



United States  
Department of  
Agriculture

Forest  
Service

Washington  
Office

14th & Independence SW  
P. O. Box 96090  
Washington, DC 20090-6090

*File Code: 1570-1 (EMC)*

*Date: April 13, 1999*

*Mr. Eric Fjelstad  
Abacus Mineral Corporation  
Ziegler Law Firm  
307 Bawden Street  
Ketchikan, Alaska 99901*

*RE: Appeal of the Record of Decision for the Tongass National Forest (#97-13-00-0095,  
#97-13-00-0104, #97-13-00-0115, #97-13-00-0121, #97-13-00-0122)*

*Dear Mr. Fjelstad:*

*Enclosed is the decision on the above referenced appeals.*

*Sincerely,*

*/s/ Steve T. Segovia  
for*

*CHRISTOPHER RISBRUDT  
Director, Ecosystem Management Coordination*

*Enclosures*

*Decision for appeals (#97-13-00-0095, #97-13-00-0104, #97-13-00-0115, #97-13-00-0121,  
#97-13-00-0122)*

*List of Parties  
1999 ROD*





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File Code: 1570-1 (EMC)

Date: April 13, 1999

*Mr. Paul Rusanowski  
Raven Environmental Services  
628 Basin Road  
Juneau, Alaska 99801*

*RE: Appeal of the Record of Decision for the Tongass National Forest (#97-13-00-0095,  
#97-13-00-0104, #97-13-00-0115, #97-13-00-0121, #97-13-00-0122)*

*Dear Mr. Rusanowski:*

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*Sincerely,*

*/s/ Steve T. Segovia  
for*

**CHRISTOPHER RISBRUDT**  
*Director, Ecosystem Management Coordination*

**Enclosures**

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File Code: 1970-1

Date: April 13, 1999

*Mr. Thomas C. Crafford  
Cook Inlet Region, Inc.  
2525 "C" Street  
P. O. Box 93330  
Anchorage, Alaska 99509-3330*

*RE: Appeal of the Record of Decision for the Tongass National Forest (#97-13-00-0095,  
#97-13-00-0104, #97-13-00-0115, #97-13-00-0121, #97-13-00-0122)*

*Dear Crafford:*

*Enclosed is the decision on the above referenced appeals.*

*Sincerely,*

*/s/ Steve T. Segovia  
for*

*CHRISTOPHER RISBRUDT  
Director, Ecosystem Management Coordination*

*Enclosures*

*Decision for appeals (#97-13-00-0095, #97-13-00-0104, #97-13-00-0115, #97-13-00-0121,  
#97-13-00-0122)*

*List of Parties  
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File Code: 1570-1 (EMC)

Date: April 13, 1999

**Mr. Jerry Scudero**  
**Taquan Air**  
**1007 Water Street**  
**Ketchikan, Alaska 99801**

**RE: Appeal of the Record of Decision for the Tongass National Forest (#97-13-00-0095,  
#97-13-00-0104, #97-13-00-0115, #97-13-00-0121, #97-13-00-0122)**

**Dear Mr. Scudero:**

**Enclosed is the decision on the above referenced appeals.**

**Sincerely,**

**/s/ Steve T. Segovia**  
**for**

**CHRISTOPHER RISBRUDT**  
**Director, Ecosystem Management Coordination**

**Enclosures**

**Decision for appeals (#97-13-00-0095, #97-13-00-0104, #97-13-00-0115, #97-13-00-0121,  
#97-13-00-0122)**

**List of Parties**  
**1999 ROD**





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File Code: 1570-1 (EMC)

Date: April 13, 1999

**Mr. Steven Borrell**  
**Alaska Miners Association**  
**501 W Northern Lights, #203**  
**Anchorage, Alaska 99503**

**RE: Appeal of the Record of Decision for the Tongass National Forest (#97-13-00-0095, #97-13-00-0104, #97-13-00-0115, #97-13-00-0121, #97-13-00-0122)**

**Dear Mr. Borrell:**

**Enclosed is the decision on the above referenced appeals.**

**Sincerely,**

**/s/ Steve T. Segovia**  
**for**

**CHRISTOPHER RISBRUDT**  
**Director, Ecosystem Management Coordination**

**Enclosures**

**Decision for appeals (#97-13-00-0095, #97-13-00-0104, #97-13-00-0115, #97-13-00-0121, #97-13-00-0122)**

**List of Parties**  
**1999 ROD**





*This is a decision on five appeals of the Record of Decision (1997 ROD) for the Tongass National Forest (Forest) Revised Land and Resource Management Plan (1997 Forest Plan) and its accompanying Final Environmental Impact Statement (FEIS). The appellants are: Abacus Mineral Corporation (#97-13-00-0095 (#0095)), Raven Environmental Services (#97-13-00-0104 (#0104)), Cook Inlet Region, Inc (#97-13-00-0115 (#0115)), Taquan Air (#97-13-00-0121 (#0121)), and Alaska Miners Association (#97-13-00-0122 (#0122)).*

*Your Notices of Appeal (NOA) were postmarked by September 25, 1998. The appellants' appeals were timely. The Regional Forester transmitted the relevant decision documentation and pertinent appeal records (AR) to this office. Many interested parties requested and were granted intervenor status (see enclosed lists of parties). Intervenors whose comments were received are also listed on the enclosed lists of parties.*

### *Secretary Review and Evaluation*

*The 1997 Forest Plan is based on Alternative 11 in the Tongass Land and Resource Management Plan Revision Final Environmental Impact Statement (FEIS), with modifications as documented in the 1997 ROD. The decision to approve the 1997 Forest Plan was subject to appeal in accordance with Forest Service appeal regulations at 36 CFR 217. Thirty-three notices of appeal were filed on the May 23, 1997, decision. In addition, two lawsuits have been filed that involve the appeals of the 1997 ROD. Also, the 1997 Forest Plan is implicated in at least one other lawsuit unrelated to appeals.*

*As the Under Secretary for Natural Resources and Environment at USDA, I have elected to exercise discretionary review of the administrative appeals relating to the Regional Forester's approval of the 1997 Forest Plan. This is not a step I take lightly. It is my belief that the continuing controversy and exceptional circumstances surrounding the Tongass Land and Resource Management Plan warrant my direct and immediate participation in order to bring this controversy to closure as quickly as possible so that the Forest Service can move forward with the Modified 1997 Forest Plan implementation. The residents of Southeast Alaska, their communities and elected officials, as well as business and organizations from the region, have long sought certainty in the management of the Tongass National Forest. A key to this certainty is ensuring the sustainability of the goods and services produced by the Tongass National Forest, and all the resources on which they depend. The enclosed 1999 ROD seeks to provide that certainty built upon a foundation of sustainable natural resource stewardship. Therefore, I have reviewed these appeals and related records. My decisions in the appeals reflect modifications contained in the enclosed 1999 ROD.*

*The 1999 ROD documents my decision and rationale to modify the 1997 Forest Plan. I am modifying some aspects of the 1997 Forest Plan, not because I find that it fails to meet mandatory requirements, but because I have concluded that, for multiple use reasons and to reduce the level of environmental risk, the Secretary's responsibilities and authorities should be exercised differently to improve the Forest Plan. The enclosed 1999 ROD changes development land use designations (LUD's) to mostly natural LUD's in 18 Areas of Special Interest totalling approximately 234,000 acres. The 1999 ROD also strengthens a standard and guideline (S&G) and adds another to address certain wildlife species, to improve subsistence opportunities and to reduce risk to old-growth ecosystem viability. Adjustments I made to management direction, together with unchanged portions of the 1997 Forest Plan,*

*will hereinafter be referred to as the Modified 1997 Forest Plan. The Modified 1997 Forest Plan is the document titled "Land and Resource Management Plan - Tongass National Forest", dated 1997, and is based on Alternative 11 in the "Tongass Land Management Plan Revision Final Environmental Impact Statement" with modifications as noted in the enclosed 1999 ROD.*

### *Regulatory Authorities*

*The regulations governing forest plan appeals are not based on statutes that require an appeal system, but instead are one way the Department meets its responsibilities under the Organic Act (16 U.S.C. 472, 551), the Multiple Use-Sustained Yield Act (16 U.S.C. 528-531) (MUSYA), and the National Forest Management Act (16 U.S.C. 1600, et seq.) (NFMA). As Under Secretary I am charged to provide leadership in resource management and assure the protection, management, and administration of the National Forests (7 U.S.C. 2.20). I also am charged under 7 U.S.C. 2.20(a)(2)(viii) to "exercise the administrative appeal functions of the Secretary of Agriculture in review of decisions of the Chief of the Forest Service pursuant to 36 CFR 215 and 217, and 36 CFR 251 Subpart C."*

*The regulations governing forest plan appeals (36 CFR 217.17) provide for discretionary review by the Under Secretary. Discretionary review is based on the appeal record presented to the Chief (36 CFR 217.17(e)). The appeal regulations grant broad latitude in deciding when to invoke discretionary review (36 CFR 217.17(a)). The 1997 Forest Plan falls within the scope of the identified factors that include, but are not limited to, the "controversy surrounding the decision, the potential for litigation, whether the decision is precedential in nature, or whether the decision modifies existing or establishes new policy." In fact, probably not since the Secretaries of Agriculture and the Interior jointly signed the 1994 "Record of Decision for Amendments to Forest Service and Bureau of Land Management Planning Documents Within the Range of the Northern Spotted Owl" has there been as compelling a need for final resolution of such a long-standing land management controversy. An expedited discretionary review harms no appellant's interests as the Chief's decision would be subject to discretionary review in any event, and the review is based on the same record. In sum, expediting the discretionary review portion of the appeal process, although unconventional, is in the best interest of the residents of Southeast Alaska and the public at large, and within the spirit and letter of the appeal regulations.*

*I find that the Regional Forester complied with applicable Federal law and agency policy in his approval of the 1997 ROD for the 1997 Forest Plan. However, as previously discussed, I feel modifications are needed to reduce the level of risk and uncertainty for ensuring environmental protection regarding three key issues which I found could be improved upon from the 1997 Forest Plan: (1) subsistence use and associated deer winter range/deer habitat capability; (2) assurance of adequate amounts and distribution of old-growth forest for species viability; and (3) protection of Areas of Special Interest.*

*My decision on the appeals reflects those modifications contained in the enclosed 1999 ROD and is the final administrative action by the Department of Agriculture.*

### *The Modified 1997 Forest Plan*

*The Modified 1997 Forest Plan is a programmatic framework for management of an administrative unit of the National Forest System.<sup>1</sup> The enclosed 1999 ROD explains what the Modified 1997 Forest Plan does. "This Plan provides the broad, programmatic direction necessary to manage the resources and uses of the Tongass National Forest in a coordinated and integrated manner" (Modified 1997 Forest Plan). It "will guide the management of the Tongass National Forest for the next 10 to 15 years" (1999 ROD). The components of Forest Plan direction, "along with the Land Use Designation map, establish a management framework that governs the location, design, and scheduling of all Forest management activities. Within the management framework, project-level planning is undertaken to achieve Forest Plan implementation" (Modified 1997 Forest Plan). The Modified 1997 Forest Plan sets forth goals and objectives for management and establishes programmatic standards to follow in pursuit of those goals. "Goals are achieved through the allocation of lands to the set of LUD's, through implementation of the Standards and Guidelines specified for the LUD's, and through other activities conducted on the Forest" (Modified 1997 Forest Plan). Pursuant to NFMA, the Modified 1997 Forest Plan identifies land that is suitable for timber production and determines the allowable sale quantity (ASQ), and other resource outputs, all of which are estimates.*

*Implementation of the Modified 1997 Forest Plan will take place through project-level decisions which must be within the bounds of the programmatic framework. As stated in the Modified 1997 Forest Plan, implementation is "accomplished through the recurrent identification of proposed actions . . . consistent with activities anticipated in the Plan; the analysis and evaluation of such actions . . . ; related documentation and decisionmaking; and project execution and administration, in a manner that is consistent with the management direction of the Plan" (Modified 1997 Forest Plan). Thus, the Modified 1997 Forest Plan standards operate as parameters within which projects must take place. Approval of any project must be consistent with the management standards. If a project cannot be conducted within these parameters, these safeguard mechanisms in the Modified 1997 Forest Plan will prevent such development from going forward (see *Swan View Coalition v. Turner*, 824 F.Supp 923, 933 (D. Mont. 1992)).*

*The 1999 ROD (Section VIII, Appeal Rights) notes that decisions on site-specific projects are not made in the ROD and that such decisions will not be made until completion of environmental analysis and documentation for the specific project, in compliance with the National Environmental Policy Act (NEPA). Thus, approval of the Modified 1997 Forest Plan does not mandate any project decisions. Each project or activity must be consistent with the programmatic environmental protection direction in the Modified 1997 Forest Plan (16 U.S.C. 1604 (i)).*

*Finally, the Modified 1997 Forest Plan establishes monitoring requirements to help determine how well the standards and management direction are working and whether the goals remain appropriate throughout the plan period. As stated in the Modified 1997 Forest Plan,*

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<sup>1</sup>*The Modified 1997 Forest Plan and FEIS were prepared under the authority of the Multiple Use-Sustained Yield Act (MUSYA) (16 U.S.C. 528-531); the Forest and Rangeland Renewable Resources Planning Act of 1974 (RPA), as amended by the NFMA (16 U.S.C. 1601-1614); the implementing regulations of NFMA (36 CFR 219); and the NEPA (42 U.S.C. 4321-4335 and its implementing regulations (40 CFR 1500-1508).*

*"... monitoring and evaluation comprise an essential feedback mechanism within an adaptive management framework to keep the Plan dynamic and responsive to changing conditions."*

*In summary, the Modified 1997 Forest Plan establishes a framework for decisionmaking on the Tongass National Forest using programmatic direction as a gateway for compliance with environmental laws at the project level.*

### *Response to Concerns*

*Your appeals contain concerns related to wild and scenic river designation.*

*My response to your concerns provides a focused response to contentions involving complex resource management issues. Although every contention made by you may not be cited in this decision, all of your concerns have been considered. My review of the concerns has focused upon the Regional Forester's compliance with law, regulation, and policy.*

### *Range of Alternatives*

*The following section addresses your concerns about specific aspects related to the nomination of Kegan and Niblack Lakes and streams for Wild and Scenic River status. The appellants contend:*

*"The Forest Service use of the Errata as an administrative vehicle was arbitrary and capricious and in violation of NEPA" (40 CFR 1503.4) (#0095 NOA, p. 13). They further allege that "[t]here is no authority, precedent, or support for the proposition that an agency can effect a major modification of a preferred alternative by way of an errata statement" (#0095 NOA, p. 14).*

*"The recommendation of the Kegan and Niblack systems under WSRA was not encompassed within the Range of Alternatives that the public could have reasonably believed were under Forest Service consideration for selection in the Record of Decision" (#0095 NOA, p. 29).*

*"That AMC and other impacted and interested parties have not been provided with proper notice in order to challenge this action in a reasonable manner, and without resorting to a costly appeal process . . ." (#0121 NOA, p. 2).*

*"The addition of these two drainages [Kegan and Niblack] after the end of the public comment period, and without any consideration of the impact on the mining company working diligently in compliance with all permits, and regulations on the Niblack mining claims can only be described as 'surreptitious'" (#0122 NOA, p. 5).*

### *Discussion*

*As required under Section 5 (d) of the WSRA, an evaluation to determine the eligibility; a river's potential classification as a wild, scenic, or recreational; and suitability for all rivers*

*and streams on the Tongass National Forest was conducted as part of the forest planning process (FEIS, p. 3-331). The evaluation determined 112 rivers were eligible for consideration for inclusion in the National Wild and Scenic Rivers System (FEIS, p. 3-331), including Kegan and Niblack Lakes and streams.*

*A suitability analysis was subsequently conducted on all 112 eligible rivers, including Kegan and Niblack Lakes and Streams, for designation to the National Wild and Scenic Rivers System. The appellants state in their concerns that recommending Kegan and Niblack systems for designation under the Wild and Scenic River Act (WSRA) was not encompassed within the range of alternatives or publicly disclosed in the RSDEIS (#0095 NOA, p. 24; #0115 NOA, p. 2; #0104 NOA, p. 9). However, the FEIS states that "one of the factors in the suitability reports was consideration of a range of alternatives for managing the river, whether recommended for designation or not" (FEIS, p. 3-337). The 112 rivers, with numerous segments, and three possible classifications (wild, scenic, or recreational), presented hundreds of possibilities for structuring alternatives at the Forest Plan level. By considering the range of alternatives for managing a river, "the river could be depicted in its current, most undeveloped condition in one alternative, and resource opportunities and state and local infrastructure needs could be recognized in other alternatives" (FEIS, p. 3-338). Thus the "alternatives were simply a starting point for comparing rivers, values, resource trade-offs, and opportunities" (FEIS, p. 3-338).*

*"Assigning a river to a given alternative was a reflection of the alternative theme, recognizing other possible combinations for a particular river might exist" (FEIS, p. 3-338). As with all of the eligible streams and rivers, a full suitability analysis was conducted on Kegan and Niblack Systems.*

*Chapter 3 of the 1997 Forest Plan, page 3-3, clearly showed that Kegan and Niblack Systems "will be recommended to Congress for inclusion in the National Wild and Scenic Rivers System" (1997 Forest Plan, p. 3-3). The Regional Forester's decision to recommend 32 rivers for designation and findings of Appendix A of the 1997 ROD also supported the initial statement in the 1997 Forest Plan which includes Kegan and Niblack Systems under Alternative 11. Rivers were also recommended for inclusion in the selected alternative based on public comment to the RSDEIS (Record RS-G-6, TLMP 1048 and FEIS, p. 3-338).*

*The appellants contend that public comments on the RSDEIS do not "justify the Forest Service's change in position with respect to the Kegan and Niblack systems" (#0095 NOA, p. 15). While public interest in individual rivers, either for or against designation, was a major factor in the final selections, the Forest Supervisors were also concerned with "how rare, superior, or unique the identified values were for individual rivers, and what effects long-term management would have on those values if a river were not designated" (1997 ROD Appendix A, p. A-1). "The Forest Supervisors were equally concerned with resource trade-offs, and potential conflicts with other Forest uses" (1997 ROD Appendix A, p. A-1).*

*The Tongass National Forest correctly followed and adhered to the process to determine eligibility of the 112 rivers. The Regional Forester concurred with the process used to determine the eligibility of rivers for inclusion in the National Wild and Scenic Rivers System.*

*After his careful review of the suitability analysis for all eligible rivers, the Regional Forester agreed that 112 rivers, in "whole or in part, are eligible for designation as part of the National Wild and Scenic Rivers System" (1997 ROD, p. 9). The Regional Forester's final recommendation included 32 rivers for designation to the National Wild and Scenic Rivers System (1997 ROD, p. 9).*

*If a river is considered eligible and suitable it may be recommended for designation as a Wild, Scenic, or Recreation River (FEIS, p. 3-326). It is important to note that the rivers identified in the selected alternative of the 1997 Forest Plan and in the Regional Forester's decision, will not necessarily be included in the Wild and Scenic Rivers System. The Regional Forester clearly explained that, "[t]hese recommendations are preliminary administrative recommendations that will receive further review and possible modification by the Chief of the Forest Service, the Secretary of Agriculture, and the President of the United States. Congressional action is necessary to designate rivers as part of the National Wild and Scenic Rivers System" (1997 ROD, p. 9).*

*The evaluation process used by the Forest Service to determine the eligibility and suitability of rivers and streams on the Tongass National Forest, was based on, among other things, an inventory of the Forest conducted by Forest Service, the Alaska Department of Fish and Game (ADF&G), and others with knowledge of river resources. The inventory also included information sources, such as the ADF&G's Catalogue of Waters Important to Anadromous Fish, the Forest Service's 1979 Forest Plan Value Comparison Unit (watershed) ratings for fish, wildlife and recreation, the ADF&G 1983 Sport Fish Habitat Improvement Program ratings of streams, inventoried potential Research Natural Areas, and other special Management Area inventories (FEIS, p. 3-331).*

*Due to the remoteness of many of the rivers, data on some aspects of a river, such as recreation use, was extremely limited. As stated on page 3-326 of the FEIS, "to the extent such information was available to the Forest Service, it was considered in the suitability studies." If streams and rivers appeared to have potential outstandingly remarkable values, the Forest followed the processes outlined in the Final Revised Guidelines for Eligibility, Classification and Management of Rivers Areas, 47 Federal Register 39454 (Sept. 7, 1982) and in Chapter 8 of FSH 1909.12, before eligibility was determined (FEIS, p. 3-331).*

*The appellants state in their NOA that the Forest Service relied on outdated and inaccurate data in determining the eligibility and suitability of the Kegan and Niblack systems (#0095 NOA, pp. 29-38; #0104 NOA, p. 2; #0121 NOA, p. 2; #0122 NOA, p. 3). However, before a river was determined to be eligible, the general criteria used for identifying outstandingly remarkable values were reviewed for accuracy and currency by officials from the National Park Service, U.S. Fish and Wildlife Service, Bureau of Land Management, ADF&G, Alaska Department of Natural Resources and its Division of Parks and Outdoor Recreation (FEIS, p. 3-334). As discussed, the Forest Service used not only on its own data to determine a river's eligibility, but also consulted expertise outside the agency before a river was recommended for wild or scenic river designation.*

*The term "outstandingly remarkable" as used in the WSRA has not been defined. "The determination of what features area outstandingly remarkable is largely a matter of professional judgement by the federal agency planners conducting the wild and scenic river study, although they may consult with recognized resource experts outside the agency. Any river, however, that has unique biological or geological characteristics, critical wildlife habitat, outstanding recreation, important historic or prehistoric sites, or is highly representative of a geographic area, may be a good candidate for the system" (Record RS-G-6-a, TLMP 443). As mentioned earlier, the FSH 1909.12, section 8.21c makes the statement: "[t]he determination that a river area contains 'outstandingly remarkable' values is a professional judgment on the part of the study team."*

*On November 16, 1998, a Decision Notice (DN) and Finding of No Significant Impact (FONSI) was issued by the Acting Tongass National Forest Supervisor, entitled "Niblack Lakes and Streams Forest Plan Amendment." The decision was to ". . . use a non-significant Forest Plan amendment to change the Wild River Land Use Designation to the same land use designations that are adjacent to the river corridor. This includes Timber Production, Old Growth Habitat, and Minerals Land Use designations." Also, the DN indicated that "[t]he Niblack Lakes and Streams system will not be recommended to Congress for addition to the National Wild and Scenic Rivers System."*

*The rationale for the DN was that "[t]he Niblack Lakes and Streams Wild River Land Use Designation and future recommendation to Congress as a Wild River addition to the National Wild and Scenic Rivers System was based on incorrect information. This decision and Forest Plan amendment will change the LUD's and rescind the recommendation to Congress, thus correcting the error and adding credibility to the overall Wild and Scenic River strategy included in the Forest Plan. The decision takes into account the 70+ foot barrier to anadromous fish less than 100 yards from saltwater which negates the reputed high anadromous fisheries values of the Niblack system; recognizes that other representative stream and lake systems are available in the area to fully represent anadromous fisheries and other values; and, the perceived restrictions to mineral exploration and development are eased. The fisheries values which are present will be protected through application of the Old Growth Habitat LUD on the lower segment and Forest Plan Riparian Standards and Guidelines in the headwaters" (Tongass National Forest DN and FONSI on Niblack Lakes and Streams Forest Plan Amendment of November 16, 1998).*

#### *Decision*

*After my review of the record, I find the issue related to the consideration of the Kegan system in the range of alternatives in the 1997 Forest Plan was adequately discussed. The recommendation by the Regional Forester for designation as wild, scenic, or recreational, is consistent with the WSRA, the Final Revised Guidelines for Eligibility, Classification and Management of Rivers Areas, 47 Federal Register 39454 (Sept. 7, 1982), Chapter 8 of the FSH, and the findings of Federal and State agency professionals. I affirm the Regional Forester's decision on this point.*

*However, as discussed above, the "Niblack Lakes and Streams Forest Plan Amendment" of November 16, 1998, indicates the Niblack Lakes and Streams system will not be recommended for addition to the National Wild and Scenic Rivers System.*

*Wild River Land Use Designation*

*Appellants contend, "[t]he Forest Service arbitrarily and capriciously abandoned the minerals LUD for the Kegan and Niblack areas" (#0095 NOA, p. 21).*

*Appellants contend, "[t]he Kegan/Niblack Area is not suitable for WSRA designation because of the presence of active mining exploration activities and existing mining structures and buildings" (#0095 NOA, p. 49).*

*Appellants contend, "[a]ccording to the National Wild and Scenic Rivers Act, the presence of this industrial development as situated within the boundaries of the proposed Wild River corridor, would negate the validity of a 'Wild' classification (no man made features present)" (#0121 NOA, p. 1).*

## **Background**

***The WSRA, describes the requirements used to determine a river's eligibility for designation in the National Wild and Scenic Rivers System. As stated by the WSRA Section 1 (b) as amended, "[i]t is hereby declared to be the policy of the United States that certain selected rivers of the Nation which, with their immediate environments, possess outstandingly remarkable scenic, recreational, geologic, fish and wildlife, historic, cultural, or other similar values, shall be preserved in free-flowing condition, and that they and their immediate environments shall be protected for the benefit and enjoyment of present and future generations. The Congress declares that the established national policy of dam and other construction at appropriate sections of the rivers of the United States needs to be complemented by a policy that would preserve other selected rivers or sections thereof in their free-flowing condition to protect the water quality of such rivers and to fulfill other vital national conservation purposes."***

***These "outstandingly remarkable" values should be a unique or exceptional representation for the area studied, within a geographic province, when compared to other rivers (Record RS-G-6-a, TLMP 443). "For study purposes, the Act requires that the evaluation of a river's eligibility consider, as a minimum, the area within one-fourth mile of either side of the high water mark of the river. However, features outside this corridor may be considered if their inclusion is essential for protection of the outstandingly remarkable values of the river" (FEIS Appendix E, p. E-4).***

***The process for determining whether a river should be recommended for inclusion in the National System consists of three steps. Eligibility is the first step in the assessment of a river segment for future inclusion to the National Wild and Scenic River System. As part of the forest planning process, river study teams determine eligibility for wild and scenic river designation by applying the criteria in sections 1(b) and 2(b) of the Wild and Scenic Rivers Act, the Final Revised Guidelines for Eligibility, Classification and Management of River Areas, 47 Federal Register 39454 (Sept. 7, 1982), and the procedures established in the Forest Service Handbook (FSH 1909.12, 8.21). The FSH states that "[t]he determination that a river area contains 'outstandingly remarkable' values is a professional judgment on the part of the study team" (FSH 1909.12, 8.21c).***

***The second step classifies the river or its segments according to the criteria in the WSRA. Section 16 (a) of the WSRA as amended, defines a river as "a flowing body of water or estuary or a section, portion, or tributary thereof, including rivers, streams, creeks, runs, kills, rills, and small lakes." "Wild river areas" are defined as "those rivers or sections of rivers that are free of impoundments and generally inaccessible except by trail, with watersheds or shorelines essentially primitive in character and waters unpolluted. These represent vestiges of primitive America." "Scenic river areas" are defined as "those rivers or sections of rivers that are free of impoundments with shorelines or watersheds still largely primitive and shorelines largely undeveloped, but accessible in places by roads." "Recreational river areas" are defined as "those rivers or sections of rivers that are readily accessible by road or railroad, that may have undergone some development along their shorelines and that may have undergone some impoundment or diversion in the past" (WSRA Section 2 (b)(1) as amended).***

*The final step is the determination that a river is suitable for inclusion in the national system. Suitability refers to "how designation of a river fits the overall management for the area, and considers the trade-offs with other resource values" (FEIS, p. 3-326). "The land manager's estimate of the worthiness of the river to be recommended as a component of the national system, as well as mixed land ownership, state and local government interests and the value of other resources and potential uses, may affect the decision to recommend a river as suitable" (FEIS, p. 3-326).*

## **Discussion**

*The appellants state in their concerns that the Forest Service did not explain anywhere in the FEIS or the Errata, the basis for its apparent decision to modify the Land Use Designation (LUD) classifications applicable to the Kegan and Niblack areas. In addition, they contend that the effects of WSRA designation on existing activities in the proposed river corridors were not disclosed (#0095 NOA, pp. 21, 39). "Land Use Designations (LUD's) specify ways of managing an area of land and the resources it contains. LUD's may emphasize certain resources (such as Wilderness, or old-growth wildlife habitat), or combinations of resources (such as providing for scenic quality in combination with timber harvesting). Each Land Use Designation has a detailed management prescription which includes practices and standards and guidelines" (FEIS, p. 2-1).*

*The designation of a river as a component of the National Wild and Scenic Rivers System can affect the management of various resources (FEIS, p. 3-336). On the Tongass National Forest, rivers that have been recommended for wild river designation are managed according to the goals, objectives, and desired condition of the wild river LUD. "The Wild and Scenic Rivers Act provides that the study boundary includes, at a minimum, the area within 1/4 mile either side of the ordinary high water mark of the river. Final boundaries can and do vary from this minimum, but generally follow the 1/4 mile guideline. Congressional designation as a Wild, Scenic or Recreational River in Alaska might result in the establishment of a Conservation System Unit as defined by ANILCA" (FEIS, p. 3-336).*

*The Regional Forester was consistent with the WSRA in his discussion of forest lands open to minerals exploration and development. In his decision he explained, "[s]hould Congress designate portions of rivers as 'Wild,' they will be withdrawn from mineral entry at that time. All withdrawals are subject to valid existing rights" (1997 ROD, p. 4). The Regional Forester went on further and noted, the need for future withdrawals from mineral entry, "such as to maintain natural ecological processes within Research Natural Areas, will be determined on a case-by-case basis" (1997 ROD, p. 4).*

*There are several effects of designating a river as wild. As mentioned above, Congressional designation as a wild river results in the area being withdrawn from mineral entry. In addition, "[s]cheduled commercial timber harvest is not allowed, and outputs of timber from tentatively suitable forest lands are foregone. Construction of major recreation facilities, roads, powerlines and other features are not allowed. However, if designated as a Conservation System Unit under ANILCA, Title XI defines a process whereby transportation and utility corridors may be allowed. The potential for hydroelectric power generation is also foregone" (FEIS, p. 3-336). The FEIS also explains that "[s]ome opportunities for fish and wildlife habitat enhancement would also likely be foregone," and the rights of landowners*

*within a wild river area would not be affected by designation, "except perhaps access constraints" (FEIS, p. 3-336).*

*The appellant's issue of the effect of WSRA designation on existing mining activities has been addressed by the FEIS. In addition to the aforementioned effects of designation, the FEIS discusses potential effects of recommending a river as wild, as they relate to limiting the future development of mineral resources important to Alaska's economy. If mining rights exist, "operating costs for existing mining activities in Wild river areas could increase due to requirements to minimize impact on the river values" (FEIS, p. 3-330).*

*As previously discussed, On November 16, 1998, a DN and FONSI was issued by the Acting Tongass National Forest Supervisor, entitled "Niblack Lakes and Streams Forest Plan Amendment." That decision changed the Wild River LUD to the same LUD's that are adjacent to the river corridor, and determined that the Niblack Lakes and Streams system will not be recommended to Congress for addition to the National Wild and Scenic Rivers System.*

#### *Decision*

*After my review of the record, I find the evaluation process used by the Tongass National Forest to determine eligibility and suitability of rivers recommended for designation to the Wild and Scenic Rivers System is consistent with law, regulation, and policy, including: the WSRA, the Final Revised Guidelines for Eligibility, Classification and Management of Rivers Areas, 47 Federal Register 39454 (Sept. 7, 1982), Chapter 8 of the FSH, and the findings of Federal and State agency professionals.*

*However, as discussed previously, the "Niblack Lakes and Streams Forest Plan Amendment" of November 16, 1998, indicates the Niblack Lakes and Streams system will not be recommended for addition to the National Wild and Scenic Rivers System.*