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Resource Review

August 1994 *A monthly publication of the Resource Development Council, Inc.*

New federal rules redefine access across remote areas

Proposed Rule seeks to clarify access under RS-2477 law

Proposed federal regulations dealing with rights-of-way on public lands in Alaska and the Lower 48 have drawn sharp criticism from Alaskans who disagree with the new rules which could preclude access along Alaska trails historically achieved by snow machines, sled dog teams, pack animals and foot.

The U.S. Department of Interior issued the proposed rules as part of an effort to settle long-standing confusion over the existence and management of many rural Western "highways" across public lands. If adopted, the regulations would establish a process for three Interior agencies, the Bureau of Land Management, the National Park Service and the U.S. Fish and Wildlife Service, to verify highway rights-of-way claimed by state and local governments under a now-repealed 1866 law (Revised Statute 2477).

Originally designed to encourage people to move West by allowing them access through public land, the RS-2477 rights-of-way law was repealed in 1976, but under a grandfather provision roadways created before then can still be developed. Because no documentation was required to legally create a roadway, the federal government has no idea how many there are, and both state and federal public land managers have disputed which rights-of-

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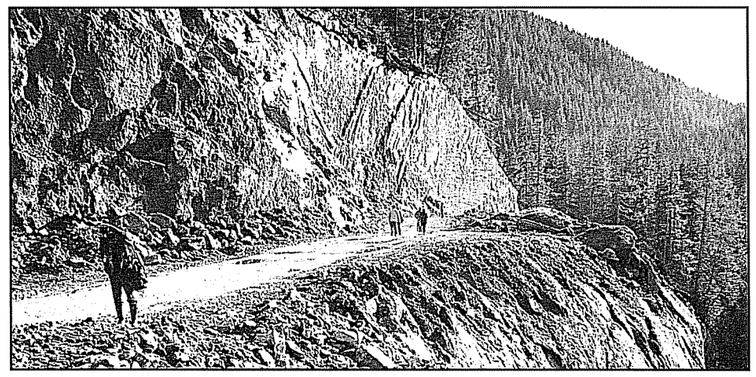

The U.S. Interior Department has unveiled a proposed rule by which it will recognize public access routes. Under the Proposed Rule, many of Alaska's remote historic trails and access corridors may not be recognized as public rights-of-way. Alaskans fear the federal government's latest attempt to clarify access laws in the West could obstruct access to villages, private property, mining claims and other locations.

Extension requested on public comments for Proposed Rule

The U.S. Department of the Interior has opened a 60-day public comment period on the new regulations dealing with RS-2477 rights-of-way in Alaska and the Lower 48.

The proposed regulations appeared in the Federal Register August 1. Comments will be accepted through September 30.

Governor Wally Hickel has asked Interior Secretary Bruce Babbitt to extend the public comment period by 90 days. The Governor noted that the comment

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Message from the Executive Director
by Becky L. Gay

RDC watching and working on ANILCA Title XI access issue

1980: Alaska National Interest Land Claims Act (ANILCA) passed.

Title XI of ANILCA concerned transportation and utility systems including roads, highways, railroads, airstrips, flumes, canals, pipelines, dock, electric transmission lines, radio and television transmission and relay towers and related facilities. It also, very importantly, protects individual rights of adequate and feasible access.

1986: In September, six years after ANILCA passed, the Department of Interior finally promulgated regulations under Title XI of the Act.

The Trustees for Alaska, Alaska Center for the Environment, National Parks and Conservation Association, American Wilderness Alliance, Northern Alaska Environmental Center, Southeast Alaska Conservation Council and Denali Citizens Council filed a lawsuit against the regulations naming U.S. Department of Interior and (then Interior Secretary) Don Hodel and raising a variety of issues.

1989: Through the Pacific Legal Foundation (PLF),on June 27, a court order granted intervenor status to RDC, the Alaska Miners(AMA) and the Alaska Loggers Associations(ALA) in the litigation. The Arctic Slope Regional Corporation (ASRC) also intervened.

1993: The regulations were upheld by the U.S. District Court in final judgment on March 16, a significant victory for the future of access in Alaska.

On May 17, Trustees file its Notice of Appeal to the Ninth Circuit Court of Appeals naming the new Secretary of the Interior, Bruce Babbitt. On behalf RDC, AMA and ALA, PLF responded by filing an opening brief on the appeal also stressing its interest in the inholder access rights challenged by the Trustees.

1994: In February, a new team for President Clinton came to Alaska and explored the situation with the various groups involved in the lawsuit, under the leadership of Molly Ross, a National Park Service attorney currently working directly for George Frampton, Assistant Secretary for Fish, Wildlife and Parks.

In March, in a brief declaration issued by George Frampton, the Department stated it had "decided to propose revisions to the Title XI regulations that are the subject of this litigation."

In July, while in Anchorage, Frampton said the proposed regulations would be made public by October 1994 and that Title XI would be the model by which Alaska access issues

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It took Congressional action to build a road from the Chukchi Sea to the Red Dog Mine in Northwest Alaska because the access route crossed Cape Krusenstern National Monument. Considering the complexity of Title XI, mine developers instead pursued a land exchange before Congress to build the road.

The Resource Development Council (RDC) is Alaska's largest privately funded nonprofit economic development organization working to develop Alaska's natural resources in an orderly manner and to create a broad-based, diversified economy while protecting and enhancing the environment.

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Resource Review is the official monthly publication of the Resource Development Council. RDC is located at 121 W. Fireweed, Suite 250, Anchorage, AK 99503, (907) 276-0700. Fax: 276-3887

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Guest Opinion
by Senator Ted Stevens

It's all-out war against timber industry

We all remember the tale of the boy who cried wolf; he kept conjuring up calamities that never materialized. In Alaska, we have a federal agency that is crying wolf...and goshawk, too.

Without public input, and outside of procedures established by law, the U.S. Forest Service is endeavoring to save two species that are neither endangered nor even threatened in Alaska; the Alexander Archipelago wolf and the Queen Charlotte goshawk.

Although the Forest Service has no evidence that these animals are declining in number, it is waging an all-out war on the timber economy of Southeast Alaska. The agency is pursuing its goal by delaying timber sales, creating no-harvest zones out of thin air, and reducing the amount of new timber that would go to Southeast Alaska mills by more than 50 percent.

A Lower 48 extreme environmental group has filed a petition to list the wolf and the goshawk under the Endangered Species Act without scientific evidence of declining populations. That's the slender reed the Forest Service's current acts are based upon, but its true goal is to end all logging on the Tongass National Forest.

Let's look at the facts: This year, the Forest Service canceled the Alaska Pulp Corporation's long-term timber contract, putting more than 450 Alaskans out of work. The agency offered no assistance whatsoever to the people of Sitka who wanted to replace the APC mill with an environmentally-friendly, medium-density fiberboard plant.

The agency did not follow-up on its promise to negotiate a new ten-year timber contract, and it has put up only 142 million board feet (MMBF) of new timber offerings this fiscal year. The average harvest over the past five years in the Tongass is approximately 400 MMBF.

In the Forest Service's mission to "save" species that aren't even threatened, it has marched into the Tongass and begun drawing 3 to 10-mile no-harvest circles around every tree with a goshawk nest. Each of those circles is 30 to 300 square miles. Nobody knows how much land the agency will require for "habitat conservation areas" to protect the non-threatened wolf.

The Forest Service is taking all these actions in the small portion of the Tongass specifically left for timber production by Congress. The Tongass National Forest — our nation's largest — consists of 17 million acres. Only 1.5 million acres are available for timber harvest, and if the Forest Service gets it way, that number will be dramatically reduced.

The Forest has imposed its no-harvest mandates by edict, ignoring the Tongass Timber Reform Act, the Alaska National Interest Lands Conservation Act, the National Forest Management Act, and the National Environmental Policy Act.

The Tongass Timber Reform Act mandates the Forest Service to provide timber to meet the demand of the mills in the Tongass. This year, ignoring the law, the agency will offer less than half of the timber necessary to meet that demand.

The Forest Service's actions also violate a specific section of ANILCA designed to stop the federal government from unilaterally withdrawing land in Alaska. The "no more" clause of that law makes clear that no agency can make land withdrawals in Alaska that exceed a total of 5,000 acres without public notice and congressional approval. The goshawk circles and the wolf areas clearly violate this law. The Forest Management Act requires public participation in forest planning before management procedures are implemented like those related to goshawks and wolves, but the public has not been consulted in this case.

The National Environmental Policy Act, of which I was an original cosponsor, states that if there is a significant official act by an agency, its environmental consequences must first be examined. No NEPA review has been conducted on the goshawk circles and the wolf habitat.

I had prepared legislation to make the Forest Service abide by these laws, but it is my judgment that since Forest Service chooses to ignore laws already on the books, it simply would not comply with a new law telling it to obey existing law.

The Forest Service is not alone. In a cynical effort to block my legislation, extreme environmental groups bombarded senators with false information. They said my amendment would block the PACFISH strategy, that it was aimed at allowing timber activities to threaten Southeast Alaska salmon.

They knew that was not the case.

The Forest Service has already promised me that the PACFISH policy of 300-foot buffer zones to protect salmon streams would only be implemented through the Tongass Land Management Plan. Furthermore, I'll join anyone to protect Alaska salmon. Over the years I have worked hard to obtain the funds necessary to enhance and protect salmon streams throughout our state.

Sadly, the promises made under the Tongass Timber Reform Act have not been kept by this administration.

The time has come for the Forest Service to stop crying wolf and to tell the truth. The no-harvest zones are not to protect the non-threatened and the non-endangered wolf or goshawk, instead they are just thinly disguised efforts to end logging and a way of life in Southeast Alaska.

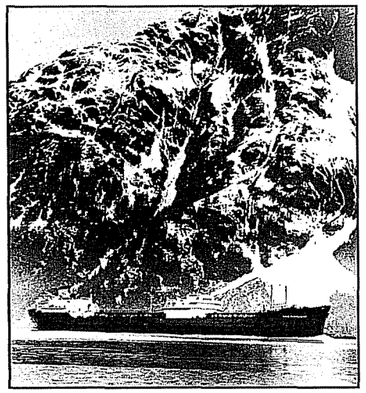
RDC comments on Proposed Rule for controlling tanker vapor emissions

The Resource Development Council has urged the Environmental Protection Agency to regulate the Valdez Marine Terminal separately from other terminals. In extensive comments on a newly-proposed rule for controlling emissions from oil tanker loading operations, RDC also supported a proposal by Alyeska Pipeline Service Company to install vapor emissions controls on two berths and to implement federally-enforceable operational limitations on a third berth which would have only temporary use due to declining throughput.

Factors such as the Valdez terminal's enormous size, its remote location, extreme climate, the complexity of controlling crude oil vapors, declining throughput and other aspects warrant treatment of the Valdez terminal as a separate subcategory, RDC said. Valdez is the site of the largest marine terminal in the United States, and it loads crude oil exclusively. By placing the Valdez terminal in a separate subcategory, the EPA would be in a position to establish a Maximum Available Control Technology standard that takes all these factors into account.

In addition, RDC pointed out that a three-year compliance timeframe, which would apply under Title III of the Proposed Rule, is more appropriate for the Valdez terminal than the two-year timeline allowed under Title I because of the size of the terminal and corresponding extent of work required, and due to the short construction season in Alaska. The Valdez terminal is 15 times larger than the next largest in the U.S.

Regarding vapor controls on terminal berths, RDC noted that vessel loading at most terminals is reasonably consistent from year to year, but with North Slope oil production in steady decline, loading at Valdez has been declining since 1988. Alyeska is currently loading vessels at four berths, but by 1997 the company anticipates it will only be using three berths for vessel loading, and one of those berths will only be used on a limited basis.



The Environmental Protection Agency is considering new rules for controlling vapor emissions from oil tanker loading operations.

Because of declining throughput, the third berth is projected to be needed for only limited routine loading until 2001. After that, Alyeska proposes to use the third berth only during maintenance or other short-term shutdowns of the other two berths. The ability to use the third berth while the others are down is necessary to provide operational flexibility.

The vapor control process at Valdez will be the most expensive one ever installed anywhere. According to Alyeska, the capital expense to install controls at two berths is $92 million. The additional cost to install controls to a third berth is $28 million in capital expense alone. Because 90 percent of throughput will be loaded from the two controlled berths when averaged over the remaining life of the terminal, it would cost considerably more on a per megagram basis to install controls on the third berth. In fact, it would cost more than three times as much per megagram to control emissions on the third berth as it would on the other two.

An Alyeska analysis showed that the average cost to remove a megagram of pollutant between compliance and the year 2015 is $239,225 at the two controlled berths and $766,060 at the third berth. Given its limited use, it would not be cost-effective to install controls at the third berth, RDC noted. RDC urged the EPA to apply cost/benefit considerations to ensure expensive controls are not installed on berths with limited remaining operational life and use.

Alyeska has chosen a vapor control technology that will remove 99 percent of volatile organic compounds and hazardous air pollutants. Loading emissions overall would be reduced by about 90% between compliance date and 2015 since more than 90% of throughput would be loaded at controlled berths.

Mining Law reform ...

(Continued from page 5)

"Chairman's Mark" that is closer to Rahall than Craig.

"Johnston's mark right now is not workable, it leaves too much discretion to the Secretary of Interior," said Borell. "The chairman's mark, like H.R. 322, appears to be written specifically to eliminate exploration and mining on the public lands."

A filibuster by mining supporters would be difficult to pull off this fall. There are roughly 25 senators who have indicated their support, but 41 are needed to sustain a filibuster.

If the filibuster fails, say good-bye to most mining in America.

"It is becoming more and more clear that there is a major war against the West, not just mining, but timber harvesting and other multiple uses on public lands," said Borell.

Senator Harry Reid of Nevada said that "members of Congress must understand that if they succeed in passing legislation that taxes and regulates U.S. mining operations to death, they will get nothing. Companies will close up shop and go elsewhere."

Thoughts from the President

by David J. Parish

Candidates brief RDC

Be an informed voter

This summer RDC's Executive Committee invited the leading Gubernatorial candidates to attend a series of informal issue discussions with our statewide board of directors. RDC is a non-partisan organization, but the nature of our issues require the staff and individual members to be politically involved and informed. It was in the spirit of communication and education that these discussions took place.

Republican candidates Jim Campbell and Tom Fink each briefed the group separately, as did Democratic candidates Sam Cotten, Steve McAlpine and Tony Knowles. It was rewarding to the group to note how long all of the candidates have been involved with RDC in various capacities.

Each individual candidate stressed their involvement with resource issues over the years and their commitment to strengthening sound resource policies. Tax issues and ideas for new revenue from enhanced resource development were also explored.

The state's budget situation was mentioned by all of the candidates, only the method for diagnosing which state expenditures should be cut differed. All of the candidates stressed the need for the next governor to show strong leadership on the budget issue, and be willing to take the heat for doing so.

The state's budget situation was mentioned by all of the candidates, only the method for diagnosing which state expenditures should be cut differed. All of the candidates stressed the need for the next governor to show strong leadership on the budget issue, and be willing to take the heat for doing so.

Each of the candidates raised value-added resource projects as opportunities to be explored, and most of the candidates supported continuing at least one of the state/federal lawsuits underway -- particularly the case involving the ANS oil export ban.

Overall, the discussions were open and honest. Each of the candidates offered a unique glimpse of themselves by being opened to a wide variety of very difficult questions.

Particularly since RDC does not endorse candidates, the board certainly appreciates the time given by the candidates before the August 23 primary to educate us on issues of common interest.

I encourage all members of RDC to follow the 1994 elections and attend candidate forums to learn where our next governor stands on the issues. Vote from an informed perspective.

Title XI access regulations ... *(Continued from page 2)*

would be decided.

On August 1, 1993, after substantially limiting access under a RS2477 directive (see related story this issue), Department of Interior officials again underscored the importance of Title XI of ANILCA in the future of access decisions.

As you can see, Alaska has a great deal riding on the outcome of the Title XI access regulations revisions. While we are all waiting, I hope you will continue to support RDC and its affiliate PLF in this worthy and precedent-setting pursuit which is of the greatest significance to the future of access in Alaska.

Just to give you a taste of the litigation, here are some points from PLF's arguments against Trustees:

1. The regulations are consistent with ANILCA, namely, Congress intended that there be reasonable and feasible access across Federal Conservation System Unit Lands in Alaska.

2. Congress intended for ANILCA to provide practical procedures for the creation of transportation utility systems.

3. The regulations' grant of access to Inholdings conforms to the statute. Specifically, ANILCA permits pipelines and transmission line access to inholdings; the government is not required to perform validity examinations of mining claims before allowing access and inholdings created after the enactment of ANILCA.e.g. land exchanges, are included in its protections.

4. The special access provisions of ANILCA were properly construed. Specifically, there is no statutory requirement to unduly restrict airplane and motorboat access, there is no pre-existing use test for special access, and helicopter and off-road vehicle use is permitted by ANILCA.

RS-2477 rule holds key to Alaska access

(Continued from page 1)

way are valid.

The issue is big in Alaska where RS-2477 rights-of-way have historically been used throughout the state for travel between villages and to access mining claims, private property and hunting and fishing grounds. Although representing only one component of the access equation, RS-2477 rights-of-way are considered the most secure and feasible form of access across federal areas.

"It doesn't intend, in any way, to take away access rights," said Deborah Williams, Alaska Assistant to Interior Secretary Bruce Babbitt. "The important thing to remember is that this is a proposed rule and the language could change."

Williams also said that Title 11 of ANILCA will allow new access to public lands if it is denied through the RS-2477 process.

But Alaska land managers note that Title 11 has not worked in reality and that RS-2477 must be preserved along with every available mechanism for providing rights-of-way, transportation and utility system corridors across the state.

The Proposed Rule would move the official procedure for granting a right-of-way from the judicial arena to the administrative realm. Claimants, such as state and local governments, would have two years to submit evidence to a federal land manager for recognition.

Definitions used to determine valid rights-of-way are expected to be the sharpest points of contention with the new rule. These definitions narrow past policy by requiring "highways" to "be a public thoroughfare used for the passage of vehicles to carrying people or goods from place to place."

In the Proposed Rule, the definition of "construction" would be defined to require evidence of "an intentional physical act" to prepare "a durable, observable physical modification of land for use by highway traffic." A 1988 policy would have adopted mere use or passage as sufficient to "construct" a "highway." The proposed regulation would supersede the previous policy.

Senator Frank Murkowski said the definitions don't fit Alaska.

"When Alaskans used the state's historic trails for access, they did so by foot or pack animal. They did not pave trails because that would have made no sense in a land of permafrost," said Murkowski.

"We've got a bunch of city slickers trying to figure out what a highway is in the West," said Dan Kish, a spokesman for Rep. Don Young. "If we don't have street lights and a gravel base, then somehow we don't have a highway, according to them."

In a recent decision, the Ninth Circuit Court determined that in Alaska's remote frontier areas undeveloped dog sled trails, foot paths and horse trails qualify as valid rights-of-way under RS-2477. The Court said the historic routes qualify as a public thoroughfare as long as the record was clear that public travel routinely occurred between two points over open public land.

Furthermore, recognizing Alaska's extreme climate and rugged terrain, the Court ruled that it is not necessary for an exact path to have been traveled year-round. The Court said that unlike other states, RS-2477 highways in Alaska are often no more than trails that move from season to season. It said that in Alaska a right-of-way could be established along different routes as long as the points on either end remained fixed. This decision clarified the use of winter trails, which vary from summer trails accessing the same destination.

Under the newly-proposed DOI rules, however, an RS-2477 highway must have had visible, durable construction or modification and have been used for the passage of vehicles carrying people or goods. Under this interpretation, historic dog sled trails, mule train routes or footpaths would not qualify.

The Interior Department says the recent Court decision is not consistent with Congressional intent or practice under the statute. It is seeking a rehearing of the Court's decision and has pledged to take any final decision into account when issuing a final rule.

The State fears that if Interior prevails, access corridors would be lost across federal lands, isolating vast areas of state, private and Native corporation lands. The State administration and Alaska's congressional delegation opposes the proposed rule.

The Proposed Rule not only affects Alaska but many roads across the West.

"We have thousands of roads across rural Utah that are used by the public every day and according to these regulations many of those roads will be shut down," said Rep. James V. Hansen, R-UT.

Feds' taking public comments on new rights-of-way rules

(Continued from page 1)

period coincides with the most active part of the late summer and early fall for Alaskans.

Steve Borell, Executive Director of the Alaska Miners Association, also urged Interior to extend the comment period.

"It has taken 128 years to write these regulations and now we have only 60 days to comment," Borell said. "The very people most affected by these rules are out in the field right now trying to make a living."

RS-2477 provides the only feasible access to many areas of the state, including native land holdings and state lands.

Copies of the proposed regulations may be obtained by contacting: Tom Gorey, BLM Public Affairs, 1849 C Street N.W., Room 5600, Washington, D.C. 20240, telephone (202) 208-5717.

Comments should be sent to U.S. Department of the Interior, Main Interior Building, 1849 C Street, N.W., Room 5555, Washington, D.C. 20240.

Mining Law reform heats up in Washington

Although a U.S. Senate-House Conference Committee has met only once this summer to hash out a federal Mining Law reform package, backstage activity is furious and committee chairman Senator Bennett Johnston (D-LA) has made it clear he wants the bill out before the end of August.

The future of the mining industry in Alaska and across the Western U.S. is on the line as the conference committee considers House and Senate legislation that would drastically affect mining on public lands, according to Steve Borell, Executive Director of the Alaska Miners Association.

Borell said Alaskans must encourage Johnston to move closer to the Senate conference position, S. 775, a bipartisan compromise bill sponsored by Senators Larry Craig (R-ID) and Harry Reid (D-NV). In addition, he urges Alaskans to contact any senators they know outside Alaska and ask them to support the major components of the Craig bill. The senators should also be asked to support a filibuster, if necessary.

"We need all the help we can get on a filibuster because it looks like its heading that direction," Borell said.

Mining supporters in the House are greatly outnumbered and were unable to prevent H.R. 322 from becoming the conference vehicle of the House. Sponsored by Rep. Nick Rahall (D-WV), H.R. 322 is supported by environmental activists and the Clinton Administration. Miners say the bill is a nightmare for the industry, warning that if it or something similar becomes law, future exploration will shut down and thousands of jobs across the West will be lost. H.R.. 322, they warn, will force American mining companies to go overseas and leave America dependent on foreign countries for resources that are plentiful here.

In the Senate, support has been split between the Craig bill and a Rahall-type bill sponsored by Senator Dale Bumpers. The Craig bill emerged as the Senate vehicle in the conference committee, but Chairman Johnston kicked off the conference with a

(Continued to Page 6)

Chairman's Mark

- 2 percent gross royalty with an escalating scale for gold and copper up to 33 percent
- Patents issued to mineral estate only, subject to a graduated royalty. Interior Secretary approves mining suitability before patents are approved
- New standards for operation and reclamation
- Mandatory permits for exploration, subject to the miner meeting new requirements, that the Secretary of Interior would have up to one year to review

Craig (S. 775)

- 2 percent net profit royalty
- Annual rental fees of $100 per 20-acre claim
- Continuation of mining claim patents and Mining Law withdrawal authority
- "Reasonable" operating and reclamation requirements

Rahall (H.R. 322)

- 8 percent royalty on gross income from mining
- Excessive rental and permitting fees
- New environmental regulations with new costs that duplicate existing laws and ignore the states' role in permitting and reclamation
- Land use policy that allows mining to be shut down almost at random

Which senators need your call?

There are 59 potential votes in the Senate to support a filibuster against irrational Mining Law reform (41 votes are needed). Anyone not listed here is deemed a definite "no" on support of a filibuster. Only 28 on this list are considered solid supporters. The rest all need work, and they ALL need our phone calls and faxes of encouragement. Address for all senators is: The Honorable (name), U.S. Senate, Washington, D.C. 20510.

Max Baucus (D-MT)
Robert Bennett (R-UT)
Jeff Bingaman (D-NM)
Kit Bond (R-MO)
David Boren (D-OK)
John Breaux (D-LA)
Hank Brown (R-CO)
Richard Bryan (D-NV)
Conrad Burns (R-MT)
Robert Byrd (D-WV)
Ben Campbell (D-CO)
Dan Coats (R-IN)
Thad Cochran (R-MS)
Kent Conrad (D-ND)
Paul Coverdell (R-GA)
Larry Craig (R-ID)
Alfonse D'Amato (R-NY)
John Danforth (R-MO)
Thomas Daschle (D-SD)
Dennis DeConcini (D-AZ)
Robert Dole (R-KS)
Pete Domenici (R-NM)
Dave Durenberger (R-MN)
Lauch Faircloth (R-NC)
Wendell Ford (D-KY)
Slade Gorton (R-WA)
Phil Gramm (R-TX)
Charles Grassley (R-IA)
Judd Gregg (R-NH)
Orrin Hatch (R-UT)
Mark Hatfield (R-OR)
Howell Heflin (D-AL)
Jesse Helms (R-SC)
Ernest Hollings (D-SC)
Kay Hutchinson (R-TX)
Daniel Inouye (D-HI)
Nancy Kassebaum (R-KS)
Dirk Kempthorne (R-ID)
Trent Lott (R-MS)
Connie Mack) (R-FL)
Harlan Mathews (D-TN)
John McCain (R-AZ)
Mitch McConnell (R-KY)
Frank Murkowski (R-AK)
Patty Murray (D-WA)
Don Nickles (R-OK)
Sam Nunn (D-GA)
Bob Packwood (R-OR)
Larry Pressler (R-SD)
Harry Reid (D-NV)
Richard Shelby (D-AL)
Alan Simpson (R-WY)
Robert Smith (R-NH)
Arlen Specter (R-PA)
Ted Stevens (R-AK)
Strom Thurmond (R-SC)
Malcolm Wallop (R-WY)
John Warner (R-VA)

Source: People for the West!