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Full Ninth Circuit Court vacates and grants rehearing of ruling that allows agency appointee to trade away public lands in Izembek Refuge without congressional approval

The Ninth Circuit Court of Appeals today vacated and granted a rehearing of a March ruling by a divided three-judge panel that allowed an Interior Secretary to overrule Congress and trade away lands in national parks, refuges, and Wilderness areas for economic reasons.

That panel's decision upheld a land swap designed to make way for a commercial gravel road in Izembek National Wildlife Refuge. Trustees filed a petition for rehearing en banc in April 2022 asking the entire Ninth Circuit Court to review the split court decision that threatens Izembek lands, waters and animals, and has dangerous and expansive implications for all public lands in Alaska.

“In vacating the earlier ruling and accepting our petition, the Ninth Circuit Court recognized the national significance of the Alaska National Interest Lands Conservation Act, President Jimmy Carter's landmark accomplishment that protected 104 million acres of Alaska conservation lands from industrial and commercial development,” said **Dr. David Raskin, president of Friends of Alaska National Wildlife Refuges**. “This is the first step to undo the dangerous Ninth Circuit panel split decision after two federal district court decisions had rescued Izembek National Wildlife Refuge from the Trump administration's backdoor land trade designed to punch an unnecessary and destructive road through the biological heart of the Izembek Wilderness. We hope that the Court will restore ANILCA legacy and protect and preserve 83 percent of national wildlife refuges and 60 percent of national parklands.”

Before the case went to the Ninth Circuit Court of Appeals, two Alaska District Court decisions rejected such an exchange. The Biden administration defended the Trump era land swap on appeal. A three-judge Ninth Circuit panel ruled 2 to 1 in March that the Interior Secretary could use the land exchange provision of ANILCA to gut a National Wildlife Refuge and congressionally designated Wilderness Area without congressional approval. The panel also found that ANILCA's purposes include providing economic benefits to the State and corporations within it, contrary to the law's plain language explaining that it is intended to protect conservation and subsistence in Alaska.

“By taking up this review, the Ninth Circuit Court of Appeals has signaled that there are significant legal questions with the split panel's ruling that an unelected Interior Secretary may overrule Congress by giving away lands designated as Wilderness,” said **Bridget Psarianos, senior staff attorney with Trustees for Alaska**. “We and our clients now look forward to going before the full Ninth Circuit, and continuing the fight to uphold the laws protecting Izembek and all of our state's national parks and wildlife refuges. We hope the Biden Administration will finally recognize the importance of this issue, both for Izembek's health and to prevent

commercial interests from undermining conservation and subsistence protections on public lands in Alaska.”

Commercial and private interests have advocated for a road through the heart of the Izembek Refuge for decades. Under the Trump administration, Interior made repeated attempts to make way for that road by trading away land in Izembek Refuge designated as Wilderness by Congress. A [court ruling](#) in March 2019 voided the first land swap, and Interior tried again in [June 2020](#). Interior appealed the 2020 Court decision and the Ninth Circuit heard [oral arguments](#) in August 2021. Trustees [filed an en banc petition](#) in April 2022, shortly after the Ninth Circuit’s split-panel ruling.

Trustees’ request for a rehearing was supported by three amicus curiae briefs, filed by a group of administrative and natural resource law professors, former Interior Secretary Bruce Babbitt and former Interior Solicitor John Leshy, and President Jimmy Carter.

In granting the rehearing, the Court ordered oral argument in one month.

Law firm Trustees for Alaska represents nine groups in the lawsuit: Friends of Alaska National Wildlife Refuges, Alaska Wilderness League, the Center for Biological Diversity, Defenders of Wildlife, National Audubon Society, the National Wildlife Refuge Association, Sierra Club, The Wilderness Society, and Wilderness Watch.

GROUP STATEMENTS:

“We welcome the court’s ruling to grant a rehearing, making way for safer options to protect the environment,” said **Peter Winsor, executive director at Alaska Wilderness League**.

“Unlawfully giving away public land to build a road right through the heart of a wildlife refuge makes no sense, and unnecessarily risks destroying the Izembek Wildlife Refuge’s unparalleled wilderness values.”

“It was obvious from the beginning that the destructive ruling by two Trump-appointed judges to uphold a land exchange must be reviewed by the court in the interest of wilderness areas and wildlife refuges across the nation,” said **Karlin Itchoak, Alaska senior regional director for The Wilderness Society**. “We trust that the full Ninth Circuit will find that the land exchange was illegal and undermines provisions in the Alaska National Interest Lands Conservation Act.”

“We are grateful the Ninth Circuit has chosen to rehear this case and reconsider a deeply flawed decision,” said **Defenders of Wildlife President and CEO Jamie Rappaport Clark**.

Defenders of Wildlife is optimistic that the court will ultimately reject this illegal land exchange and protect the irreplaceable wilderness and wildlife habitat of Izembek National Wildlife Refuge.”

“Today’s decision charts a way forward, though our work to protect Izembek is far from over,” said **Dan Ritzman, director of the Sierra Club’s Lands, Water, Wildlife campaign**. “Public lands cannot be traded to serve the special interests of a few at the larger expense of the American people, and we will continue to use every tool in our belts to ensure this irreplaceable piece of wilderness habitat is protected for future generations.”

“The Court’s decision to rehear the case has given the Izembek Wilderness and the other 100 million acres of conservation units in Alaska a tremendous reprieve from the destructive efforts of the Biden and Trump administrations,” said **George Nickas, executive director of Wilderness Watch**. “We’re confident we’ll prevail when the case is reheard, just as we did in the district court.”

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