

SJR

21

GRACE LAKE WAS ORIGINALLY PLANNED AS A HYDRO-ELECTRIC SITE BUT IT WAS FELT THAT SWAN LAKE, BEING CLOSER, WOULD BE A BETTER SITE. ONE OF THE MAIN REASONS THAT THE RESOLUTION IS BEING PROPOSED AT THIS TIME IS TO SET THE WHEELS IN MOTION. I AM SURE THAT ALL MEMBERS OF THE COMMITTEE ARE AWARE OF HOW LONG IT TAKES FOR SOMETHING LIKE THIS TO BECOME A REALITY ESPECIALLY IN VIEW OF THE DESIGNATION OF THE AREA AS A WILDERNESS AREA.

AS AN AFTERTHOUGHT, NO ONE CAN SAY WHY, UNLESS IT HAS SOMETHING TO DO WITH THE MINERALS IN THE AREA, BUT THE LAKE IS COMPLETELY BARREN OF FISH. AFTER MANY HOURS OF FISHING, SENATOR ZIEGLER CAN ATTEST TO THAT FACT AS CAN MANY OTHER LOCAL FISHERPERSONS.....

WE WOULD APPRECIATE YOUR FAVORABLE CONSIDERATION!!

SENATE AMENDMENT #1

By Senator Ziegler

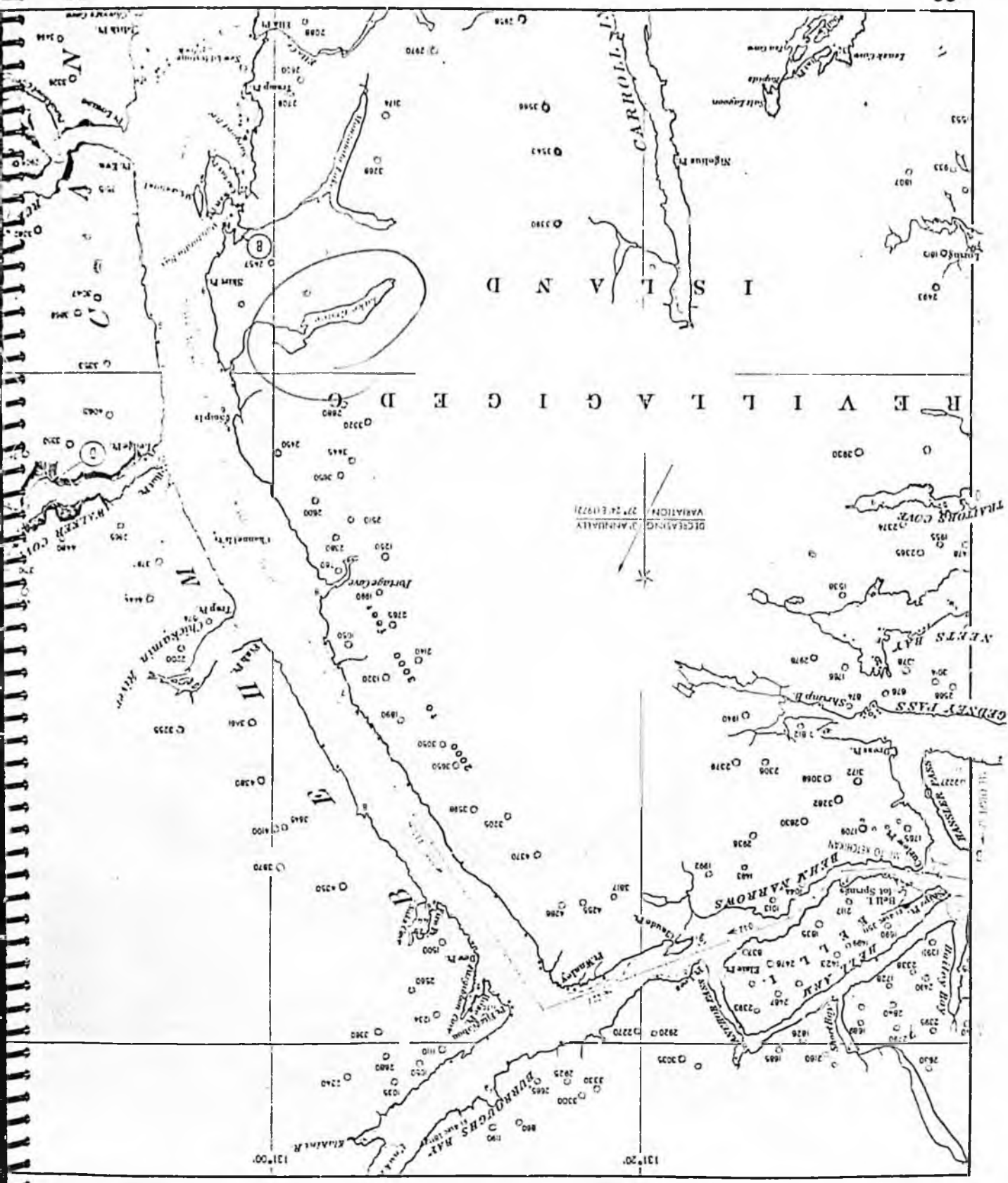
To: Amend SENATE BILL No. SJR 21

To: HOUSE BILL No.

PAGE: 2 LINE: 1

After the word "to" insert:

the Honorable Ronald Reagan, President of the United States,



DISTRIBUTED BY SENATOR ZIEGLER

From: Fritz

Re: Analysis of the laws applicable to the development of the Grace Lake Power Project

Date: March 22, 1983

Subject

You have asked me to research how the Alaska Lands Act (ANILCA) affected the Grace Lake Power Project withdrawal.

Grace Lake is within an area designated by ANILCA as the Misty Fjords National Monument Wilderness. Not only did Congress designate this area as a national monument, with substantial restrictions on the use of the monument lands, it also designated the area as a national wilderness area, with a different set of restrictions. Under the terms of ANILCA, wilderness areas are to be administered under the terms of the Wilderness Act of 1964, except where expressly provided for in other provisions of ANILCA. Under the provisions of the Wilderness Act, wilderness areas are to be "devoted to the public purposes of recreational, scenic, scientific, educational, conservation, and historical use." That act, however, does give the President the power to authorize power projects and transmission lines when it will serve the public interests better than denial of the project. Russ Brown and Tony Bevinetto of the Energy Committee advise, however, that a power project has never gone forward in a Congressionally designated wilderness area, due to the likelihood of strong opposition from the environmental community.

Earlier I mentioned that the Misty Fjords National Wilderness was to be administered as a wilderness area, except where other provisions of ANILCA expressly provide. The section dealing with monuments states that monuments designated by ANILCA shall be managed to "protect objects of ecological, cultural, geological, historical, prehistorical, and scientific interest." It is an open question as to whether a power project would be consistent with protecting those objects. This section also provides that right-of-ways, including those for electric transmission lines, through these monuments must be approved both by the President and Congress. Consideration of Congressional Resolutions of Approval would occur under ANGST type debate restrictions. While it is unclear whether a power project on Grace Lake would fall under the right-of-way provisions of this section, an electric transmission line from the project would probably be covered, and would require Congressional approval.

If FERC has retained control over the power site withdrawal, and if it has the power to allow the State or a private party to develop the power project (discussed below), then it may be possible to get around the requirement of Presidential and Congressional approval of the right-of-way. Another section of ANILCA states: "Notwithstanding any other provisions of this act or other law. in any case in which State owned or privately owned land...or other valid occupancy is within or is effectively surrounded by one or more conservation systems..., the State or private owner or occupier shall be given by the Secretary such rights as may be necessary to assure adequate and feasible access for economic and other purposes to the concerned land." This section arguably is broad enough to cover an electric transmission line from Grace Lake.

There is also a provision in ANILCA which states that nothing in the Act shall be construed as "superceding, modifying, or repealing, except as specifically set forth in this Act, existing laws applicable to the various Federal agencies which are authorized to develop or participate in the development of water resources or to exercise licensing or regulatory functions in relation thereto." It is unclear whether this provision gives FERC the authority to allow the development of a power project on Lake Grace power withdrawal without having to meet the requirements of the ANILCA provisions discussed above. The language of the provision is ambiguous, and the legislative history on it is sparse. It is, however, similar to language in the Federal Land Management Act of 1976 (FLPMA). As a result of that language, FERC and the Department of Interior have engaged in a longstanding dispute over who has control over power projects on Federal lands, with each agency claiming that it has control.

Conclusion

The conflicting provisions of ANILCA makes it difficult to determine whether a power project can be built on Grace Lake. The matter is one that will probably be resolved in the courts, with the outcome of such a suit uncertain. Based on the fact that Congress (and the environmentalists) were concerned enough about preserving this area to designate it as both a wilderness area, and a national monument, any attempt to have any development in the Misty Fjords National Monument Wilderness is likely to result in litigation by the environmentalists. Whoever tries to develop a power project at Grace Lake is buying a lawsuit. In addition, an electric transmission line across the Misty Fjords National Monument Wilderness area from Grace Lake might have to be approved by Congress. Although it would be possible to get Senate approval for such a line, it is doubtful whether the House Interior and Insular Affairs Committee would report out a Resolution of Approval.



Reply to: 1510

Date: APR 13 1983

Honorable Bettye Fahrenkamp
Chairperson, Resources Committee
Alaska State Legislature
Pcuch V
Juneau, AK 99811

Dear Ms. Fahrenkamp:

Regarding Senate Joint Resolution No. 21, the Forest Service recognizes the importance and need for hydroelectric power for Ketchikan, and that Ketchikan is partially dependent on fossil fuel for its generation of electrical power.

Additionally, we recognize that several potential power sites are located within conservation system units in Southeast Alaska, including Lake Grace in the Misty Fiords National Monument Wilderness. Based on a February 15, 1983 meeting between the Regional Forester and Senator Murkowski, we have agreed to prepare a map which identifies all hydroelectric power site withdrawals located within the Tongass National Forest conservation system units. We expect this map to be completed by May 15, 1983.

Development of hydroelectric sites within established Wilderness may be permitted with approval of the President. Associated transmission facilities may also be permitted with approval of the President and Congress. The applicable laws include ANILCA Section 503e, ANILCA Title 11, Wilderness Act Section 4(d)4, Federal Power Act, and National Environmental Policy Act. We understand the authorities of the Wilderness Act Section 4(d)4 have never been exercised.

In accordance with these laws, the Forest Service will work with cooperating agencies such as the Federal Energy Regulatory Commission, to expedite the processing of future applications on Lake Grace or other sites. The Federal Energy Regulatory Commission would probably be the lead agency in this matter.

With the necessary Presidential and Congressional approvals, authority currently exists to approve access and development of a hydroelectric facility and transmission lines within established Wilderness.



Honorable Bettye Fahrenkamp

2

Again, we recognize the importance and need of hydroelectric power to Ketchikan and other communities. The development of Lake Grace and other Southeast Alaska sites could be accomplished through an inter-tie system. We would be pleased to work with the State and others in the study of proposals for such a system.

Sincerely,

for *Michael A. Sandor*
JOHN A. SANDOR
Regional Forester

