

ALASKA STATE LEGISLATURE
SENATE RESOURCES STANDING COMMITTEE

April 4, 2007

4:42 p.m.

MEMBERS PRESENT

Senator Charlie Huggins, Chair
Senator Bert Stedman, Vice Chair
Senator Lyda Green
Senator Gary Stevens
Senator Bill Wielechowski

MEMBERS ABSENT

Senator Lesil McGuire
Senator Thomas Wagoner

COMMITTEE CALENDAR

Confirmation Hearing - Denby Lloyd, Commissioner Alaska
Department of Fish and Game (ADF&G)
CONFIRMATION ADVANCED

SENATE BILL NO. 103

"An Act authorizing the transfer of land from the Alaska
Railroad Corporation to Eklutna, Inc.; and providing for an
effective date."

MOVED SB 103 OUT OF COMMITTEE

PREVIOUS COMMITTEE ACTION

BILL: SB 103

SHORT TITLE: LAND TRANSFERS ALASKA RR & EKLUTNA

SPONSOR(s): RESOURCES

03/02/07	(S)	READ THE FIRST TIME - REFERRALS
03/02/07	(S)	RES
04/04/07	(S)	RES AT 4:30 PM BUTROVICH 205

WITNESS REGISTER

DENBY LLOYD, Acting Commissioner
Alaska Department of Fish and Game (ADF&G)
Juneau AK

POSITION STATEMENT: Confirmation hearing for appointment.

PAT GAMBLE, President and CEO
Alaska Railroad Corporation (ARRC)
Anchorage AK

POSITION STATEMENT: Supported SB 103.

CURTIS MCQUEEN
Corporate Affairs
Eklutna, Inc.
Anchorage AK

POSITION STATEMENT: Supported SB 103.

JIM ARNESEN, Land Manager
Eklutna AK

POSITION STATEMENT: Supported SB 103.

DANIEL ALEX, Tribal Administrator
Native Village of Eklutna
Alaska

POSITION STATEMENT: Supported SB 103.

BONNE' WOLSTAD
Fairbanks AK

POSITION STATEMENT: Supported SB 103.

ACTION NARRATIVE

CHAIR CHARLIE HUGGINS called the Senate Resources Standing Committee meeting to order at [4:42:17 PM](#). Present at the call to order were Senators Wielechowski, Stedman, Stevens and Huggins. Senator Green joined the committee at [4:43:23 PM](#).

Confirmation Hearing - ADF&G, Commissioner-designate Denby Lloyd

[4:43:43 PM](#)

DENBY LLOYD, Commissioner-designate for the Alaska Department of Fish and Game (ADF&G) Denby Lloyd said his expertise comes from commercial fishing. He looked forward to the challenge of being commissioner overseeing sport fishing and game management, subsistence and various policy issues that involve management and utilization of fish and wildlife in Alaska. He looked forward to treating constituents in a fair and equitable manner and bringing science and prudent policy analysis to the performance of that job. He sought to assure everyone that there would be no favoritism in the commissioner's office - a policy

he has displayed in the past in managing among commercial fishing groups.

[4:44:51 PM](#)

SENATOR WIELECHOWSKI said they learned recently about what the court has declared to be a bounty on wolves and asked if that was his decision.

MR. LLOYD replied yes; it was his decision to create an incentive for increased participation in the wolf control effort and at the same time to collect usable scientific samples. He was advised at the time that there was distinction between a bounty and sample collecting. He said this type of sample gathering has been performed in the recent past and he hadn't anticipated legal difficulties.

SENATOR WIELECHOWSKI asked if he had consulted with the state's attorneys before making this decision.

MR. LLOYD replied no, that the attorney was out of town at the time, and that he had consulted within the department.

[4:46:12 PM](#)

SENATOR WIELECHOWSKI asked if he intended to pursue the killing of wolves by helicopter.

MR. LLOYD replied that he hadn't decided that yet.

SENATOR WIELECHOWSKI asked him what factors he would consider in making that decision.

MR. LLOYD replied that the pragmatic factors would be the snow conditions, the likelihood of success, the number of animals left in a particular unit between where they are now and their objective, logistic considerations and policy considerations within the governor's office.

SENATOR WIELECHOWSKI asked him to explain policy considerations within the governor's office.

MR. LLOYD replied that this governor and past governors have had to weigh the efficacy of these types of efforts versus the potential resistance to using them by other constituent groups. Given that the governor is the chief executive, he would follow her lead.

SENATOR WIELECHOWSKI asked if it was appropriate to make these types of wildlife decisions based on politics instead of science.

MR. LLOYD replied there are always public policy aspects to the decisions the department makes. Generally, the department prepares the scientific information and forwards those directions to the policy makers. "Often times we're going to the Board of Game, to the Board of Fisheries, and often times also to the Office of the Governor."

[4:48:16 PM](#)

SENATOR WIELECHOWSKI asked what his position was on the recent Board of Game decision to allow the trapping of wolverines in Anchorage.

MR. LLOYD replied that he didn't have a personal position on that issue and wasn't real familiar with it. He knew there were competing views within the department's staff on whether it should be allowed. He thought it was part of the role of the Board of Game to make those choices when there was no clear technical guidance from the department.

SENATOR WIELECHOWSKI asked when he makes decisions based on predator control, for instance, what would be his approach in terms of policy and science.

MR. LLOYD replied that his approach is to provide a good scientific basis for any exercise the department engages in. It is a public policy choice to either have a population of ungulates that is at low levels with high predator populations or to shift that balance in order to achieve a goal. Scientifically, the department can document that predator control in some areas can result in an increase of ungulate population that can be harvested by human beings for consumption or sport, but that comes back into the public policy arena.

[4:49:59 PM](#)

SENATOR WIELECHOWSKI asked Mr. Lloyd to explain why he wanted the number of wolves in certain areas decreased down to 20 or 30 percent of what they are now.

MR. LLOYD replied that as he understands the science and he has been advised by personnel in the Division of Wildlife Conservation that wolves have large litters and reproduce at a fast rate and in order to be effective at wolf control, you have

to reduce the population by about 80 percent - so that would leave 20 percent in those areas.

[4:50:58 PM](#)

SENATOR STEVENS asked him for some background on the issue of predator control and who advocates for it.

MR. LLOYD replied that predator control in this instance is a relatively new issue to him, but he is engaged in a program that focuses on five areas in the state with a possible addition of two or three others. This involves less than 10 percent of the land mass in Alaska and many areas like federally controlled wilderness or national parks would not allow such exercises. Making public policy choices to increase moose and caribou populations by virtue of predator control on portions of state lands is reasonable and these choices have been made through the Legislature with intensive management law and through the Board of Game deliberations.

He couldn't really characterize a constituency behind predator control, but he said there are many sport and subsistence users who are looking for increased moose and caribou populations in several areas of the state and they want the department and the state to help in that regard by reducing predation by predators so that predations can be substituted by humans for human use and consumption.

[4:52:59 PM](#)

SENATOR STEVENS said he thought the department had tried for years to balance the many demands on it and that often politics entered into it. He stated that he had known Mr. Lloyd for many years and he has a great deal of respect for him. He asked what his theory is of managing large groups of people.

MR. LLOYD replied that he was director of the Division of Commercial Fisheries two different times and was regional supervisor in the Kodiak Office; he had scientific research and management background, as well. His management perspective changed as his responsibilities changed and when he was a project leader, he looked out for the safety and efficacy of the assignment. At mid-management level, he looked to buffer, promote and defend the staff in their ability to accomplish their tasks - making sure they were provided with good personnel services and budgetary services. At a more senior level, he brought the broader perspective that public policy demands. He said:

We have, I think, an enviable constitution that leads or guides our resource management program in the department and we have an enviable system of regulatory development through the Boards of Fisheries and Game. I look forward to working with the Legislature, the Administration and with the Boards to figure out what the appropriate public policy direction will be for the department and then to carry that out in a scientifically defensible manner.

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SENATOR STEDMAN said even though this is a Board of Fisheries issue, he has heard there doesn't seem to be a fair allocation of red crab because it is a depressed biomass and 20 percent of it went to the personal use fishery.

MR. LLOYD responded that the department provides scientific information to the Board of Fisheries so it can make informed decisions, but he couldn't comment on what he thought the decisions should be. He said the department, in responding to a number of concerns from the fleet, had done a thorough review of its red crab survey methodology and had included outside reviewers to help. They hadn't accommodated all of the concerns, but had made a fair amount of movement.

[4:58:49 PM](#)

SENATOR WIELECHOWSKI asked what his position was on the federal recommendation to reduce the sport halibut catch for charter boats down to one fish per day.

MR. LLOYD replied that he wrote a letter to Dr. Jim Balsager of the National Marine Fisheries Service who is also on the Halibut Commission that made that decision and asked them to reconsider because a one-fish bag limit was unnecessarily onerous to the sport fish charter industry in that the harvest reduction objectives they were looking for could have been accommodated in other ways. Since that time, the federal Secretary of State and Secretary of Commerce have rescinded that action and they are going through final rule-making now to institute a one-plus bag limit for Southeast Alaska. That is likely to look like one fish of any size plus one fish less than 32 inches. In Southcentral Alaska, by virtue of a department action to limit skipper and crew harvest, the federal government decided it didn't need to impose any reduction in the bag limit from two fish per day. So, he thinks, some headway was made with the federal system and he hoped to bring the issue back to the North Pacific Council rather than to the Halibut Commission.

5:00:56 PM

SENATOR WIELECHOWSKI asked how active a role he intends to take with the Pebble Mine development. Some people claim it will have a tremendous impact on the wildlife and the fishery.

MR. LLOYD replied that presuming it will be a major mining effort impacts are likely to happen unless there is good project review and potential mitigation. He stated:

I'm following the governor's lead in this respect in that so far as we can provide the opportunity to have that mine development - great. But the expectation is that it will be developed in such a way that there is no net impact on fisheries out there. And our department will be directly involved in that. We've already modified the MOU between the Department of Natural Resources and Fish and Game so that Fish and Game is directly involved with that program review with the Department of Natural Resources.

SENATOR WIELECHOWSKI went back to the predator control issue and said that wolves are one of the predators, but studies also show significant predation from grizzly bears and even golden eagles. He asked if he intended to expand the program to include those other types of wildlife.

MR. LLOYD replied that it was very possible the program would be expanded to not only grizzly bears, but black bears, in some instances, because of predation on moose and caribou. He said he would work with the Board of Game to determine which prudent control measures ought to be applied to bears.

5:02:52 PM

SENATOR STEVENS asked what his goals would be in the commissioner's job of sitting on the Board of the North Pacific Management Council.

MR. LLOYD replied that as commissioner of ADF&G he has one of the 11 voting seats on the Council and 6 of them are Alaskan appointees. If this majority is utilized in a reasonable fashion, the interests of Alaska ought to be well represented on the Council and he would look for the opportunity to benefit coastal communities rather than any specific harvester or processing group.

5:04:21 PM

CHAIR HUGGINS noted the list of both the opposition and support for Mr. Lloyd. He said he would support him if the governor does, but he wanted to take the liberty as a chairman to talk to him and characterize the people who have concerns.

He said one of Mr. Lloyd's first decisions was to hire an immediate subordinate and that he hired that person so he wouldn't be "campaigned." Chair Huggins reminded him that he is managing the state's fish and game for abundance and sustained yield and they belong to the people of Alaska.

CHAIR HUGGINS also advised that while he supports predator control, he thought the state would lose on the issues of bounties and helicopters. He asked Mr. Lloyd to broaden his perspective and be more collaborative in his decision-making, because "that predator control program belongs to the State of Alaska and we suffer the consequences if we don't have that in place."

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CHAIR HUGGINS went on to the issue of escapement in the Upper Cook Inlet where he lives and said on behalf of his constituents that the fish run a gauntlet there and he wants some of them to reach Upper Cook Inlet. Also, his hunter friends want to hunt moose in Unit 16B, which is now closed. It's one of the larger game units in the state that is close to a metropolitan area and the commissioner might need to consider protecting the moose there.

He encouraged him to foster trust and confidence and he advised: The way you get that is you go out and you engage those groups and foster their trust and confidence in your leadership.

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SENATOR STEVENS moved to forward the name of Denby Lloyd to the full body for consideration. There were no objections and it was so ordered.

[5:10:16 PM](#) at ease [5:13:15 PM](#)

SB 103-LAND TRANSFERS ALASKA RR & EKLUTNA

CHAIR HUGGINS announced SB 103 to be up for consideration.

[5:13:58 PM](#)

PAT GAMBLE, President and CEO, Alaska Railroad Corporation (ARRC), supported SB 103 saying that in accordance with the

Railroad Transfer Act, the ARRC seeks permission from the legislature to transfer about 48 acres of ARRC property to Eklutna Inc. with the blessing of Eklutna Village. The purpose of the transfer is to end a long-standing gridlock over this particular piece of property that started out as a quarry. It was quarried for a number of years until such time as they became aware that it was also a significant cultural icon in the history of the Eklutnas. They became gridlocked in terms of using any quarry product and figured any future mining possibilities were very remote. After much unsuccessful litigation, they decided the right thing to do was recognize it as a cultural issue and resolve it by signing the land over to the Eklutnas. In addition, Eklutna, Inc. and CIRI, to the extent that it has rights under the surface of lands all through this particular area, have a lot of interests that the Railroad wanted to further over time.

[5:17:43 PM](#)

SENATOR WIELECHOWSKI asked what the status of the land is to the Railroad right now.

MR. GAMBLE replied that it is one of fee simple ownership.

SENATOR WIELECHOWSKI asked what the ARRC would get in exchange for the transfer.

MR. GAMBLE replied that the transfer is not value for value, but rather:

We are transferring the property just simply because we feel that it's rightfully theirs and we're not going to use it. We're not going to mine the quarry any more as we had over a number of years. In the sense that there's an exchange, they have agreed that any rock that is currently laying on the ground that was shot in the past - it's been there for several years - any rock of whatever size that would be part of a cleanup that we would go in and do and bring the materials out in order to leave the land clean, we could have. In addition, if there was any desire of Eklutna Village or Eklutna Inc to try to landscape the face of what has already been shot, quarried, over the years and to try to clean that up and make it look a little more presentable, we're certainly amenable to going in and with certain restrictions doing that cleanup and again picking up whatever comes off the

face as we clean that up and take that out, too,
before we roll the track up.

SENATOR WIELECHOWSKI asked how he can say the land belongs to the Railroad in fee simple, but yet the land rightfully belongs to Eklutna.

MR. GAMBLE explained that's part of the cultural determination he and his staff made when looking into the history of how the land came into the Railroad's hands. "Things were done in a way that we probably would not accept today." The objection raised by the Eklutna Village in the late 90s highlighted this issue to the point where their interests were recognized finally by the Railroad and the federal government.

[5:20:07 PM](#)

He related that the history goes back to World War II when the Eklutna Village offered the quarry to the Army to use. The Army ran the Railroad in those days. After the war ended, the Native School that owned the property closed the quarry and moved, surplusing the land. The Railroad asked for the quarry and the Bureau of Indian Affairs (BIA), not the Village, gave it to them. The Village felt like it had been sold out at that point. This is the story he heard over and over again.

He explained that in the North Anchorage Land Agreement (NALA) the Railroad was given the right to mine the quarry down to the flat ground. However, the very name "Eklutna" talks about the geographical features [the two knobs on either side of the river] that were being mined away.

SENATOR WIELECHOWSKI asked if this property had an appraisal.

MR. GAMBLE replied no.

SENATOR WIELECHOWSKI asked if he knew what it was worth.

MR. GAMBLE answered no.

[5:21:59 PM](#)

CURTIS MCQUEEN, Corporate Affairs, Eklutna Inc., supported SB 130 and added that this is a 30-year plus wound for Eklutna Inc. and the Native Village of Eklutna. They both serve the same clients and work very close together. Eklutna Inc. is the for-profit corporation and the Village is the federally recognized tribe. "Elutnoi" means the river that runs between and the two knobs on either side of the river are what Eklutna is to the

people. To have them continue to be mined down to flat ground goes to the core of their identity. With Mr. Gamble's arrival to the Railroad, it was recognized as a long-term issue and other mutually favorable long-term issues were found that they could work together on in terms of land trades.

[5:23:58 PM](#)

JIM ARNESEN, Land Manager, Eklutna, Inc., said one thing that has been left out so far is the tie-in to the Alaska Native Claims Settlement Act (ANSCA) and the Alaska National Interest Lands Conservation Act (ANILCA). The Railroad had temporary rights to this property which would self-extinguish when it could no longer use the property. ANILCA didn't deal with every land issue and this property was envisioned to go back to Eklutna over 30 years ago in ANSCA.

[5:25:28 PM](#)

DANIEL ALEX, Tribal Administrator, Native Village of Eklutna, supported Mr. McQueen's comments that only temporary use was granted. Section 3 of the ANSCA said that Eklutna, Inc. was entitled to the property. He mentioned that Eklutna, Inc. signed an MOU with the ARRC saying it could use the materials that were already quarried and that the Railroad would restructure the landscape once it was done.

[5:27:25 PM](#)

CHAIR HUGGINS asked if anyone objects to this transaction.

MR. ALEX replied that the Council speaks for the Native Village of Eklutna and it supports the MOU.

CHAIR HUGGINS asked who signed the MOU dated January 22, 2007. He saw the signatures of Mr. Gamble and Mr. Alex.

MR. ALEX responded that the MOU dates back before he became the tribal administrator. He thought Jerry [indisc.] was deputy executive officer. The MOU went back a couple of years.

CHAIR HUGGINS asked if he was talking about the 1982 version.

MR. ALEX replied [indisc.].

[5:29:39 PM](#)

MR. MCQUEEN clarified that for the last 2.5 years the Native Village of Eklutna and the ARRC have had a MOU that contained certain dates. As those dates have come up, they have been

reaffirmed by signing amendments to continue the MOU. This goes back quite a long way.

5:30:27 PM

CHAIR HUGGINS asked if there were other aspects to the land transfer agreement the legislature should be aware of.

MR. MCQUEEN replied that there are some conditions have been worked out with the ARRC regarding blasting overhangs that might be dangerous - including a schedule and times of days and nights they need to be respectful of. However, they all agree that the sooner they can get in and get that stock pile off the ground, the better. They have requested that this summer season be the one they do it in.

CHAIR HUGGINS asked Mr. Gamble if the Railroad could meet those cleanup obligations. He indicated yes.

5:31:53 PM

BONNE' WOLSTAD, Fairbanks, said she was glad the ARRC recognized the ownership issues and was working to solve them.

SENATOR STEDMAN commended the Railroad on taking a proactive direction in settling this issue and setting a good example in how to resolve other similar situations. He is comfortable with the settlement, but he would have liked to see an appraisal.

5:34:06 PM

He asked if there is a Railroad right-of-way that goes into the quarry site that isn't referenced on the aerial survey.

MR. GAMBLE replied that the right-of-way is the spur line going into the quarry and that would be part of the cleanup. As they bring the material out it is their intention to pull the rail up and return the right-of-way strip to its natural look as much as possible. So, the main line which is a couple hundred yards down from that spur will then bypass the entire piece of property.

5:35:05 PM

SENATOR WIELECHOWSKI asked since this is a cultural and historic site, is it fair to say the Eklutna Village has no plans to mine or develop the property.

MR. MCQUEEN replied that is correct; they are working to keep that area in its pristine natural state. Eklutna, Inc. has other lands outside of this area that may potentially be mine-able

rock, but do not have cultural significance and do not have the ties to the Eklutna River that these two knobs have.

SENATOR WIELECHOWSKI asked if any municipalities in the area have weighed in either in support of or opposed to this plan.

MR. MCQUEEN replied that they have had tremendous support from Mayor Begich and the NALA has a resolution in favor of it.

[5:37:12 PM](#)

SENATOR WIELECHOWSKI asked if the planning and zoning department had granted a conditional use permit.

MR. MCQUEEN replied that a conditional permit has been granted recently to remove the remaining rock, but for nothing else.

[5:37:49 PM](#)

SENATOR STEVENS asked who gave the quarry to the Railroad after the Army was done with it.

MR. GAMBLE replied the BIA closed the school and moved it; the land that had been retained for the school grounds went up for grabs. The ARRC said it wanted the quarry and in the original document review, a letter was found between the Railroad and the BIA in which the BIA asked a couple of questions, those were answered, and very simply the land was transferred to the Railroad.

SENATOR STEVENS said he thought this was the right thing to do.

[5:39:33 PM](#)

MR. GAMBLE added that the federal government also removed its objection when it saw the progress that had been made and reviewed the signed documents going forward to a resolution.

CHAIR HUGGINS asked Mr. Alex if he supported the land transfer.

MR. ALEX replied yes.

SENATOR STEDMAN moved to pass SB 103 from committee with individual recommendations. There were no objections and it was so ordered. There being no further business to come before the committee, Chair Huggins adjourned the meeting at [5:40:43 PM](#).

