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**JOINT SPECIAL COMMITTEE ON MENTAL HEALTH TRUST LAND
SECOND SESSION
14TH ALASKA STATE LEGISLATURE**

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Jerry Schrader, Public Alternate**

**Report to the Legislature
January 1987**

This report is issued pursuant to Legislative Resolve 53, 1986.



Official Business

Alaska State Legislature

Pouch V
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January 1987

Passage of SCR 36 by the 1986 Legislature established the Joint Special Committee on Mental Health Trust Land and charged the committee with the following:

- development of a proposal to resolve the mental health trust litigation,
- recommendation of a level of appropriation adequate to provide sufficient funding for mental health programs in the future, and
- a report to the Legislature on the committee's findings and recommendations.

We are happy to report that the committee unanimously agreed on a settlement proposal that avoids many of the complex land issues involved in attempting to reconstitute a one million acre land trust. We would like to call your attention to page 14 of the report, which contains the committee's recommended settlement proposal.

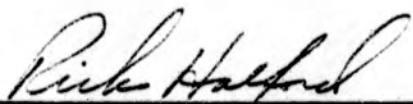
We would also like to call your attention to page 22 of the report, which contains recommendations on a level of funding for mental health programs in FY 88. Legislation to implement the committee's settlement proposal and legislation that addresses the mental health program will be introduced by the committee.

In our study of the mental health issue this past year it soon became clear that this complex legal land issue is not going to go away. It is vital that the public and the Legislature realize the extreme importance of settling this matter in a fair and permanent manner. It is the committee's unanimous belief that such a settlement requires action by the Legislature.

If prompt legislative action is not taken a likely result will be continued court action by the litigants, forcing a freeze on all transactions involving mental health lands and possibly involving all state lands. Current and former mental health lands total one million acres, many of which are in and around the state's urban areas. The disruption and conflicts with existing and proposed

land management regimes and land uses that a land freeze would cause are tremendous. While our proposal involves a significant commitment by the legislature, it was determined by the committee to be far preferable to either reestablishment of a land trust or continued litigation.

During the course of our discussions and deliberations, the committee enjoyed full participation and cooperation by the plaintiffs, intervenors, and defendants in the lands lawsuit and by organizations and persons concerned with mental health issues in Alaska. We would like to especially thank our public members, Ms. Pat Ryan-Clasby and Mr. Clifford Groh, and our public alternates, Ms. Janet Baird and Dr. Jerry Schrader, for their many hours of effort and their invaluable input to this report. Thanks are also extended to Sandra Schubert and David Finkelstein who served as staff to the committee in the drafting of the report.



Senator Rick Halford
Co-Chairman, Joint Special
Committee on Mental Health
Trust Land



Representative Pat Pourchot
Co-Chairman, Joint Special
Committee on Mental Health
Trust Land

TABLE OF CONTENTS

Background	1
Settlement Proposal	3
Lands to be in Trust	4
Compensation for Land Removed From Trust	5
Land Management	7
Use of Generated Funds	8
Fund Management	9
Legislative Intent	10
Recommended Alternative	12
Funding Level	17
Definition of Mental Illness	17
Scope of Program	18
Program Funding	19
Funding Recommendations	22
Appendix	24
Committee Membership	24
SCR 36 (Committee's Enabling Legislation)	25
Alaska Mental Health Enabling Act	27
Summary of the Supreme Court's Decision in <u>Weiss</u> ..	31
Attorney General's Opinion on Recommended Alternative	41

BACKGROUND

In 1956, the United States Congress passed Public Law 84-830, "An Act to confer upon Alaska autonomy in the field of mental health, transfer from the Federal Government to the Territory the fiscal and functional responsibility for the hospitalization of committed mental patients, and for other purposes." To ensure that the territory had adequate financial resources to discharge the responsibilities attending its assumption of mental health authority, the Act granted one million acres of land to Alaska as a public trust. The law, commonly known as the Alaska Mental Health Enabling Act, reads in part:

Sec. 202(a) "The Territory of Alaska is hereby granted and shall be entitled to select, within ten years from the effective date of this Act, not to exceed one million acres from the public lands of the United States in Alaska which are vacant, unappropriated, and unreserved at the time of their selection...."

Sec. 202(e) "All lands granted to the Territory of Alaska under this section, together with the income therefrom and the proceeds from any dispositions thereof, shall be administered by the Territory of Alaska as a public trust and such proceeds and income shall first be applied to meet the necessary expenses of the mental health program of Alaska. Such lands, income, and proceeds shall be managed and utilized in such manner as the Legislature of Alaska may provide. Such lands, together with any property acquired in exchange therefor or acquired out of the income or proceeds therefrom, may be sold, leased, mortgaged, exchanged, or otherwise disposed of in such manner as the Legislature of Alaska may provide, in order to obtain funds or other property to be invested, expended, or used by the Territory of Alaska...."

Land selections were made between 1956 and 1966. Since their selection the lands have been administered by the State Department of Natural Resources. Management has been for the general public good without specific reference to supporting a mental health program. Land proceeds have been deposited in the state's general fund.

In 1978 the legislature passed a law (Chapters 181-182, SLA 1978) redesignating mental health trust lands as general grant lands. The law established a trust fund for mental health programs and called on the legislature to appropriate 1.5% of the annual receipts from all state land to the fund. No appropriations were ever made.

In 1982 the Alaska Mental Health Association filed a class action lawsuit in Fairbanks Superior Court on behalf of Carl Weiss, a seven year old boy from Nenana, and Earl Hilliker, a Fairbanks resident. Weiss v. State of Alaska contended that the plaintiffs were in need of mental health services which were not available in

Alaska and questioned the constitutionality of the 1978 redesignation law. The court's judgment, entered in 1984, stated that the one million acres of land were for the exclusive benefit of the mentally ill, that the redesignation law violated the trust established by Congress, and that the trust was to be reimbursed for the fair market value of the lands with a credit for state appropriations made for mental health purposes. The state appealed the decision to the Alaska Supreme Court.

In October 1985 the Supreme Court issued its opinion in the Weiss case. It declared the redesignation act invalid and required that the trust be reconstituted as nearly as possible to its 1978 status, the date it was redesignated as general grant land. As part of the reconstitution, the court required that the trust be reimbursed for lands sold since 1978 with a credit for mental health expenditures made by the state during the same period.

The executive branch responded to the Court ruling by issuing Department Order 121, "Mental Health Land Interim Management". The order suspends and restricts certain actions on mental health lands based on receipt of fair market value or reimbursement to the trust in land or money for all transactions. In addition, it sets up a special account within the state's general fund to receive income obtained from the management of mental health land.

The legislative branch responded to the Court ruling by creating a mechanism to resolve the litigation. The Joint Special Committee on Mental Health Trust Land was established and charged with developing a proposal to resolve the litigation. The Interim Mental Health Trust Commission was established and charged with protecting the land trust from further diminution pending final resolution of the litigation, and overseeing the land appraisals and mental health audit necessary for reconstituting the trust.

SETTLEMENT PROPOSAL

The State Supreme Court, in deciding Weiss v. Alaska, ordered that the mental health trust be reconstituted to match as nearly as possible the holdings which comprised the trust when the mental health lands were redesignated as general grant lands in 1978. The order provided for the trust to be reimbursed for lands that have been sold since the redesignation, with a credit, or "set-off", to the state for mental health expenditures made since 1978. How to interpret whether lands have been sold or merely transferred, how to determine the value of the lands, and what constitutes a mental health expenditure were not addressed by the court. Who should manage the land, what management practices should be followed, and how trust earnings should be managed and spent were also not addressed.

The committee has been advised by the Attorney General that either a strict reconstitution of the trust or development of a negotiated settlement may be pursued. If reconstitution of the trust is sought the legislature has discretion in answering the questions left unanswered by the court, subject to judicial review if requested by the parties. Should a negotiated settlement be sought, the approval of both parties in the lawsuit is needed. As standard procedure in class action suits, the court would review the settlement for fairness before entering judgment in the case.

In the committee's view, a strict reconstitution of the trust is not desirable, primarily for the following reasons.

1. There are difficulties involved in reconstituting the trust to its 1978 status. Nearly half of the original acreage has been conveyed to third parties or designated by the legislature for limited use. Return of land conveyed to private parties is probably not legally possible; return of land conveyed to municipalities is vigorously opposed by the municipalities and legally uncertain; return of land in parks, refuges, and forests is likely to meet with stiff public opposition. Replacement acreage of like value would be difficult to secure, and it would take many years for cash payments in lieu of land to build a significant trust fund in light of the state's current revenue picture.

2. There is no guarantee that reconstituting the trust will enhance mental health programs. Managing the land, even under a policy of maximum revenue generation, may not generate enough revenue to fund the mental health program. More to the point, the enabling act provides that revenue from the trust land is not necessarily intended for the exclusive use of mental health programs. Similarly, the Weiss decision did not specify that additional state revenues must be committed to mental health program funding.

With this in mind, the committee has sought development of a settlement proposal that recognizes the many competing uses of the land and promises enhancement of mental health programs. A range

of alternative settlement proposals has been reviewed, from a strict reconstitution of the land trust to a statutory dedication of a percentage of state general fund revenues. In reviewing the proposals the committee considered the following: A) lands to be returned to the trust, B) compensation for lands not returned, C) how the trust land would be managed, D) how trust earnings would be spent, E) how a monetary trust would be managed, and F) legislative intent.

A) Lands to be in trust

As of August 1986, 829,250 acres of the State's one million acre mental health entitlement had been patented to the state by the federal government. An additional 176,634 acres had been approved for patent. The acreage can be roughly broken into the following status categories. Acreages are approximate and were provided by the Department of Natural Resources.

Unencumbered land

207,225 acres

This is land which reverted to trust status upon the Supreme Court's ruling that the trust must be reconstituted, and on which no encumbrances currently exist.

Less-than-fee disposals

286,562 acres

This includes land with residential leases, oil and gas leases, coal leases, timber sales, mining claims, materials sales, and rights-of-way. Proceeds from activity on these lands are currently being credited to a special mental health account within the state's general fund.

Limited use designations

368,241 acres

This includes parks and recreation areas (150,576 acres), game refuges and habitat areas (85,710 acres), state forests (131,955 acres), and interagency land management assignments (4,473 acres). Current use of these lands is incompatible with management for maximizing revenue.

Municipal conveyances

43,087 acres

The Municipal Entitlement Act (AS 29.65) authorizes municipalities to select vacant, unappropriated, unreserved land from within their boundaries. Mental health lands became available for municipal selection under the 1978 law redesignating them as general grant lands. In addition, AS 29.65.060 specifically authorizes selection of mental health land if certain criteria are met. To date, 23,259 acres of mental health land have been patented to municipalities; an additional 18,968 acres have been approved for patent. Some of the lands conveyed to municipalities have in turn been transferred to third parties or have had improvements constructed on them.

The Attorney General has advised the committee that municipalities which have received title to mental health lands could be compelled to return them to the trust, under private trust law principles which address receipt of trust property. Many municipalities are on record opposing return of the lands.

Conveyed to private parties 90,412 acres
This includes land patented to or under contract for sale to individuals (45,994 acres), lands condemned (5,149 acres), and litigation settlements (39,269 acres). Enforceable third party property rights have vested in these lands, and it is probably not realistic to return them to the trust.

Approaches to establishment of a land trust considered by the committee include:

- Return of as much land as feasible.
- Return of only less-than-fee disposals and unencumbered lands.
- Return of land from within parks, refuges and forests that are not essential to the unit's purpose.
- Selection of new lands; for example, acquiring mental health over-selections under the state's general grant land entitlement and transferring them to mental health status.
- Converting all mental health land to general grant land in exchange for monetary compensation.

Findings: The Supreme Court ordered that the trust be reconstituted to its 1978 status. There is general agreement that lands in the "unencumbered" and "less-than-fee disposal" categories currently have trust status.

There is disagreement over what other lands can legally be returned or are required by the court to be returned to trust status. In addition, returning land already committed to other uses may not be in the state's best interest and may be politically unrealistic.

There is likely some "nonessential" land in state parks, refuges, and forests that could be returned to the trust.

If new acreage is sought and the goal of the trust is to generate revenue, lands that have high resource or commercial values should be pursued. The presentation to the committee by the National Conference of State Legislatures indicated that those states which have raised large amounts of money from trust land manage high value lands such as timbered or urban lands. In Alaska, such lands generally have existing claims.

B) Compensation for land removed from trust

The Supreme Court has ordered that the state compensate the mental health trust for any land sold since passage of the 1978 redesignation law. Of the land removed, all but the 86,076 acres conveyed to private parties could arguably be returned to trust status. However, since much of the land is encumbered or receives significant public use, return to the trust may be an unrealistic goal.

Unless a negotiated settlement is reached, the process of appraising land values must be completed in order to determine the

amount of compensation due. The process was begun in 1985 when the Department of Natural Resources conducted an opinion-of-value estimate of 973,033 acres of mental health land. This, together with on-the-ground appraisals of 11,272 acres, resulted in a total 1978 valuation of \$282 million (approximately \$567 million in today's values).

Dissatisfaction among the parties over the opinion-of-value estimates resulted in the Interim Mental Health Trust Commission being statutorially charged with developing valuation procedures and overseeing valuation of all or part of the mental health lands. Fiscal year 1987 funding to the Commission falls far short of the millions of dollars needed to pay for on-the-ground appraisals of all parcels. The commission has focused the available valuation funds on municipal lands that were originally mental health lands. All municipal parcels are being valued using the opinion-of-value method, while a representative set of parcels will receive on-the-ground appraisals. The results are expected to be available in early 1987.

In determining the amount of compensation, the court has ordered that the state be allowed a credit, or set-off, for mental health expenditures made from 1978 to 1985. An audit of past program expenditures was recently conducted by the Legislative Budget and Audit Division with oversight by the Interim Mental Health Trust Commission. By legislative direction, a broad range of programs was audited and resulted in an expenditure total of \$512.3 million. The Commission reviewed LB&A's audit to identify those expenditures they felt constituted the state's mental health program and recommended that \$197.8 million be included in the set-off.

In developing its recommendation, the Commission evaluated each program offering. They looked at whether it was part of the state's 1977 comprehensive mental health plan, whether it addressed a professionally recognized mental health diagnosis, whether it was addressed in Alaska statutes, and whether its primary purpose was to provide mental health services. The major programs included in the Commission's recommendation are the Alaska Psychiatric Institute, the community mental health system, and programs for the developmentally disabled prior to 1981 at which time mental retardation was removed from Alaska's statutory definition of mental illness. Alcoholism, drug abuse, special education, and corrections programs are excluded from the Commission's recommendation except where they meet the general criteria for a mental health program.

Means of compensation considered by the committee include:

- Compensation in replacement lands and/or money, based on the fair market value of the land removed from the trust, offset by expenditures for mental health programs.
- Compensation based on a total value adequate to provide a revenue base to fund the mental health program.
- Replacement of the land trust with a direct funding source through dedication of a revenue stream (a specified percentage of

revenue from the management of all state land, designation of a percentage of state general fund income, proceeds from a specified tax, earmarking of funds from the reserve account of the Alaska Permanent Fund) or establishment of a monetary trust through a lump sum payment (use of a portion of any "windfall" revenues the state may receive from settlement of oil company lawsuits or other litigation).

Findings: Appraising land values to determine the amount of compensation owed the trust is a costly process. To date, the state has spent \$138,300 on valuations; on-the-ground appraisals of all mental health lands is estimated to cost in the millions.

The amount of the offset for mental health program expenditures is not absolute. There is not a universal or agreed on definition of mental health to guide the determination.

Negotiating a settlement based on program need rather than land values would save a significant amount of time and money that would otherwise be spent on appraisals.

The Attorney General has advised that dedication of a percentage of state income as a "mental health income stream" is permissible if its expenditure is patterned after the Mental Health Enabling Act. Specifically, the income stream would be dedicated first for mental health expenditures and then for other public purposes, and would be subject to legislative appropriation.

Relying on the reserve account of the Permanent Fund as an income stream assumes a policy of annual expenditure of the account. Although the State's current revenue picture argues for expenditure this year, expenditure of the account in future years may not be warranted.

Should a revenue stream be established, its ability to provide funds in perpetuity must match that of a trust corpus.

C) Land management

Current statutes (Title 38) provide for "maximum use of state land consistent with the public interest", and mental health lands have historically been managed according to these statutes. In December 1985, following the Weiss decision, the Department of Natural Resources issued Department Order #121, which established management principles that prevent further diminution of the trust. The order requires receipt of fair market value, or reimbursement of the trust in land or money, for all transactions. Land management oversight is being provided by the Interim Mental Health Trust Commission, which has adopted a policy of suspending any future land sales until the litigation is resolved.

Land management proposals considered by the committee include:

- By Department of Natural Resources with statutory direction to maximize revenue.
- By Department of Natural Resources under modified Title 38 provisions, with a commission having veto power.
- By a public corporation charged with maximizing revenue.

Findings: Neither the federal Mental Health Enabling Act nor the Weiss decision address how trust land should be managed.

General trust law principles require management actions to be in the best interest of the trust, which would likely mean maximizing land earnings.

If lands are to be managed for maximum revenue generation, new statutory guidelines will need to be developed and a manager will need to be designated.

Management funds will be required and could come from trust land revenues. The presentation to the committee by the National Conference of State Legislatures indicated that land management costs in other states range from 5% to 25% of annual land income.

Management of the trust land in the best interests of mental health programs could be enhanced through public oversight.

D) Use of generated funds

Article IX, Section 7 of the Alaska Constitution prohibits the automatic dedication of any state tax or license to a special purpose unless required by the federal government for state participation in federal programs. The Attorney General and the Legislative Legal Division have advised that automatic dedication of the proceeds from the sale or development of mental health lands fails to meet this exception. This opinion is based upon the analysis that the federal Mental Health Enabling Act does not require dedication of trust revenues to mental health programs, but rather establishes a revenue source from which appropriations for programs are to be made. The Constitution would therefore need to be amended, with approval of the majority of the voters statewide, to allow an exclusive dedication to occur.

It should be noted that the plaintiffs disagree with the Attorney General's analysis of the dedication, maintaining that Congress intended the legislature to be able to protect the corpus of the trust. In the plaintiffs' view, protection can occur only if proceeds from land sales are dedicated to a corpus account from which only earnings are appropriated. Under this analysis, dedication of sale proceeds would not violate the Constitution.

"Earmarking" trust land income in the general fund and appropriating an amount equal to the income is permissible, but it does not ensure that income will go toward funding mental health programs. Since one legislature cannot bind future legislatures,

enactment of a law stating that income will be spent on mental health programs is subject to the will of each legislature and dependent on annual appropriation of funds.

Uses of generated funds considered by the committee include:

- Constitutional dedication to a mental health fund.
- Congressional amendment to the federal Mental Health Enabling Act to require that income be dedicated to mental health programs.
- Earmarking trust income in the general fund.

Findings: The federal Mental Health Enabling Act does not require that trust income be spent exclusively on mental health programs, but provides for income to be applied first to necessary mental health expenditures and then to other public purposes. The legislature is given discretion in determining what constitutes a necessary mental health expenditure.

Dedication of trust income would ensure its expenditure on mental health programs. However, dedication is not required by the federal Act and is therefore not allowed by the state Constitution. Achieving an amendment to the Constitution to allow dedication would be a rigorous process, requiring a 2/3 vote of each legislative body and a majority vote of the people. To be successful, a major education and information process would need to be undertaken. The amendment process is purposely rigorous as a means of protecting the original premise of the Constitution which, in regard to dedicated funds, was to provide the legislature discretion in appropriations so that the state's funding needs could be considered annually and the state's revenue spent where it was most needed.

Preservation of the trust corpus through dedication of sale proceeds would ensure the continuation of the trust, but may not be permissible under Alaska's Constitution.

Seeking a Congressional amendment to the federal Mental Health Enabling Act that would require income to be dedicated raises federalism issues and may set a poor precedent for future federal grants.

"Earmarking" trust income in the general fund and appropriating an amount equal to the income is permissible. With no legal requirement that income be spent on mental health programs, advocacy groups and other interested persons could play an important role in guiding appropriations.

E) Fund management

Since the Weiss decision, income from mental health trust lands has been deposited in a special account within the state's general fund. To date approximately \$500,000 has been deposited. The general fund is managed by the Department of Revenue along

statutory guidelines (AS 37.10.070) which outline permissible investments and emphasize preservation of principal and high liquidity. The corpus and earnings of the general fund are available for annual appropriation by the legislature. The Department of Revenue also manages other funds, including trust funds.

State funds are also managed by the Alaska Permanent Fund Corporation, a public corporation operated by a board of trustees along statutory guidelines (AS 37.13.120) which outline permissible investments and emphasize high income production under the prudent-man rule. Expenditure of the fund's corpus is prohibited by the state Constitution.

Means of fund management considered by the committee include:

- By Department of Revenue, as a separately managed "permanent" fund.
- By a public corporation as a "permanent" fund.
- As part of the state general fund.

Findings: If a major monetary trust fund is established, a specific fund management scheme would need to be adopted. Otherwise, funds could be managed as part of the general fund and appropriated annually.

Creation of a permanent fund, in which the corpus is protected and only earnings are spent, would ensure a continued source of revenue. The corpus would be afforded greatest protection through a Constitutional amendment.

If managed by a public corporation, the fund corpus would be an asset of the corporation and thus protected from expenditure.

F) Legislative intent

The Supreme Court's ruling ordering reconstitution of the trust did not address the adequacy of the state's mental health program, nor did it specify that additional revenues must be committed to program funding. The language of the federal Mental Health Enabling Act requires only that trust revenues "first be applied to meet the necessary expenses of Alaska's mental health program". If the settlement is to provide increased program funding, the intent of the legislature in regard to future appropriations is a key factor.

The original purpose of the mental health trust, which was to provide a source of funding from which appropriations for Alaska's mental health program could be made, can be achieved only if future legislatures make the necessary appropriations.

Statements of intent considered by the committee include:

- Appropriate program money in an amount equal to or in excess of the revenue generated by the trust.

- Increase program funding annually until program goals are met, irrespective of trust earnings.

Findings: Reconstituting the trust has no direct bearing on the state's mental health program. A legislative commitment to increase funding for mental health programs is essential if mentally ill Alaskans are to obtain the relief they need.

Legislative intent with a high degree of public involvement may provide assurance that funding increases will occur.

Obtaining a stipulated court judgment may lend a degree of assurance that legislative intent will be carried out.

RECOMMENDED ALTERNATIVE

A major conclusion drawn by the committee is that legislative action to resolve the litigation must be taken, and taken now, to avoid severe consequences and substantial liability. The committee's primary recommendation is that achievement of a settlement be pursued this legislative session. Toward this end, the committee has deliberated thoroughly the advantages and disadvantages of both reconstitution of a land trust and replacement of the land trust with a negotiated monetary settlement, and recommends that a monetary settlement be pursued.

While recognizing that reconstitution of a land trust would explicitly fulfill the terms of the Mental Health Enabling Act and directly respond to the Supreme Court's order, the committee has found that there are significant disadvantages to a land settlement.

A primary disadvantage is that the lack of administrative flexibility with respect to trust land prevents competing land uses and may alienate many user groups. Returning lands currently committed to other uses would create hardships for municipalities that have selected mental health trust land under the state's Municipal Entitlement Act, individuals who are third party recipients of trust land, recreationists and sportsmen who enjoy parks and game refuges, and others. Once in trust status, land must be managed according to trust principles which designate revenue generation as the goal. Such a management approach would restrict and possibly preclude mining claims, veterans' discounts, litigation settlements and exchanges with Native corporations, and other activities. This is much the situation that impelled the State in 1978 to redesignate the mental health trust land as general grant land.

There is also concern that the costs of land management are high and the potential for revenue generation uncertain at best. Testimony received from the University of Alaska in regard to management of their trust land indicated that land management costs significantly exceed revenues at this time. As mentioned, national statistics collected on long established trusts in other states show that land management costs range as high as 25% of annual land income.

Other disadvantages identified by the committee include the diversion of attention from mental health issues to land management that a land trust necessitates, and the knowledge that the feeling of security and permanence that land provides may be illusory -- even oil-rich Prudhoe Bay lands ultimately will run out of oil.

Conversely, the advantages of a monetary settlement are many. Primary is the fact that it focuses attention on the funding level for mental health programs and is capable of providing immediate financial support for the program. The other major advantage is relief from the land management concerns outlined above. A

monetary settlement may garner support from many other groups because former trust lands would be available for a variety of purposes and a possible cloud from land titles would be removed.

Recognizing that the state's revenue outlook provides little possibility for establishment of a monetary trust fund, which would require a large cash payment, the committee recommends a monetary settlement consisting of a guaranteed revenue stream.

In brief, the recommended alternative (Alternative A) replaces the land corpus with the dedication of 5% of all state revenues as the Mental Health Income Stream. The revenue stream would serve the intended purpose of the original land corpus by providing a source of money from which appropriations for the state's mental health program must first be made. Alternative A provides for a pledge of state assets which would be used to reconstitute a trust corpus should the revenue stream not be made available for appropriation. In effect, the mental health community would be empowered to have a state property sale to ensure establishment of a revenue stream.

Alternative B provides for reestablishment of a land trust by reclaiming much of the land that has been removed from the trust. Because of the numerous disadvantages discussed above, this alternative is not recommended by the committee.

Alternative C outlines the likely results should a negotiated settlement not be reached and the parties return to court. The consequence of the state's inaction will be further litigation, the ramifications of which will be felt by citizens throughout the state. It is this potential liability that has led to the committee's primary recommendation of taking action to settle the lawsuit now.

Legislation to implement Alternative A will be introduced by the committee. The committee recommends that any legislation considered for resolving the litigation contain a series of findings and purposes that outline the policy decisions reached by the legislature.

ALTERNATIVE A
SECURED REVENUE STREAM

Replaces the land trust with a guaranteed and enforceable revenue stream designed to equal the earning potential of a reconstituted trust.

Lands to be in Trust
None.

Compensation for Land Removed from the Trust
Dedication of 5% of all state revenues as the Mental Health Income Stream secured by a pledge of state assets. The pledge would be an enacted and stipulated (court-ordered) waiver of the state's immunity from execution (AS 09.50.270). This would allow the sale of certain state assets (possibly in a prioritized list) to satisfy the obligation.

Land Management
Not applicable.

Use of Generated Funds
The legislature shall first appropriate funds from the Mental Health Income Stream to meet the necessary expenses of the state's mental health program. A Mental Health Board will make recommendations on mental health needs in Alaska and report on the use and expenditure of the Mental Health Income Stream.

Fund Management
Not applicable.

ALTERNATIVE B RECONSTITUTION OF THE TRUST

Reestablishes the mental health land trust by reclaiming much of the land that has been removed from the trust in previous years.

Lands to be in Trust (approximate acreage)

Unencumbered land	207,225 ac.
Less-than-fee disposals (leases, etc.)	286,562 ac.
Post-1978 legislative designations	203,855 ac.
Patented and approved municipal selections (other patented and approved municipal selections of approx. 9,000 ac. would not be returned due to third party transfers, construction of facilities, etc.)	34,000 ac.
University, CIRI and other settlements	39,269 ac.
TOTAL	770,911 ac.
Pre-1978 legislative designations*	164,386 ac.
TOTAL	935,297 ac.

DNR and a new Mental Health Trust Corporation will review other lands to replace the value and potential revenue production of lands not able to be returned to the trust or determined to be inappropriate for inclusion in the trust.

Compensation for Land Removed from Trust

Compensation in new land and/or in cash payments to a trust fund will be determined once the land appraisal process, 1978-85 expenditure audit, and land identification (as described above) are complete.

Land Management

By the Mental Health Trust Corporation, a public corporation with a five-member board to include three members selected from names recommended by the mental health community, as well as at least two members with land management expertise. The Corporation will set land management policies based on new statutes consistent with general trust principles, and may contract with DNR or other entities for land management services.

Use of Generated Funds

Land income will be deposited in a special account within the general fund, and appropriated annually by the legislature first for land management expenses and the state's mental health program. Corpus proceeds (from sales) will be placed in a protected trust fund.

Fund Management

The trust fund will be administered by the Mental Health Trust Corporation, with management by the Permanent Fund Corporation, Department of Revenue, or other entity of the Mental Health Trust Corporation's choosing.

* The Supreme Court decision did not address designations made before 1978 which may require compensation to the trust.

ALTERNATIVE C
NO ACTION

Outlines the likely and possible results from a failure to resolve the litigation through negotiation.

Likely Results

- Significant money judgment, possibly in the billions of dollars, due immediately.
- Freeze on all land transactions and/or direct court supervision of mental health lands, with potential for a freeze on all state lands.
- Potential return to the trust of approximately 372,000 acres of state parks, refuges, and forests.
- Possible invalidation of state conveyance of approximately 86,000 acres to third parties, particularly municipalities and Native corporations, a course of action which will place a cloud on the title to those lands and may result in third parties losing title.
- Escalation of tremendously expensive and complex litigation involving, among other things, appraisals of up to 20,000 separate parcels of land and litigation of the "offset" for mental health expenditures.

Possible Results

- Liability of third parties such as municipalities, Native corporations, and others for participation in the breach of trust.
- Imposition of a management scheme for mental health land inconsistent with other state land management policies.
- Replacement of the State as trustee.

FUNDING LEVEL

The Alaska Mental Health Enabling Act, passed by Congress in 1956, specified that the income and proceeds from the mental health trust "first be applied to meet the necessary expenses of the mental health program of Alaska." No description of program and no determination of necessary expenses was provided. Rather, the Act specified that the "income and proceeds shall be managed and utilized in such manner as the Legislature of Alaska may provide", and in a manner "compatible with the conditions and requirements imposed by other provisions" of the Act.

In considering Weiss v. Alaska, the Supreme Court ruled only on the question of whether or not the state had breached the public trust by redesignating mental health land as general grant land. It did not address the adequacy of the state's mental health program nor did it specify that additional revenues must be committed to program funding. In the committee's view, the issue of funding for Alaska's mental health program is distinct from the question considered by the court, and is not an essential part of a settlement.

However, the committee is concerned that reconstituting the trust as ordered by the court may not enhance mental health programs, as neither the federal enabling act nor the Supreme Court's decision dedicate trust revenues to mental health. Recognizing that the Weiss lawsuit was filed on behalf of Alaskans whose mental health needs were not being met and who looked to the trust as a source of relief, a primary interest of the committee is to ensure that necessary funding for mental health programs is provided. This is consistent with the committee's statutory charge to recommend a level of appropriation adequate to provide sufficient funding for mental health programs in the future.

Determining the amount of funding "necessary" to provide a mental health program is dependent on the definition of mental illness and the scope of the treatment program offered.

DEFINITION OF MENTAL ILLNESS

There is no universally accepted definition of mental health or mental illness. The legislative history of the Mental Health Enabling Act is unclear as to the Congressional intent. Conflicting definitions are found throughout federal legislation and reports.

Definitions among the 50 states are inconsistent. For example, Arizona excludes mental retardation, drug abuse, and alcoholism from its definition while Connecticut includes them. Several states define mental illness as "mental disease to such an extent that a person requires care and treatment for his own welfare, or the welfare of others, or of the community." Other

states limit their programs to "individuals who, in the opinion of a licensed physician, have a psychiatric disorder".

The Diagnostic and Statistical Manual of Mental Disorders developed by the American Psychiatric Association is the professional source of standards in diagnosing mental disorders. It reads, "There is no satisfactory definition that specifies precise boundaries for the concept 'mental disorder'". Nevertheless, the manual classifies certain conditions as mental disorders and excludes others. Several states reference the manual in their definition of mental illness.

Alaska's statutory definition of mental illness has changed as the legislature has appropriated funds to develop and expand services and as treatment philosophies have changed. AS 47.30.915(12) defines mental illness as, "An organic, mental or emotional impairment that has substantial adverse effects on an individual's ability to exercise conscious control of the individual's actions or ability to perceive reality or to understand; mental retardation, epilepsy, drug addiction, and alcoholism do not per se constitute mental illness, although persons suffering from these conditions may also be suffering from mental illness."

SCOPE OF PROGRAM

In the absence of a widely accepted, established definition of mental illness, the statutes and appropriations enacted by the legislature have played a primary role in shaping the state's mental health program. As the state's policy making body, the legislature has established the scope of the state's mental health program by deciding what programs receive funding, how much funding is received, and who is responsible for administering the programs.

Prior to passage of the Mental Health Enabling Act in 1956, the only treatment and custodial care for Alaskans needing mental health services was provided by Morningside Hospital, a private institution in Portland, Oregon. With passage of the Act, Congress transferred the responsibility for Alaska's mental health program to the Territory of Alaska and provided federal funds, \$1 million annually the first two years followed by declining appropriations through 1968, to implement service delivery.

Today, Alaska's program for the mentally ill consists primarily of the Alaska Psychiatric Institute (API) and a system of community mental health centers. API was built in Anchorage in 1962. The first community mental health centers were constructed in Anchorage, Fairbanks, and Juneau soon after passage of the federal enabling act. The opening of centers in Ketchikan and Kodiak followed. All are now part of a statewide system of 27 community mental health centers established under the state's 1975 Community Mental Health Services Act.

Program growth has been a direct function of legislative appropriations. The legislature has been guided by the state's comprehensive mental health plan and by the ideas and needs of consumers, client families, advocacy groups, private providers, and others.

AS 47.30.520 mandates the development of a comprehensive mental health plan and requires that the plan provide a five-year projection of statewide needs, services and resources in the mental health system. Alaska's last comprehensive plan was developed in 1977. Its goal was a network of mental health units throughout the state that could provide comprehensive mental health services to all consumers. The plan featured API prominently and cited community based mental health services as the most apparent need.

Development of an updated comprehensive mental health plan is currently underway. Its major finding is that a tremendous need exists for increased state services for the mentally ill. The plan indicates that despite increased legislative appropriations over the years, funding has not kept pace with the need.

The major components of Alaska's service system are stretched to capacity and many needy persons are not being served. Applying national mental health data which states that 5% of the general population suffers from one or more mental disorders, Alaska's population in need of services would be approximately 25,000. Currently, about 10,000 persons are being served -- 1200 at API and 8800 through the community mental health system. Statistics for the chronically mentally ill are even more discouraging, with only 1394 of the estimated 5500 Alaskans in need receiving services.

Between 1974 and 1985, admissions to the community mental health system increased 185% above simple population growth. At the current staffing level, services have reached a practical limit and waiting lists exist at most centers.

Similarly, during fiscal year 1985 the state's population grew by 1.9%; admissions to API grew by 8%. API has accommodated the increased admissions by decreasing the length-of-stay in the treatment of patients. A documented consequence of this is a 50% re-admission rate of former API patients. What this means in terms of quality and adequacy of care can only be inferred, but the consequences cannot be favorable.

PROGRAM FUNDING

State appropriations for mental health programs have grown from slightly less than \$1.2 million in 1959 to slightly more than \$23.4 million in 1986. However, when an inflation factor is applied, actual state spending on mental health has declined over the last few years.

The draft mental health plan, released in August 1986, estimates the cost of developing a comprehensive mental health system at \$106.9 million in annual operating costs, an increase over FY 87 operating expenditures of approximately \$82.1 million. It also identifies a need for \$102.1 million in one-time capital costs. The plan places highest priority on care for acutely disturbed persons. It recommends funding a system of immediate response through community mental health centers, designated beds in local hospitals, and specialized care services at the Alaska Psychiatric Institute.

High priority is also placed on care for the chronically mentally ill. The plan recommends funding case management services, emergency services, day treatment, outpatient psychotherapy, rehabilitation services, and inpatient services. This component of the state's mental health system is recognized as being most in need of expansion.

A comprehensive care system for children and adolescents is also recommended. Prevention programs, early intervention programs, specialized outpatient services, day treatment programs, group homes, and specialized foster care programs are proposed for funding. The plan identifies specialized services for the elderly, Alaskan natives, and incarcerated persons; general clinical services; and disaster response services as essential to a comprehensive mental health system.

To fully implement the plan, the draft estimates additional state funding as follows. Costs are shown in millions of dollars.

	Annual Operating	One-Time Capital
Acute	\$ 5.3	\$16.5
Chronic (basic services only)	41.0	51.3
Children	16.3	11.3
Elderly	4.9	3.6
Alaskan natives	3.0	12.1
General clinical	2.1	0
Disaster response	.1	0

In addition, the plan identifies an annual operating cost of \$650,000 to ensure the availability of mental health professionals to provide the increased level of service.

The draft plan emphasizes that the fiscal estimates are only broad approximations and that actual expenditures would need to be determined. However, in the committee's view, the draft clearly demonstrates that Alaska's current level of mental health funding is insufficient to serve our mentally ill population. It should be noted that the Alaska Alliance for the Mentally Ill has testified that the draft falls short of the goals of an adequate program.

The committee's view is supported by testimony received from the National Conference of State Legislatures (NCSL). Their review of Alaska's mental health program led to several recommendations, primarily that our programs be expanded. NCSL cited community care, children's programs, and treatment of incarcerated persons as particularly deficient, and recommended that a formal and continuous planning process be established.

In addition, NCSL compiled 1985 data from a number of western states, and rated Alaska's mental health program in comparison to the others. Alaska's expenditures on mental health as a percentage of our total state budget were the lowest in the study group (.4%); our per capita expenditures were the highest (\$45/state resident); and the percentage of our mental health budget that came from state sources rather than from federal or local sources was high compared to the national average (88% vs. 77%). The Division of Mental Health has expressed concern that NCSL's data may not have accurately reflected all mental health program expenditures.

FUNDING RECOMMENDATIONS

1. Whether or not funds exist in a mental health trust, Alaskans' mental health needs should be met.
2. The scope of the mental health program should continue to be determined by the legislature as the state's policy making body. The comprehensive mental health plan should guide the legislature in program development and spending decisions.
3. As required by statute, the plan should be continually updated to meet the changing needs of Alaskans and to reflect changing treatment philosophies.
4. The state benefits tremendously from public involvement in the planning process, and an advocacy board should be established to recommend program needs and funding levels to the legislature, and to monitor program implementation and expenditures.
5. The existing prioritization of mental health populations should be followed to ensure that the needs of persons with the most critical mental health problems are met. 7 AAC 71.135 places highest priority on the acutely disturbed, followed by the chronically disturbed, children and adolescents, other persons requiring direct intervention, and persons requiring nondirect services. This prioritization is reinforced in the draft comprehensive state plan.
6. Funding increases should be incremental in nature, allowing response to the state's fiscal situation and the ability of the program to expand in any one year. For FY 88 the committee recommends a minimum of \$27,392,200.
 - a) Continued funding of \$22,533,200, the Department's FY 88 base budget for the Division of Mental Health and Developmental Disabilities for mental health services and administration, Community Mental Health grants, and contract services provided by native corporations. In light of the Weiss lawsuit and the unmet mental health program needs, existing mental health programs should be protected from further budget cuts.
 - b) Reinstatement of the \$4,000,000 cut by executive action in July 1986. These funds should be allocated as follows: restore \$550,000 to API; allocate \$272,000 for adult residential care for the chronically mentally ill to restore 13 beds and add 27 new ones; restore \$151,800 to the Division of Mental Health for staff to plan and deliver mental health services; restore \$223,200 to the Fairbanks community mental health program; and allocate \$2,828,500 to community services for the chronically mentally ill.

c) Restoration of the \$859,000 provided to the Department in FY 87 as legislative "add ons". This includes funds for designated beds, emergency services for the chronically mentally ill, and suicide prevention.

NOTE: The committee devoted most of its time in developing funding recommendations to those programs serving the "mentally ill" population. The committee did not attempt to define what other populations should be provided access to Alaska's mental health program or to determine funding needs for these other populations.

7. Passage of legislation establishing a service system for the chronically mentally ill should be sought. The state's existing Community Mental Health program requires recipients to bear 25% of the cost of service, thus encouraging centers to serve those clients who are able to pay. Since the chronically mentally ill are generally unemployed, uninsured, and can't afford to pay, their needs have in large part been neglected. Establishing a separate service system with 100% funding from the state would ensure that this population is served. Legislation to establish such a system will be introduced by the committee, accompanied by a fiscal note that distributes available funds to all 27 Community Mental Health Centers based on a needs formula. In addition to reprogramming \$2.8 million to chronically mentally ill services as recommended in (5)(b) above, a budget increment is needed.

8. Future year funding increases should allow continued progress toward meeting the goals of the state's comprehensive mental health plan.

JOINT SPECIAL COMMITTEE ON MENTAL HEALTH TRUST LAND

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Offered: 5/10/86
Referred: Rules

FINAL

Original sponsors: Josephson, Sackett,
Rodey, et al

1 IN THE SENATE BY THE FINANCE COMMITTEE

2 HOUSE CS FOR CS FOR SENATE CONCURRENT RESOLUTION NO. 36 (Finance)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - SECOND SESSION

5 Establishing a joint special committee
6 on mental health trust land.

7 BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:

8 WHEREAS the United States Congress granted 1,000,000 acres of land to
9 the Territory of Alaska to be administered as a public trust for the neces-
10 sary expenses and support of mental health in the territory; and

11 WHEREAS in October 1985, the Alaska Supreme Court determined that the
12 1978 decision of the Alaska Legislature to redesignate mental health trust
13 land as general grant land had breached the trust established by the Con-
14 gress; and

15 WHEREAS the funding level for the mental health programs in the state
16 is one of the lowest in the nation on a per capita basis; and

17 WHEREAS the legislature, the administration, and mental health advo-
18 cates agree that the state must comply with the intent of the Congress that
19 mental health programs in the state receive sufficient funding; and

20 WHEREAS it is not in the public interest that continued litigation
21 over the mental health land trust divert attention from the underlying goal
22 of increased funding for mental health programs and care in the state; and

23 WHEREAS present state statutes do not explicitly provide for the
24 management of mental health trust land for maximum revenue production; and

25 WHEREAS the return of mental health trust land to trust status pre-
26 cludes management of mental health trust land for its highest and best use;

27 BE IT RESOLVED by the Alaska State Legislature that a Joint Special
28 Committee on Mental Health Trust Land is established under Uniform Rule 21;
29 and be it

HCS CSSCR 36(Fin)

1 FURTHER RESOLVED that the Joint Special Committee on Mental Health
2 Trust Land is composed of three members of the Senate appointed by the
3 president of the Senate, three members of the House of Representatives
4 appointed by the speaker of the House of Representatives, and two public
5 members interested in the mental health trust land issue; the public mem-
6 bers shall be selected by the other members of the Joint Special Committee
7 on Mental Health Trust Land; and be it

8 FURTHER RESOLVED that one member appointed from the House of Represen-
9 tatives be from the membership of the House Finance Committee and one
10 member appointed from the Senate be from the membership of the Senate
11 Finance Committee; and be it

12 FURTHER RESOLVED that the Joint Special Committee on Mental Health
13 Trust Land develop, after public hearings, a proposal to resolve the mental
14 health trust litigation and recommend a level of appropriations adequate to
15 provide sufficient funding for mental health programs in the future; and be
16 it

17 FURTHER RESOLVED that the committee is authorized to meet during and
18 between sessions of the legislature and is to report its recommendations
19 and findings on the first day of the First Session of the Fifteenth State
20 Legislature; and be it

21 FURTHER RESOLVED that the committee terminates on the 10th day of the
22 First Session of the Fifteenth State Legislature.

Final Bill

**TITLE I—AUTHORITY OF THE TERRITORY OF ALASKA
IN THE FIELD OF MENTAL HEALTH**

POWERS OF THE TERRITORIAL GOVERNMENT

Sec. 101. For the purpose of vesting in the Territory of Alaska authority comparable in scope to that of the States and other Territories of the United States in the field of mental health, the Territorial legislature is hereby authorized to enact such laws on the subject of mental health as it may deem appropriate, and such legislation may supersede any of the Acts cited in section 301.

FUNCTIONS OF COURTS

Sec. 102. In carrying out section 101, the Territorial legislature is authorized to confer upon United States commissioners, as ex officio probate judges, and upon the United States District Court for the Territory of Alaska, such jurisdiction, functions, and duties as it may deem appropriate for such purpose.

EFFECTIVE DATE

Sec. 103. This title shall become effective on the date of enactment of this Act.

TITLE II—GRANTS

SPECIAL GRANTS TO ALASKA FOR MENTAL HEALTH

Sec. 201. Title III of the Public Health Service Act, as amended, is hereby amended by adding thereto a new part as follows:

58 Stat. 661.
42 USC 201 note.

"PART H—GRANTS TO ALASKA FOR MENTAL HEALTH

"GRANTS FOR ALASKA MENTAL HEALTH PROGRAM

"Sec. 371. (a) There are hereby authorized to be appropriated the following sums to be available to the Surgeon General of the Public Health Service for the purpose of making grants to the Territory of Alaska to assist it to carry out plans, submitted by the Governor of the Territory or his designee and approved by the Surgeon General, for an integrated mental health program for the Territory, including outpatient and inpatient care and treatment: For each of the fiscal years ending June 30, 1958, and June 30, 1959, the sum of \$1,000,000; for each of the fiscal years ending June 30, 1960, and June 30, 1961, the sum of \$800,000; for each of the fiscal years ending June 30, 1962, and June 30, 1963, the sum of \$600,000; for each of the fiscal years ending June 30, 1964, and June 30, 1965, the sum of \$400,000; and for each of the years ending June 30, 1966, and June 30, 1967, the sum of \$200,000.

Appropriations.

Estimates: pay-
ments.

"(b) The Surgeon General shall, prior to the beginning of each calendar quarter or such shorter period as the Surgeon General may find necessary, estimate the cost of carrying out the approved plan, on the basis of estimates furnished by the Territory, including estimates of the amount of contractual obligations for hospitalization, and on the basis of such further investigations as he may find necessary. From the amounts appropriated for any fiscal year, the Surgeon General shall pay to the Territory the amount requested by it but not to exceed the amount so estimated by the Surgeon General for each such period, reduced or increased, as the case may be, by any sum (not previously adjusted under this section) by which he finds that the amount paid for any prior period was greater or less than the amount which should have been paid. The amount of any balance of payments made to the Territory under this section and remaining unobligated on July 1, 1967, shall be repaid to the Treasury of the United States.

"(c) Whenever the Surgeon General finds, after affording opportunity for hearing, that the Territory has failed to comply substantially with any provisions of the approved plan, he shall notify the Governor that no further payments will be made under this section (or that further payments will not be made for parts of the plan affected by such failure) until he is satisfied that there will no longer be any such failure.

"(d) For the purpose of facilitating the administration of the Territory's mental health program, the Surgeon General is authorized to enter into arrangements with the Territorial government to provide for the care and treatment, in hospitals operated by the Service, of patients requiring hospitalization. Such arrangements shall be subject to the availability of suitable facilities therefor and shall provide for charges to the Territorial government in amounts determined by the Surgeon General which shall be sufficient to cover the full cost of such care and treatment. Upon payment by the Territory the amount of such charges shall be credited to the appropriation from which such costs were incurred: *Provided*, That, during the period of grants under this section, payment may be effected by deductions from the amount of such grants otherwise payable to the Territory, with such deductions to be credited to the appropriation from which such costs were incurred.

"PAYMENTS FOR CONSTRUCTION OF HOSPITAL FACILITIES

"Sec. 372. (a) There is hereby authorized to be appropriated an amount not exceeding the total sum of \$6,500,000, to remain available until expended, to enable the Surgeon General to make payments to the Territory of Alaska as the total contribution of the Federal Government to be used in defraying the cost of construction of hospital and other facilities in Alaska needed for the carrying out of a comprehensive mental health program.

"(b) Such facilities shall be scheduled for construction in accordance with a comprehensive construction program, developed by the Territory in consultation with the Public Health Service and approved by the Surgeon General. Projects shall be constructed in accordance with such approved program and in accordance with plans and specifications for the project approved by the Surgeon General.

"(c) Upon certification by the Territory, based upon inspection by it, that work has been performed upon a project, or purchases have been made in accordance with approved plans and specifications, and that payment of an installment is due, the Surgeon General shall certify such installment for payment: *Provided, however*,

That the Surgeon General may cause the project to be inspected at any time, and if such inspection indicates that the project is not being constructed in accordance with approved plans and specifications, he may, after notice and affording opportunity for hearing, withhold further payment until he finds that adequate corrective measures have been taken.

"(d) The term 'cost of construction' means the amount found necessary by the Surgeon General for the construction of a project and includes the construction and initial equipment of buildings (including medical transportation facilities), architects' and engineering fees, the cost of land acquired specifically for the purpose of the project, and on-site improvements.

"(e) If, within twenty years from the date of completion of construction, any hospital or other medical facility constructed with the aid of grants under this section shall cease to be a publicly owned facility operated for the care or treatment of patients under the Territory's mental health program, the United States shall be entitled to recover from the Territory the then value of the hospital or other medical facility, reduced, however, proportionately to the extent to which the Territory may have contributed to the cost of construction thereof."

Recovery of
value of facility.

LAND GRANT

Sec. 22. (a) The Territory of Alaska is hereby granted and shall be entitled to select, within ten years from the effective date of this Act, not to exceed one million acres from the public lands of the United States in Alaska which are vacant, unappropriated, and unreserved at the time of their selection: *Provided*, That nothing herein contained shall affect any valid existing rights. All lands duly selected by the Territory of Alaska pursuant to this section shall be patented to the Territory by the Secretary of the Interior.

(b) The lands authorized to be selected by the Territory of Alaska by subsection (a) of this section shall be selected in such manner as the laws of the Territory may provide, and in conformity with such regulations as the Secretary of the Interior may prescribe. The authority to make selections shall never be alienated or bargained away, in whole or in part, by the Territory. All selections shall be made in reasonably compact tracts, taking into account the situation and potential uses of the lands involved. Upon the revocation of any order of withdrawal in Alaska, the order of revocation shall provide for a period of not less than ninety days before the date on which it otherwise becomes effective during which period the Territory of Alaska shall have a preferred right of selection, subject to the requirements of this Act, except as against prior existing valid rights or as against equitable claims subject to allowance and confirmation. Such preferred right of selection shall have precedence over the preferred right of application created by section 4 of the Act of September 27, 1944 (58 Stat. 748; 43 U. S. C., sec. 282), as now or hereafter amended, but not over other preference rights now conferred by law. As used in this subsection, the words "equitable claims subject to allowance and confirmation" include, without limitation, claims of holders of permits issued by the Department of Agriculture on lands eliminated from national forests, whose permits have been terminated only because of such elimination and who own valuable improvements on such lands.

(c) All grants made or confirmed under this section shall include mineral deposits: *Provided, however*, That mineral deposits in lands which on January 1, 1956, were subject to public land order numbered 52 of January 22, 1943, shall not be included in said grants, but shall continue to be reserved to the United States.

Mineral deposits.

Leases; sales.

(d) Following the selection of lands by the Territory pursuant to subsection (b), but prior to the issuance of final patent, the Territory shall be authorized to lease and to make conditional sales of such selected lands.

(e) All lands granted to the Territory of Alaska under this section, together with the income therefrom and the proceeds from any dispositions thereof, shall be administered by the Territory of Alaska as a public trust and such proceeds and income shall first be applied to meet the necessary expenses of the mental health program of Alaska. Such lands, income, and proceeds shall be managed and utilized in such manner as the Legislature of Alaska may provide. Such lands, together with any property acquired in exchange therefor or acquired out of the income or proceeds therefrom, may be sold, leased, mortgaged, exchanged, or otherwise disposed of in such manner as the Legislature of Alaska may provide, in order to obtain funds or other property to be invested, expended, or used by the Territory of Alaska. The authority of the Legislature of Alaska under this subsection shall be exercised in a manner compatible with the conditions and requirements imposed by other provisions of this Act.

EFFECTIVE DATE

Sec. 203. This title shall become effective on the date of enactment of this Act.

TITLE III—TRANSITIONAL AND GENERAL PROVISIONS

AMENDMENTS AND REPEALS

Sec. 301. (a) Such of the following Acts or parts thereof as the Governor by proclamation shall declare to be superseded by a law or laws hereafter enacted by the Territorial legislature are repealed as of the effective date (specified in such proclamation) of such superseding law or laws, or as of the two hundred and tenth day after the date of enactment of this Act, whichever is later:

(1) Section 8 of the Act of January 27, 1905 (33 Stat. 616, 619; 48 U. S. C. 47);

(2) The first sentence of section 7 of the Act of February 6, 1909 (35 Stat. 600, 601), as amended by section 2 of the Act of October 14, 1942 (56 Stat. 782; 48 U. S. C. 46);

(3) The Act of June 25, 1910 (36 Stat. 852; see 48 U. S. C. 46b);

(4) The Act of April 24, 1926 (44 Stat. 522), as amended by sections 4 and 5 of the Act of October 14, 1942 (56 Stat. 782, 783; 48 U. S. C. 50, 50a); and

48 USC 46a, 47a,
47b, 47c, 48, 48a

(5) Sections 1, 3, 6, 7, 8, and 9 of the Act of October 14, 1942 (56 Stat. 782, 783-785; 48 U. S. C. 46c, 47a, 47b, 47c, 48, 48a).

(b) (1) The Acts and parts of Acts listed in subsection (a), except the Act of June 25, 1910, are, pending their repeal as provided in subsection (a), amended (A) by striking out the words "Secretary", "United States", "Congress", and "Department of the Interior" wherever these words appear, and inserting in lieu thereof the words "Governor of Alaska or his designee", "Territory of Alaska", "the Legislature of Alaska", and "Territory of Alaska", respectively; (B) by inserting immediately before the word "Treasury", wherever it appears, the word "Territorial"; (C) by striking out the word "Federal"; and (D) by amending section 1 (a) of the Act of October 14, 1942, to read as follows: "'Governor' means the Governor of Alaska or his designee;": *Provided*, That the words "United States" where

NOTICE: This opinion is subject to formal correction before publication in the Pacific Reporter. Readers are requested to bring typographical or other formal errors to the attention of the Clerk of the Appellate Courts, 303 K Street, Anchorage, Alaska 99501, in order that corrections may be made prior to permanent publication.

THE SUPREME COURT OF THE STATE OF ALASKA

STATE OF ALASKA,

Appellant/Cross-Appellee,

v.

VERN T. WEISS, et al.,

Appellee/Cross-Appellant.

File Nos. S-653/678

O P I N I O N

[No. 2987 - October 4, 1985]

Appeal from the Superior Court of the State of
Alaska, Fourth Judicial District, Fairbanks,
Warren W. Taylor, Judge.

Appearances: G. Thomas Koester, Assistant
Attorney General, Norman C. Gorsuch, Attorney
General, Juneau, for Appellant/Cross-Appellee.
Stephen C. Cowper, Fairbanks, for Appellee/
Cross-Appellant. Russ Winner, McGrath &
Associates, Anchorage, for Amicus Curiae
Cook Inlet Region, Inc.

Before: Rabinowitz, Chief Justice, Burke,
Matthews and Compton, Justices. [Moore,
Justice, not participating]

COMPTON, Justice.

The State of Alaska ("state") appeals from a judgment of the superior court holding that the state breached its duty as trustee of federal mental health grant lands when the legislature redesignated the property as "general grant land." For the reasons set forth below, we

affirm the holding to this extent, but reverse the superior court's conclusion that the redesignation legislation was valid.

I. FACTUAL AND PROCEDURAL BACKGROUND

In 1956 the United States Congress passed the Alaska Mental Health Enabling Act (AMHEA) which, insofar as it concerns this case, granted the Territory of Alaska one million acres of federal land to be held in public trust to help effectuate the creation and operation of mental health care facilities in Alaska. Pub. L. No. 84-830, 70 Stat. 709 (1956). Section 202(e) of the Act specifically provides:

All lands granted to the Territory of Alaska under this section, together with the income therefrom and the proceeds from any dispositions thereof, shall be administered by the Territory of Alaska as a public trust and such proceeds and income shall first be applied to meet the necessary expenses of the mental health program of Alaska. Such lands, income and proceeds shall be managed and utilized in such manner as the Legislature of Alaska may provide. Such lands, together with any property acquired in exchange therefor or acquired out of the income or proceeds therefrom, may be sold, leased, mortgaged, exchanged, or otherwise disposed of in such manner as the Legislature of Alaska may provide in order to obtain funds or other property to be invested, expended or used by the Territory of Alaska. The authority of the Legislature of Alaska under this subsection shall be exercised in a manner compatible with the conditions and requirements imposed by other provisions of this Act. (emphasis added)

The state managed these lands without maintaining a separate account until 1978. The Alaska State Legislature made its practice law in 1978 when it passed the following statutory provision:

REDESIGNATION AND DISPOSAL OF MENTAL
HEALTH LAND

(a) Land granted to the state under the Mental Health Enabling Act of 1956, 70 Stat. 709, and patented to or approved for patent to the state on July 1, 1978 and land designated as mental health land which was received by the state in exchange for land granted under that federal land grant is redesignated as general grant land and shall be managed and disposed of by the Department of Natural Resources under applicable provisions of law.

Ch. 181, § 3(a), SLA (1978).

Alaska has provided continuous mental health care since statehood. The record indicates that between 1959 and 1982 the state spent over \$222,000,000 on mental health care. Generally speaking, there has been a constant increase from 1959 to the present in mental health expenditures: slightly less than \$1,200,000 was expended in 1959, and slightly more than \$29,000,000 was expended in 1982. The record does not indicate how much of the trust land at issue has been disposed of, nor the total value of such disposed land. In the state's answer to the complaint, it alleges that "state expenditures for mental health purposes exceeded revenues from mental health grant lands in all years for which revenues from those lands were tabulated

separately." The record does indicate that as of 1973, total revenues from these mental health trust lands amounted to \$19,555,582. The state's total expenditures to that point amounted to \$66,726,176.

Weiss et al. filed a class action in 1982 alleging that the state breached the public trust by 1) failing to account for revenues realized, 2) using revenues for purposes other than mental health care and 3) passing legislation redesignating the property "general grant land." Plaintiffs sought declaratory relief invalidating the redesignation legislation; injunctive relief compelling the state to administer the trust according to the law; general relief establishing a trust account "for the receipt of funds generated from all lands selected by the State of Alaska under the aforesaid mental health land grant"

The superior court ruled that invalidation of the redesignation legislation was not an available remedy, based on State v. University of Alaska, 624 P.2d 807, 815 (Alaska 1981). However, the court did hold that the state breached its duties as trustee by removing the federal grant lands from the trust. As a remedy, the court ordered that

[t]he public trust established by P. L. 84-830, 70 Stat. 709, shall recover from the defendant State of Alaska an amount equal to the fair market value of all lands conveyed from the trust as of the date of conveyance, plus prejudgment interest from the date of each conveyance. For the purposes of this judgment, all lands remaining in the trust as of July 19, 1978, shall be considered

as having been removed from trust status
by the State of Alaska on that date . . .

The court also ordered a set-off for all monies spent by the state on mental health care.

The state appeals from the judgment, except the holding that the redesignation legislation was valid. Weiss et al. cross-appealed the trial court's failure to rule the legislation invalid.

II. DID THE STATE BREACH THE PUBLIC TRUST
CREATED BY CONGRESS WHEN IT REDESIGNATED
PROPERTY IN THE TRUST AS "GENERAL
GRANT LAND?"

A. Nature of the Trust.

The state argues, essentially, that the redesignation is of no legal consequence because the state has always provided public mental health programs in the past and, implicitly, will provide them in the future. The state maintains that providing such programs fulfills its obligations according to AMHEA, freeing the grant lands for other public purposes. Textual support for this position comes from the portion of Section 202(e) which states that "proceeds and income shall first be applied to meet the necessary expenses of the mental health program of Alaska." It is suggested that this language means Congress intended that the land grant serve as a revenue base guarantee. Great emphasis is placed on the legislative history of AMHEA.

which establishes that Congress did not wish to limit the use of grant lands exclusively to mental health programs.¹

Despite these observations, we think it irrefutable that Congress intended to create a trust, to be based on a corpus of one million acres of federal land. It is a commonplace of the law that without trust property there can be no trust. Restatement (Second) of Trusts § 74 (1959).² When the state, through the legislature, altered the status of the property grant the trust was thereby effectively terminated. The state, as trustee, had no power to do this

1. The debates in the House and Senate are too lengthy to reproduce in their entirety here, but certain remarks are representative of the discussions. Senator Jackson commented that "[t]he income from sales or leases will be used to support the mental health program in Alaska. The income will be held in trust for that purpose. Any money received over and above the need for the mental health program may be used for other public purposes." He further noted that the language change was not of a fundamental nature, and thus said that, "[t]he purpose of granting 1 million acres is the same as in all other similar grants, such as the public school land-grant program." 102 Cong. Rec. 9761 (June 7, 1956).

We note that the language in the federal grant was changed from designating the proceeds of the land grant to be used as a public trust for Alaska's mental health program, to saying that the proceeds "shall first be applied to meet the necessary expenses of the mental health program" only because of worry among members of Congress that the land may actually have a value far in excess of the necessary health care expenses. The record in this case shows that income from the land grant was actually less than state expenditures for mental health programs.

2. Section 74 provides: "A trust cannot be created unless there is trust property."

and consequently breached its duty to preserve the corpus.³ The fact that the state has provided mental health care in the past and will most likely do so in the future is no justification for termination of the trust. Whether a beneficiary can rely on the bona fides of a trustee to continue voluntarily to uphold the terms of a defunct trust is quite beside the point. We decline the opportunity to encourage the state, or any trustee for that matter, to determine unilaterally when to terminate a trust without specific authority to do so.

B. Remedy.

Having concluded that the state breached the trust, we find it necessary on the facts of this case to invalidate the redesignation statute, Ch. 181, § 3(a), SLA (1978). State v. University of Alaska, 624 P.2d 807, 815 (Alaska 1981) does not compel a different result. In that case, the federal government had granted 100,000 acres to the state "for the exclusive use and benefit" of the

3. Our reliance upon basic trust law principles finds ample support in the precedents of this court and the United States Supreme Court. See Lassen v. Arizona, 385 U.S. 458, 17 L.Ed.2d 515 (1967); State v. University of Alaska, 624 P.2d 807 (Alaska 1981). Both Lassen and University of Alaska involved federal grants to be used by states for school purposes. Those cases stand for the proposition "that the same private trust law principles are to apply to federal land granted to the states for school purposes." University of Alaska, 624 P.2d at 813. There is no reason to treat federal lands granted for mental health purposes differently.

University. Id. at 811. Years after the grant, the state included 5,040 acres of the trust land in a state park. This action was not in itself a breach of the trust so long as the University was paid fair market value for the land. We inferred that the legislature intended to pay the University for this disposition, stating:

It is also logical to assume that the legislature intended to compensate the University for the loss of its land. This view gives the statute creating [the park] a reading that is in accord with the well recognized canon of statutory construction that, when possible, legislation should be construed in a way that upholds its validity.

524 P.2d at 816.

Unlike the situation in University of Alaska, the present case does not involve a disposition of a portion of trust lands for a specific use. Instead, the entire corpus of the trust is intermingled with the general grant lands of the state. No particular use of the trust lands is specified and it may be years before much of the land is used. While it was reasonable to infer a legislative intent to pay for 5,040 acres for which there was a present park land use in University of Alaska, it is not reasonable to infer that the legislature meant to pay for a quantity of trust land approaching one million acres for which in large part there is no present use. Thus, the payment remedy imposed in University of Alaska is not appropriate here. Because the state in passing the redesignation act went

beyond the power which had been granted it with respect to the trust lands by Congress, the redesignation act must be declared invalid.

It follows from our conclusion that the redesignation legislation is invalid that the trust must be reconstituted to match as nearly as possible the holdings which comprised the trust when the 1978 law became effective. The case is remanded so that requisite findings can be made. We take this opportunity to provide some guidance to the trial court to simplify its task.

Those general grant lands which were once mental health lands will return to their former trust status. In the event exchanges have been made, those properties which can be traced to an exchange involving mental health lands will also be included in the trust. To the extent that former mental health lands have been sold since the date of the conveyance the trust must be reimbursed for the fair market value at the time of sale. In calculating the total amount owed, the trial court should grant a set-off for mental health expenditures made by the state during the same period. In the event that expenditures exceeded the value of lands sold, the state need not furnish cash as part of the reconstitution. The goal is to restore the trust to its

position just prior to the conveyance effected by the redesignation legislation.⁴

AFFIRMED in part, REVERSED in part and REMANDED for further proceedings consistent with this opinion.

DELIVER TO: <u>Sally Slaughter</u>	LOCATION <u>LHWM</u>
FROM: <u>Mike Vediner</u>	LOCATION <u>C.O. - INW.</u>
TELEPHONE/TELECOPIER # _____	TOTAL NUMBER OF PAGES <u>10</u>
TRANSMITTING ON/SPEED <u>5</u>	DATE <u>10-9</u> TIME <u>3:10</u>
PHONE FOR PROBLEMS: NAME/NUMBER <u>465-2400, Lori</u>	
COMMENTS _____	

1,000.25
Oppeller
Oppeller
10-14-85
by direction of Clerk
Crompton
Signed 10-2-85
Sudlow

4. Amicus raises questions regarding the title held by conveyancees and bona fide purchasers of mental health lands. In view of our disposition of this case, we deem it unnecessary to address those issues at the present time.

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

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January 23, 1987

The Honorable Pat Pourchot
The Honorable Rick Halford
Co-Chairmen
Joint Special Legislative
Committee on Mental Health
Alaska State Legislature
P.O. Box V
Juneau, Alaska 99811

Re: Dedication of mental health income
stream (our file 663-87-0319)

Dear Representative Pourchot and Senator Halford:

Sandra Schubert indicated that you would like a short memorandum outlining the legal analysis I presented at the committee's last meeting to the effect that dedicating a portion of state general funds annually as a "mental health income stream" would not violate the dedicated fund prohibition in article IX, section 7, of the Alaska Constitution. In pertinent part, that provision provides: "The proceeds of any state tax or license shall not be dedicated to any special purpose, except as provided in section 15 of this article or when required by the federal government for state participation in federal programs." (Emphasis added.)

In section 202(e) of the Alaska Mental Health Enabling Act, P.L. 84-830, Congress required that the income and proceeds from the one million acre land grant "shall first be applied to meet the necessary expenses of the mental health program of Alaska." We believe this requires, as a condition of the state's receipt of the one million acre land grant, that the portion of state revenues attributable to the mental health trust be separately identified, segregated out of the general budget process and made available first for funding the state's mental health program. Accordingly, the identification and establishment of a mental health trust income stream does not violate the prohibition on dedicated funds because it falls within the exception for dedications required for participation in federal programs. We believe this is true whether the revenues constituting

The Honorable Pat Pourchot
The Honorable Rick Halford
Our File No. 663-87-0319

January 23, 1987
Page 2

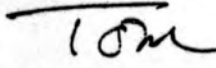
the income stream are actually generated from administration of mental health lands or are simply a portion of general fund revenues constituting compensation to the trust for lands removed from trust status.

It should be noted that the federal Act does not require that the entire income stream be dedicated to the state's mental health program. Instead, it requires that it first be made available to fund the state's mental health program; any remaining funds in the income stream may thereafter be used for other public purposes.

We hope this brief analysis satisfies your requirements. If we can be of further assistance, please contact us at your convenience.

Sincerely yours,

RONALD W. LORENSEN
ACTING ATTORNEY GENERAL

By: 
G. Thomas Koester
Assistant Attorney General

GTK/dlm

cc: Interim Mental Health Trust Commission

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