

(LIMITED RUN FOR ALL ADDITIONAL SPONSORSHIPS)

CS FOR SENATE JOINT RESOLUTION NO. 26(RES)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-THIRD LEGISLATURE - SECOND SESSION

BY THE SENATE RESOURCES COMMITTEE

Offered: 2/25/04

Referred: Rules

Sponsor(s): SENATOR WAGONER

REPRESENTATIVES Wolf, Chenault, Lynn, Dahlstrom

A RESOLUTION

1 **Requesting the United States Department of the Interior and the United States**
 2 **Department of Justice to appeal the decision of the United States Court of Appeals for**
 3 **the Ninth Circuit in The Wilderness Society v. United States Fish and Wildlife Service**
 4 **and to seek an emergency stay of the decision pending an appeal of the decision.**

5 **BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

6 **WHEREAS**, on December 30, 2003, the United States Court of Appeals for the Ninth
 7 Circuit ruled in The Wilderness Society v. United States Fish and Wildlife Service (Case No.
 8 01-35266) that the stocking of hatchery-reared salmon fry into Tustumena Lake violated
 9 provisions of the Wilderness Act (16 U.S.C. 1131 - 1136); and

10 **WHEREAS** the United States District Court for the District of Alaska had ruled in
 11 favor of the United States Fish and Wildlife Service and denied a motion for summary
 12 judgment on behalf of the plaintiffs; and

13 **WHEREAS** a three-judge panel of the United States Court of Appeals for the Ninth
 14 Circuit found the stocking of salmon fry in Tustumena Lake to be consistent with the
 15 Wilderness Act and the Alaska National Interest Lands Conservation Act; and

16 **WHEREAS** an en banc panel of the United States Court of Appeals for the Ninth

1 Circuit erroneously ruled that the stocking of salmon fry in Tustumena Lake was an
2 impermissible "commercial enterprise" that is prohibited by the Wilderness Act, despite the
3 fact that the commercial harvesting occurs outside the Kenai Wilderness; and

4 **WHEREAS** the sockeye salmon enhancement program in Tustumena Lake
5 contributes significantly to the lives and activities of the residents of the Kenai Peninsula and
6 the loss of this project would create substantial hardships for the residents of this area and the
7 many nonresident fishermen who participate in fisheries outside the Kenai Wilderness; and

8 **WHEREAS** the decision of the en banc panel is important to Alaskans because
9 Alaska has over 50,000,000 acres of Congressionally designated wilderness areas, more than
10 all of the rest of the United States combined; and

11 **WHEREAS** the decision of the en banc panel has broad economic implications
12 throughout Alaska concerning the conduct of any commercially related activities, such as
13 guiding, trapping, customary trade, commercial lodges, eco-tourism, and other similar
14 operations, within or near a wilderness area that have been traditionally engaged in by
15 Alaskans; and

16 **WHEREAS** the decision of the en banc panel of the United States Court of Appeals
17 for the Ninth Circuit could be broadly construed to prohibit other fish and wildlife
18 management and research programs in wilderness areas designed to benefit a wide variety of
19 users, including some that are commercial in nature; and

20 **WHEREAS** the effects of this decision of the en banc panel are not limited to Alaska
21 and will detrimentally affect management of wilderness areas in the other states; and

22 **WHEREAS** the en banc panel of the United States Court of Appeals for the Ninth
23 Circuit did not conclude that the stocking of salmon fry in the wilderness area was
24 inconsistent with wilderness and refuge values or with Congressionally established purposes
25 for the withdrawals; and

26 **WHEREAS** the United States Fish and Wildlife Service has officially recognized and
27 approved this program since before the Kenai Wilderness was created in 1980; and

28 **WHEREAS** a one-year emergency stay of the decision of the en banc panel of the
29 United States Court of Appeals for the Ninth Circuit is needed to accommodate the release of
30 existing salmon fry this spring;

31 **BE IT RESOLVED** that the Alaska State Legislature respectfully requests that the

1 United States Department of the Interior and the United States Department of Justice appeal
2 the decision of the en banc panel of the United States Court of Appeals for the Ninth Circuit
3 in *The Wilderness Society v. United States Fish and Wildlife Service* (Case No. 01-35266) to
4 either the entire United States Court of Appeals for the Ninth Circuit or the United States
5 Supreme Court; and be it

6 **FURTHER RESOLVED** that the Alaska State Legislature respectfully requests that
7 the United States Department of the Interior and the United States Department of Justice
8 request a temporary emergency stay of the decision of the en banc panel of the United States
9 Court of Appeals for the Ninth Circuit to allow the enhancement project to continue this year
10 while the decision is under appeal.

11 **COPIES** of this resolution shall be sent to the Honorable Gale Norton, United States
12 Secretary of the Interior; the Honorable Theodore B. Olson, Solicitor General, United States
13 Department of Justice; and to the Honorable Ted Stevens and the Honorable Lisa Murkowski,
14 U.S. Senators, and the Honorable Don Young, U.S. Representative, members of the Alaska
15 delegation in Congress.