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Original sponsors: Bennett, Parr
and Fahrenkamp

Offered: 6/5/81
Referred: Judiciary

1 IN THE SENATE

BY THE RESOURCES COMMITTEE

2 HOUSE CS FOR SENATE BILL NO. 83 (Resources)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TWELFTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act restricting the authority of the Department of
7 Natural Resources to regulate certain activities in
8 the Chena River State Recreation Area; and providing
9 for an effective date."

10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

11 * Section 1. AS 41.20.020(6) is amended to read:

12 (6) adopt [ESTABLISH], in accordance with this section and
13 the Administrative Procedure Act [,] (AS 4.62), [RULES AND] regula-
14 tions governing the use and designating incompatible uses within the
15 boundaries of state park and recreational areas to protect the property
16 and to preserve the peace;

17 * Sec. 2. AS 41.20.020 is amended by adding a new paragraph to read:

18 (12) adopt, in accordance with the Administrative Procedure
19 Act (AS 44.62), regulations governing the use of the Chena River State
20 Recreation Area and designating incompatible uses within the boundaries
21 of the Chena River State Recreation Area except that regulations may
22 not be adopted which [prohibit or] unreasonably restrict

23 (A) work on valid mineral leases or mining claims;

24 (B) the legal taking of fur-bearing animals;

25 (C) the traditional use of roads and trails by any
26 means of transportation, including a vehicle propelled by machin-
27 ery, if the use occurred regularly in the area of a state recrea-
28 tion area before the effective date of the Act establishing the
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27 ery, if the use occurred regularly in the area of a state recrea-
28 tion area before the effective date of the Act establishing the
29 state recreation area;

1 (D) the cutting of dead and down or burnt timber.

2 * Sec. 3. AS 41.20.505 is amended to read:

3 Sec. 41.20.505. INCOMPATIBLE USES PROHIBITED. The commissioner
4 of natural resources shall designate by regulation incompatible uses
5 within the boundaries of the Chena River Recreation Area in accordance
6 with the requirements of AS 41.20.020(12) and 41.20.497, and those
7 incompatible uses designated shall be prohibited or restricted, as
8 provided by regulation.

9 * Sec. 4. This Act takes effect immediately in accordance with AS 01.10.-
10 070(c).

11 *Regs may not be adopted which use Res.*
12 *Restrict*

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14 A OK

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16 B OK

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18 C Use of Regular Roads + trails

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22 *Regs may separate*
23 *+ seasonally restrict*
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6/2/81
Bradley

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17 * Sec. 2. AS 41.20.020 is amended by adding a new paragraph to read:

18 (12) adopt, in accordance with the Administrative Procedure
19 Act (AS 44.62), regulations for the use of state recreation areas which
20 also designate incompatible uses within the boundaries of state recrea-
21 tion areas except that regulations may not be adopted which prohibit *unreasonably*

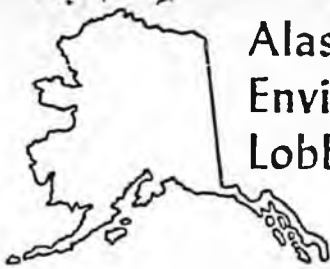
Restrict

- 23 (A) work on valid mineral leases or mining claims;
- 24 (B) the legal taking of fur-bearing animals;
- 25 (C) the traditional use of roads and trails by any
- 26 means of transportation, including a vehicle propelled by
- 27 machinery, if the use occurred regularly in the area of a state
- 28 recreation area before the effective date of the Act establishing
- 29 the state recreation area; or

1 (D) the cutting of "dead and down" or burnt timber.

2 * Sec. 3. This Act takes effect immediately in accordance with AS 01.10.-
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Alaska
Environmental
Lobby

419 6th St., Suite 321
Juneau, Alaska 99801

586-2345

Testimont before the House
Resources Committee on SB 83
by
Roland Shanks

Thank You Mr. Chairman,

As a reident of Fairbanks and a frequent user of the Chena Recreation Area, I'm very concerned about this Legislation. The Chena Rec. Area was established about 10 years ago, and at that time there was not alot of use in the area and it seemed like a long ways from town. But, in the intervining years the residential area of Chena Hot Springs Road has expanded right to the boundry of the Rec. area. Also, the use in the area has increased. I've camped on the banks of the Chena River and counted more than a hundered boats in one day during the summer. With the reopening of Chena Hot Springs resort the winter use has increased dramatically too. The area recieves heavy use by skiers, snowshoers, and mushers.

This legislation would make it impossible for the Div. of Parks to manage the area. By taking away their ability to manage mining, trapping, ORV use and wood cutting.

I think we should take a good look at these activities.

Last winter the Div. of Parks issued a permit for 62 pieces of heavy equipment to cross the Rec. area. We protested the permit, but it was finally issued. During the discussions we had an attorney look at the situation, and he informed us that there was no legal recourse. To my knowledge there are no mining claims within the Rec. area, and we can see from last years activities, that not only can Div. of Parks issue a crossing permit but that they will.

Another provision of the legislation prohibits the Div. of Parks from prohibiting or unreasonably restricting the taking of fur-bearing animals. Since state law allows the taking of some fur-bearing animals by firearm does that mean they cannot control firearm use. The Board of Game is primarily responsible for managing trapping not the Div. of Parks. Does this also mean that they can't do anything to control snow-goes if it is being used for trapping..That distcrys one of the basic management tools a recreation manager has the ability to designate seperate areas for incompatible uses.

The next provision requires that roads and trails traditionally used before the Rec. area was established must be left open to uncontroled use. Again this will take away a very important management tool. If you can't close a traditional road or trail, we need to define road and trail. Is anyplace a vehicle has passed a road. Under this provision even if a road becomes unsafe because of it's physical condition or traffic it could no be closed, not even to insure public safety.

The last provision makes it illegal to control the cutting of dead and down or brunt timber. These types of uses may be compatible in some areas of the Rec. area, but they must be controled. They must be done in a way that protects the recreationist and the Rec. area. Does this provision mean that they can't control ORV use if they are cutting fire wood. The Div. of Parks wouldn't be able to stop someone from driving a 4X4 across the marshy parts of the Chena Rec. area in the summer. Indiscriminate use of that type could distroy the Recreational Values of the area.

Because of the problems I've cited above I hope you defeat this bill. There have been management problems in the Rec. area before, but those are not solved by taking away the Div. of Parks ability to manage. This area has become a very important area to the people of Fairbanks.

And I believe that it should be managed in the most professional manner possible and to do that they can't have their hands tied.

This piece of legislation also has some language problems. What does "unreasonably restrict" mean. I can see nothing but problems using a phrase like that. The only way we'll ever know what that means is after a court defines it. I feel that this legislation could be improved by deleting on page one line 21 all language starting with expect and continuing thru line 28. This would allow the Div. of Parks to designate and manage incompatible uses.

I hope that you will take action today that protects the Chena Recreation Area instead of distroying it.

MEMORANDUM

State of Alaska

DIVISION OF PARKS

TO: Legislative Staff

DATE: 5/28/80

FILE NO:

TELEPHONE NO:

FROM: Chip Dennerlein
Director

SUBJECT: SB 83

I have received several requests to comment on SB 83, "An Act restricting the authority of the Department of Natural Resources to regulate certain activities within state recreation areas, and providing for an effective date". I offer the following as the Department's position of the legislation.

1. The bill, as presently amended, would preclude the department from promulgating regulations which "prohibit or unreasonably restrict" certain activities (emphasis added). The original version of the bill included the word "restrict". This word was deleted by the Senate Resources Committee for several reasons. For example, one of the uses mentioned in the bill is "the legal taking of fur bearing animals". While this is regulated by the Boards of Game, the department of natural resources does have authority over firearm discharge. It is legal to trap or take furbearing animals in Alaska through the use of firearms. In legal terms, a restriction on the use of firearms in certain areas would represent a "restriction" on the legal taking of fur bearing animals. Similarly, a traditional trail which might have very adequately accommodated a handful of motorized vehicle users might not have the physical ability to accommodate a great amount of such use without serious permanent damage to the terrain. Or - five horses over a wet spring trail is a lot different than fifty or one hundred horses. Restrictions may be necessary simply to ensure continued use and enjoyment in the future. Seeing these problems the Senate Resources committee struck the word "restrict", thus ensuring the continuance of certain uses without opening a Pandora's box of questionable authority and legal uncertainties. Unfortunately, the Senate Judiciary committee inserted the phrase "unreasonably restrict" into the bill. This phrase causes even more ambiguous legal problems and is not acceptable.

2. The bill would mandate that the cutting of dead and down or burnt timber be allowed in recreation areas. This is generally acceptable and the Senate Resources Committee changed the original phrase "dead timber" to "dead and down or burnt". The reasoning behind this change was that many trees which may appear dead during the winter are very much alive. Moreover, a number of bird species rely on standing dead timber for feeding, nesting and perching. To more clearly illustrate that only trees which are both dead and down should be cut, parenthesis should encircle dead and down to show that the phrase as used is a "term of art" in forestry.

3. The bill, as written and sponsored, stems from a few past problems in the Chena Recreation Area near Fairbanks which predate my tenure as director. I have researched these problems and while I am convinced that they can (and for the most part have) been

solved by evolving and better management for the area, I can respect the desire of those who wish to see certain guarantees for use of the area. However, no problems of the nature of which the bill seeks to address have ever occurred in any other state recreation areas. Since these other areas, such as Captian Cook in the Kenai District and Nancy Lake in the Mat-Su District have been established for more than ten years, it is reasonable to assume that any problems involving "traditional" uses would have cropped up by now. In accordance with the time tested principle "if it ain't broke, don't fix it" the act should not apply to any other areas besides Chena River Recreation Area. Several trails within the Nancy Lake Recreation Area were used by motorized vehicles prior to the establishment of the area in the late 1960's. One other trail was closed to snowmachine use about five years ago in a plan to separate and accommodate both snowmachiners and cross country skiers. There has never been a problem. Management is more effective and the public is happy. The "traditional users" have all been provided for. Posit for a moment, however, a new arrival to the state who has moved to Alaska because its the last frontier and he doesn't want any #\$*! !#\$&*! regulations telling him what to do. Unfortunately this individual decides to seek his "last frontier" just outside the limits of Anchorage, Palmer and Wasilla in a heavily used state recreation area known as Nancy Lake. Because motorized use once occurred on a certain trail within the recreation area, the department does not have the authority to prevent this individual from destroying the experience of many citizens along a family canoe trail system or in a quiet cross country ski area. This story may be a bit dramatic, but it is not far fetched. In fact, it happens every day in park and recreation system units where legal authorities are ambiguous.

SB 83 was introduced by Senators Bennet, Parr and Fahrenkamp. Senator Bennet testified on the bill before Chairman Fahrenkamps committee. Representative Bettisworth testified before Senate Judiciary where Senator Parr made the amendment to include "unreasonably restrict" in the legislation. The department respects the concerns of those legislators who wish to amend AS 41.20.497 to ensure certain uses in the Chena Recreation Area near Fairbanks. However, the department respectfully requests that SB 83 be amended along the lines of my comments here and be limited to incorporation into the statute affecting Chena Recreation Area.

ALASKA
STATE LEGISLATURE
MEMORANDUM

TO: Representative Fred Brown
House Judiciary Committee

FROM: Representative Fred Zharoff *Fz*
House Resources Committee

RE: CS SB 83 (Resources)

DATE: June 9, 1981

During the Resources Committee review of this bill several work drafts were prepared for the Committee's review, consideration, and passage. However, when the finalized draft was returned to Legal Services for a final bill there was a miscommunication on which version was passed by the Committee. Therefore a version not approved by the Committee was returned from Legal Services and sent on to your Committee.

Attached is a copy of the correct work draft version of SB 83 as passed out of the Resources Committee.

6/2/81
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