

Testimony of
J. P. Tangen
Alaska Miners Association
Before the Energy and Natural Resources Committee
Of the United States Senate
Field Hearing, Fairbanks, Alaska
March 28, 2016

Madam Chairman, Members of the Committee, I appear today on behalf of the over 1800 members of the Alaska Miners Association to address the subjects of “Resource Development – Opportunities to Create New Jobs and Strengthen National Security.”

I believe that it goes without saying that the very existence of the State of Alaska is dependent on the development of its abundant natural resources. Many of the mineral resources needed for our national security are found in Alaska. Over the past several decades, the United States has allowed itself to become dependent on the People’s Republic of China for a large number of those strategic minerals. Recent changes in China have highlighted the desirability for us to become self-sufficient. Accordingly, we briefly review the relevant statutory framework today and request appropriate changes.

I. The “The Alaska Statutory Trilogy”

No one can seriously argue that Alaska is not unique in many ways, not the least of which is the abundance and diversity of mineral resources that are found from one end of the State to the other.

The Alaska Statutory Trilogy repeatedly has recognized that abundance. First, the **Statehood Act** granted the State 104 million acres of land selections. This is an area greater in size than the entire State of California. The justification for such a significant grant was that due to our size, remoteness and sparse population Alaskans would need vast tracts of resource-rich land to develop to support its residents.

Second, the **Alaska Native Claims Settlement Act** in settling long-standing land claims afforded indigenous people a commercial paradigm for generating cash revenue independent of the public treasury. The settlement included forty-four million acres in land selections, which selections were frequently made with an eye toward resource development.

Third, the **Alaska National Interest Lands Conservation Act** was adopted, to ensure that distinguished park areas, refuges, rivers and representative woodlands were afforded unique consideration *without adversely impacting existing opportunities to develop the resources of the State*.

II. The Four Organic Acts

The Alaska Statutory Trilogy was adopted in the context of the respective contemporaneous organic mandates of the four major land managing agencies in Alaska.

Accordingly, ANILCA, for instance, was consented to and adopted based upon the practices of the four agencies as they were interpreted in 1980. Thirty-five years later these agencies have aggressively evolved in ways that deny the people of Alaska their expressly-intended benefits.

When adopted ANILCA created numerous Conservation System Units which frequently surrounded privately held inholdings and allotments and which were transected by trails and waterways customarily used for access through and across the subsumed areas. Since passage, the National Park Service, the Fish and Wildlife Service and the US Forest Service have all imposed restrictions vitiating the utility of these inholdings and access routes.

III. Corrective Legislation is Required

At this time, the Alaska Miners Association is calling for corrective legislative action, either in the form of a stand-alone bill, or as amendments to other germane legislation to accomplish at least the following goals:

1. The organic acts of the four major land management agencies need to be amended to harmonize with the requirements of the Alaska Statutory Trilogy.

See: Supplement Exhibit A.

2. *As a priority*, ANILCA needs to be amended to provide a clear, Alaska-specific **definition of what constitutes a “withdrawal”** in connection with land management plans in Alaska.

See: Supplement Exhibit B.

3. The **Alaska Land Use Council** was created by Title XII of ANILCA to facilitate coordination between the State of Alaska and the four federal land management agencies. The Alaska Land Use Council needs to be reconstituted to ensure that the four land management agencies have adequate oversight with regard to Alaska-specific land management activities.

See: Supplement Exhibit C.

4. **“Lapsed” Public Land Orders** (PLOs) have been recommended to the Secretary for revocation but have not been acted upon. Statutory action is now required.

See: Supplement Exhibit D.

5. **RS 2477 rights-of-way** to need to be conveyed to the State of Alaska by statute.

According to the Ninth Circuit in *Alaska v. United States*, (March 14, 2016): “R.S. 2477 is unusual, as land-grant statutes go, because of its self-executing nature. No formal document memorializing the grant of a right-of-way needed to be executed by a federal official.”

Up to this point, the Department of the Interior has interpreted RS 2477 to require the State to do the extensive research to verify the exact route of each trail. The State has identified the R.S. 2477 rights-of-way it asserts in A.S. 19.30.400 (1998). Each of the identified rights-of-way should be statutorily approved now, based on a fifty foot of the centerline description (to be described by the State) with adequate provisions for nearby borrow pits.

See: Supplement Exhibit E.

6. The **submerged lands** in the State belong to Alaska in accordance with the Statehood Act. Nonetheless, the Department of the Interior has required the State to go through a tortuous process to have them declared navigable. That process should be done away with. The standard should be simply whether the unfrozen waterway can float a laden raft.

Further, the exclusive police authority (except for federal laws of general application) of the State of Alaska over the management of navigable waters within Conservation System Units needs to be imposed on the land management agencies by statute.

See: Supplement Exhibit F.

Madame Chairman, this concludes the recommendations of the Alaska Miners Association at this time. We appreciate the opportunity to present these requests to you, and stand ready to assist your efforts to ensure that Alaska's mining industry remains strong, for the benefit of the State and for the security of the nation.