

Record of Decision

Wrangell-St. Elias National Park and Preserve
Final Environmental Impact Statement
Cumulative Impacts of Mining

National Park Service
Alaska Regional Office
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Cooperating Agencies:

U.S. Fish and Wildlife Service
U.S. Army Corps of Engineers



Boyd Evison, Regional Director

8/21/90
Date

BACKGROUND SUMMARY

On December 2, 1980, Section 201(9) of the Alaska National Interest Lands Conservation Act (ANILCA), 16 USC 410hh, established Wrangell-St. Elias National Park and Preserve. Preserves are managed in the same fashion as parks except that hunting and subsistence uses by local residents are allowed. The boundary encompasses approximately 13,188,024 acres, including 9,078,675 acres designated as wilderness by ANILCA.

The federal lands within Wrangell-St. Elias National Park and Preserve were withdrawn from location, entry, and patent under the United States mining laws, subject to valid existing rights, by Section 206 of ANILCA (16 U.S.C. 410hh-5). The National Park Service manages mining and related activity on previously existing patented and valid unpatented mining claims located within national park system units according to the requirements of the Mining in the Parks Act of 1976 (90 Stat. 1432). The Act closed all national park system units to mineral entry and location under the Mining Law of 1872 that remained open due to their enabling legislation or other specific statutes.

Regulations implementing the Mining in the Parks Act were promulgated by the National Park Service in 1977 and apply to mining and mining-related activity associated with pat-

ented and valid unpatented mining claims. These regulations, codified at Title 36 of the Code of Federal Regulations (CFR), Part 9, Subpart A: Mining and Mining Claims, are consistent with Congressional intent that all mining operations in national park system units be conducted in a manner that would prevent or minimize damage to the environment and other park resources.

On July 24, 1985, the United States District Court for the District of Alaska enjoined the National Park Service from approving mining plans of operations for mining and related activity in Alaska national park system units. The court order resulted from litigation filed by the Northern Alaska Environmental Center, Alaska Chapter of the Sierra Club, and Denali Citizens Council (Civil Case J85-009). The court order stated that some mining operations were causing environmental damage in the park units. Activities permitted by the NPS through approval of individual mining plans of operations could result in significant cumulative environmental effects.

The Court order directed the NPS to fully comply with its mining regulations at 36 CFR Subpart 9A and prepare the required environmental documents in compliance with the National Environmental Policy Act (NEPA) before approving mining operations in park units. Furthermore, the NPS was required to prepare ade-

quate environmental impact statements (EIS) that consider the cumulative effects of multiple mining operations in Wrangell-Saint Elias National Park and Preserve and Yukon-Charley Rivers National Preserve. This order was amended on December 4, 1985, to require the NPS to also prepare an EIS addressing the cumulative effects of mining in Denali National Park and Preserve. A final judgement and injunction continuing the prior injunctions was filed on March 7, 1988.

In April 1989, the National Park Service released the draft EIS for Wrangell-St. Elias National Park and Preserve for review and comment by the public, industry, special interest groups and government agencies. Clarifications and revisions were incorporated in the final EIS document, which was released for public distribution in May 1990.

DECISION

Based on a review of the impact analysis in the EIS, and input received during the public comment period, the National Park Service has decided to implement, in modified form, the proposed action in the FEIS: Alternative D: Acquire All Claims. This alternative is the most environmentally preferred as it has the least potential to cause damage to the biological and physical environment, and

would provide the highest level of protection, preservation and enhancement of park resources.

To implement this alternative, the NPS will develop an acquisition plan, pursuant to current NPS policy and guidelines, to acquire all patented and valid unpatented mining claims in Wrangell-St. Elias NP&P. Priorities for acquisition will generally be based on the criteria presented in the FEIS, appendix 10, which were developed for alternative C, but may be modified to align more specifically with individual park circumstances such as claim aggregation and potential development threats. These criteria separate claims into groups where park resources are threatened by proposed mining activity, and those where mining activity would not adversely affect park resources.

Existing non-mining developments or improvements on patented claims will be reviewed for compatibility with park purposes and possible acquisition. Compatible non-mining developments and improvements could be excluded from acquisition.

Cost: The current gross value estimate for mining claims in Wrangell-St. Elias National Park and Preserve is \$13.5 to 19.0 million. Individual claim fair market values will be determined at the time of acquisition by an independent appraisal and may exceed these gross value estimates. Actual acquisition costs will be

higher due to normal administrative costs such as appraisals, title clearances, hazardous waste surveys, closing costs and relocation costs.

Interim Operations: Until such time as funds are available for acquisition the National Park Service will process mining plans of operations, amendments and modifications to existing mining plans of operations according to the regulations for mining at 36 CFR Subpart 9A, the access provisions of the Transportation and Utility System regulations at 43 CFR Part 36, the National Environmental Policy Act, Section 810 of ANILCA and other applicable state and federal requirements, including further consideration of the cumulative impacts of mining operations within the context of specific proposed operations.

The evaluation of mining proposals would include, where adequate information is available, establishing and using resource protection goals to quantitatively evaluate the relative level of cumulative impacts on park resources for consideration in decisions to approve or deny mining proposals. Resource protection goals would not be used as absolute thresholds that, if not met, would result in denial of a mining proposal. Conversely, resource protection goals are a tool for evaluating cumulative mining impacts and is only part of the information the NPS would use in determining the appro-

priate action for a mining proposal.

Since the regulations at 36 CFR Subpart 9A are intended to ensure that mineral-related activities associated with mining claims do not significantly injure or adversely affect park resources, and are not intended to constitute a "taking" of any compensable property interest of a mining claimant, plans will be reviewed as they are submitted to achieve this balance.

Any plans of operations approved will include appropriate mitigation and reclamation measures to minimize the effects on park resources. If, however, the National Park Service determines that the impacts of proposed mining operations would violate the decision standards of 36 CFR 9.10 for plan of operations approval, and the effects could not be sufficiently mitigated, the plan would be disapproved pursuant to the existing regulatory standards.

It is not the intent of the National Park Service to amend the existing regulations. The mining regulations are designed to reasonably regulate, rather than prohibit, mining operations. Absent the acquisition of mining interests, some environmental impacts to park resources will result from mining activities approved prior to acquisition. In the interim, until funds for the acquisition are available, all plans of operations approvable under 36 CFR Subpart 9A will be approved.

NPS Reclamation Program: Subject to the availability of funds, the National Park Service will pursue a reclamation program on disturbed mineral properties acquired by the United States, as well as on unreclaimed abandoned, void, donated claims. Reclamation activities undertaken by the NPS will be guided by the same standards as applied to mining plans of operations. Reclamation site plans and environmental clearance documentation will be prepared prior to initiation of these activities.

Where appropriate, the National Park Service will consider using any authority it may have to require the responsible party to do or assist with the necessary reclamation.

Hazardous Waste Surveys: Secretarial Order 3127 and implementing procedures in Departmental Manual 602 DM 2 specify Interior Department policy and requirements for potential acquisitions of interests in real estate involving hazardous substances. Current policy generally prohibits acquisition if hazardous substances are present and expenditure of Departmental funds would be required for cleanup. The intent of the policy is to ensure that certain cost factors are considered in land acquisition proposals. These factors include the costs of studying, analyzing and correcting problems associated with hazardous substances, which the Department may otherwise be liable for upon acquisition.

The above authorities require a review of lands, or any interest in lands, under consideration for acquisition, to determine whether there is a reasonable probability that hazardous substances are present. The National Park Service will comply with all survey requirements to determine the presence and extent of hazardous substances on all mining claims to be acquired pursuant to S.O. 3127 and 602 DM 2. Determinations as to whether to pursue acquisition of a property containing hazardous substances will be made on a case-by-case basis after the survey is complete.

In addition, the NPS has initiated surveys of abandoned, void and donated mining properties to determine the extent of hazardous waste contaminants which may be present. The NPS will continue to survey these properties and will comply with Federal and State law regarding the cleanup and disposal of regulated substances.

Summary of Interim Regulatory Procedures for Decision.

Until such time as funding and approval are provided to implement the proposed action, the National Park Service will conduct mining plan of operations review and evaluation by adopting, on an interim basis, Alternative C (see Other Alternatives Considered in this Record of Decision). If Congress does not enact special legislation restricting future patents for mining claims or appropriate funding to implement the strengthened claim

acquisition program, which are elements unique to Alternative C, the National Park Service will, in effect, be adopting Alternative B on an interim basis. The procedures for processing mining plan of operations and evaluating of cumulative mining impacts are identical for alternatives B and C. Regardless, cumulative impacts will be further considered in the context of specific proposed operations.

Takings Implication Assessment: The National Park Service has completed a separate Takings Implication Assessment (TIA) as required by Executive Order No. 12630 (53 Federal Register 8859; 3/18/88), Governmental Actions and Interference With Constitutionally Protected Property Rights. The National Park Service has prepared the TIA according to guidance provided in the Attorney General's Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings, and the Attorney General's Supplemental Guidelines To Evaluate the Risk and Avoid Unanticipated Takings for the Department of the Interior.

To the extent that the National Park Service proceeds with any non-voluntary acquisitions of mining claims, they would be pursued through the normal eminent domain procedures of the federal government. Until such time as the National Park Service is able to proceed with acquisition, all plans of operations which are approvable under 36 CFR Subpart 9A will be approved. Therefore,

the proposed action does not present a significant takings implication and would not deny economically viable use of a protected property interest.

OTHER ALTERNATIVES CONSIDERED

Alternative A: Post-1985 Status Quo/No Action. The National Park Service would review and analyze proposed mining plans of operations according to applicable regulations, including 36 CFR Subpart 9A and the access provisions of 43 CFR Part 36. The National Park Service would review individual plans of operations on a case-by-case basis and prepare the environmental documents required by the National Environmental Policy Act for each proposed plan of operations. Further specific consideration of cumulative mining impacts would be made during this process.

Alternative B: Proposed Action in DEIS-Review Operations under Existing Regulations, Including use of Quantitative Cumulative Impact Analysis and Resource Protection Goals.

The National Park Service would review and analyze mining plans of operations according to applicable regulations, including 36 CFR Subpart 9A and the access provisions of 43 CFR Part 36. The National Park Service would review individual plans of operations on a comprehensive basis and prepare environmental documents as required by the National Environmental

Policy Act including further consideration of the cumulative impacts of mining operations within the context of specific proposed operations.

The evaluation of mining proposals would include, where adequate information is available, establishing and using resource protection goals to quantitatively evaluate the relative level of cumulative impacts on park resources for consideration in decisions to approve or deny mining proposals. Resource protection goals would not be used as absolute thresholds that, if not met, would result in denial of a mining proposal. Conversely, resource protection goals are a tool for evaluating cumulative mining impacts and is only part of the information the NPS would use in determining the appropriate action for a mining proposal.

In cases where park resources would be significantly injured or adversely affected, or other circumstances would not justify approval, the National Park Service would pursue acquisition of the mining claims by purchase, exchange, or donation. A negotiated transaction would be sought based on fair market value. In appropriate situations where a negotiated transaction cannot be attained, the use of eminent domain may be considered. Valid mining claims would be acquired under existing authorities.

Until such time as funds are available for acquisition,

mining operations would be processed under applicable law as stated above. Since the mineral management regulations at 36 CFR Subpart 9A are intended to ensure that mineral extraction activities associated with mining claims do not adversely affect park resources and are not intended to constitute a "taking" of any compensable property interest of a mining claimant, plans would be reviewed as they are submitted to achieve this balance.

Plans of operations would include appropriate mitigation and reclamation measures to minimize the effects on park resources. If, however, the National Park Service determines that the impacts of proposed mining operations would violate the decision standards for plan of operations approval, 36 CFR 9.10, and the effects could not be sufficiently mitigated, the plan would be disapproved pursuant to the existing regulatory standards.

It is not the intent of the National Park Service to amend the existing regulations. The mining regulations are designed to reasonably regulate, rather than prohibit, mining operations. Absent the acquisition of mining interests, some environmental impacts to park resources would result from mining activities in the unit. In the interim, until acquisition funds are available, all plans of operations approvable under 36 CFR Subpart 9A would be approved.

The National Park Service would pursue a reclamation program on unreclaimed, abandoned and acquired mined lands owned by the United States and located within the unit's boundary.

Alternative C: Same as Alternative B but with a strengthened claim acquisition program and proposed patent restrictions. This alternative is the same as Alternative B in all respects, but also includes provisions for patent restrictions and a strengthened mining claim acquisition program. Authority would be sought to apply patent restrictions to all valid unpatented mining claims taken to patent in the future. Implementation of this element of Alternative C would require a change in law. Once patented, the claim surface would remain in federal ownership to limit new non-mining uses and developments. The proposed restricted mineral patent would convey the minerals only and the claims would be subject to the more stringent regulatory standard for reclamation.

The National Park Service would also initiate a strengthened mining claim acquisition program to acquire valid unpatented and patented mining claims whose development by mining or otherwise would be detrimental to park values.

SUMMARY OF ANILCA SECTION 810 FINDINGS

The proposed action and alternatives were evaluated for any effects on subsistence activities in compliance with section 810 of ANILCA. Based on this evaluation, the National Park Service has concluded that neither the proposed action nor any of the alternatives would have a significant impact on subsistence activities.

MANAGEMENT CONSIDERATIONS

Over the five year period since the injunction was imposed on mining activity in the three parks, the National Park Service has had the opportunity to carefully consider, investigate and evaluate the effects that mining activities have had, and would continue to impose on park resources. Although many factors and much data has been considered in the decision-making process, the following elements represent the primary management considerations which the National Park Service used in its decision to select Alternative D as the proposed action:

- Based on the impact analysis in the final EIS, past mining has had major impacts on park resources including aquatic resources and moose habitat. Future mining could result in major cumulative

impacts on these resources as well as grizzly bear habitat and caribou habitat.

- The National Park Service has the authority and responsibility to ensure that all mining operations, including reclamation, are performed in a manner to prevent or minimize damage to the environment and other resource values. The proposed action represents the most comprehensive and collective approach to reducing the recovery time for land and water areas previously disturbed by mining operations.
- The National Park Service recognizes the exercise of existing mineral rights associated with valid unpatented and patented mining claims located within national park system units in Alaska within the framework of its minerals management regulations for mining and mining claims at 36 CFR Subpart 9A. While the proposed action entails a gradual and complete phase-out of mining operations associated with these mineral rights, it also provides for just compensation of Constitutionally protected property rights at fair market value.
- The National Park Service received a total of 146 written comments and

testimony from 19 individuals at public hearings during the comment period for the draft EIS documents for Denali National Park and Preserve, Wrangell-St. Elias National Park and Preserve and Yukon-Charley Rivers National Preserve. Analysis of public comments indicates support for Alternative D, the claim acquisition alternative, by a factor of nearly 9 to 1.

- The National Park Service has no statutory authority to impose patent restrictions on mining claims which may be taken to patent in the future. The proposed action would most effectively decrease the potential that exists for the creation of incompatible patented inholdings within the park units.
- The proposed action is consistent with the General Management Plan/Land Protection Plan for Wrangell-St. Elias National Park and Preserve approved by the Director of the National Park Service (Oct. 1986).

The following factors were considered in not selecting the other EIS alternatives:

- Alternative A would not provide as optimum a level of resource protection as the proposed action, and has limited applications for assess-

ing the cumulative effects of multiple mining operations. Future mining could result in major cumulative impacts on park resources, including wetlands, aquatic ecosystem integrity, grizzly bear habitat, black bear habitat, moose habitat, riparian wildlife habitat, and visual quality.

- o Alternative B would not provide as optimum a level of resource protection, entails a less proactive approach to claim acquisition concerns and would not limit the creation of new patented inholdings as valid mining claims are taken to patent. Future mining could result in major cumulative impacts on park resources.
- o Alternative C would not provide as optimum a level of resource protection and is contingent upon a change of law for imposing mineral patent restrictions. Future mining could result in major cumulative impacts on park resources.

MITIGATION FOR DECISION

The National Park Service will include appropriate mitigation and reclamation measures, as determined during the mining plan engineering and environmental impact analysis, as

conditions of approval for plans of operations approvable under 36 CFR Subpart 9A. Past mining impacts on unreclaimed, abandoned and acquired lands located in the unit and owned in fee by the United States will be mitigated by the National Park Service reclamation program.

Examples of the types of reclamation and mitigation measures available for consideration include:

- o altering or restricting the timing, location, or extent of mining activity
- o reestablishing approximate original contours
- o reestablishing stream gradients, pool/riffle ratios and sinuosity
- o saving and redistributing topsoil materials
- o revegetation of disturbed sites
- o controlling water pollution

The actual measures applied will be determined according to site-specific conditions on a case-by-case basis, and will be considered in the plan-specific environmental documentation prepared for each plan of operations.

Other examples of mitigation and reclamation measures that may be considered by the National Park Service during processing of a mining plan of operations are provided in the

Bureau of Land Management,
Fortymile River Placer Mining
Final Cumulative EIS and
Placer Mining in Alaska: A
Guide to Mitigation and Recla-
mation (Bureau of Land Manage-
ment publication BLM-AK-GI-89-
021-3809-918). These docu-
ments are incorporated by
reference in this Record of
Decision.

INSPECTION, COMPLIANCE AND ENFORCEMENT

The National Park Service will monitor all existing approved mining operations, and any approved in the future, in the event funding is not otherwise available for acquisition. The purpose of monitoring is to ensure operator compliance with all standards and conditions of approved mining plans of operations, and to ensure proper enforcement of the regulations for mining and mining claims at 36 CFR Subpart 9A.

Monitoring may consist of any combination of the following elements, combined as appropriate to ensure compliance:

- announced and unannounced site visits to inspect mining and access activities
- stream water quality sampling by NPS or State
- regular aerial photography of operations
- close of season reports from operators

PUBLIC INVOLVEMENT

A notice of intent to prepare three EIS documents on the cumulative impacts of mining in Denali, Wrangell-St. Elias, and Yukon-Charley Rivers units of the national park system in Alaska was published in the Federal Register on May 7, 1986 (51 FR 16903). The notice also announced the intent to hold scoping meetings with interested parties and encouraged input from the public on the issues requiring treatment in the EIS documents.

Scoping meetings were conducted in September 1986 in Anchorage, Fairbanks and Eagle to identify major issues for the EIS documents. A list of issues was developed and published in the draft EIS. A second round of scoping meetings was conducted in March 1988 in Anchorage and Fairbanks to provide an opportunity for input on the range of alternatives for the EIS documents. EIS alternatives brochures were also mailed to all interested organizations, groups, individuals and government agencies. The response to the EIS alternatives brochure was published in the draft EIS.

A notice of availability for the draft EIS was published in the Federal Register on April 13, 1989 (54 FR 14871) and provided for a 60-day public review period. Over 700 copies of the draft EIS were distributed for review and comment.

A notice of extension of the public comment period for the draft EIS, and availability of technical background material and environmental information used in developing the draft EIS, was published in the Federal Register on June 15, 1989 (54 FR 25506).

Public hearings were conducted in May 1989 in Anchorage and Fairbanks to receive oral comments on the draft EIS and ANILCA Section 810 evaluation. A notice of the public hearings was published in the Federal Register on May 4, 1989 (54 FR 19249). Notice of the public hearings was also published in local newspapers. All written and oral comments received during the public review period are printed in the final EIS.

A Notice of Availability for the final EIS was published in the Federal Register on June 8, 1990 (55 FR 23477). This Record of Decision reflects consideration of all written and oral comments received during the 30 day no action period.