

FEDERAL OVERREACH SUMMIT

Citizens' Advisory Commission on Federal Areas

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Outline of this talk

1. Historical Context
2. ANILCA
3. Other Areas of Federal Overreach
4. How to Mitigate, Avoid & Fight Overreach
5. How to Defend Against Future Overreach

Historical Context

At Statehood – 104 million acres, except for a few National Parks and Refuges, remainder of 365 million acres.

BLM and USFS lands available for: timber, tourist lodges, commercial guides, oil & gas, operation of the mining law (i.e. staking mining claims).

In 1968 Prudhoe Bay was discovered – only one logical route for a pipeline.

Alaska Natives saw this as the mechanism to get a land settlement – filed suit.

ANCSA in 1971 – possibly the single most important Act since Statehood.

ANILCA in 1980 – 104 million acres removed from land available; increased Congressionally designated lands off limits to multiple use to 165.5 million acres.

How much is 165.5 million acres?

Texas has a total of 168 million acres;

165.5 million acres = the combined acreage of New York + New Jersey + Pennsylvania + West Virginia + Ohio + Indiana + Illinois!

Impacts of ANILCA – plus subsequent regulations & policies

ANILCA – billed as the huge compromise! Who compromised?

- State of Alaska – 104 million acres could not be selected (some lands with the highest mineral potential).
- Native Corporations – some of best could not be selected.
- Alaskans in general – most of 104 million acres is so restricted and inaccessible cannot be used or enjoyed.
- Most Americans will never benefit – only those financially independent, physically fit, and able to take off long periods of time, i.e. closed to elderly, disabled, disabled veterans, young families with children, etc.

Immediate impacts in 1980

- 104 million acres were forever closed to mineral entry (mining claims)!
- After +10 years of hope with uncertainty, many companies closed their doors
- Guides in new National Parks – >40 ordered to leave immediately

ANILCA – Impacts that followed later

Kantishna is one example:

- In 1985 – 24 family mines operating at Kantishna.
- Sierra Club and Northern Environmental Center – “cumulative affects EIS”.
- NPS took 5.5 yrs to say no mining – their criteria so strict, as to make it impossible.
- After spending >\$30k to design mine plan, settling ponds, reclamation, etc. told privately – you will never be allowed!
- Senator Stevens – over the next 10 yrs, 4 bills to provide compensation maybe 6 persons?
- NPS – even after claims have been declared “valid” by very rigorous dictates of the law, additional “validity exams” have been ordered.

On Refuges – long history of hassles to obtain and renew guide leases and many (most?) have been forced out of business.

Ongoing ANILCA Federal Overreach

- NPS Management Plans – updates seek to expand control, inside and outside park boundaries.
- Buffers on conservation system units (State legislators often hoodwinked also).
- AMRAP mineral evaluations required/promised under ANILCA - have been stopped.
- Annual report to Congress required of minerals work required by ANILCA – has been stopped.

A Major Promise of ANILCA - Valid Existing Rights

QUESTION: How could Congress been clearer?

A Major Promise of ANILCA - No More

Section 101 This act provides sufficient protection for the national interest in the scenic, natural....**thus Congress believes that the need for future legislation designating new conservation system units, new national conservation areas or new national recreation areas has been obviated thereby.** (emphasis added)

Section 1326(a) No future executive branch actions...

Section 1326(b) No further studies of federal lands in the State of Alaska for the single purpose of considering the establishment of conservation system unit, national recreation area, national conservation area or for related or similar purposes shall be conducted unless authorized by Congress.

QUESTION: How could Congress have been clearer?

Other Areas of Federal Overreach

- BLM Resource Management Plans – further limit access and add restrictions on use.
- USFS Forest Management Plans – further limit access and add restrict on use.
- National Petroleum Reserve-Alaska (NPR) – plan after plan after plan, always more restrictive.
- Plans – always “evaluate” for more “Wilderness” and “W&SR” designation.
- Why not also evaluate for removal of Wilderness, etc. designations?

Cannot change law by legislation? Then bypass the Congress by craft or decree:

- Antiquities Act – thanks to ANILCA cannot use in Alaska!
- Executive Orders – are used to bypass Congress.
- Roadless Rule – restricts activity in “inventoried” roadless areas; presence of roads has no bearing on designation; illegal under “no more” intent of ANILCA.
- Millsite Rule – can only have one 5-acre “Millsite Claim” for every 20-acre mining claim; no basis in administrative or case law.
- Ancillary Use Opinion – limits facilities on mining claims; contradicts 100+ years of administrative and case law.
- BLM restricting exploration on State selected lands – prohibition first begun Spring 2013; specifically addressed and allowed by ANILCA.
- USF&WS contracts with ENGOs do “studies” on projects they both oppose.
- “Friendly” ENGO lawsuits crafted with help from agencies – **Sue and Settle!**

Still more examples of federal overreach (alphabetical)

1. CERCLA – EPA seeking to control bonding of mining, even though States have local programs that are working fine.
2. Clean Air Act – continued expansion far beyond original intent.
3. Clean Water Act – continued expansion far beyond original intent.
4. Attack on coal – in every conceivable form: changing permitting rules; stream buffer rule; new coal ash restrictions; venting methane when mining; postponing & blocking of coal lease sales;
5. CWA – Wetlands – continued expansion far beyond original intent.
6. CWA – 404(c) - EPA Bristol Bay Watershed Assessment; canceled Spruce Mine 404 permit 3 years after issuance by Corps.
7. CWA – EPA – Waters of National Significance – this provision used to block bridge to CD-5 on North Slope; used block RR bridge over Tanana River.
8. Endangered Species Act – continued expansion far beyond original intent.
9. National Environmental Policy Act (NEPA) –
10. Public Land Orders (PLOs) – BLM now requires Plan amendment to remove; then does not follow ROD will not
11. Recordable Disclaimer of Interest (RDI) – new DOI policy to no longer allow.
12. Wildlands – DOI Secretarial Order 3310 – defunded nationally by Congress; illegal in Alaska per ANILCA but was still attempted.

How to Mitigate, Avoid and Fight Overreach

Excellent work by the Parnell Administration with funding support by the Legislature!

1. RS-2477 rights of way - AG detailed to DNR
2. Navigable waterways - AG detailed to DNR
3. Endangered Species Act – office in ADF&G
4. ANILCA offices in both DNR and ADF&G

Areas where similar approach is needed:

- 1. Ocean Zoning/Marine Spatial Planning** – needs a single responsible person.
- 2. World Heritage, Biosphere Preserves, International Parks:**
 - needs a single responsible person to track worldwide; appears occasionally;
 - needs Legislative Resolution to support federal legislation;
 - **Federal legislation needed to ensure that only the Congress can authorize any international designation of lands and waters in the U.S.**
 - In 1999 H.R.883 & S.510, the **American Land Sovereignty Protection Act** – passed on floor in House with bi-partisan support, stalled in Senate Energy Committee.
 - This needs to be reintroduced and become law.

World Heritage Site Examples

- Wrangell St. Elias NP is listed as World Heritage Site – In 1993 ENGOs referenced the designation as a reason to block the Icy Bay Timber Harvest on Chugach Alaska Corporation private lands.
- Yellowstone NP is listed as World Heritage Site – In mid-90s used to generate international pressure to stop the New World Mine in Montana [several miles outside the park, on a drainage flowing away from the park, in an historic mining district, mine would have cleaned up the historic workings].
- Volcanoes of Kamchatka World Heritage Site – listed 12/18/1996. That day Environmental Defense Fund, Pacific Environment & Resource Center and Sierra Club sent letters and press releases demanding that the Overseas Private Investment Corporation (OPIC) not provide political risk and finance insurance for the adjacent Aginskoye Gold Mine.
- Kakadu NP (Australia) is listed – used in attempt to block the Jubilukla uranium project (located adjacent to the 20-year old Ranger Uranium Mine).
- Beringia – not listed yet! So what is Beringia?

*“Today, **Beringia** is defined as the land and maritime area bounded on the west by the Lena River in Russia; on the east by the Mackenzie River in Canada; on the north by 72 degrees north latitude in the Chukchi Sea; and on the south by the tip of the Kamchatka Peninsula.” NPS website, 8/10/13*

NOTE: previously extended only as far west as the Kolyma River.



Current Beringia Activity

“On January 17, 2013, Russian Prime Minister Dmitry Medvedev **signed a decree creating the Russian National Park "Beringia," in the Russian North East region of Chukotka.** ([See map](#)) This region is directly across the Bering Strait from Alaska, and the national park designation in Russia would create opportunities for the National Park Service (NPS) to work more closely with the region on park-to-park projects. The establishment of a new national park in Russia is especially important to the NPS Alaska Region, as the designation makes federal lands available on the Russian side **for inclusion in an International Protected Area spanning the Bering Strait.**” [emphasis added] *NPS website, 8/10/13*

- Beringia Days – annual meetings which in the end are meant to increase acceptance of designation as World Heritage Site by Alaska Natives. Travel costs often paid by NPS.
- NPS lobbying – has included travels in Russian Far East.
- NPS – former Alaska NPS Director Barbie spoke to the Russian Duma in Moscow on Beringia.
- NPS staff – several in Alaska focused on Beringia program.

How More to Defend Against Future Overreach

1. Continue this Summit with the responsible offices reporting on their activities, concerns, successes and failures.
2. Raise the profile of these issues so Alaskans see the dangers.
3. Be alert.
4. Assign responsibilities to specific people.
5. Review every piece of federal (and state) legislation and provide comments that that will position the State for possible litigation:
 - Especially if it mentions or impacts federal land management agency in Alaska
 - Study it circumspectly, expect to find problems
6. Monitor often the NPS, USF&WS and NMFS websites and activities.
7. Watch Federal Agency proposals to Alaska Board of Game and Board of Fish.

More defense - Study the “opposition” (the enemy)

1. Follow money - Environmental Grantmakers organization directs spending of several \$100 million each year [often meet in Girdwood].
2. Follow the Pew Foundation and other foundations.
3. Follow Alaska Conservation Alliance – they launder the money and distribute the funds locally.
4. ESA – visit Center for Biological Diversity website every week.
5. Visit other websites often and connect the dots – Natural Resources Defense Council, Wilderness Society, Sierra Club, World Wildlife Fund, Oceana, any so-called “Keeper”, SE Alaska Conservation Council, etc.
6. Attend events – Beringia Days, etc.

Conclusions

- The number of avenues of attack can appear overwhelming.
- Federal agencies have a natural propensity to reach for more and more power, control, etc.
- Federal agencies are often not held accountable for their actions.
- We are terribly outspent with the hundreds of millions of dollars available to the ENGOs.
- The ENGOs have few if any scruples – e.g. the promises of ANILCA.

HOWEVER, we can prevail if we remain diligent in our efforts!