

SJR

21

SENATE RESOURCES COMMITTEE  
LEGISLATION CHECKLIST

IDENTIFICATION:

BILL NUMBER: SJR 21

BILL NAME: Relating to the use of Lake Grace, an area within the Misty Fjords National Monument, for the generation of hydro. power for the Ketikutan area

SPONSOR(S): Ziegler

RELATED BILLS PENDING:

DATE INTRODUCED: 3-23-83

REFERRALS: Resources

INITIAL RESEARCH:

BILL SUMMARY COMPLETED:

SUMMARY BY LEGAL DIVISION:

SPONSOR CONTACTED FOR  
BACKUP MATERIALS:

DEPT. OF LAW SUMMARY:

FISCAL NOTE:

AGENCY RESPONSE:

OTHER INTERESTED SENATORS OR  
REPS. NOTIFIED:

BACKGROUND RESEARCH:

SIMILAR BILLS INTRODUCED IN PREVIOUS LEGISLATURES:

RESPONSES FROM INTERESTED PERSONS/GROUPS:

OTHER STATE OR FEDERAL PRECEDENTS, REGULATIONS, LAWS:

HEARING PREPARATION:

CHAIRMAN BRIEFED:

DATE AND PLACE SET:

STAFF MEMO TO COMMITTEE:

TELECONFERENCE:

BACKGROUND MATERIAL DISTRIBUTED:

PSA/PRESS RELEASE:

LIST OF WITNESSES:

SUGGESTED AMENDMENTS/COMMITTEE  
SUBSTITUTES DRAFTED:

Jim Caplan USFS

SJR 21

Swan Lake project still  
under construction. Have  
identified Grace Lake for  
future needs.

Just within monument  
boundary.

Get map.



Reply to: 1510

Date: **APR 13 1983**

Honorable Bettye Fahrenkamp  
Chairperson, Resources Committee  
Alaska State Legislature  
Pouch 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

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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. Barton*  
JOHN A. SANDOR  
Regional Forester

# Alaska State Legislature



BETTYE FAHRENKAMP, Chairman  
ROBERT H. ZIEGLER, SR., Vice Chairman  
DICK ELIASON  
PAUL FISCHER  
VIC FISCHER  
BOB MULCAHY  
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## Senate

### Committee on Resources

TO: Senate Resources Committee Members

FROM: Senate Resources Committee Staff

RE: Hearing, 4/13/83

DATE: April 12, 1983

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The following 3 bills have been heard by the Resources Subcommittee on Fisheries and will be addressed by Senator Mulcahy at the Wednesday hearing:

SB 2 PROVIDING FOR A LICENSE EXEMPTION FOR COMMERCIAL FISHING VESSELS 24 FEET OR LESS.

The Subcommittee recommends adoption of a Committee Substitute that would exempt all vessels used for the commercial harvesting of salmon in the administrative area know as Arctic-Yukon-Kuskokwim from the licensing requirement.

SB 52 RELATING TO THE LICENSING OF COMMERCIAL FISHING.

The Subcommittee recommends adoption of a Committee Substitute that would require that every person engaged in commercial fishing hold a commercial fisheries license which could be purchased either as a crewmember license or as an entry permit. A portion of the fees from this commercial fisheries license would go to the Fisherman's Fund.

HF 267 RELATING TO HERRING STRIPPING.

HB 267 would extend the time that herring stripping (the process by which herring roe is extracted from the carcass) is allowed to take place in the Bering Sea until 1936. The Board of Fisheries does have a regulation in place that will govern carcass disposal in the Bering Sea.

Also scheduled for the Wednesday hearing are:

SJR 21 RELATING TO THE USE OF LAKE GRACE, AN AREA WITHIN THE MISTY FJORDS NATIONAL MONUMENT, FOR THE GENERATION OF HYDROELECTRIC POWER FOR THE KETCHIKAN AREA.

SJR 21 would urge Congress to adopt legislation either eliminating the Lake Grace area from the Misty Fjords National Monument or permitting the development of the Lake Grace area for its hydro potential.

Lake Grace was determined to be of substantial potential value for a damsite before its designation as part of Misty Fjords National Monument. The nearby community of Ketchikan wishes to pursue its development to meet future power needs.

HB 187 RELATING TO REGULATION, LICENSING AND FEE FOR FUR FARMING.

HB 187 relieves the current permitting burden on fur farmers by eliminating the \$100 fee for a fur farming license, reducing the fee from \$100 to \$3 for collecting animals for fur farming purposes, and eliminating the requirement for a permit for importing and exporting mink and fox for fur farming. In addition, Commissioner Neve of DEC has committed to administrative changes in the current permitting procedures to more accurately reflect the needs of fur farmers and the types of activities they engage in.

The meeting is scheduled for Wednesday, April 13 at 3:00 pm in the Beltz Room. It is hoped that final committee action could be taken on these bills at this time.

From: Fritz

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

Date: March 22, 1983

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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.

# Alaska State Legislature

BETTYE FAHRENKAMP, Chairman  
ROBERT H. ZIEGLER, SR., Vice Chairman  
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## Senate

### Committee on Resources

#### MINUTES

Bettye Fahrenkamp  
Chairman

April 13, 1983  
3:05 p.m.

Beltz Room  
Room 211, Capitol

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#### MEMBERS PRESENT

Senator Fahrenkamp, Chair  
Senator Ziegler, Vice Chair  
Senator Sturgulewski

Senator Eliason  
Senator Mulcahy  
Senator Vic Fischer

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#### CALENDAR

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|--------|---|
| SJR 21 | Relating to the use of Lake Grace, an area within the Misty Fjords National Monument, for the generation of hydroelectric power for the Ketchikan area. |
| SB 2   | Providing for a license exemption for commercial fishing vessels 24 feet or less.   |
| SB 52  | Relating to the licensing of commercial fishing.  |
| HB 187 | Relating to regulation, licensing and fee for fur farming.  |
| HB 267 | Relating to herring stripping.  |

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#### HB 187

Representative Ringstad reviewed the provisions of the bill: (Sec 1) fur farming is redefined; (Sec 2) eliminates fee; (Sec 3) requires Fish and Game to authorize trapping for breedstock without a permit, and; (Sec 4) streamlines importation regulations and permitting.

In response to a question, Rep. Ringstad stated that federal regulations would still be in effect to control importation of diseased animals.

Bob Hinman, of the Department of Fish and Game, said that the department supports CSHB 187 (Res). They approved of Sec. 3, although it reduces fees, because of the small number issued. In response to a question on Sec. 4, Hinman explained that it ended a conflict between Title 16 and Title 3 over control of import permitting.

Commissioner Richard Neve, Department of Environmental Conservation, submitted a statement in support of the bill and announcing a suspension of regulations to study transfer to DNR of this authority.

Senator Sturgulewski moved that CSHB 187 (Res) be reported out of committee with individual recommendations. There was no objection.

#### SJR 21

Senator Ziegler reviewed the history of the proposed hydro site and the purpose of the resolution. In answer to a question about the authority for approval of the development, he said the resolution is addressed to Congress and the President, for approval of the transmission line along with the hydro development.

The US Forest Service submitted a letter stating that administrative authority to accommodate the development was possible. Senator Ziegler moved that SJR 21 be reported out of committee with individual recommendations. There was no objection.

#### HB 267

Senator Mulcahy reported on the testimony heard in the Fisheries Subcommittee hearing on HB 267, which supported the extension of the date from July 1, 1982 to July 1, 1986.

Senator Mulcahy moved that HB 267 be reported out of committee with individual recommendations. There was no objection.

#### SB 2

Senator Mulcahy moved that a committee substitute for SB 2 be adopted. There was no objection.

Senator Mulcahy said the purpose of the bill is to exempt from licensing the small boat fleet because of the short season for salmon and herring fishing from skiffs. Currently all boats are licensed.

Sgt. Buell Russell, Department of Public Safety, Fish and Wildlife Protection Division, testified that the department had no problem with the bill.

Senator Mulcahy moved CSSB 2 from committee with individual recommendations. There was no objections.

SB 52

Senator Mulcahy moved the committee substitute for SB 52. There was no objection. Senator Mulcahy referred to the sectional analysis and said the bill is basically technical changes. In response to concerns on residency requirement, Senator Mulcahy said that the requirement could be made to conform to other legislation or court decisions if necessary.

Senator Fahrenkamp agreed that the bill was housekeeping changes.

Senator Mulcahy moved CSSB 169 (Res) from committee with individual recommendations. There were no objections.

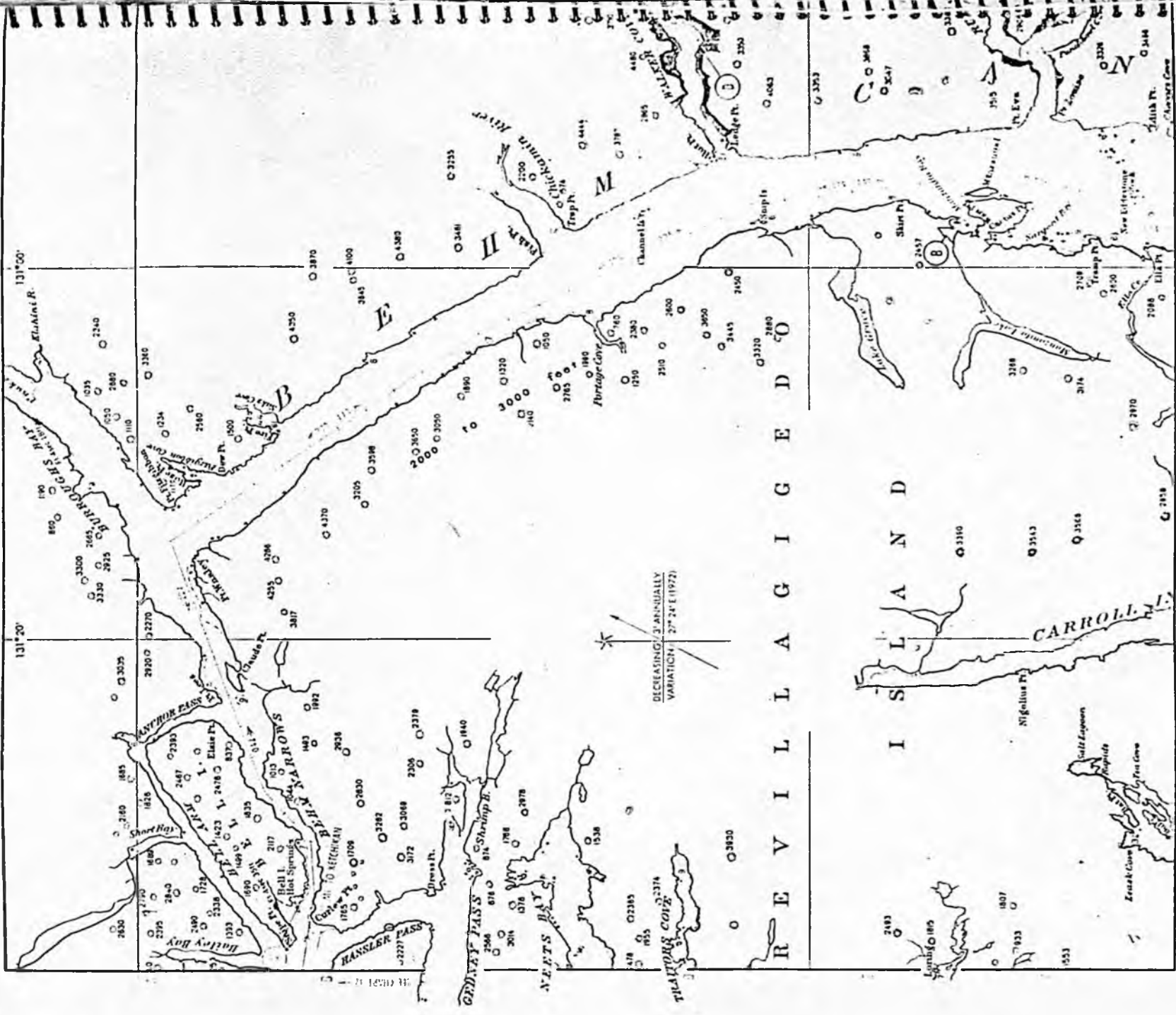
The meeting adjourned at 3:40 p.m.

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