

**ALASKA STATE LEGISLATURE
HOUSE STATE AFFAIRS STANDING COMMITTEE**

April 22, 2004

8:08 a.m.

MEMBERS PRESENT

Representative Bruce Weyhrauch, Chair
Representative Jim Holm, Vice Chair
Representative Bob Lynn
Representative Paul Seaton
Representative Max Gruenberg

MEMBERS ABSENT

Representative John Coghill
Representative Ethan Berkowitz

COMMITTEE CALENDAR

OVERVIEW OF LAWSUIT: ALASKA VS. U.S.

TAPES

04-67, SIDE(S) A & B

CHAIR BRUCE WEYHRAUCH convened the meeting of the House State Affairs Standing Committee at 8:08 a.m. Representatives Weyhrauch, Holm, Lynn, Seaton, and Gruenberg were present at the call to order.

SUMMARY OF INFORMATION

JOANNE GRACE, Co-Counsel on the case State vs. U.S., explained that the case was filed by the State of Alaska in November of 1999 to [obtain the] quiet title to all the lands underlying marine waters in Southeast Alaska. It is an original action filed in the U.S. Supreme Court. Coastal boundary disputes between individual state's and the United States can be filed directly with the Supreme Court. A Special Master [Professor Gregory Mags] has been appointed by the Supreme Court to hear testimony on this case and provide recommendations to the Supreme Court. There are four counts in the complaint: Counts one and two require determination of the seaward boundary of the State of Alaska and counts three and four deal with title to submerged lands in land reservations created before statehood,

specifically, the Tongass National Forest and Glacier Bay National Monument.

MS. GRACE thoroughly discussed all aspects of the case that she can at this point. Since there is not yet a settlement, strategy was not part of the discussion.

LAURA BOTTGER, Co-Counsel with Ms. Grace, responded to a comment from Representative Seaton by saying that the State of Alaska provided prominent and compelling evidence regarding the United States' position on the inland water status.

CHAIR WEYHRAUCH asked about count three in which the federal government conceded to the state on the boundaries of the Tongass National Forest.

MS. GRACE provided general information on how the concession came about. In further response to Chair Weyhrauch, Ms. Grace specified that one other [entity] besides the Sierra Club, Wilderness Society, and the National Wildlife Federation filed an Amicus briefs in the case other than those by the Sierra Club, Wilderness Society, and the National Wildlife Federation, but the Special Master recommended against intervention and the [entity] was not allowed to intervene in the case.

MS. GRACE asked for clarification of a question from Chair Weyhrauch regarding the potential negative precedential impact of this decision if the Supreme Court upholds the Special Master to the navigable waters all over the State.

CHAIR WEYHRAUCH referred to the donut hole issues, tugs and barges hauling freight up the inland passage, cruise ships and ships that have fishing operations in those waters, and asked what the potential negative impact would be if the Supreme Court upholds the Special Master.

MS. GRACE specified that the impact of the donut holes is that those areas are not within the State of Alaska, therefore, they are under federal jurisdiction even though the State of Alaska has fisheries management jurisdictions of the donut holes.

MS. BOTTGER turned to Chair Weyhrauch's inquiry as to the recent statement by U.S. Senator Leiberman questioning the state's jurisdiction, Alaska ownership, over riverbeds in the Yukon Flats National Wildlife Refuge. She said this case deals only with marine waters, and therefore it doesn't touch on that area.

MS. GRACE, in response to Chair Weyhrauch, explained that the Supreme Court takes, as original actions, only a very limited category of cases, cases that it believes cannot be adjudicated in a local district court. The state would have to file the suit as the plaintiff, she noted. In further response to Chair Weyhrauch, Ms. Grace said there is one pending case filed 10 years ago, which is the Peratrovich Case. "Their" position is that those lands underlying the marine waters in the Tongass National Forest are federally owned, and therefore are public lands under the definition of Alaska National Interest Lands Conservation Act (ANILCA) for the purposes of Title 8. Plaintiffs in that case are of the opinion that if they are public lands under Title 8, then subsistence priority applies to those lands and the Federal Subsistence Board would have the authority to manage all the fisheries in Southeast Alaska.

ANNOUNCEMENTS

There were no announcements.

COMMITTEE ACTION

The committee took no action.

ADJOURNMENT

CHAIR WEYHRAUCH adjourned the hearing at 8:42 a.m.

NOTE: The meeting was recorded. A copy of the tape(s) may be obtained by contacting the House Records Office at State Capitol, Room 3, Juneau, Alaska 99801 (mailing address), (907) 465-2214, and after adjournment of the second session of the Twenty-Third Alaska State Legislature this information may be obtained by contacting the Legislative Reference Library at (907) 465-3808.