a long history of unpleasant incidents culminating in the events that took place in Wrangell – St. Elias National Park in 2003, the NPS has wasted a lot of money on arbitrary and vindictive activities. Unfortunately, there is nothing in the 2nd draft Access User Guide that would discourage a reoccurrence of such malfeasance.

Things are not working. Compared to the individual, the NPS has a virtually unlimited budget, power and time to apply pressure tactics against property owners in Alaska’s national parks. The courts are not an effective avenue for redress of injustice because they have long moved towards a “hands off” attitude to agency operations oversight. Rightly or wrongly, the NPS enjoys a preference with the burden of proof heavily laid on the individual. In the words of Chief Judge Edith Jones of the 5th Circuit Court, “The American legal system has been corrupted almost beyond recognition...the question of what is morally right is routinely sacrificed to what is politically expedient [2003].”

Paula Easley, Chairman – paulaeasley@yahoo.com – (907) 222-0605

Taking note of NPS pressure tactics against landowners, federal Judge John Roberts admonished, "The NPS should want to avoid getting a reputation as a bully [2004]."

Fearing just this situation, ANILCA's framers tried to protect landowners from regulatory abuse and lawsuits. "Having participated in the development of ANILCA, I know that...Congress did not intend that NEPA apply...as evidenced by the use of the phrase, 'notwithstanding any other provisions of this Act or other law'. Clearly, 'other law' includes NEPA." [Recent letter from Senator Ted Stevens]

The essence of the statutory mandate for inholder access is that regulatory technicalities should be minimized or generally eliminated. To do otherwise is going to keep legislators, public officials and hundreds of residents and landowners bogged down in endless debate, testimony and discussions over the details of permits and regulations.

Compared to all Alaska NPS lands, the extent of the subject inholdings is negligible, probably less than 0.1% (one part in 1,000). There is consequently no significant threat to the environment of Alaska national parks from use of inholdings.

To move forward, the first step for the NPS Alaska Region is to publicly acknowledge that it has been going in the wrong direction for the past 26 years regarding access and to articulate a clear statement of a reform agenda. A commitment must be made to use common-sense, honesty, fair-dealing and integrity to align itself with the spirit and letter of the law.

Your outreach indicates you want to improve the relationship NPS has with landowners, communities and the State of Alaska. We stand ready and are eager to help.

Sincerely,

ALASKA LAND RIGHTS COALITION

Paula Easley

Paula Easley, Chairman
(907) 274-6800
paulaeasley@yahoo.com

Ray Kreig [SIGNED ELECTRONICALLY]

Ray Kreig, Vice Chairman
276-2025 ; 243-8951 home
ray@kreig.com

Attach: Submittal consists of 49 pages (of which 4 are blank) including ATTACHMENTS A-E

cc:

Senator Ted Stevens
Senator Lisa Murkowski
Congressman Don Young
Governor Frank Murkowski
Secretary of the Interior Dirk Kempthorne

Alaska Commissioner of Natural Resources Mike Menge
Mary A. Bomar, Director National Park Service
Ben Stevens, President, Alaska Senate
John Harris, Speaker, Alaska House of Representatives

**ALASKA LAND RIGHTS COALITION FINAL COMMENTS ON THE MARCH 27, 2006
 “USER’S GUIDE TO ACCESSING INHOLDINGS IN A NATIONAL PARK SERVICE
 AREA IN ALASKA”**

TABLE OF CONTENTS

INTRODUCTION 1
 INDIVIDUAL LANDOWNER NOTIFICATION REQUIRED 2

POLICY ISSUES 2
 REVIEW OF ACCESS USER GUIDE 2
 PROGRESS, STASIS, AND RELAPSE 3
 EVENTS OF 2003 IN WRANGELL-ST. ELIAS NP — NPS MISCONDUCT ... 3
 Hale Family 4
 Doug Frederick 5
 NPS LEADERSHIP FAILURE OR IS IT BY DESIGN? 6
 JED DAVIS A HERO 6
 SETTING THE TONE AND ETHICAL STANDARDS AT THE TOP 7
 NPS HISTORY OF BAD FAITH DEALING 9
 ANILCA BACKGROUND 9
 POST-ANILCA PERFORMANCE RECORD — DID THE NPS FAITHFULLY
 EXECUTE CONGRESSIONAL INTENT? 12
 Abuse of Regulatory Authority 12
 Environmental Study Overkill as a Coercion Tool – The Spruce Creek
 Access DEIS 14
 Mining Claim Validity Adjudication 15
 NPS Ignores Congressional Direction It Does Not Agree With 16
 NPS Sets Trap for Landowners When Restricting Public Access 16
 DRAFT 2 FAILS TO LIVE UP TO THE PROMISES MADE IN ANILCA 17
 IS NPS TRYING TO CONTROL LAND USE ON PRIVATE PROPERTY? ... 18
 NPS CLAIM THAT ISOLATED PATENTED LANDS HAD NO VALID EXISTING
 [ACCESS] RIGHTS IN 1979 WHEN ANILCA WAS ENACTED 19
 PRIMA FACIE EVIDENCE OF NPS BAD FAITH 21
 Failure to Designate any “Park Roads” 22
 Unprofessional Diatribe by WRST Superintendent Gary Candelaria .. 22
 Discretionary Authority, Selective Enforcement 23
 Glacier Drive Airstrip 23
 Between the footbridges 23
 McCarthy Creek Subdivision (University of Alaska Land
 Management) 24
 NPS AGENCY CONFLICT OF INTEREST – STAFF ETHICS AND MORALITY .
 24
 A BETTER WAY — LESSONS LEARNED AT SKAGWAY 26

POLICY EXECUTION ISSUES	27
"MINISTERIAL" PERMITTING	27
NATURAL PROCESSES AND RIGHTS OF WAY	28
<u>Vegetation Growth</u>	28
<u>Erosion, Flooding</u>	29
<u>Bridges & Fords</u>	29
<u>Gravel/Fill</u>	29
EIS CHARGES NOT TO GO TO LANDOWNER	30
AIRSTRIPS & BOAT LANDINGS NEXT TO PATENTED LANDS	31
ACQUIRED LANDS	31
ACCESS RIGHTS ARE NOT JUST FOR LANDOWNERS	31
 CONCLUSION	 32
ALASKA LAND RIGHTS COALITION	33
 ATTACHMENT A
<i>Let National Park Residents Thrive</i> , by Neil Darish. Anchorage Daily News, May 8, 2004, page B-6. Opinion, Compass: Points of view from the community.	
 ATTACHMENT B
ANILCA STATUTORY LANGUAGE GUARANTEEING ACCESS	
 ATTACHMENT C
July 18, 2006 letter regarding NEPA from Senator Ted Stevens, to Marcia Blaszak Regional Director, National Park Service, Anchorage.	
 ATTACHMENT D
NATIONAL PARK SERVICE REGULATORY OVERKILL Example of the Spruce Creek Access Draft Environmental Impact Statement	
 ATTACHMENT E
NPS IGNORES CONGRESSIONAL DIRECTION IT DOES NOT AGREE WITH: DIRECTION OF DENALI NP ENABLING ACT CONCEALED BY MISQUOTING	

ALASKA LAND RIGHTS COALITION FINAL COMMENTS ON THE MARCH 27, 2006 "USER'S GUIDE TO ACCESSING INHOLDINGS IN A NATIONAL PARK SERVICE AREA IN ALASKA"

1985 Observation regarding the NPS in the 5th year of ANILCA:

As the press prepared to leave Chisana, Terry and Deb Overly pointed out that when a plane used to fly over their homestead, it was thought of as the "guardian angel" delivering a good friend or the mail. "It's different now," Overly said. "They're destroying an Alaska heritage, the freedom to live and work in the wilderness. When you hear a plane today you think, 'Oh, what do they want now?' " (September 1985, Reported in Resource Development Council, Resource Review, Park Service Regulations: Inholders fight to maintain freedom and individual rights, p 7.)

INTRODUCTION

All appearances are that the National Park Service (NPS) did not agree with the 1980 Congressional ANILCA compromise that protected economic use of private lands inside Alaska national parks. Instead the NPS has used extreme and heavy handed environmental regulation to achieve its preferred outcome: acquisition of as much land as possible through extinguishing access and driving out owners that are inconvenient to the long range plans of the NPS.

We believe there has been a management problem within the Alaska Region of the National Park Service and this has needlessly made Congressionally-mandated ANILCA landowner access into a chronic controversy.

Compared to all Alaska NPS lands, the extent of the subject inholdings is negligible, probably less than 0.1% (one part in 1,000). There is consequently no significant threat to the environment of Alaska national parks from use of inholdings.

Recent outreach by NPS Alaska Regional Director Marcia Blaszak and her deputy, Vic Knox, to communities and landowner groups has been unprecedented, greatly appreciated, and is promising.

We are optimistic that we may be seeing a historic opportunity for a different way forward for the Secretary of the Interior, Director of the National Park Service in DC, and the Alaska Regional Director to end change the environment of conflict landowners have had for 26 years since the passage of ANILCA with the NPS.

INDIVIDUAL LANDOWNER NOTIFICATION REQUIRED

There has been inadequate inholder notification. Numerous landowners are completely surrounded by NPS lands and they are directly affected by this User Guide and access process.

But the NPS has admitted it has not compiled a list of inholders and assumes there are many who know nothing about the process and this comment period¹. We believe it is mandatory for fairness that the NPS locate all the owners that it asserts have no legal year-round vehicular surface access, send them a certified letter of notification with return receipt requested. The process has been inadequate for all parks except possibly Wrangell-St. Elias National Park (WRST²) where it is obvious that some special outreach has been made by Copper Center personnel. However, we do not know how complete the contact to all directly affected parties in WRST has been. We did some checking with landowners in other park units earlier in the summer and found that all we consulted were unaware of the access guide process.

UPDATE: We are pleased and appreciate that on June 7, 2006 NPS Alaska Regional Director Marcia Blaszak announced that the comment period was extended to September 1, 2006. The outreach made by Director Blaszak and her deputy, Vic Knox, to communities and landowner groups has been unprecedented, greatly appreciated, and is promising. However, these private groups do not have the resources of the government and cannot be a substitute for direct notification of all affected individuals by the NPS, nor are all owners participants in these groups. The government still has the responsibility to notify all affected owners.

POLICY ISSUES

REVIEW OF ACCESS USER GUIDE

Alaska Land Rights Coalition (AkLRC) has reviewed the approximately 100 pages of excellent comments submitted from review of the 1st draft of the February 2005 Access User Guide (1st AUG). We particularly agree with the issues identified and positions taken by the Residents of the Wrangells. They have done a superb job as have other organizational reviewers: The State of Alaska, University of Alaska Land Management, Slana Alaskans Unite, McCarthy Area Council, Doyon Ltd., Chugach Alaska Corp., The Resource Development Council, and the Alaska Miners Association. They have identified many issues and protested the process. Their comments, taken together with additional items identified by individuals, compose a robust and impressive body of

¹ NPS Lands Chief Chuck Gilbert comment at 5/11/06 Anchorage hearing.

² The NPS assigns four letter codes to all its units. WRST is the code for Wrangell-St. Elias National Park.

professional, legal and historical research as well as experience that the NPS could hardly credibly disregard.

Yet astonishingly the NPS ignored almost all of it in preparing Draft 2. The NPS has not given the respect that is customary when other agencies solicit comments of organizations and individuals who put a very substantial effort into responding. A meaningful public process and dialogue minimally requires conventional practices such as publication of the comment letters received with a content analysis of major issues, numbered points on the letters keyed to the agency's viewpoint and discussion for each issue.

AkLRC associates its view with the collection of comments on the 1st AUG identified above that were ignored by the NPS in preparing the 2nd AUG. Rather than reiterate them, they are hereby reincorporated and resubmitted to be considered in their entirety.

PROGRESS, STASIS, AND RELAPSE

The 2nd AUG does have some better solutions. Programmatic bulk "general" documentation is the right approach as long as it is properly designed and not a trap for landowners. Charging annual fees for access to patented lands that has been free for 200 years had no ANILCA basis and should never have seen the light of day.

Regarding the mass driveway permits, NPS Lands Chief Chuck Gilbert stated in the May 11th Anchorage hearing, "We don't think the date of the access creation [before or after park creation] is an important distinction." That is progress, but that statement should have been committed to writing in the AUG. The hearing was not even officially recorded by the NPS or transcribed by a court reporter. Were it not for the AkLRC digital recording, this important commitment would have been lost.

EVENTS OF 2003 IN WRANGELL-ST. ELIAS NP — NPS MISCONDUCT

The 2nd AUG does not provide any safeguards against fanatical and heavy handed regulatory interference with access. Because of history and the reputation the NPS has developed in its dealings with inholders and communities, landowners and residents have no choice but to view this access user's AUG through the prism of the events of 2003.

Wrangell-St. Elias National Park Superintendent Gary Candelaria and Chief Ranger Hunter Sharp abused the regulatory powers and financial resources of the NPS in the war they waged against WRST inholders trying to enjoy their private property and exercise their access rights, especially the Hale [Pilgrim] family and Doug Frederick. Many consider Candelaria and Sharp's actions to be ethically despicable.

Hale Family

Appearances are that a half million dollars in federal funds were spent in the McCarthy Creek Valley gathering information to harass the Hale family and interfere with access to their property 13 miles up a 100-year old road.

Nothing substantive or of commensurate public benefit is known to have come from that appalling and unconscionable amount of wasted money. We are unaware of a scientific, legal, or administrative work product result. Furthermore, the NPS foolishly ordered that an unnecessary survey and a wide rectangular slash line scar³ be cut around the Hale homestead. This caused resource damage and scenic impact on park lands far greater than anything the Hale family was accused of doing as they used their access. Nor was an Environmental Assessment (EA) performed. The NPS granted itself a Categorical Exclusion (CE).

The NPS did succeed in saddling two Hale children with criminal records after NPS undercover sting operations and a massive prosecution effort obtained convictions for minor incidents of trespass. However, the federal judges cut back NPS demands for thousands of dollars in fines to a few hundred dollars. Judge John Roberts admonished the NPS, "The government needs to consider going the extra mile to resolve the dispute with your neighbor. I think the NPS should want to avoid getting a reputation as a bully."⁴

The Hale family applied for emergency summertime overland access in July 2003 and, after being run through the ringer of an EA, the NPS eventually issued them a winter only access permit known by all to be completely unworkable, useless, and extremely unsafe.

The NPS ignored overwhelming public comment and its own EA decision criteria by limiting travel to the very months the EA identified as most hazardous to human safety due to snow avalanches, aufeis and flash flooding and as of highest risk to fisheries, coinciding with incubation of Dolly Varden eggs. Despite stating in the EA that "the EA findings and public comment will form the basis for a decision regarding the application," the NPS denied appropriate access in the face of persuasive practical and scientific evidence.

³ Chief Ranger Hunter Sharp has said (KCHU radio) that what landowners did on their own property could be a concern to the NPS if it created something that could be seen from park land. Yet, his own actions in the Hale homestead survey exhibit a clear NPS double standard: The NPS can cut a ten foot swath through virgin vegetation over a mile long on the boundary of the Hale homestead and it issues itself an environmental exemption CE while contending it is perfectly OK to hammer an inholder with an EA or EIS required for using preexisting 100 year old access.

⁴ *Judge orders token fine for Pilgrim son; Says Park Service should avoid "bully reputation"* – Wrangell-St. Elias News, May 2004. www.wsen.net/MJ2004/page2.html

The NPS could at any time have decided to follow the mandate of ANILCA and not interfere with use of the access. Instead of instructing federal lawyers to implement a permitting quagmire, the NPS could have instructed them to find a way to give the required access including use of a NEPA Categorical Exclusion (CE) if necessary.

Basically the Hale winter access permit was an NPS publicity stunt. The Hales are still waiting, 3 years later, for usable overland access.

Doug Frederick

The NPS blocked long time Slana inholder Doug Frederick from surface access to his Copper Lake property and also obtained a criminal conviction for his efforts to protect damaged ATV trails on public land by demonstrating use of small wooden pallets over wet areas. The NPS charged him with "putting bridges in the park without a permit" even after rangers gave the impression to the community that they wanted help fixing the trail. This conviction is widely considered to have resulted from trumped up charges⁵ which also contributed to the death of Frederick's daughter Tonya in a vehicle accident. The NPS efforts to criminalize her father caused many unnecessary trips for the family to Anchorage hundreds of miles away to deal with the charges. On March 5, 2004 all federal judges on the district court were presented with a petition containing over 140 names including former legislator Richard Shultz of Tok and numerous business and public figures from the Interior, Copper Basin and South Central Alaska. The petition protested, "the outrageous criminalizing by the National Park Service and the federal courts of a public spirited man, Doug Frederick, of Slana, who was undertaking a volunteer trail improvement demonstration." Frederick's \$510 fine was paid by his neighbors and others as part of the protest.

Local residents can only view such wasteful, vindictive actions by NPS managers and employees as examples of an out of control, unaccountable agency with no regard for the taxpayer or what is professional and credible.

It is obvious these events are quite properly considered to be an embarrassment to the agency by some NPS staff. AkLRC recognizes this as a sign of hope and sincerity that the future could be better, depending on who is in charge and what has been learned.

However we see nothing in the 2nd AUG which would prevent NPS personnel with views similar to Gary Candelaria and Hunter Sharp from doing the same things again. As the NPS prepares its 3rd AUG, please read it from the perspective of the landowner worried about a repeat of the events of 2003 and understand that they have much to fear.

⁵ www.landrights.org/ak/wrst/Frederick.htm

NPS LEADERSHIP FAILURE OR IS IT BY DESIGN?

These are things that happen when superintendents and their employees down the chain do not receive clear instructions from above on what high-level principles they are to execute on the ground. The Secretary of the Interior, Director of the National Park Service in DC and the Alaska Regional Director need to set the tone and define ethical standards for all managers and employees in the agency. They need to *inculcate*⁶ a sense of fair dealing and logic. Were such done, the events of 2003 in Wrangell St. Elias National Park would never have happened. And the AUG would be totally different. As is, it codifies a meticulous and open-ended process that assures the landowner of nothing certain. It is an evasive, commitment-phobic document that leaves NPS with unlimited ways to be subjective, discriminatory and cause intentional delay.

We are not aware that any internal investigation or reprimands within the department have taken place for the NPS staff misconduct of 2003. In fact, former Superintendent Gary Candelaria has officially⁷ since been honored and rewarded for his actions in WRST. Chief Ranger Hunter Sharp is a past NPS-recognized star⁸.

How are landowners and local communities to view an NPS with this history and recent actions, or an AUG codifying and giving license and tools for such bad behavior to NPS staff?

JED DAVIS A HERO

The exemplary conduct, healing efforts, and sincerity of WRST Superintendent Jed Davis (who succeeded Gary Candelaria) are widely appreciated and held great promise. His loss to the NPS and the Copper Valley is a public tragedy. He was blazing a new pathway to mutual understanding between the agency and troubled localities. Top management⁹ made the right choice in his hire and we sincerely hope that similar wisdom will prevail in choosing his successor.

⁶ Inculcate - To teach or impress by forceful urging or frequent repetition or instruction; instill: *Inculcate a code of ethics.*

⁷ *Former Park Superintendent Receives Award; Superintendent Stands Up for National Park Protection* – NPS Press Release, November 16, 2004 (Copper Center, Alaska). The National Parks Conservation Association (NPCA) today bestowed its prestigious Stephen T. Mather Award on former Wrangell-St. Elias National Park and Preserve Superintendent Gary Candelaria for his unwavering dedication to the protection of Wrangell-St. Elias, his commitment to park staff etc.

⁸ *National park ranger award presented to Alaska ranger* – NPS Press Release, April 25, 2001 (Washington, DC). How do you become the "best ranger" in the National Park Service (NPS)? It is not easy, but that is exactly what Hunter Sharp is being considered by his peers in the NPS.

⁹ Note these NPS management changes: Alaska Regional Director [Robert Arnberger retired 8/03 after three years in Alaska. Marcia Blaszak took over as Acting and was made permanent on 4/28/04]. Wrangell St. Elias Superintendent [Gary Candelaria started 11/99 and left in 2004. Jed Davis started 11/04 and retired 3/31/06 (passed away 4/3/06)].

The decision to replace top management at WRST with Jed Davis was welcome but reform appeared to stall after his loss when discussion at the Anchorage hearing in May caused concern that the progress Jed made may have been superficial and that NPS was slipping back to old habits.

SETTING THE TONE AND ETHICAL STANDARDS AT THE TOP

The NPS has needlessly made congressionally-mandated landowner access into a convoluted longstanding controversy.

The architects of the ANILCA political compromise that made creation of the parks possible clearly envisioned that Alaska's national parks would be different from the Lower 48. The NPS needs to honestly and forthrightly accept the promises made to the people of Alaska and act in good faith, word and deed like it is really committed to the spirit and the letter of the decision of Congress guaranteeing these access rights. It needs to cease evading its responsibilities.

The question is, will the NPS in Alaska – in good faith and without deception – carry forth with the intent and letter of the law and let the residents and cultures in these park units, which cover 15% of the area of Alaska, continue? In the words of McCarthy resident Neil Darish,

“Can we have a clear statement from our Alaska Regional NPS Director that her philosophy is going to allow the residents within the park to thrive?”¹⁰ [see ATTACHMENT A]

Recently, Director Blaszak responded during a meeting with residents in McCarthy and in the recent congressional hearing in Anchorage¹¹. She conveyed that she indeed does want the communities in the parks to thrive and continue for a very long time to provide a living history opportunity for visitors that the NPS cannot do.

AkLRC takes this as a good step and we look forward to the NPS clearly, forthrightly and honestly further expanding on this vision. It needs to be done in the NPS management direction guidelines part of the next version of the AUG. If it follows through and sets the tone for NPS employees in Alaska, the details will work themselves out and residents and the agency can move forward in a relationship of trust to protect resources, the cultures of the areas and give park visitors enhanced lifetime experiences.

¹⁰ *Let national park residents thrive* [Op-Ed] by Neil Darish (Anchorage Daily News, May 8, 2004)

¹¹ *"National Parks of Alaska"* [Congressional Hearing]. House Committee on Government Reform. 8/14/06 - Anchorage, Alaska. Mark E. Souder (R - Indiana), Chairman.

Landowners and local communities do not desire conflict. As Neil Darish said in his OpEd, “the park service can become a hero if people are treated with respect.” We would add also, “with common sense and logic.”

Otherwise, our congressional delegation, legislators, public officials, their staffs and hundreds of park residents and landowners will continue to be bogged down in thousands and thousands of hours of debate, testimony, discussion over the details of permits, regulations, and this AUG.

Observation of past agency behavior leads to the conclusion that perhaps this is exactly what the National Park Service in Alaska prefers over forthrightly and candidly dealing with the primary issue discussed by Darish. We hope not and ask the NPS: Why not look at what your own in-house management think tank, The George Wright Forum, has discovered? They have published studies on “evolving living landscapes” where residents are “inclusive and constructive elements... that help mold the future of the National Park Service.” Look to NPS Superintendent John Debo: In the Cuyahoga National Park in Ohio his fresh thinking viewed occupancy by residents in certain circumstances to contribute to the purposes for which the park was created.

Why not accept that this really is the way for Alaska? It is best for the NPS, for the residents and landowners, for park visitors and for the environment. We really believe so.

Fairbanks author Dan O'Neill captures the issue in another way as he describes¹² how the post-ANILCA NPS brought “Lower 48 States” ideas to Alaska and has all but eliminated rural subsistence lifestyles along the Yukon River in the Yukon - Charley National Preserve:

“At Great Smokey Mountains National Park, the Park Service bought out six thousand six hundred private parties – many by using condemnation proceedings. Park managers moved assorted barns and buildings to the Mountain Farm Museum, where costumed interpreters now demonstrate hill-country life at the imitation farmstead. At Buffalo National River in Arkansas, the Park Service condemned and leveled many hundreds of homes; at Ozark Scenic Riverways in Missouri, the Park Service bulldozed the cabins along the river; at Big Bend National Park in Texas, they knocked down the ranchers cabins. And now they regret it.

“At least some of the Park Service employees at Yukon-Charley are prepared for the same thing to happen in their park. **The day is not so distant, they say, when all the river people will be gone from the river and the Park Service will put GS-5 summer hires in their cabins. They'll be drama majors from colleges in the States. They'll**

¹² *A land gone lonesome: an inland voyage along the Yukon River* by Dan O'Neill (2006). Counterpoint, Perseus Books (New York). 256 p. See especially the conclusion and the Afterword describing NPS Superintendent John Debo's salvage of Cuyahoga River Valley National Park from traditional NPS “extirpate the residents” policies (p. 235-242).

wear red flannel shirts and spit snoose. They'll hang a few fish so the floaters can see people living the old-time way. And come the first frost, they'll head back to school...

“But these stories of the river people are their own kind of argument. They suggest that it is a thing of value when frontiersmen and -women are living out in the country – of value to the people themselves, as they grow in courage and competence; of value to the land, as their deep local knowledge informs our stewardship; of value to our culture, as their residency conserves nearly extinct pioneering ideals. **For now, the land is lonesome by decree, artificially empty as if, to enshrine the trees, we banished the birds.**”

NPS HISTORY OF BAD FAITH DEALING

The NPS has had both a long and very recent history of deception and bad faith dealing in matters involving executing the intent of Congress with respect to local community and inholder protections. The wholesale disregard of landowner comments on the 1ST AUG underscores concerns that this bad faith continues.

KEY POINT: Most new park units are and have been created after controversy and disagreement between preservationist forces and local communities. Congress has normally had to achieve hard negotiated and fought compromises, whether in Alaska or across the Lower 48. In many cases it has legislated ostensible guarantees of local community rights including access and protection from property condemnation. But all too often, as soon as the ink is dry on the enabling legislation, the NPS endeavors to achieve anyway all of the results it wanted (but did not get) prior to a congressional compromise. In operating new units, the NPS has frequently felt free to disregard the instructions of Congress.

Some examples¹³: North Cascades National Park, Great Smoky Mountains National Park, Buffalo National River, Cuyahoga Valley National Park, Acadia National Park, the promise that mining activity was protected and could continue in Alaska National Parks, and now, ANILCA access guarantees.

ANILCA BACKGROUND

President Jimmy Carter declared vast areas of National Monuments across Alaska in 1978. This action had a serious impact and started a period of great turmoil and controversy (1978-79) prior to passage of ANILCA. Alaskans feared “the Feds” taking over, not having access to their cabins, hunting areas, trap lines. There was virtual civil disobedience in many areas. Protest signs went up blanketing entire districts. NPS employees were shunned and local services (including medical) were refused to the

¹³ *Short course: 80 year history of NPS abuse and misconduct - Alaska version.* American Land Rights Association. www.landrights.org/ak/wrst/shortcourse.htm

agency. On September 11, 1979 an airplane used by NPS rangers in WRST was burned in Glennallen¹⁴. Planes used by the NPS in Bettles were also vandalized.

ANILCA was a grand compromise to settle the contentious “d(2)”¹⁵ issue. Neither environmentalists nor residents, developers, or resource users received everything desired. But the deal crafted by Congress incorporated guarantees of access, and valid existing rights for communities, land owners, and residents enveloped in the new conservation system units. It was the presence of these solemn guarantees in ANILCA that substantially calmed the passions and fears of those who had been living and working in and around the 1978 monument declarations.

These Alaska parks were designed to be different from those in the Lower 48. There was an understanding that subsistence activities (hunting, fishing, use of materials at hand) and even mining could continue in many of these parks. There were specific guarantees for access. If you had property, you were guaranteed access.

That was the political and historical environment that led to these provisions in ANILCA:

STATUTE

“VALID EXISTING RIGHTS

Nothing in this title shall be construed to adversely affect any valid existing right of access.” (16 USC 3169) ANILCA SEC. 1109.

“SPECIAL ACCESS AND ACCESS TO INHOLDINGS

.....in any case in which...privately owned land...is within...one or more conservation system units...the...private owner...shall be given...such rights as may be necessary to assure adequate and feasible access for economic and other purposes to the concerned land by such...private owner...and their successors in interest.

Such rights shall be subject to reasonable regulations issued by the Secretary to protect the natural and other values of such lands.”
(emphasis added) (16 USC 3170) ANILCA SEC. 1110. (b) [See ATTACHMENT B for complete citation.]

¹⁴ “Do Things Right the First Time”: *Administrative History. The National Park Service and the Alaska National Interest Lands Conservation Act of 1980*. By G. Frank Williss (September 1985). U.S. Department of the Interior / National Park Service. www.cr.nps.gov/history/online_books/williss/adhi5c.htm

¹⁵ So called from Section 17(d)2 of the 1971 Alaska Native Claims Settlement Act that provided for 80 million acres of land set asides for National Parks, Wildlife Refuges, Forests, and Wild and Scenic Rivers.

LEGISLATIVE HISTORY

Congress specified “this provision directs the Secretary to grant the owner of an inholding such rights as are necessary to assure adequate access to the concerned land across, through, or over these Federal lands by such State or private owners or occupiers and their successors in interest. The Committee recognizes that such rights may include the right to traverse the Federal land with aircraft, motorboats, or land vehicles, and to use such parts of the Federal lands are necessary to construct safe routes for such vehicles” (emphasis added). H. Rept. 96-97, Part I, 96th Congress, pp. 239-240.

The Senate concurred and further emphasized that “this subsection provides the guarantee of an adequate and feasible alternative for economic and other purposes; that is, a route which will permit economic access to, and the use of such lands” (emphasis added). S. Rept. 96-413, 96th Congress, p. 249.

“The Committee understands that the common law guarantees owners of inholdings access to their land, and that rights of access might also be derived from other statutory provisions, including other provisions of this title, or from constitutional grants. This provision is intended to be an independent grant supplementary to all other rights of access, and shall not be construed to limit or be limited by any other right of access granted by the common law, other statutory provisions, or the Constitution.” S. Rept. 96-413, 96th Congress, p. 249.

ANILCA promises — Alaska is different from National Parks in the Lower 48.

“The Alaska National Interest Lands Conservation Act of 1980 (ANILCA) was the product of an intense four year legislative battle. Enacted into law over the opposition of a vast majority of Alaskans, the Act contained dozens of unique provisions specifically designed to address the concerns of Alaskans and protect traditional uses on millions of acres of public lands. The primary architects of the Act also made repeated assurances that ANILCA would not adversely affect traditional uses and users and that access to the millions and millions of acres of set aside lands would not be curtailed. This is a crucial legal, historical, and political fact: the agreement that underlies ANILCA was that the “national interest” would get its 120 million acres of new Parks, Refuges and Wilderness areas, but Alaska would get unique special rules to enable a wide array of activities to continue in these vast new units.” *From Chapter 9. The Real ANILCA, by*

Bill Horn¹⁶ in: ANILCA - J.P. Tangen, editor, D(2), part 2 : a report to the people of Alaska on the land promises in ANILCA : 20 years later. 2000, Alaska Miners Association, Anchorage, Alaska, p 56.

Without access to private lands and a reasonable network of public land access, these communities and bush lifestyles will die of economic strangulation and conversion to a stifling bureaucratically micro-managed permit society. The architects of the ANILCA compromise knew that and gave clear language mandating access in ANILCA.

POST-ANILCA PERFORMANCE RECORD — DID THE NPS FAITHFULLY EXECUTE CONGRESSIONAL INTENT?

Investing the NPS with life or death authority over the access to and thus the usability of private property and the welfare of small business raises a key issue: Does the NPS have an irreconcilable conflict of interest in this role? The answer is yes. There is a long history of problems when the NPS takes on quasi-judicial functions. How is the record of the NPS as impartial administrator? Poor.

Abuse of Regulatory Authority

First and foremost is the NPS use of extreme environmental regulation as a different way to achieve aims not otherwise directly authorized or even prohibited by law. The government has a virtually unlimited budget compared to any of the property owners in Alaska’s national parks, as well as virtually unlimited power and time.

The NPS has many ways to hide costs, delay or avoid accountability for legal harassment of its targets and bad decisions. In fact the NPS can use a number of pressure tactics that may cost the taxpayer a substantial amount of money but will not have to come out of the current NPS budget cycle. It can facilitate a “friendly” lawsuit against itself intended to result in more oppressive regulation, justification for hiring more people, and a higher budget. It can write criminal citations against targets. It can push decisions into an EA or EIS that takes a lot of time and money to respond to. The costs of defense and the resulting investigations may be paid out of a Justice Department fund separate from the NPS regular budget that may or may not be billed back to the NPS until years later. NPS employees are always on the public payroll while the citizen has to stop productive work to respond.

The private citizen has no taxpayer deep pocket to pay for his defense costs or fight for rights specifically granted by Congress or the US Constitution. Even if the citizen wins and the NPS is judged wrong, the citizen gets none or probably only a small part of his legal costs reimbursed while the NPS never is concerned about legal costs. AKLRC is aware of a case where the NPS took this into consideration in calculating the ability of the landowner to withstand a decade long court battle. An NPS employee confidentially

¹⁶ Assistant Secretary of the Interior for Fish, Wildlife, and Parks (1985 to 1988).

disclosed the Government's strategy of a financial war of attrition ("They plan to force you to choose between your children's college education or this lawsuit") which underscores the imbalance of financial power between the government and citizens. Harassing litigation and administrative actions are used to drive up the costs, in terms of time and financial resources, of landowners fighting for their constitutional and legal rights. As long as government employees are immune from prosecution for egregious and unethical behavior and not held accountable for their actions, they will continue to take advantage of the inherent power of their bureaucratic positions and funding unless top government managers insist on moral behavior.

Furthermore the NPS well knows that the federal courts have long moved towards a "hands off" attitude and that very weak oversight is exercised over federal agency operations. The NPS will be presumed right and will be given the benefit of any doubt. The burden of proof will be heavily laid on the individual in any contest for justice or fairness.

“The American legal system has been corrupted almost beyond recognition...the question of what is morally right is routinely sacrificed to what is politically expedient.” [Judge Edith Jones at the Federalist Society of Harvard Law School on February 28, 2003 ¹⁷. Three years *later* she was appointed Chief Judge of the U.S. Court of Appeals for the Fifth Circuit].

Note the recent action of the Ninth Circuit Court of Appeals in the [Hale v. Norton](#) case on access to the Hale Family homestead on McCarthy Creek in Wrangell-St. Elias NP. The court refused to decide the important issue of whether the McCarthy-Green Butte Road exists as an RS 2477 right-of-way and, furthermore, rather than confront a popular NPS, merely deferred to the NPS's opinion that ANILCA rights are subservient to a NEPA environmental analysis regardless of the harm imposed on private citizens or the question of whether ANILCA preempts NEPA in guaranteeing adequate and feasible access "notwithstanding any other provision of law."

Politicians and oversight committees are reluctant to oppose the NPS. The media will presume the NPS to be right. In addition, the NPS enjoys the communication and PR machine resources of closely cooperating well-funded environmental NGO's.

When the NPS wants to block use of private land access that is granted to an owner in statute, it knows that it does not have to up-front say "No" and risk bad publicity from appearing to not be in conformance with law. It can effectively achieve its objectives by nullifying the owner's rights through imposition of protracted, expensive and arbitrary permitting procedures that exhaust the finances of the owner and run out the clock on his needed schedule. The NPS can even keep the landowner from ever being able to sue by continually asking for more and more information and data. Thus his application

¹⁷ *American Legal System Is Corrupt Beyond Recognition, Judge Tells Harvard Law School* by Geraldine Hawkins, March 7, 2003 - http://www.massnews.com/2003_Editions/3_March/030703_mn_american_legal_system_corrupt.shtml

may never be considered “administratively complete” and finally adjudicated, a requirement under the Administrative Procedures Act before there can be federal court review.

The danger to the citizen of this behavior on the part of the NPS was well known to the Congressional framers of ANILCA when they enacted specific language that granted landowner access and exempted ANILCA from operation of the National Environmental Policy Act.

“Notwithstanding any other provisions of this Act or other law... the...private owner or occupier shall be given by the Secretary such rights as may be necessary to assure adequate and feasible access...” [ANILCA 1110(b)]

In a recent letter Senator Ted Stevens underscores this point:

“Having participated in the development of ANILCA, I know that NEPA does not apply. Congress did not intend that NEPA apply to that Section as evidenced by the use of the phrase, ‘notwithstanding any other provisions of this Act or other law’ (emphasis added). Clearly, ‘other law’ includes NEPA.” [July 18, 2006 letter from Ted Stevens, President Pro Tempore, United States Senate to Marcia Blaszk Regional Director, National Park Service, Anchorage. See ATTACHMENT C]

Nevertheless, the NPS has used heavy-handed regulation to the maximum to achieve its own objectives beyond what the political compromise and provisions of ANILCA allow. AkLRC strongly protests the use of NEPA in the access process.

Environmental Study Overkill as a Coercion Tool – The Spruce Creek Access DEIS

The owners of twenty acres of land on Spruce Creek in Kantishna (Denali NP) asked permission to construct a bush airstrip and small gravel road through an existing area of historic mining activity instead of continuing to travel up the bed of a stream nine miles to their property. In response, the NPS prepared a massive Draft Environmental Impact Statement (DEIS) in 1999 costing more than the construction of the proposed project! Then the NPS denied permission and sent the owners the bill.

How reasonable was this? At the landowners expense, the NPS applied a regulatory overkill factor of 150 to 1,300 times what is logical, reasonable, and accepted across the U.S. for other projects not involving the NPS [see ATTACHMENT D].

Landowners have every reason to be extremely concerned about NPS vagueness in the AUG that skims over criteria for when EA’s or EIS’s are required. This Spruce Creek Access example is another horror story of gross exaggeration of imagined threats and out of control environmental review costs in the hands of NPS managers so viscerally opposed to landowner access that they would have denied it anyway, irrespective of any documentation in \$200,000 of DEIS paperwork.

Mining Claim Validity Adjudication

In the United States, mining claim adjudications for over a hundred years have been performed by an independent third party such as the Bureau of Land Management and its predecessor agencies. Apparently, wanting to control and manipulate the process itself, the NPS took over performance of claim validity determinations at Kantishna (Denali NP). Since the NPS had its own agenda of ending all the small family-run mining operations at Kantishna, the impartiality of its validity determinations was highly suspect.

The overwhelming conflicts of interest the NPS had in this situation were well described in testimony before Senator Murkowski's 1994 hearings on *Mining Activities in Alaska National Parks*¹⁸ and by attorney Lawrence V. Albert:

NPS Regulatory Practices [at Kantishna]

Since 1986, Kantishna miners perceived that NPS was imposing onerous requirements in the review of mining plans. Moreover, the miners suspected NPS was not dealing in good faith and had a hidden agenda to frustrate their rights. Through litigation discovery years later, their suspicions are well substantiated.

[NPS geologist Larry] Brown formed the opinion that no mining operations would be permitted on Caribou Creek or anywhere else in the Kantishna Hills. Brown also believed that supervisory NPS personnel provided guidance that plan reviews should be as complicated and prolonged as much as possible. Brown was incensed with NPS' deception of [miner] Sam Koppenberg and thought that NPS had reached a foregone conclusion that Koppenberg's plan for middle Caribou Creek would never be approved, and yet Koppenberg was encouraged to spend additional money for naught....

After six years with NPS in Alaska, [environmental specialist Tom] Ford could not identify a single plan of operations for the Kantishna Hills that was ever approved. Moreover, Ford indicated that none of the several plans submitted was ever adjudicated on the merits with the single exception of Koppenberg's plan... His intention, shared by the NPS staff, was that denial of Koppenberg's plan would mean denial of all future mining operations in Denali. After Brown and Ford's departure in 1992, NPS continued its dilatory practices. From the period of the 1985 injunction until condemnation actions were filed in 1998, not one plan of operation for commercial mining operations was approved for Kantishna. Additionally, NPS refused to process plans for commercial operations on grounds that they were incomplete and required more information. [from: *ANILCA PROMISES BROKEN: THE DEMISE OF THE KANTISHNA MINING DISTRICT* by Lawrence V. Albert, Attorney at Law -- from d(2), Part 2A Report to the People of Alaska

¹⁸ *Mining activities in units of the National Park Service in Alaska*. Hearing before the Subcommittee on Public Lands, National Parks, and Forests of the Committee on Energy and Natural Resources, United States Senate, One Hundred Third Congress, first session ... Anchorage, AK, November 6, 1993 (Senate Hearing 103-577) 124 p.

on the Land Promises Made in ANILCA 20 Years Later... Edited by J. P. Tangen (2000)
Anchorage: Alaska Miners Association, p. 42-52. www.alaskaminers.org/d2main.html

NPS Ignores Congressional Direction It Does Not Agree With

The 1917 enabling act for the establishment of Mount McKinley National Park, now Denali, directs the Secretary of the Interior through the NPS to manage the park in a way that encourages visitation. This Congressional direction has remained unchanged for almost 90 years. It has survived 41 Congresses and many amendment cycles to the Denali Park section of the U.S. code.

Apparently disagreeing, the NPS simply deletes Congressional direction it deems inconvenient when forced to quote the federal statutes in regulation rulemaking and park planning documents. It picks and chooses only the sections of statute it likes: those talking about preservation, game and fish [see ATTACHMENT E]. The NPS chronically attempts to limit access to park and private lands in its regulations and management policies.

NPS Sets Trap for Landowners When Restricting Public Access

In Montana, federal statutes and Glacier National Park documents had acknowledged consistently since 1910 that the NPS could not deny inholders access to their property.

In 1976 the NPS restricted the general public's ability to use Glacier Route 7 which was the historic access to the inholding area for over 70 years, but keys were provided to owners so they could continue to use the road.

In its 1985 "Land Protection Plan" the NPS reiterated that private land owners have rights guaranteed in the enabling legislation for the park that must be respected, and because private property owners retain reasonable and adequate use and enjoyment of their property, the NPS has no power to deny access.

But in 1999 the NPS stopped providing keys and closed the road in the winter to even the inholders. The NPS ultimately claimed¹⁹ that the landowners should have known that banning snow machines in the whole park combined with gating the road showed the NPS was claiming something different than the statutory access guarantees it wrote about in its own plans.

The federal district court ruled that inholder Jack McFarland missed his last chance to sue by the time the NPS refused to provide keys in 1999 and that the owners should not have believed or relied on the NPS plans that stated their access was protected. NPS claimed the 12 year statute of limitations under the federal Quiet Title Act began in 1976 and ended in 1988 only three years after NPS published its plan that confirmed landowner access.

¹⁹ McFARLAND v. UNITED STATES, et al. www.landrights.org/mt/glac/mcfarland.htm

If ultimately sustained, this outrageous position would mean that property owners who access their property via rights held on federal lands would have to take note any time the NPS restricts the access rights of the general public to use those lands because the NPS could claim it has acted in a manner adverse to the property owners and, to protect their rights, the owners would be forced to file many defensive lawsuits. They could not let time pass by if something the NPS did even appeared to threaten their access!²⁰

Fortunately the Ninth Circuit recently said “No” to this and sent it back to district court, but it is profoundly troubling that the NPS and any court could take the view that an agency's actions over time, ignoring the law and their own documents, could ripen into abrogation of the NPS's obligation to even follow the law.

NOTE: This situation is one of a few we describe from outside Alaska. We think it is pertinent to ANILCA 1110(b) access issues because NPS personnel are constantly transferred into Alaska from “Lower 48” parks. They bring work experience and ethical practices from their previous environment. Even though Alaska NPS personnel have been receiving special ANILCA training, initiated by our congressional delegation, to learn the history of the act and how to implement the law, it is obvious that the training is lacking. It has not been successful in altering the pattern of behavior of transferees in regards to their attitudes to local residents, conditions in Alaska, and the access guarantees in the ANILCA compromise.

This is not to say that the actions of the NPS at Glacier NP described here (or later at Acadia NP in Maine) are somehow honorable or acceptable because they are not Alaska ANILCA parks. These are appalling and deplorable situations that should never be repeated anywhere.

DRAFT 2 FAILS TO LIVE UP TO THE PROMISES MADE IN ANILCA

AkLRC strenuously objects to the process described in the AUG because the effect, in large part, is to abrogate the access guarantees made to Alaskan landowners who were engulfed by ANILCA conservation system units. These guarantees were necessary in order to gain sufficient public acceptance in Alaska to reduce resistance to the legislation so that ANILCA could pass.

Those commitments are what gave people hope for their economic future and confidence that they would be treated fairly and honorably. But the parallels to the conflicts of interest the NPS had in all the situations discussed above mandate a very different approach to documenting ANILCA mandated access. It is clear that NPS discretion, as-is in the 2nd AUG, can not be relied on to produce a just impartial outcome in the spirit of the ANILCA compromise of 1979.

²⁰ Per Jack McFarland and his attorney, William Perry Pendley of Mountain States Legal Foundation.

IS NPS TRYING TO CONTROL LAND USE ON PRIVATE PROPERTY?

At a May 11, 2006, Anchorage hearing on Draft 2, NPS Lands Chief Chuck Gilbert was asked, “Does the NPS intend to control use of private property?” He answered, “No. People can do what ever they want on their private property.” Later, he was asked why access applicants are being asked about their future land use plans. After the subsequent dialog Gilbert said, “Trust us to be reasonable, we are not going to be unreasonable.”

Unfortunately, any inholder who finds himself in negotiations with the NPS must be extremely skeptical of any process that relies on “trusting” the agency to treat him fairly and impartially. In our view, the NPS needs to break out of its past mold and dramatically demonstrate in words and *deeds* that it is going to accept its obligations in good faith and treat people properly and honorably.

Notwithstanding Gilbert’s denial that the NPS intends to control land use on private property, there is much fear that in fact such is exactly the intention of the NPS. In the past, when the NPS could not achieve its objectives overtly, it used its resources and powers to achieve the same results covertly²¹.

The 1986 WRST General Management Plan²² specifically states that the NPS does not intend to allow “incompatible” uses of private lands.

COMPATIBILITY OF LAND USES

The National Park Service is required to examine existing and potential uses of nonfederal lands within the park/preserve to determine if these uses are compatible with the purposes for which the park/preserve was established (ANILCA, section 1301). For example, one of the purposes Congress assigned for Wrangell St. Elias National Park/Preserve is to maintain unimpaired the scenic beauty and quality of high mountain peaks, foothills, glacial systems, lakes and streams, valleys, and coastal landscapes in their natural state. The National Park Service must attempt to ensure that uses on federal and nonfederal lands within the park/preserve do not cause harm to the

²¹ We see “Lower 48 States” methods of NPS operation continually creeping into Alaska ANILCA parks. In Acadia NP in Maine, during Congressional consideration of a boundary modification bill, the NPS assured landowners just outside the park holdings in 1986 that they could build homes without interference. The NPS later recanted, both extending an ambiguous boundary to include their property and threatening the owners with condemnation if they tried to build. **The National Park Service interprets its authority to mean that it should be routinely exercised to the fullest extent the agency can possibly exercise it.** Tired of paying taxes on land they could not use, one family recently gave up and tried to get the NPS to buy them out. But the NPS, knowing it was already in complete control at no cost and that it had lowered the property value with its condemnation threat, offered less than half its true value. The family refused and not really wanting to sell at all, is still stuck. Such low balling has been a pattern, both by the NPS and the land trusts operating on its behalf. *At Acadia, Lust for More Land Is Encroaching on Rights of Property Owners* By Erich Veyhl. Downeast Coastal Press (Cutler, Maine) and Magic City Morning Star (Millinocket, Maine), Jun 20, 2006. http://magic-city-news.com/article_6118.shtml

²² See page 74 of: Wrangell-St. Elias National Park / Preserve, Alaska : general management plan, land protection plan, wilderness suitability review / United States Department of the Interior, National Park Service, [Alaska Regional Office]. [Denver, Colo. : The Service, 1987] www.nps.gov/wrst/GMP1986/GMP.htm

scenic beauty and quality of the area. If, for example, a private landowner were to subdivide his property and sell parcels for recreational development so that scenic vistas were disrupted, this would be contrary to the purpose of maintaining scenic beauty and quality and would be an incompatible use of private land in the park/preserve...

Compatible uses include the following:

private use of nonfederal lands for residential, recreational, or subsistence activities that do not adversely impact wildlife or other values on adjacent federal lands as discussed above

repair, replacement, or minor modification of existing structures, so long as the structures blend with the wilderness character of adjacent federal lands and do not otherwise adversely affect park/preserve resources ...

There is the potential for subdivision and commercial development on much of the nonfederal land in the unit. The following activities can result in impairment of the values identified in the "Purpose of the Park/Preserve" section and are considered incompatible uses of the land. In addition, any significant increase in population within the boundaries of the park/preserve is incompatible with preservation of the unit's generally undeveloped character.

Activities that intrude on the wilderness character or impair scenic vistas...

Major new commercial development or significant expansion of an existing commercial facility without consultation with the National Park Service to ensure compatibility with park purposes and values as described in ANILCA and the general management plan

Subdivision or development which significantly increases the number and distribution of part and full-time residents utilizing park/preserve resources for subsistence, access, or support purposes

This issue needs to be addressed by top NPS management in Alaska and WRST. Is the NPS going to interfere with uses of private lands or not?

Judgments on access documentation by the agency need to be done by impartial staff insulated by a firewall from any considerations of controlling land use on private lands. To insure fairness, this may well require that the NPS relinquish its responsibility to ensure reasonable and economic access to another agency that does not carry the institutional baggage of the NPS such as the Bureau of Land Management or the State of Alaska.

NPS CLAIM THAT ISOLATED PATENTED LANDS HAD NO VALID EXISTING [ACCESS] RIGHTS IN 1979 WHEN ANILCA WAS ENACTED

ANILCA Section 1109 specifically states: "Nothing in this title shall be construed to adversely affect any valid existing right of access. ..."

The NPS is now asserting a bold and extremely aggressive claim that isolated private land parcels that do not touch a deeded state right of way [or presumably state owned navigable waters] have no access because BLM saw no need to issue such access permits prior to the 1979 creation of the new NPS units. The NPS needs to abandon this position.

There needs to be a clear statement, “NPS fully recognizes that motorized travel (ATV, vehicles) is perfectly acceptable and expected to access land inholdings...etc.” We note that the AUG only recognizes motorboat, air & non-motorized modes of travel as valid means without going through an NPS “permit” gauntlet.

The AUG needs to treat this attempt to strand patented mining claims, homesteads, home sites, and trade and manufacturing sites in considerable detail, extensively footnoted and supported.

At the time of the 1978/79 debate and passage of the ANILCA compromise, *no one* thought there was *any* problem accessing isolated patents surrounded by federal lands. Now, decades later, the NPS lands staff and attorneys apparently have fabricated a theory that ANILCA’s guarantees of respect for “valid existing rights” may be ignored if, at the time of ANILCA, the lands had no permitted, documented access. In those cases, appearances are they are advising the NPS to propagate the false claim that there is no “valid existing right” of access to these parcels; thus ANILCA can be ignored for them.

This viewpoint was articulated on Valdez Public Radio KCHU by WRST Superintendent Gary Candelaria and Chief Ranger Hunter Sharp on 10/15/03 and was confirmed as the agency’s thinking at the Anchorage hearing on the access manual by Chief of Lands Chuck Gilbert on 5/11/06. This is a radical reordering of hundreds of years of common law legal traditions and guaranteed rights. It is against the stated ANILCA legislative history²³.

There are at least three different justifications for access to isolated federal patents:

- 1) Appurtenances – Land patents issued under the Homestead Act and Mining laws conveyed the land “with the appurtenances thereof.” An appurtenance is that which is essential to the use of the right granted. Something that is outside the property itself but adds to the greater enjoyment of the property. Example is an easement or right of way.
- 2) Easements by Implication – Easements of access would generally be necessary to fulfill the Homestead Act and Mining laws’ purposes of encouraging the settlement of the frontier.

²³ “The Committee understands that the common law guarantees owners of inholdings access to their land, and that rights of access might also be derived from other statutory provisions, including other provisions of this title, or from constitutional grants. This provision is intended to be an independent grant supplementary to all other rights of access, and shall not be construed to limit or be limited by any other right of access granted by the common law, other statutory provisions, or the Constitution.” S. Rept. 96-413, 96th Congress, p. 249.

- 3) Easement by Necessity – This doctrine exists in common law and/or statutes of nearly every state (including Alaska) because economic waste from the creation, even by design, of landlocked parcels without access is viewed with disfavor.

Testimony at the Anchorage hearing by homesteader John Horan typifies the virtually universal understanding at the time of ANILCA in the early '80s that possession of a federal patent to your property included right of access. In his case, he specifically asked the BLM at the time he had obtained his patent in 1980 if he needed documented access to his parcel which was about a mile off the Chitina-McCarthy Highway. BLM said, “Absolutely not, your access is guaranteed by the Homestead Act.”

The plain reading of ANILCA Section 1109 and understanding by the public at large mollified landowners that they were protected at the time of its passage. Now, years later, NPS is reinterpreting that no one had any existing right of access to a public road.

It is perfectly understandable that people feel this constitutes fraud, reinforcing the worst fears and stories of government agency abuse of ordinary citizens. Additionally it is an absolutely wretched move for an agency to upset 200 years of assumed and actual unimpeded access to patented lands and do it by dropping hints in stray radio interviews and unrecorded meetings. Where is the NPS press release announcing this radical move?

NPS appears to even deny the validity of RS2477 access roads. Surely, somewhere in the 15% of Alaska administer by the NPS, it can recognize one valid RS2477!

If the NPS intends to persist in this claim that isolated lands had no right to access in 1979, the next version of the manual needs to discuss this issue with great sensitivity, detail and clarity because it is nothing short of re-writing history and the whole political debate at the time of ANILCA to rescind the contemporary understanding of what honoring “valid existing rights” meant.

Finally, the NPS needs to seriously consider whether the consequent loss of credibility in exploiting this advantage, if that is what it is, is really worth it. It makes a mockery of the guarantees of ANILCA that quieted concerns in the state to the point where the ANILCA compromise was even possible. It will rightly be considered to be a dishonest betrayal of a public trust.

PRIMA FACIE EVIDENCE OF NPS BAD FAITH

In addition to the history and examples discussed above, these recent incidents in WRST point to the lack of congruity with statute and consistency with rule and reasonableness in NPS management of access issues.

Failure to Designate Any "Park Roads"

Wrangell-St. Elias National Park has now been in existence for 26 years. It is the largest national park in the United States and covers 12.1 million acres²⁴ — an area larger than the states of Massachusetts, Rhode Island, Connecticut, and Delaware combined. During this period of time, during which there has been continual turmoil over the status of access over this vast area, not one designation of a "Park Road" is known to have been made by the NPS. In making such a designation, it would allow the NPS a freer hand in satisfying its obligation to provide mandated access and serve its visitors without the complications of other proceedings and permitting. But again, perhaps the NPS finds those restrictions as useful excuses to do nothing to help access. That's how it appears.

Unprofessional Defamation by WRST Superintendent Gary Candelaria

In June 2003, NPS Superintendent Candelaria wrote and widely disseminated propaganda about an inholder family. Candelaria's slanderous open letter attacking the Hale [Pilgrim] family contained clearly biased and false private financial and civil information. Such a senior government manager clearly has to know that such behavior is inexcusable from any WRST employee let alone coming from the superintendent himself. Even after being notified the information was wrong, he did not cease having it disseminated to visitors at the Kennicott ranger station for the entire summer.

Among many falsehoods in the letter, Candelaria said, "The Pilgrims do not yet own the land they are living upon. In fact, they have not made a payment to the holder of their deed of trust since last year and are in danger of being foreclosed. They have refused to pay their creditor since January, and have also refused to leave his land." He went on to say, "The Pilgrims have broken the law, openly, deliberately, repeatedly."

All of this is a shabby cheap-shot at best as well as a lie. Though it is no one's business, the family has never been in arrears on their land payments and was certainly in no danger of foreclosure. In fact, even with the all the difficulties that have forced the family off their land (many caused by the NPS access blockade), they completely paid off their mortgage in less than five years through hard work and thrift.

Reporting on the astounding Candelaria letter, Rick Kenyon, the local minister and publisher of the Wrangell-St. Elias News in McCarthy wrote, "It is important to note that the Pilgrims have not been charged with any crime, there has been no trial, nor have they been found guilty by a jury or judge."²⁵

²⁴ *How big is the park?*, Wrangell-St. Elias News (McCarthy) May & June 2005 p. 14-15. Although WRST is authorized at only 12.1 million acres in ANILCA the NPS claims an area of 13.1 million acres by controversially including 721,655 acres of state native and private land in the park. <http://www.wsen.net/MJ2005/page5.html>

²⁵ *WRST Superintendent defames Inholders in "Open Letter"*, Wrangell-St. Elias News (McCarthy) July & August 2003 p. 15-16. <http://wsen.net/JA2003/page5.html>
FULL TEXT OF CANDELARIA LETTER: www.landrights.org/ak/wrst/NPS.Candelaria.03-06-27.pdf

Since then, perhaps to justify Candelaria's false claims against the Hales or to simply make trouble for the family, two Hale sons were set up by rangers for criminalization.²⁶

It is troubling to think that NPS senior management condones this kind of obviously unprofessional behavior by one of its top managers. Rather than disciplinary action, the NPS even gave Candelaria award recognition and publicity, leaving NPS staff believing his lies and receiving the message that such behavior is not only laudatory but an example to follow.

Discretionary Authority, Selective Enforcement

It causes substantial anxiety about fairness in other arenas and issues when park managers treat favored, more powerful entities having political clout with common sense and reason while similar situations involving disfavored, isolated or weak landowners get discriminatory abuse and prosecution (persecution).

For example, in the community of McCarthy there are at least three accesses that were constructed on NPS lands without specific permission or any permit. Quite properly and logically the NPS has not interfered or hassled anyone. But technically they all do cross NPS lands and when the NPS has harassed other "little guys" for crossing NPS lands similarly without permits, NPS managers have been asked, "Why the selective enforcement?" The point being that others less powerful or convenient to pressure should also be left alone.

Glacier Drive Airstrip – Constructed by local residents about 1998 along the section line easement next to the current location of the NPS camp south of the visitor kiosk. The east half of the airstrip is on private land but the west half was newly bulldozed on NPS lands without permission or permit. Although well known to NPS managers and used extensively by the community, no regulatory action or civil citation has occurred. When questioned about the lack of enforcement while others are being hammered, Chief Ranger Hunter Sharp told two local residents that it is "management discretion" who the NPS cites and what is overlooked.

Between the Footbridges – A similar situation occurs between the two McCarthy footbridges where locals well known in the community constructed a gravel roadway that deviates onto NPS lands. Nothing was done by the NPS to authorize construction of that access either. The conclusion most would draw is when it would face a mass uprising, the NPS would hesitate to close a route heavily used by the community. But the NPS has no problem bullying a

²⁶ After Superintendent Candelaria's open letter three of the 17 family members experienced criminal justice system involvement, two of which were shameful harassment actions against the two oldest Hale sons launched by the NPS as part of its inholder war discussed earlier. That the family patriarch Robert Hale was later accused of very serious State crimes does not absolve Superintendent Candelaria of his reckless and false accusations, harming at least 16 of the 17 Hales.

disfavored or isolated landowner like the Hale [Pilgrim] family, Doug Frederick, or Susan Smith.

McCarthy Creek Subdivision (University of Alaska Land Management) – There are 300 feet of NPS lands that must be crossed for access to six lots in the University of Alaska subdivision that are accessible only from the McCarthy - Green Butte Road. But this was the same historically used 100 year old road and RS2477 right of way closed by Hunter Sharp in April of 2003 when the Pilgrim family tried to haul materials to their homestead to replace a burned dwelling.

Whether Sharp realized he was closing off access to this part of the University’s subdivision at the same time he closed the road to the Hales and the community at large is not known. What would the situation be today were one of the landowners or the University to take heavy equipment to access their lots? When the Hale family or Slana homesteader Doug Frederick used their “undocumented” accesses across NPS land, they faced prosecution, harassment and criminalization, all at the “management discretion” of the NPS.

NPS AGENCY CONFLICT OF INTEREST – STAFF ETHICS AND MORALITY

Basic obligation of public service

Public service is a public trust. Each employee has a responsibility to the United States Government and its citizens to place loyalty to the Constitution, laws and ethical principles above private gain. To ensure that every citizen can have complete confidence in the integrity of the Federal Government, each employee shall respect and adhere to the principles of ethical conduct...

Employees shall disclose waste, fraud, abuse, and corruption to appropriate authorities.

[excerpt from: Department of the Interior Code of Ethics²⁷]

The National Park Service administers 15% of the area of the State of Alaska. Within its domain there are many communities and millions of acres of private lands and thousands of people. How does the NPS wish to be viewed by these folks? What kind of relationship does the NPS desire to have with them, now and for a hundred years into the future? How does the NPS wish its employees and managers to be regarded? Does it want mutual respect and cooperation?

²⁷

www.doi.gov/ethics/regs2.html#code

If so, there is much the NPS does or can do that locals sincerely would like to cooperate with and be a partner. Resource protection (land and wildlife), enhancing visitor experience, visitor outreach, facility improvement, human and natural history research are all examples. Even helping with public support for worthy NPS budget requests.

Such cooperation would make the job of the NPS much easier and more effective. It would give taxpayers a better return on their contributions.

But it is hard to have such cooperation without mutual respect and trust. Both sides have to earn that, but it has to be understood that this is in no way a level playing field. The NPS has a multimillion dollar budget and teams of lawyers and virtual sovereign power. Staff is well paid compared to local residents, many of whom struggle every day in a highly competitive and risky economic environment. Having no deep-pocket tap into the U.S. Treasury, locals absolutely have to watch their spending and be effective. And as they do that, they cannot help but notice and contrast how their government is performing day to day in the park.

How the NPS is viewed and the respect it gains, in large part, comes from how ordinary citizens observe NPS staff using government (taxpayer) resources and power.

Since the 1980 passage of ANILCA we see this pattern of NPS behavior:

ANILCA has one section that says access “shall” be granted to private lands and the NPS can issue “reasonable” regulations to prevent damage to the resources. When these assurances were added to ANILCA in 1980 landowners believed their rights would be protected. There it was, in black and white in the laws of the land. *This is America!* Laws have popular credibility. People felt safer and consequently reduced their opposition to the establishment of the new parks.

But the NPS did not agree with what Congress did and the NPS had its fingers crossed behind its back – it was a trick. The NPS opposes access and staff figured they would get their way later by running people through a permitting gauntlet made so protracted and expensive that it would, hopefully, drive landowners into bankruptcy. The NPS would claim that any terrain impact, no matter how slight, is the collapse and ruination of the environment.

The driving intention behind all this being to obtain an inholder's land for as low a cost as possible²⁸ and to drive out owners that are “inconvenient”

²⁸ Example: Orange Hill is a huge copper deposit 13 miles southeast of Nabesna surrounded by WRST NPS lands. In 1980 it was considered to be one of the 30 largest copper deposits in the world. The gross metal value of the proven reserves at current metal prices is over \$2.6 billion. The NPS has run the owners of this property through a permitting, access and appraisal nightmare for twenty years culminating in a ludicrous NPS appraisal for a buyout offer for the 363 acre patented property of \$146,000. No, no zeros have been dropped. This is not a typo. Here it is in words: One hundred and forty six thousand dollars and 00/100 cents. See: *Another ANILCA horror story: The Orange Hill Property by Wally McGregor*. Alaska Miner, December 2005, p 6-8, 17. Also published in Wrangell-St.

to the long range plans of the NPS. The strategy has been to look for any trivial change to the environment – a depressed tussock or some crushed willow brush grown over a road or trail – and proclaim that it is “resource damage.”

It appears to us that the NPS needs to review its organizational and management ethics. How moral is the approach that too many in the NPS have taken?

We believe that most NPS employees truly want and will do the right thing if they get support and direction from the top of what is expected, what is acceptable, and what is not. Rational, common sense behavior is what builds trust. Not posturing about protecting special places and national assets that are not under any real threat anyway.

In Kantishna (Denali NP) as in WRST, the Park Service has wasted, utterly wasted, millions of dollars on costly boondoggles with helicopter monitoring, sending teams of scientists and biologists and geologists around spying on landowners and users while at the same time constantly complaining that the NPS does not have money for visitor centers or maintenance.

People living in these areas watch the NPS and know it costs over \$1,000 an hour to fly those helicopters around and cover the personnel costs and support staff. The result of actions like this is a huge credibility gap between Alaskans and the NPS – particularly those in bush communities like McCarthy. Their only desire is to be left alone and allowed to live in peace.

A BETTER WAY — LESSONS LEARNED AT SKAGWAY

There are many parallels with the relationship of the NPS to the Skagway and Dyea communities and the animosity built up towards the NPS in other Alaska park units, especially in WRST. In Skagway, the NPS realized the error of its ways and repaired its early poor relationship with the community by working out its differences with a new team operating in a more open and fair dealing way that ultimately increased mutual trust. All have benefitted.

Klondike Gold Rush National Historical Park is located in an active, viable community and there was a high potential for conflict between the National Park Service and residents. Although relations with the public were good after the park was dedicated in June 1977, the NPS and the community had competing, antagonistic aims and the poor decisions of park officials ignited community animosity. In 1980 relations took a dramatic turn for the worse when the NPS issued a “land protection plan” which tried to prevent development on private property. That plan, coupled with the numerous patrols

Elias News (McCarthy) July & August 2006 p. 15-17. <http://wsen.net/JA2006/free/page9.html>

which seasonal rangers took through the Dyea homestead area, brought a storm of controversy to the NPS [after NPS historian, Frank Norris²⁹].

Relations gradually improved during the early 1980s through personal intervention from top NPS management that came to Skagway to bridge the communications gap with residents. The NPS backed off of its Dyea land plan and disavowed attempts to control land use on private property. The local attitude toward the NPS improved considerably and the park was seen in an increasingly positive light. In April 1985, the Skagway City Council unanimously passed a resolution supporting the presence of the NPS in Skagway. Such an action would have been unthinkable just a few years before.

Community support continued and in 1986 the City of Skagway passed another resolution requesting federal funds to allow the NPS to restore park buildings. Park officials have apparently continued to inform the community about their work and involve local residents.

Hopefully the appropriate lessons today will be drawn by NPS senior management and applied to the ANILCA access situation statewide. It will remove a major irritant and has the potential to be a healing, trust-building act if properly done. The lesson from Skagway is that the NPS received community support when it stopped exploiting its position of dominance to advance its own agenda of controlling land use and acquiring all the private property.

POLICY EXECUTION ISSUES

Draft 2 of the AUG reflects an NPS attitude against access. We find its format to be odd, vague, and uninformative. Too much of the new information conveyed appears to be in a series of questions and answers on pages 9-17 rather than a tightly constructed, well thought out series of criteria that clearly lay out a frame of reference for guidance of the NPS as it adjusts to future changed conditions and access requirements. This is unacceptable for a proposal that would give the NPS life or death authority over the viability of a business or usability of a home or tract of land. It is especially so considering the past record of the NPS.

“MINISTERIAL” PERMITTING

Permits – There are two broad types of permits: Ministerial and Discretionary. Ministerial permits are ones that are issued once it is demonstrated a project meets certain objective measurable standards. These permits would be issued while one waits

²⁹ *LEGACY of the GOLD RUSH: An Administrative History of the Klondike Gold Rush National Historical Park* by Frank B. Norris. National Park Service. Alaska System Support Office. Anchorage, Alaska 1996. 509 p.
www.nps.gov/klgo/adhi/adhi.htm See relevant excerpts summarized at: www.landrights.org/ak/klgo/Norris.htm

or within a few days or a few weeks at the most. Discretionary permits are subject to a more subjective analysis before being acted on. There could be public hearings and take many weeks or months to process. There is a real question: How or why should there be any permits for a right? If “permits” are to be used at all by the NPS for landowners with ANILCA 1109 and 1110 (b) access, virtually all of them must be of the Ministerial type to be compliant with ANILCA and not violate inholder access rights.

NATURAL PROCESSES AND RIGHTS OF WAY

The NPS needs to prepare a detailed treatment of how in the agency's view practical and economic access maintenance, permitting and documentation will be affected by natural processes. Lay out suggestions for a practical methodology for maintenance of inholder accesses. Make a clear statement that the NPS will not use natural events like water action (flooding, erosion), vegetation growth, bank sloughing etc. as a tool to extinguish legal access — either overtly or by stealth through extreme permit actions designed to make an access uneconomic to maintain or restore after a period of disuse or an event.

The agency needs to eschew extreme restriction of man-made activity that is plainly obvious to be insignificant in comparison to natural processes in the surrounding landscape. It needs to specifically disavow “junk science” techniques³⁰ that falsely allege potential “resource damage”.

Vegetation Growth

There have been many instances where the growth of brush on an old road and the need to maintain the road by removing brush is considered by the NPS to be a significant environmental event that triggers elaborate studies and even attempts at prosecution for criminal infractions.

Yet once the permit is issued, this access manual appears to require landowners to remove brush and clip vegetation on their right of way or be in violation of the stipulations. Why? We strongly believe that no easement access should be lost because a landowner elects not to cut or remove vegetation. No EAs or EISs should be required for vegetation control or removal on either old or new roads.

We are not aware of any law, justification, or process for losing an easement from growth of vegetation and none is cited in ANILCA 1110(b). We note that all appearances are that the NPS was attempting to document civil and/or criminal charges against the Hale family for using a tracked vehicle over a 100 year old industrial road that had several feet of brush growth on its surface.

³⁰ *Junk or bunk science* is a term used to describe purportedly scientific data, research, analyses or claims which are perceived to be driven by political, financial or other questionable motives [from Wikipedia, the free encyclopedia – http://en.wikipedia.org/wiki/Junk_science]

Any rational observer of such a situation has every reason to question the credibility of the agency engaging in this kind of harassment.

Erosion, Flooding

Similarly, natural processes - erosion, flooding, slope failures - should not, must not, result in the extinguishment or the impairment of an access easement. In the highly unusual instance where an access road or structure causes significant damage to park terrain outside the limits of the easement, then maintenance by the landowner is not unreasonably a requirement of the agency. But the vast majority of cases will require nothing like that, and again common sense should rule what is required by NPS.

Bridges & Fords

Stream crossings are a favorite chokehold for the NPS to blow all out of proportion and exaggerate impacts and affects. Outline in the AUG the criteria to be used by the NPS if it opposes a particular improvement or protection measure that a landowner may need at stream crossings for access. The degree to which those criteria are specific and objective as opposed to vague and subjective will give landowners what is needed to evaluate the sincerity of the NPS in this AUG process. Prior experience causes landowners at this point in time to lack confidence that they will receive fair, rational treatment in such matters by the NPS. Remember please, ANILCA says reasonable.

Gravel/Fill

To stabilize and utilize many access easements the landowner is going to need some onsite (within the easement) or offsite gravel, sand or fill. The advantage to the NPS is that such gravel would stabilize the road surface and avoid disturbance and destruction of boggy areas within the travel surface of the easement.

Yet a number of landowners have been told that even though there is ample gravel alongside their access route they will not be allowed to use it and would have to import gravel from other locations at great and unnecessary expense.

One landowner with an access immediately adjacent to a braided river with vast plains of bare, unvegetated gravel was told he would have to haul gravel in from 10 miles outside the park. This is patently obstructive harassment. The braided river adjacent to the access route is moving millions of tons of gravel every year. The maintenance use of a few hundred tons of gravel out of the sterile dry braided plain is absolutely and totally insignificant in impact to the natural features and environment of the park.

Such gravel use for emplacement in the limits of the easement preserves park land resources that are the servient estate to the Congressionally mandated easement to the parcel. It is a perfect candidate for a Categorical Exclusion to NEPA.

EIS CHARGES NOT TO GO TO LANDOWNER

The history of the NPS in obstructing and denying mandated inholder access demonstrates its obvious conflict of interest when it takes on to itself the decision on whether an EIS or EA is to be done for an access. It is not a disinterested party and other agendas are constantly in play [see previous discussion of NPS behavior on the Denali Spruce Creek Access EIS.]

The costs and timing of environmental reviews are well known to be fruitful areas for manipulation and powerful tools for unfair agency coercion and leverage. It is progress that in the second draft of the AUG, NPS has accepted its responsibility to pay for an EA. But if the NPS continues to insist it will never pay for an EIS, it taints any decision it may make if it were to require an access EIS. The process will be incentivized and prejudiced towards kicking an access project up to an EIS instead of doing an EA or using a Categorical Exclusion. To do so is doubly advantageous to the NPS as it shifts the costs off the NPS to the landowner and achieves the double duty of applying pressure to the landowner to sell out to the NPS cheap. Again, there needs to be a clear and concise, specific and objective discussion of what criteria the NPS intends to use in deciding what kinds of access improvements it will push to an EIS level, and it is imperative that NPS assume financial responsibility for either an EA or EIS.

There must be no charges to the landowner for an Environmental Impact Statement for basic land (road and/or ATV) access to an inholding. EISs are extremely costly and time consuming efforts that circumvent the clear understanding that economic access shall be given "notwithstanding any other provisions of this Act or other law."

Furthermore, in the granting of access, ANILCA makes no distinction between residential, recreational or commercial uses of private property. We are concerned that NPS is making such distinctions in discussing when programmatic EA's and EIS's would be imposed.

Delay is denial of access. The Hale family asked for emergency access to bring fire damage repair materials to their homestead in August 2003. The NPS manipulated and contorted that EA process into a farce. It ignored its own EA criteria and did what it wanted anyway: To deny practical access while at the same time gaining a propaganda victory by appearing to the uninformed and the media to grant "access" (which was unusable).

The NPS has an impossible conflict of interest and if it wants to truly change this perception, the time is now to act. The family is still waiting for usable EMERGENCY access today, three years later. Give it to them. And in the AUG, there must be a clear, concise explanation of what the NPS will do in its environmental review process.

AIRSTRIPS & BOAT LANDINGS NEXT TO PATENTED LANDS

What about adjacent accesses on NPS lands? The AUG is silent on the situation typical of hundreds of inholdings in Alaska national parks. A parcel of land may be so far from the road system - 50 or 100 miles or more - that the access is, by choice of the landowner, going to be by floatplane landing or boat or aircraft landing on an airstrip.

When a parcel is too small for construction of an airstrip, there will be need of adjacent NPS lands. In many cases this might be a braided unvegetated gravel river bed. But such may, from time to time, need minor modification or smoothing to be usable as an airstrip. When such airstrips are not locatable on patented lands and need to be on NPS lands, what is the permitting process and what are the parameters used? Prior to park creation BLM had no objection to such airstrip use to service an adjacent land patent. Please discuss in the AUG.

The safest practical mooring or landing location may not be immediately adjacent to the inholding. What about the access road needed? What about temporary vehicle parking at the mooring or landing location?

Also, the presence of an airstrip nearby or on the private inholding must not preclude ground road access to the parcel. Many times the airstrip is too expensive for the bulk of goods haulage and people transport required. The owner needs and has the right to determine this, not the NPS. Why was the owner-preferred route language removed from the 1st AUG?

ACQUIRED LANDS

ANILCA does not make any distinction regarding the obligation for the NPS to provide Section 1110(b) access to inholdings irrespective of whether it traverses public domain or acquired (purchased) lands. Please address/confirm this in the revised user AUG.

ACCESS RIGHTS ARE NOT JUST FOR LANDOWNERS

It must always be remembered that these 1110(b) access rights benefit more than just landowners. The wider public enjoys accommodations on private lands which provide many thousands of visitors possessing average physical, financial, and health limitations with, in many cases, the only way they can have a meaningful, multiple-day visit inside the parks.

CONCLUSION

There should be no misunderstanding: Landowners value park resources and share with the NPS an interest in protecting the terrain from impacts. After all, it’s in their own back yard. They recognize there is value both to the inholder and the NPS in documenting locations of mandated blanket easements across surrounding NPS lands and discussion of maintenance procedures. It is in no one’s interest to encourage a situation where the values which bring visitors to the parks are harmed.

The proposed 2nd AUG remains heavy handed, overreaching, and not in the public interest. The NPS has failed to demonstrate through an objective, third party, peer-reviewed, scientifically valid approach that an oppressive access permitting system is necessary to satisfy mandated access or to produce improvement or protection of environmental values.

Finally, once again: The plain reading of the statute and the legislative history as stated in the Congressional reports, is that current and future owners of inholdings are allowed economic and practical access to their property. This includes overland surface access by motorized vehicles. This access benefits not only inholders but also many thousands of people who would utilize private accommodations on these lands because of personal choice or necessity due to age, health, disability or outdoor skills level. They otherwise would be unnecessarily denied options that enhance their visit to their national parks.

We would sincerely hope that future park inholders will be comfortable with this observation regarding the NPS by the 30th year of ANILCA:

When a plane flies over the homestead, there’s no concern if it is an NPS scientist or ranger. It would be a welcomed visit to share interesting natural observations or maybe enforcement tips against wildlife violators or deal with visitor litter. Or best of all, to just visit with a good neighbor, a public servant who does respected work and who in turn respects a resident who loves the land as much as she does.

There should be no reason it cannot be this way. With wise NPS and Interior Department leadership please make it happen. We stand ready to help.

ALASKA LAND RIGHTS COALITION

The purpose and mission statement of the Alaska Land Rights Coalition is to protect private property ownership and access rights and to defend and advocate access to, and multiple uses of, public land and waters in Alaska for recreation, transportation and economic livelihoods consistent with defensible land management principles. We have participants that include individuals as well as national and local organizations such as the American Land Rights Association, Residents of the Wrangells and the Kantishna Inholders Association.

[this page intentionally left blank]

Daily News

Dougherty
resident & EditorSteve Lindbeck
Associate Editor

Norman C. Brown

Fanning, Editor and Publisher, 1971-1983
Fanning, Editor and Publisher, 1967-1971

OPINION

COMPASS: *Points of view from the community***Let national park residents thrive**

By NEIL DARISH

Many people dream of living in the wilderness. Residents inside Wrangell-St. Elias National Park are examples of "self-reliant living" made real. The National Park Service is mandated to preserve not only wilderness but also heritage and culture. Wrangell-St. Elias National Park contains a remote wilderness culture, deep within America's largest national park. Should this community be allowed to continue?

In the 1960s, conservationists considered man a threat to the wilderness. Old Park Service management philosophy marginalized or eliminated locals. New Park Service management ideas incorporate cultural assets, and some parks are "run with, for and, in some cases, by local people." Management by Park Service is changing to better realize the value of indigenous cultures and local residents as stewards. Man is not always a threat to preservation, especially when communities are part of the landscape.

The George Wright Forum is a Park Service institution. It acts as a think tank, a place where ideas about conservation and managing national parks are developed. By publishing studies on "evolving living landscapes" where residents are "inclusive and constructive elements" to protected areas, they help mold the future of our National Park Service. In Europe and much of the developing world, "living landscapes" and residents are embraced as an essential part of their national parks; and it has been that way for the last 50 years. America's Park Service still struggles with thriving cultures as a resource worthy of preservation.

In the Cuyahoga Valley National Park in Ohio, there is fresh thinking about the notion of a "lived-in" park. The superintendent, John Debo, views continued occupancy, in certain circumstances, to contribute to the purposes for which the park was cre-

Park Service rangers share with local residents the love of nature, local history, the appeal of self-reliant living, and the importance of preserving this for future generations. The Park Service can become our hero if we as resident stewards are treated with respect by the Park Service — here and in Washington, D.C.

ated. He uses the terminology "residents" and "partners" rather than "in-holders," the latter implying something to be eliminated. Debo emphasizes that each park must carefully evaluate how the natural and cultural resource protection mission of that park can best be accomplished, and that a "one size fits all" approach is the antithesis of good park management. By the 1980s Cuyahoga had eliminated most of its residents, condemning and burning down their houses to bring the land back to wilderness. Today the Park Service regrets those actions.

The Alaska National Interest Lands Conservation Act enshrines Alaska's preservation of the cultural elements of remote living. The Park Service did not welcome private property in parks when Wrangell-St. Elias was formed. Congress created ANILCA to protect against the old Park Service management objective of eliminating all private land. Alaska, with its huge distances and lack of paved roads, has a flourishing remote culture, dependent on motorized vehicle trails like any other community on Earth. Locals aren't asking for new land or roads, just continued use of private land, roads and trails pre-dating the park, thus safeguarding a uniquely Alaska lifestyle. For 100 years residents have "broken trail," and "subsistence" has required driving funky vehicles somewhere unpopulated. Today these same trails and access

seem lined with unbreakable red-tape.

Park Service rangers share with local residents the love of nature, local history, the appeal of self-reliant living and the importance of preserving this for future generations. The Park Service can become our hero if we as resident stewards are treated with respect by the Park Service — here and in Washington, D.C.

Nature and thriving pre-existing communities are not mutually exclusive concepts. Around the world, administrators of protected areas have proven this. Current access issues, visitor kiosk closures and lawsuits reflect a need for a more inclusive agenda. Management actions reflecting the 1960s philosophy of "man is a threat to the wilderness" instead of the worldwide standard that "the residents are a resource" are counterproductive. Marcia Blaszk, the new Alaska regional director for the National Park Service, could set the tone for better cooperation between local residents and managers of Wrangell-St. Elias. Why move to Alaska if not for the love of nature? Who better to partner with than those who choose to live a wilderness lifestyle?

What is needed is a clear statement from our Park Service Alaska regional director that her philosophy allows the residents in this park to thrive.

Neil Darish is owner of the McCarthy Lodge in McCarthy and homesteaded outside of Fairbanks in the early 1990s.

[this page intentionally left blank]

ATTACHMENT B

ANILCA STATUTORY LANGUAGE GUARANTEEING ACCESS

ALASKA NATIONAL INTEREST LANDS CONSERVATION ACT
PUBLIC LAW 96-487-DEC. 2, 1980 94 STAT. 2465

VALID EXISTING RIGHTS

(16 USC 3169) SEC. 1109. Nothing in this title shall be construed to adversely affect any valid existing right of access.

SPECIAL ACCESS AND ACCESS TO INHOLDINGS

(16 USC 3170) SEC. 1110. (a) Notwithstanding any other provision of this Act or other law, the Secretary shall permit, on conservation system units, national recreation areas, and national conservation areas, and those public lands designated as wilderness study, the use of snowmachines (during periods of adequate snow cover, or frozen river conditions in the case of wild and scenic rivers), motorboats, airplanes, and nonmotorized surface transportation methods for traditional activities (where such activities are permitted by this Act or other law) and for travel to and from villages and home sites. Such use shall be subject to reasonable regulations by the Secretary to protect the natural and other values of the conservation system units, national recreation areas, and national conservation areas, and shall not be prohibited unless, after notice and hearing in the vicinity of the affected unit or area, the Secretary finds that such use would be detrimental to the resource values of the unit or area. Nothing in this section shall be construed as prohibiting the use of other methods of transportation for such travel and activities on conservation system lands where such use is permitted by this Act or other law.

(b) Notwithstanding any other provisions of this Act or other law, in any case in which State owned or privately owned land, including subsurface rights of such owners underlying public lands, or a valid mining claim or other valid occupancy is within or is effectively surrounded by one or more conservation system units, national recreation areas, national conservation areas, or those public lands designated as wilderness study, the State or private owner or occupier shall be given by the Secretary such rights as may be necessary to assure adequate and feasible access for economic and other purposes to the concerned land by such State or private owner or occupier and their successors in interest. Such rights shall be subject to reasonable regulations issued by the Secretary to protect the natural and other values of such lands.

[this page intentionally left blank]

ATTACHMENT C – Senator Stevens: NEPA does not apply to ANILCA Access!

United States Senate

Ted Stevens
Alaska

President Pro Tempore

Washington, DC 20510

(202) 224-3004

(202) 224-2354 (Fax)

July 18, 2006

Committees:
Chairman
Commerce, Science, and Transportation

Appropriations
Governmental Affairs
Rules and Administration
Library of Congress

Marcia Blasak
Regional Director
National Park Service
240 West Fifth Avenue
Anchorage, AK 99501

Dear Ms. Blasak:

Thank you for the chance to review the second draft of the National Park Service's (NPS) proposed User's Guide to Accessing Inholdings in a NPS Area in Alaska. I agree with you on the importance of providing clear guidance to owners of property located within national park units as to their rights under Section 1110(b) of the Alaska National Interest Lands Conservation Act (ANILCA).

Section 1110(b) grants the owners of property within national parks in Alaska a guaranteed right to adequate and feasible access to their land. Last year, I submitted comments to NPS in response to language in the first draft of the User's Guide stating that the National Environmental Policy Act (NEPA) applied to Section 1110(b). Having participated in the development of ANILCA, I know that NEPA does not apply. Congress did not intend that NEPA apply to that Section as evidenced by the use of the phrase, "notwithstanding any other provisions of this Act *or other law*" (emphasis added). Clearly, "other law" includes NEPA.

I understand NPS' position that current regulations require NEPA for access into Conservation System Units in Alaska and am requesting NPS begin a rule-making to amend existing regulations to provide that NEPA does not apply to access inholdings in national parks in Alaska under Section 1110(b). As explained above, this is consistent with Congressional intent. Legislation is another option I am willing to pursue if NPS prefers that course of action.

I look forward to working with you on this issue.

With best wishes,

Cordially,



TED STEVENS

Anchorage
(907) 271-5915

Fairbanks
(907) 456-0261

Juneau
(907) 586-7400

Wasilla
(907) 376-7665

Kenai
(907) 283-5808

Ketchikan
(907) 225-6880

Bethel
(907) 543-1638

[this page intentionally left blank]

NATIONAL PARK SERVICE REGULATORY OVERKILL

The example of the Spruce Creek Access Draft Environmental Impact Statement

The owners of twenty acres of land on Spruce Creek in Kantishna (Denali NP) asked for permission to construct a bush airstrip and small gravel road through an existing area of historic mining activity instead of continuing to travel up the bed of a stream nine miles to their property. The owners offered to help the NPS rehabilitate old mine workings near the road as they did their improvement and construction work. In response, the NPS hammered the landowners with a massive Draft Environmental Impact Statement (DEIS) that actually cost more than the construction cost of the proposed project! Then the NPS denied permission and sent them the bill.

How reasonable was this? The facts strongly imply an NPS regulatory overkill factor 150 to 1,300 times what is logical, reasonable, and accepted across the U.S. for other projects not involving the NPS [see Table below].

The NPS put those owners through an enormous amount of expense and risk by making the application process burdensome and tortuous. The 1999 process involving granting of ANILCA guaranteed access to these owners is cause for great concern.

There is no evidence that the NPS ever even considered the plain language of ANILCA that NEPA does not apply. Instead it rushed head long into maximum application of every environmental permitting angle it could dig up. It was entirely within the discretionary authority of the NPS to decide whether an EIS or only an EA was needed to provide this inholder access. And of course to avoid either elaborate process the NPS could have used a Categorical Exclusion to NEPA as it frequently does for its own disruptive activities on park lands.

What is the normal standard practice in the real world for environmental reviews of other projects? How did the NPS permitting requirements compare?

The table below compares the NPS DEIS to the DEIS that the Defense Department had to prepare about the same time for the massive \$2 to \$10 billion National Missile Defense (NMD) Deployment. The NMD involved the construction of 100 missile silos, a Battle Management, Command and Control Facility, and a thousand mile-long submarine fibre optic cable to the Aleutian Islands.

The NMD DEIS probably cost about 0.3% of the project cost. In contrast, the NPS caused a \$200,000 cost to the Spruce Creek owners for their DEIS, more than would have been spent to actually construct the road itself. The whole NMD DEIS runs 1209 pages while the NPS has produced a 425 page DEIS for Spruce Creek, a project that has only 0.003% of the cost of the NMD.

NPS regulatory overkill factor = 150 to 1,300 times!

NATIONAL PARK SERVICE REGULATORY OVERKILL

The example of the Spruce Creek Access Draft Environmental Impact Statement

COMPARISON OF DEIS EFFORTS: NATIONAL MISSILE DEFENSE (NMD) DEPLOYMENT to SPRUCE CREEK ACCESS (DENALI NATIONAL PARK)		
	NATIONAL MISSILE DEFENSE (NMD) DEPLOYMENT DEIS (9/99) ¹	SPRUCE CREEK ACCESS DEIS (7/99) ²
Size of DEIS	Two volumes, 1209 pages	One volume, 425 pages
Cost of DEIS	estimate \$5 million or less	\$250,000
Cost of Project	\$10 billion for NMD program; estimate \$2 billion for site and fibre optic cable construction.	\$200,000 to \$500,000
Cost of DEIS as % of Project	probably 0.3 % or less	50-125%
NPS Spruce Creek DEIS “Overkill Factor” based on DEIS as % of Project Cost	1	150 - 400 times
DEIS Pages per \$Billion of Project Cost	estimate 600 pages of DEIS per \$Billion of Project Cost	800,000 pages of DEIS per \$Billion of Project Cost
NPS Spruce Creek DEIS “Overkill Factor” based on DEIS Pages per \$ Billion of Project Cost	1	1,300 times
Sites Reviewed in DEIS	Eleven sites in Alaska, North Dakota; 1,000 mile long fiber optic cable route to Western Aleutians in Alaska; fibre optic cable route in North Dakota.	One locality
Total Site Related Employment	275 to 385	25 to 30
Project Description	Up to 100 missile silos; Battle Management, Command and Control Facility; In-flight Interceptor Communications System; X-Band Radar. Fiber optic cable line to Western Aleutians in Alaska and another fibre optic cable line in North Dakota.	Ten miles of narrow gravel road; small bush airstrip

¹ National Missile Defense (NMD) Deployment Draft Environmental Impact Statement, Sept 1999, U.S. Army Space and Missile Defense Command, Huntsville, Alabama. 2 Vols.

² Draft Environmental Impact Statement, Spruce Creek Access, Denali National Park and Preserve, July 1999.

**NPS IGNORES CONGRESSIONAL DIRECTION IT DOES NOT AGREE WITH:
DIRECTION OF DENALI NP ENABLING ACT CONCEALED BY MISQUOTING**

The 1917 enabling act for the establishment of Mount McKinley National Park, now Denali, directs the Secretary of the Interior through the NPS to manage the park in a way that encourages visitation. This Congressional direction has remained unchanged for almost 90 years. It has survived 41 Congresses and many amendment cycles to the Denali Park section of the U.S. code.

Apparently disagreeing, the NPS simply deletes Congressional direction it deems inconvenient when forced to quote the federal statutes in regulation rulemaking and park planning documents. To suit its agenda of limiting access it picks and chooses³ the sections of statute it likes, those talking about preservation, game and fish:

In 1917, Congress established Mount McKinley National Park to "set apart as a public park for the benefit and enjoyment of the people . . . for recreation purposes by the public and for the preservation of animals, birds, and fish and for the preservation of the natural curiosities and scenic beauties thereof . . . said park shall be, and is hereby established as a game refuge" (39 Stat. 938).

These lines were patched together by the NPS by selective extraction from three different sections to leave the impression that while the Park may have been set aside for the enjoyment of people and for recreation purposes, more emphasis was placed on preservation of natural features, curiosities, scenic beauty, and especially as a game refuge. A quite different impression is gained from reading the entire law.

The side-by-side below is the complete Denali National Park enabling statute that remains in force today which should be read and compared to the fragments the NPS has chosen to present as support for its rulemaking and other management purposes.

What did the NPS edit out? In Section 351 it deleted a clause directing the executive authority of the Secretary of the Interior [i.e. the NPS] to establish regulation "primarily aimed at the freest use of the said park for recreation purposes by the public."

In omitting this key passage, which is critical to an understanding of the Denali Park original framers' intent for the purpose of the park, the NPS deceives the public with a preamble and justification for its regulatory package restricting access that hardly satisfies the spirit of the Denali park enabling act.

Additionally, the intent of Congress to encourage ease of visitation was so great that in Section 353 Congress gave specific authority to the Secretary of the Interior to execute leases to parcels of ground throughout the Old Mt. McKinley Park, of up to 20 acres for up to 20 years, whenever the ground is necessary for accommodation of visitors.

³ Examples: 64 Fed Reg 61563 [proposed rulemaking regarding access on Denali Highway (the park road)] ; Environmental Assessment Spruce Creek Access, April 2002, Sec 1.3.2 <http://www.nps.gov/archive/dena/home/planning/ea/spruceea/saea1.html#1.3.2>

NPS IGNORES CONGRESSIONAL DIRECTION IT DOES NOT AGREE WITH:
DIRECTION OF DENALI NP ENABLING ACT CONCEALED BY MISQUOTING

DENALI NATIONAL PARK ENABLING STATUTEAkLRC
COMMENT

16 USC Sec. 347

01/05/99

TITLE 16 - CONSERVATION

CHAPTER 1 - NATIONAL PARKS, MILITARY PARKS, MONUMENTS, AND SEASHORES

SUBCHAPTER XXXIX - DENALI NATIONAL PARK

Sec. 347. Establishment; boundaries

The tract of land in the Territory of Alaska particularly described by and included within the metes and bounds, to wit: Beginning at a point as shown on Plate III, reconnaissance map of the Mount McKinley region, Alaska, prepared in the United States Geological Survey, edition of 1911, said point being at the summit of a hill between two forks of the headwaters of the Toklat River, approximate latitude sixty-three degrees forty-seven minutes, longitude one hundred and fifty degrees twenty minutes; thence south six degrees twenty minutes west nineteen miles; thence south sixty-eight degrees west sixty miles; thence in a southeasterly direction approximately twenty-eight miles to the summit of Mount Russell; thence in a northeasterly direction approximately eighty-nine miles to a point twenty-five miles due south of a point due east of the point of beginning; thence due north twenty-five miles to said point; thence due west twenty-eight and one-half miles to the point of beginning, is reserved and withdrawn from settlement, occupancy, or disposal under the laws of the United States, and said tract is dedicated and **set apart as a public park for the benefit and enjoyment of the people**, under the name of the Denali National Park. In addition to the above-described tract, all those lands lying between the south, east, and north boundaries above described and the following described boundary are made a part of and included in the Denali National Park for all purposes, to wit: Beginning at the summit of Mount Russell, which is the present southwest corner of the park; thence in a northeasterly direction one hundred miles, more or less, to a point on the one hundred and forty-ninth meridian, which is twenty-five miles south of a point due east of the upper northwest corner of the park; thence north along the one hundred and forty-ninth meridian twenty-five miles; thence west forty miles, more or less, to the upper northwest corner of Denali National Park as existing prior to January 30, 1922. (Feb. 26, 1917, ch. 121, Sec. 1, 39 Stat. 938; Jan. 30, 1922, ch. 39, 42 Stat. 359; Pub. L. 96-487, title II, Sec. 202(3)(a), Dec. 2, 1980, 94 Stat. 2382; Pub. L. 102-154, title I, Nov. 13, 1991, 105 Stat. 1000.)

**included in NPS
selective quote
from enabling
legislation**

Sec. 348. Entries under land laws not affected

Nothing herein contained shall affect any valid existing claim, location, or entry under the land laws of the United States, prior to February 26, 1917, whether for homestead, mineral, right of way, or any other purpose whatsoever, or shall affect the rights of any such claimant, locator, or entryman to the full use and enjoyment of his land. (Feb. 26, 1917, ch. 121, Sec. 2, 39 Stat. 938.)

**NPS IGNORES CONGRESSIONAL DIRECTION IT DOES NOT AGREE WITH:
DIRECTION OF DENALI NP ENABLING ACT CONCEALED BY MISQUOTING**

Sec. 349. Rights-of-way

Whenever consistent with the primary purposes of Denali National Park, section 79 of this title shall be applicable to the lands included within the park. (Feb. 26, 1917, ch. 121, Sec. 3, 39 Stat. 938; Pub. L. 96-487, title II, Sec. 202(3)(a), Dec. 2, 1980, 94 Stat. 2382.)

Sec. 350. Repealed in order to close area to entry and location under the Mining Law of 1872, subject to valid existing rights.

Sec. 351. Control; rules and regulations

Denali National Park shall be under the executive control of the Secretary of the Interior, and it shall be the duty of the said executive authority, as soon as practicable, to make and publish such rules and regulations not inconsistent with the laws of the United States as the said authority may deem necessary or proper for the care, protection, management, and improvement of the same, the said regulations being primarily aimed at the freest use of the said park for recreation purposes by the public and for the preservation of animals, birds, and fish and for the preservation of the natural curiosities and scenic beauties thereof. (Feb. 26, 1917, ch. 121, Sec. 5, 39 Stat. 938; Pub. L. 96-487, title II, Sec. 202(3)(a), Dec. 2, 1980, 94 Stat. 2382.)

key passage left
out of NPS
selective quote
from enabling
legislation

**included in NPS
selective quote
from enabling
legislation**

Sec. 352. Game refuge; killing game

The **said park is established as a game refuge**, and no person shall kill any game in said park except under an order from the Secretary of the Interior for the protection of persons or to protect or prevent the extermination of other animals or birds. (Feb. 26, 1917, ch. 121, Sec. 6, 39 Stat. 939; May 21, 1928, ch. 654, Sec. 2, 45 Stat. 622.) Act May 21, 1928, struck out provision that prospectors and miners could kill game or birds needed for actual necessities when short of food.

Sec. 353. Leases

The Secretary of the Interior may, in his discretion, execute leases to parcels of ground not exceeding twenty acres in extent for periods not to exceed twenty years whenever such ground is necessary for the erection of establishments for the accommodation of visitors; may grant such other necessary privileges and concessions as he deems wise for the accommodation of visitors; and may likewise arrange for the removal of such mature or dead or down timber as he may deem necessary and advisable for the protection and improvement of the park. (Feb. 26, 1917, ch. 121, Sec. 7, 39 Stat. 939; May 21, 1928, ch. 654, Sec. 1, 45 Stat. 622.)

key passage left
out of NPS
selective quote
from enabling
legislation

Sec. 354. Offenses; punishment

Any person found guilty of violating any of the provisions of this subchapter shall be deemed guilty of a misdemeanor, and shall be subjected to a fine of not more than \$500 or imprisonment not exceeding six months, or both, and be adjudged to pay all costs of the proceedings. (Feb. 26, 1917, ch. 121, Sec. 8, 39 Stat. 939.)