

**ALASKA STATE LEGISLATURE
SENATE RESOURCES STANDING COMMITTEE**

April 19, 2004

3:37 p.m.

TAPE(S) 04-41

MEMBERS PRESENT

Senator Scott Ogan, Chair
Senator Thomas Wagoner, Vice Chair
Senator Fred Dyson
Senator Ralph Seekins
Senator Ben Stevens
Senator Kim Elton
Senator Georgianna Lincoln

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

CS FOR HOUSE JOINT RESOLUTION NO. 35(L&C)
Relating to bovine spongiform encephalopathy, commonly known as mad cow disease, and country-of-origin labeling for meat products.

MOVED CSHJR 35(L&C) OUT OF COMMITTEE

SENATE BILL NO. 132

"An Act removing the Old Minto townsite from the Minto Flats State Game Refuge; and authorizing the Department of Natural Resources to convey certain land at the historic Old Minto site to the Minto Village Council."

HEARD AND HELD

PREVIOUS COMMITTEE ACTION

BILL: HJR 35

SHORT TITLE: MAD COW DISEASE/COUNTRY OF ORIGIN LABELS

SPONSOR(S): REPRESENTATIVE(S) KERTTULA

02/05/04	(H)	READ THE FIRST TIME - REFERRALS
02/05/04	(H)	L&C, RES
02/16/04	(H)	L&C AT 3:15 PM CAPITOL 17

02/16/04 (H) Moved CSHJR 35(L&C) Out of Committee
 02/16/04 (H) MINUTE(L&C)
 02/18/04 (H) L&C RPT CS(L&C) NT 5DP 1NR
 02/18/04 (H) DP: CRAWFORD, LYNN, GATTO, DAHLSTROM,
 02/18/04 (H) GUTTENBERG; NR: ANDERSON
 02/25/04 (H) RES AT 1:00 PM CAPITOL 124
 02/25/04 (H) Moved CSHJR 35(L&C) Out of Committee
 02/25/04 (H) MINUTE(RES)
 02/26/04 (H) RES RPT CS(L&C) NT 6DP 1NR 2AM
 02/26/04 (H) DP: KERTTULA, GUTTENBERG, LYNN, HEINZE,
 02/26/04 (H) DAHLSTROM, MASEK; NR: WOLF; AM: GATTO,
 02/26/04 (H) STEPOVICH
 03/18/04 (H) TRANSMITTED TO (S)
 03/18/04 (H) VERSION: CSHJR 35(L&C)
 03/19/04 (S) READ THE FIRST TIME - REFERRALS
 03/19/04 (S) L&C, RES
 03/30/04 (S) L&C AT 1:30 PM BELTZ 211
 03/30/04 (S) Moved CSHJR 35(L&C) Out of Committee
 03/30/04 (S) MINUTE(L&C)
 03/31/04 (S) L&C RPT 2DP 2NR
 03/31/04 (S) NR: BUNDE, STEVENS G; DP: DAVIS,
 03/31/04 (S) FRENCH
 04/19/04 (S) RES AT 3:30 PM BUTROVICH 205

BILL: SB 132

SHORT TITLE: MINTO FLATS GAME REFUGE & TOWNSITE

SPONSOR(S): SENATOR(S) LINCOLN

03/10/03 (S) READ THE FIRST TIME - REFERRALS
 03/10/03 (S) CRA, RES
 04/07/04 (S) CRA AT 1:30 PM FAHRENKAMP 203
 04/07/04 (S) -- Meeting Canceled --
 04/14/04 (S) CRA AT 1:30 PM FAHRENKAMP 203
 04/14/04 (S) Moved CSSB 132(CRA) Out of Committee
 04/14/04 (S) MINUTE(CRA)
 04/15/04 (S) CRA RPT CS 4DP NEW TITLE
 04/15/04 (S) DP: STEDMAN, LINCOLN, WAGONER, ELTON
 04/19/04 (S) RES AT 3:30 PM BUTROVICH 205

WITNESS REGISTER

Representative Beth Kerttula
 Alaska State Capitol
 Juneau, AK 99801-1182

POSITION STATEMENT: Sponsor of HJR 35.

Ms. Aurora Hauke

Staff to Representative Kerttula
Alaska State Capitol
Juneau, AK 99801-1182

POSITION STATEMENT: Commented on HJR 35 for sponsor.

Chief Andy Jimmie
Village of Minto AK

POSITION STATEMENT: Supports SB 132.

Mr. Wyn Menefee, Chief of Operations
Division of Mining, Land and Water
Department of Natural Resources
400 Willoughby Ave.
Juneau, AK 99801-1724

POSITION STATEMENT: Supports SB 132.

Mr. Joe Joiner
Department of Natural Resources
400 Willoughby Ave.
Juneau, AK 99801-1724

POSITION STATEMENT: Supports SB 132.

Mr. Matt Robus, Director
Division of Wildlife Conservation
Department of Fish & Game
PO Box 25526
Juneau, AK 99802-5226

POSITION STATEMENT: Commented on SB 132.

ACTION NARRATIVE

TAPE 04-41, SIDE A

^#HJR35

CSHJR(L&C) 35-MAD COW DISEASE/COUNTRY OF ORIGIN LABELS

CHAIR SCOTT OGAN called the Senate Resources Standing Committee meeting to order at 3:37 p.m. All members were present. The first order of business to come before the committee was CSHJR 35 (L&C).

REPRESENTATIVE BETH KERTTULA, sponsor of HJR 35, said that her staff person would present the bill.

MS. AURORA HAUKE, staff to Representative Kerttula, said that bovine spongiform encephalopathy (BSE) is commonly known as mad cow disease and can be contracted by humans who eat tainted

meat. The disease is invariably fatal and there is no known cure, but it can be prevented and this resolution supports the USDA's efforts to prevent the spread of mad cow disease and encourages earlier implementation of country-of-origin labeling for beef so consumers can make informed decisions in the marketplace.

SENATOR FRED DYSON asked what the rationale is for the present implementation date of 2006.

MS. HAUKE replied that retailers had some concern that it might be costly to label their products.

SENATOR RALPH SEEKINS asked which countries have diagnosed bovine spongiform encephalopathy in their animals.

MS. HAUKE replied the U.K., Canada, Italy, France and the U.S.

SENATOR SEEKINS asked how labeling beef with the country of origin would assist in protecting public health.

MS. HAUKE replied that 42 other countries have country-of-origin labeling, which is used as a tool for customers to decide which country they are going to buy meat from in case of a recall announcement.

REPRESENTATIVE KERTTULA added that some countries use bar codes so that one could know exactly where a cow came from. If a recall were needed, it could happen quicker.

SENATOR DYSON asked when in the slaughter-packaging process does the label get attached.

REPRESENTATIVE KERTTULA replied that she couldn't remember if it happens when it's packaged by the farmer or at the point of sale.

MS. HAUKE added that a lot of companies are already labeling beef and more companies are labeling food. It happens at the slaughterhouse but, if not there, at the retailer.

SENATOR DYSON said there is some evidence that the last three infestations in the Northwest had to do with feed. He asked if the labeling they are trying to encourage is going to take place on animal feed.

MS. HAUKE replied no. Congress has legislation to label animal feed and pet food products, but it is not currently labeled. However, use of prions that cause the disease has been banned in the feed since 1997.

SENATOR DYSON remarked that the infestation happened despite that. He asked how labeling anticipated dealing with herds from Montana, Idaho, North Dakota and Western Washington that go to Canada to feed lots and mix with the herds there.

REPRESENTATIVE KERTTULA said she didn't know.

SENATOR BEN STEVENS informed them that that's the reason for the delayed implementation - because of the problem of identifying the sourcing of the product versus the labeling. The language says labeling goes on at the point of processing. The same thing is happening with implementation of seafood labeling.

SENATOR DYSON speculated that the reason for the delay might be to get the present crisis behind us.

SENATOR STEVENS agreed that that is part of the delay, but there is also inefficiency in the tracking of the sourcing of the products.

SENATOR GEORGIANNA LINCOLN said that she didn't think any of this discussion would change the resolve factors.

SENATOR DYSON said the date causes him concern, "But they're not going to do what we say anyways."

SENATOR STEVENS responded that the delegation was opposed to the extension of the implementation date for all products that come into the country and they were successful in keeping it for seafood. A lot of effort is focused on accelerating the implementation dates back to their original schedule. The reality is that labeling is going to cost packaging plants and they don't want the bill to pass.

REPRESENTATIVE KERTTULA acknowledged that Senator Stevens' office in Washington D.C. had sent her that explanation as well.

CHAIR OGAN asked if the delegation supports accelerating the implementation.

SENATOR KIM ELTON moved to pass CSHJR 35(L&C) from committee with the attached zero fiscal note. There were no objections and it was so ordered.

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4:52 - 4:54 - at ease

^#SB132

SB 132-MINTO FLATS GAME REFUGE & TOWNSITE

CHAIR SCOTT OGAN announced CSSB 132(CRA) to be up for consideration.

SENATOR GEORGIANNA LINCOLN, sponsor, thanked the committee for hearing this bill. It transfers ownership of a little under 32 acres of state land, formerly held by the Village of Minto, from their old town site to the Native Village of Minto. The changes from the original bill added legislative findings on page 1 and state statute verbatim for clarity.

She indicated that the old Minto is 60 miles from Fairbanks, but it is only accessible by river or snow machine. Because of flooding and erosion, the old Minto was moved to a site called New Minto, about 40 miles north of the old site in 1971. Old Minto was founded in 1915 by Chief Charlie and is still used today by villagers for traditional purposes - the cemetery, church and buildings are still there. A portion of the land at the old site has been under charitable lease to the Interior Athabaskan Culture Heritage Education Institute for a youth encampment until 2052. The Old Minto Alcohol Recovery Camp is there as well. "Whole families move to this site in support of sobriety."

SENATOR LINCOLN said she could have had 40 people testify for the bill, but felt that Chief Andy Jimmy would be able to answer questions in a shorter amount of time. She noted a new fiscal note had been prepared reflecting that the legislature directs DNR to "convey" a parcel instead of "selling" it.

SENATOR DYSON said he had documents that say the site has been used for hundreds or thousands of years and asked why she said it was founded in 1915.

SENATOR LINCOLN answered that both of those statements are probably true, because the people who used the area long ago didn't have a permanent settlement and migrated through following the fish and game. The permanent settlement came in 1915.

CHAIR OGAN asked why the land wasn't selected under the Alaska Native Claims Settlement Act (ANCSA).

SENATOR LINCOLN replied when the village was moved from the old site in 1971, it reverted back to the federal government. The federal government reserved the rights when it conveyed the land to the state.

SENATOR RALPH SEEKINS asked if the entity she wants to transfer title to, the Village of Minto, is a corporation.

SENATOR LINCOLN replied that it's not a corporation, but a non-profit village incorporated under state law.

SENATOR SEEKINS asked if it is different from an ANCSA village corporation.

SENATOR LINCOLN replied:

Absolutely.... as all of the villages are. The village corporation [ANCSA] is owned by shareholders who may or may not ... reside within that community. They could reside worldwide. It's a for-profit corporation. The Native Village of Minto, which this is being transferred to, is the non-profit village, which is recognized under state law. So, the Native Village of Minto is only those residents that reside within that community. And it's a non-profit.

SENATOR SEEKINS asked if this village corporation has title to land in other places.

SENATOR LINCOLN replied no.

SENATOR WAGONER read a letter from the Tanana Chief's Conference about having a family recovery camp there, but he thought the old Minto site is not inhabited. He asked how many people live in the old Minto.

SENATOR LINCOLN guessed about 200 to 300 people. Different groups of troubled youth come in - the same with the alcohol recovery camp. There are no permanent residents. People still go from the new Minto site to old Minto. "There's a lot of movement back and forth between these two sites."

SENATOR WAGONER asked if the family and alcohol treatment programs are temporary and not year-round. "What kind of facilities do they have?"

SENATOR LINCOLN said the alcohol recovery and youth camps might run 12 months out of the year, but not full time. They might have a schedule like three months on and one month off or something like that.

CHAIR OGAN asked Chief Jimmy if he wanted to testify.

CHIEF CHARLIE JIMMIE, Village of Minto, responded that the alcohol camp is open all year, but closes temporarily because of flooding. The cultural camp starts June 1 and runs through late August. People fish out of the river all summer long. People moved to the new site actually in 1969, but they moved onto Native allotment land that was given to the village.

CHAIR OGAN asked if the council he represents is a 502(3)(c).

CHIEF JIMMIE replied yes. He said that people from new Minto like to go back to the old Minto and work with the two camps that help people with problems.

MR. WYN MENEFFEE, Chief of Operations, Division of Mining, Land and Water, Department of Natural Resources (DNR), said he would let Joe Joiner answer the question of why the land was not selected through ANCSA. He explained that DNR has a lease on the land that can be transferred.

What we see is the village is getting what they need out of it; DNR actually gets removed out of the picture through this conveyance so we don't have any sort of reverter. It's basically a straight conveyance.

MR. JOE JOINER, Department of Natural Resources (DNR), said:

The reason why the Village of Minto under ANCSA did not select the old Minto Village site was because under ANCSA they were only allowed to select within a certain area around the village. The old Minto site fell beyond that boundary. So, they were not legally allowed to select a site.

SENATOR SEEKINS asked what legal entity would have been entitled to that selection if it would have been eligible for selection under ANCSA.

MR. JOINER replied he thought it would have been the Native Village Corporation.

MR. MENEFEE replied that it would have gone to the Native Village of Minto, but it would have to have been in the right area.

SENATOR SEEKINS said he was confused about how these legal entities exist. He asked if the Native Village of Minto existed as a state chartered corporation prior to the land claim selections of ANCSA.

MR. MENEFEE said he couldn't positively answer that. ANCSA is the point at which corporations were created.

SENATOR SEEKINS stated that he was trying to figure out if this land could have been selected under ANCSA and, if so, what corporate entity would have been eligible to select it.

If it was being transferred to the Boy Scouts of America, would it have to be noted that was a non-profit corporation? Are there any overlapping authorities? I'm just trying to find out where this land then falls in terms of jurisdiction under state law.... I guess I'm trying to figure out if we're giving it to private individuals or if we're giving it to a recognized political subdivision of the state of Alaska or if we're giving it to a shareholder-owned corporation or if we're giving it to a group of people and under what definition do they exist?

MR. MENEFEE responded:

The call on who to convey it to is actually a call of Senator Lincoln's office, because they have done some investigation on this on whether the corporation of the Native Village of Minto is capable legally to own land and they have said yes and so they are conveyable to that. The state conveys land to municipal entities and also just to general private landowners.... So, on the state side of things we don't have any problem at all conveying it to any of those entities as long as

they are capable of owning land. So, we don't make a differentiation.

So, with Senator Lincoln's office, we don't have an interest in determining whether they really are under some level of a native corporation. The only thing we are interested in is are they legally capable of owning land. Through their investigation they have discovered they are capable of owning land. Therefore, if the legislature directs DNR to convey the land, we will convey it to that entity. The repercussions of whether they are a governmental organization, a corporate entity or a private landowner doesn't matter to us.

On all land that we convey, we take out the standard mineral reservation that then protects the geothermal, the mineral estate, all the locatable minerals - oil, gas.... But, because we would be conveying it outside of our normal statutes... we needed to put that in there - because we are required to keep that in state ownership.... It is the choice of the legislature who we give it to.

SENATOR LINOCLN said when this site was permanently established for this band of Athabascans, it had flooding and erosion problems. The state would not help with any conservation programs and the village had to move. It went through years of looking for a new site and two individuals donated two native allotments.

So, they didn't want to move from the old site, but they were forced to move. It could not have gone to them under ANCSA, because [it] was still held by the Athabaskan Indians of Minto. Their gravesite was there; their church was there. They still wanted to utilize it as their village. So, they still have this real strong connection to the old Minto site.... It's the same community. They wanted access to have control over what happens to that old site.

SENATOR SEEKINS said he wasn't against this concept at all, but he is concerned about the status of the property and what jurisdictional laws it is under.

TAPE 04-41, SIDE B

SENATOR SEEKINS asked if the Department of Law had done some research on how a transfer would affect the jurisdiction over the land by the state of Alaska.

SENATOR WAGONER said he wanted to know how many other situations there are like this in the state and if there are other instances, how are they going to be handled. He was thinking specifically about Shishmaref.

MR. MENEFEЕ said he didn't have a list of all the different villages that might be in the same boat. "I don't know that it's so prevalent that we've gotten into any sort of case of figuring out a program to deal with it. Basically, it would be on a case-by-case basis, because having to move a village is relatively rare.

SENATOR WAGONER said he knew of two or three sites on the Kenai River that were villages at one time that no one lives at any longer. At least one of the sites has not been taken in allotment lands or claims or anything else.

MR. MENEFEЕ related that many different people come to DNR who want land for different reasons. What makes this situation stand out is that the people had historical use of the land and the use is a public type of use. Even though the camps are exclusive to some types of people who need to be in this program, it's still a community for helping Alaskans. If a lodge were put there, the committee might feel differently, but he didn't think this should be turned into a broad program.

CHAIR OGAN concurred saying the village site was first moved because of erosion problems, and he was concerned that if cabins were built for programs or whatever, that the state would eventually be looked to for bailing it out again.

SENATOR WAGONER said he had no problem with the intentions here, but he would be more comfortable with covenants as to what the land is going to be used for.

What I see - there's 30 some acres of land that's part of the state public domain now and I don't have any problem at all for what the Village of Minto wants to use it for, but I don't want it to be put in some place where it can be sold or traded or anything else and then have a commercial purpose or a residential purpose - sold to somebody. I guess if we put in a

covenant that had Division of Lands write up a covenant for it, I would have no problem with it.

SENATOR SEEKINS said the terrain is very flat and marshy and it's right alongside the Tanana River. While it's not intrinsically beautiful, there are a number of boats on it.

The use to which it's being put right now is very valuable in my opinion and I absolutely agree with being connected with where your grandparents and your ancestors are buried. I have no problem with that.... But, I do have some of your concern on the erosion problems as they come forward.

He wanted to know what entity has title to the new Minto.

SENATOR LINCOLN replied, "Native Village of Minto.... They were deeded over the Native allotments. That is their land that they are sitting on."

SENATOR SEEKINS said he wanted a legal opinion on the issue of transferring the land to a legal state charter entity and that in so doing the state loses no jurisdiction over the land.

SENATOR KIM ELTON said he heard this bill in a previous committee. If the concern is that there may be future liability because of natural things that may or may not happen, the land is already being used and those liabilities may be there whether or not the land is owned by the state or is owned by the Minto Corporation. He guessed if the land is transferred, it may lessen the liability of the state. Also, if covenants were added beyond the normal restrictions (mineral and right-of-way rights, etc.) that are already in this transfer, it flies in the face of what the state has been saying about disposal of state lands for many other purposes.

I don't know that we want to restrict future uses or future kinds of things. Those kinds of decisions ought to be made by the private landholder and that's one of the reasons many people have advocated that we dispose of state lands. So, I'm arguing against covenants that could be applied prior to the transfer.

SENATOR WAGONER responded that the reason he is talking about covenants is because the land belongs to the State of Alaska currently and it is being transferred to the new Village of Minto.

I don't know how we get by without a fiscal note, because there's a value of some kind to that land. I have no problem giving that to them for the purposes they state in here. The problem I would have is for additional purposes at a later date....

SENATOR ELTON said his impression is that the bill, itself, doesn't specify purposes to which the land can be put to use. Adding further covenants would be restrictive on the landholder and he is arguing against that.

MR. MENEFEЕ broke in relating that his division considered both covenants and reverter clauses.

Covenants are just as you're talking about - you needn't do this on that land. A reverter is if you don't do that on that land, then the state gets it back. We actually, at DNR, don't want either one of those and I'll give you the reasons why. I'll start with the reverter. First of all, we don't want a reverter because if we hand this over and convey this land, we don't want to - 10, 20, 30 years down the line - have various buildings and structures that have been built in any different way that the Native corporation feels fit on their own land to build. Potentially - I'm not saying that they're going to do it - it could have hazardous materials, there or whatever. What we have run into with receiving lands back from people is it creates a management headache down the line. So, at DNR we really don't want to get land back that we don't have control over through a lease or something. And we don't want the management of the lease in this case.

MR. MENEFEЕ explained that the state already has an approved 55-year lease. That lease gets conveyed to the Native Village in the bill, because of the rehabilitation center. The lease encompasses the full 30 acres. If the village council decides to stop that lease, that's fine; but up to that point, the lessee has a right to continue on with that lease through the village corporations. That essentially locks in the public purpose for at least 55 years. "So, in our view, there wasn't necessarily a need for a covenant because of the lease issue and in our view, both of those were actually covered." He continued:

If you go beyond 55 years or the lessee decides they don't want to do it anymore, the state doesn't have control. But the question is, "Well, do you want to revert it at that point or do you not want to revert it? It was much easier to say no covenants, we transfer the lease."

SENATOR SEEKINS said his only concern is that if the state transfers the property (that is susceptible to flooding, which makes it difficult for people to subsist there) and keeps itself in the position of having liability for future damage from a flood, that would not be in the best interests of the state. Most people know that threat exists and are willing to take that risk with the structures they have there now.

SENATOR WAGONER attempted to clarify who the parties of the lease are and asked if the recovery camp is operated by the Tanana Chief's Conference, not the Village of Minto. If that's so, the lease would be between the Tanana Chief's Conference and the new Village of Minto, not the state.

SENATOR LINCOLN said that is correct.

CHAIR OGAN asked what the fees are for a year.

MR. MENEFEER replied that it is charitable and the state doesn't receive any money for that.

SENATOR SEEKINS asked to hold the bill long enough for him to get together with the sponsor and the Department of Law and answer his questions so he can feel comfortable.

SENATOR LINCOLN said it would be helpful to talk about how it became part of the Minto Flats State Game Refuge in 1988.

MR. MATT ROBUS, Director, Division of Wildlife Conservation, Alaska Department of Fish and Game (ADF&G), explained that the land is managed by DNR, but over the top of that is its status as a state game refuge since the late 80s when the entire Minto Flats chunk of state land was incorporated into a refuge. All user groups agreed that the main thing was to insure that the wildlife would be able to perpetuate and be used by people. The old Minto site was a parcel that was included in the refuge and has been part of its management, as well as DNR management, ever since.

Basically, my purpose here today is to say if this 31 acre site is removed from the refuge, it, in our view, doesn't have any negative impact on management of the refuge resources and in fact there are things that go on at that site that are permitted through the Department of Fish and Game. I know we've issued permits to take a moose for the cultural camp in some years. Whether or not this site remains in the refuge, that's going to still happen through the Department of Fish and Game. So, we're pretty comfortable with managing the refuge. With the site removed from the refuge, we don't see any substantial impacts.

CHAIR OGAN said he would hold this bill until Wednesday and adjourned the meeting at 4:50 p.m.

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