

BIRCH HORTON BITTNER & CHEROT

1156 15th STREET, N.W. • SUITE 1020 • WASHINGTON, D.C. 20005 • TELEPHONE (202) 659-5800 • FACSIMILE (202) 659-1027

A PROFESSIONAL CORPORATION

HAL R. HORTON (1944 - 1998)

JENNIFER C. ALEXANDER
WILLIAM T. BAYNARD
RONALD G. BIRCH**
WILLIAM H. BITTNER
KATHRYN A. BLACK
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AMY W. LIMERES

JAMES H. LISTER**¹²
MELINDA L. MEADE MEYERS**³
MARA E. MICHALETZ
ZACHARIA D. OLSON*⁴
ELISABETH H. ROSS**
CARISSA D. SIEBENECK*⁵
AARON D. SPERBECK
HOLLY C. WELLS

OF COUNSEL:
WILLIAM P. HORN**

1127 WEST SEVENTH AVENUE
ANCHORAGE, ALASKA 99501-3399
TELEPHONE (907) 278-1550
FACSIMILE (907) 278-3880

** D.C. AND ALASKA BAR
† MARYLAND BAR
◊ VIRGINIA BAR
◻ PENNSYLVANIA BAR
* D.C. BAR
ALL OTHERS ALASKA BAR

Outline of Comments/Statement Regarding Guide Regulations History January 31, 2015

By: William P. Horn, Esq.

1. The State of Alaska regulated the establishment of guide area thru the 60's, 70's, and 80's.
2. Congress deferred to this State regulatory scheme when ANILCA was enacted in 1980. Specifically section 1307, which set forth various preferences for visitor services in the Park and Refuge units, exempted State regulated fishing and hunting guide services.
3. During the first 8 years of ANILCA implementation, the federal agencies deferred to the State guide area program and honored those State authorizations/permits to guide on federal land units.
4. In 1988, the Alaska Supreme Court declared unconstitutional the State guide area system as inconsistent with the Equal Use provisions. However, the decision outlined features, which if added to the guide area system, would make a guide area program constitutional. These included competition, reasonable time limits on permits, and State oversight of permit transfers.
5. New State legislation was drafted in 1989-1990 per the Court ruling but the legislation was not passed.
6. For three years there was a regulatory hiatus during which the State had no program and the federal agencies continued to wait for the State to act to fill the regulatory gap created by the 1988 ruling.
7. When it became evident that State action was not likely, the National Park Service (NPS) and U.S. Fish and Wildlife Service (FWS) took regulatory steps to create a federally administered guide area program on NPS Preserve lands and FWS Refuge lands. These two federal programs were first implemented in 1993-94 and have been in force and effect over the subsequent 20 years to fill the regulatory gap created by State inaction.
8. During this 20 year period, BLM accepted the regulatory gap and took no steps to create a program comparable to those set up by NPS and FWS. That hiatus is likely to end as BLM now indicates it intends to set up a similar federal program absent action by the State to do likewise.

9. The expansion of federal authority over guide services in Alaska is the direct result of State inaction. Passage of a State program will likely stop BLM from setting another federal guide program. Passage of a State program will also enable the State to go to NPS and FWS and seek to re-establish the State primacy on federal lands that existed until 1993-94.

10. Continued inaction by the State will lead to yet another expansion of federal authority and likely cement the guide programs of NPS and FWS.