

SR

||

SENATE COMMITTEE REPORT

FURTHER:

3/6/87

DATE TURNED INTO OFFICE _____

Mr. President:

RESOURCES _____ Committee considered _____ SR 11

Requesting the Governor to direct the filing of an amicus brief in Sierra Club v. Bureau of Land Management to advise the court of the state's position.

and recommended:

[] replace with _____ CS FOR _____) [] same title
[] or adopt _____ CS FOR _____) [] new title

[] attached amendment(s) and

[x] do pass

[] do not pass

[] no recommendation

[] individual recommendations

[] further referral to _____

[] letter of intent adopted _____

Committee [] attached or [x] adopted fiscal note(s)

[] new [] updated or [] previous
[x] zero [] fiscal impact

MEMBERS SIGNING DO PASS

OTHER RECOMMENDATIONS

[Signature]
Curtis Surprenant amendment
Paul A. Frede

[Signature] No Rec
[Signature] No Rec

[Signature]
Chairman signature and recommendation

[] Committee Backup Attached

SENATE COMMITTEE REPORT

FIRST COMMITTEE OF REFERRAL

Date of 2/19/87 5-DAY NOTICE IN ACCORDANCE WITH UNIFORM RULE 23

FURTHER RESOURCES

**FISCAL NOTE(S) ATTACHED ** IN ACCORDANCE WITH AS 24.08.035 (see below)

DATE TURNED INTO OFFICE 3/5/87

Mr. President:

JUDICIARY Committee considered SR 11

Requesting the Governor to direct the filing of an amicus brief in Sierra Club v. Bureau of Land Management to advise the court of the state's position.

and recommended:

- [] replace with CS [] same title [] new title [] attached amendment(s) and [] do pass [] do not pass [x] no recommendation [] individual recommendations [] further referral to [] letter of intent adopted and attached

** Committee [x] attached or [] adopted fiscal note(s) [x] zero [] fiscal impact

MEMBERS SIGNING DO PASS

OTHER RECOMMENDATIONS

Blank lines for members signing DO PASS

Handwritten signatures and recommendations: Rick Halford NO REC, Joe Grover - NO REC, Curtis Stangorishi NO REC, Keith Bodery NO REC

Handwritten signature and recommendation: [Signature] No Rec

[] Committee Backup Attached

Chairman signature and recommendation

**STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE**

REQUEST: _____

Bill Version: SR 11

Publish Date: _____

Revision Date: _____

Agency Affected: Department of Law

Title: "Requesting the Governor to direct the filing of an amicus brief..."

BRU: Legal Services

Sponsor: Sen. Coghill

Components: Legal Services Operations

Requestor: Senate Judiciary Committee

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL						
----------------	--	--	--	--	--	--

REVENUE						
----------------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Please see attached analysis.

Richard I. Pegues

Prepared by: Richard I. Pegues, Director

Phone: 65-3672

Division: Administrative Services

Date: Feb. 23, 1987

Approved by Commissioner: Richard I. Pegues / FOR / Grace Berg Schable, Atty. Gen.

Date: Feb. 23, 1987

Agency: Department of Law

Distribution (by preparer):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)
- Senate Secretary

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. SR 11

This resolution requests the Governor to direct the attorney general to file an amicus curiae brief on behalf of the state, in Sierra Club v. Bureau of Land Management, which is now before the United States Court of Appeals for the Ninth Circuit. Preparation and filing of the brief can be handled using existing staff and resources within one to two weeks time, once work begins.

Senator John B. (Jack) Coghill
Alaska State Legislature

Pouch V
Juneau, Alaska 99811
(907) 465-4921

Box 55028
North Pole, Alaska 99705
(907) 488-0862

*Comments before Senate Judiciary
February 24, 1987*



GOOD AFTERNOON MR. CHAIRMAN AND FELLOW SENATORS THANK YOU FOR SCHEDULING MY RESOLUTION IN SUCH A TIMELY MANNER.

SENATE RESOLUTION 11, IS GOOD POLICY, I HOPE THE MEMORANDUMS WHICH HAVE BEEN SUPPLIED THIS COMMITTEE FROM MY OFFICE HAVE BEEN HELPFUL IN YOUR COMING TO THE SAME CONCLUSION.

AS YOU WILL NOTE IN MY MEMO, THE INTENT OF THIS RESOLUTION IS TO REMIND THE GOVERNOR THAT 80 PERCENT OF THE STATES MINING INDUSTRY IS STILL IN JEOPARDY OF BEING ELIMINATED FROM OUR ECONOMY.

THE RESOLUTION ITSELF HAS A LOT OF ROOM TO BE MADE STRONGER, BUT I HOPE THIS GENTLE PROD WILL ENCOURAGE THE GOVERNOR TO TAKE THE INITIATIVE AND ADDRESS THE ISSUE RAISED HERE AGGRESSIVELY.

THE PROBLEM THIS RESOLUTION ADDRESSES IS WHAT OUR PEOPLE IN THE RESOURCE AGENCIES CALL ENVIRONMENTAL BANKS SHOT LITIGATION. THIS TYPE OF COURT ACTION IS NOT AIMED AT ANY ONE DEVELOPMENT OPERATION, IT TARGETS AN ENTIRE INDUSTRY INDIRECTLY BY TAKING A GOVERNMENT AGENCY TO TASK.

ALL TOO OFTEN OVER THE PAST 10 OR 15 YEARS, THE ENVIRONMENTAL COMMUNITY HAS FILED SUIT AGAINST STATE OR FEDERAL AGENCIES, FOR FAILURE TO PROPERLY IMPLEMENT REGULATIONS OR OVER THE REGULATIONS THEMSELVES. IN MANY CASES THEIR CONCERNS WHERE

NOBLE AND SUPPORTABLE PUBLIC INTEREST ACTIONS. IN THIS CASE HOWEVER, THEY ARE SHOT GUNNING EVERY MINER ON BUREAU OF LAND MANAGEMENT LANDS, REGARDLESS OF GUILT.

THERE IS NO DOUBT THAT THERE ARE A FEW BAD APPLES IN THE MINING COMMUNITY, WHO PERHAPS DON'T FOLLOW OUR ENVIRONMENTAL LAWS OR PROPER ENGINEERING TECHNIQUES IN THEIR MINING OPERATIONS, BUT THIS IS NO REASON TO PENALIZE THOSE MINERS THAT DO FOLLOW THE RULES AND HAVE ENVIRONMENTALLY SOUND OPERATIONS. BUT SIERRA CLUB IS ATTEMPTING TO ~~TO~~ STOP ALL MINING UNTIL THE NINTH CIRCUIT COURT RULES ON THEIR APPEAL. THIS IS DIRTY POOL. IF THEY TRUELY HAVE A PROBLEM WITH A SPECIFIC MINING OPERATION WHY DON'T THEY ADDRESS THAT PARTICULAR MINE, RATHER THAN SHOOTING A BANK SHOT THAT WILL IMPACT ALL MINING?

YOU MAY ASK, AS I DID, IF THERE IS ACTUALLY A POSSIBILITY THE COURT MIGHT GRANT SIERRA CLUB THEIR REQUESTED INJUNCTION? THE ANSWER TO THAT RESULTED IN THIS RESOLUTION. COURT HISTORY IN MATTERS OF THIS NATURE INDICATES THAT THE POSSIBILITY IS VERY REAL, UNLESS, THE STATE, AS A REPRESENTATIVE PUBLIC ENTITY, NOTIFIES THE COURT OF THE STATES INTEREST IN THE MATTER, AS OUTLINES IN THE RESOLUTION.

LET'S FACE IT, MINING CREATES NEW WEALTH FOR THE STATE, THROUGH THE HARVEST OF MINERAL RESOURCES. MINING CREATES

JOB, AND THESE PEOPLE PAY TAXES, PROPERTY TAXES, SALES TAXES, FUEL TAXES, INCOME TAXES, BUSINESS TAXES AND THE LIKE. MINERS HAVE CREATED ACCESS ROUTES TO MANY REGIONS OF OUR STATE, THERE BY IMPROVING THE VALUE OF STATE RESOURCES ALONG THESE ROUTES. SOME EVEN ARGUE THAT MINING ENHANCES WILDLIFE HABITAT AND IMPROVES SOME AGRICULTURAL OPPORTUNITIES, LIKE CREATING SUITABLE GRAZING TOPOGRAPHIES FOR LIVESTOCK BY REMOVING MUSKEG AND PERMAFROST.

MINING IS NOT INCOMPATIBLE WITH ALASKAN'S OR ALASKA'S ENVIRONMENT. MINERS ARE IMPROVING THEIR OPERATIONS AND THERE BY LESSENING ANY IMPACTS WHICH MAY OR MAY NOT DISAPPOINT US. IF ALLOWED TO CONTINUE TO IMPROVE THEIR OPERATING TECHNIQUES, I'M CONFIDENT THEY WILL SOLVE ALL THE ENVIRONMENTAL PROBLEMS TO THE SATISFACTION OF ALASKA'S ENVIRONMENTAL COMMUNITY.

I DON'T THINK IT IS NECESSARY FOR ME TO REMIND YOU OF OUR NEED TO DIVERSIFY OUR STATE WIDE ECONOMY, OR OF THE BLOW SIERRA CLUB'S EFFORTS WOULD INFLICT ON THIS ECONOMY IF MINING IS STOPPED. BUT I WOULD LIKE TO RETURN TO A COMMENT I MADE AT THE OUTSET OF MY REMARKS. NAMELY, THIS RESOLUTION COULD BE STRONGER.

WE COULD BE ASKING THE GOVERNOR TO INTERVENE ON BEHALF OF THE MINERS IN THIS CASE, OR TO FILE AN AMICUS BRIEF ON THE MERITS OF SIERRA CLUBS APPEAL, BOTH WOULD REQUIRE

SUBSTANTIALLY MORE TIME TO BE INVESTED BY THE DEPARTMENT OF LAW. BUT, I WOULD RATHER SEE THE GOVERNOR BE ALLOWED TO MAKE THAT DECISION. I THINK THE STATE'S INVESTMENT HOWEVER LARGE OR SMALL WILL BE INSIGNIFICANT IN COMPARISON TO WHAT THE STATE'S ECONOMY WILL LOSE IF SIERRA CLUB ULTIMATELY WINS THEIR APPEAL. BUT THIS RESOLUTION IS ONLY A REMINDER, THE ISSUE OF COURT ORDERED MINE CLOSURES IS STILL OUT THERE.

I HOPE MY INTENTIONS ARE CLEAR ON THIS RESOLUTION, AND THAT YOU WILL TAKE TIMELY ACTION TODAY. THE WINDOW OF OPPORTUNITY TO FILE A REPUTABLE BRIEF IS CLOSING RAPIDLY, AND THIS MEASURE HAS ONE MORE COMMITTEE TO GO THROUGH.

THANK YOU AGAIN FOR QUICKLY ADDRESSING THIS RESOLUTION MR. CHAIRMAN.

ANY QUESTIONS?

Comments made in Judiciary Feb. 24, 1987

Senator John B. (Jack) Coghill
Alaska State Legislature

Box V
Juneau, Alaska 99811
(907) 465-4797

Box 55028
North Pole, Alaska 99705
(907) 488-0862



COMMENTS BEFORE SENATE JUDICIARY
MARCH 3, 1987

GOOD AFTERNOON MR. CHAIRMAN, SENATORS,

THANK YOU FOR BRINGING SR 11 BACK BEFORE THE COMMITTEE FOR ACTION IN A TIMELY MANNER.

AS I HAVE ALREADY PRESENTED THE COMMITTEE WITH MY TESTIMONY ON THIS RESOLUTION AT THE PREVIOUS HEARING, I APPEAR TODAY ONLY TO ADD A LETTER FROM THE GOVERNORS OFFICE WHICH I WAS COPIED WITH RECENTLY.

THE LETTER IS DATED FEBRUARY 25, 1987 AND CONCERNS THE SIERRA CLUB VS. BLM LAWSUIT. THE LETTER IS ADDRESSED TO THE U.S. NINTH CURCUIT COURT OF APPEALS.

THE LETTER ADDRESSE THE COURT'S CONSIDERATION OF A "MOTION FOR INJUNCTION PENDING APPEAL," AND IT RAISES CONCERNS ABOUT THE POSSIBLE EFFECTS OF AN INJUNCTION AND MAKES THE FOLLOWING POINTS:

° EXPRESSES THE STATE'S DESIRE TO ENSURE ADEQUATE PROTECTION OF ALASKA'S UNIQUE LAND AND WATER RESOURCES;

° RECOGNIZES THAT POTENTIAL ENVIRONMENTAL HARMS MUST BE UNDERSTOOD BEFORE THEY CAN BE BALANCED AGAINST THE NEED FOR ECONOMIC DEVELOPMENT ACTIVITIES;

° DESCRIBES THE SIGNIFICANT ROLE OF PLACER MINING IN ALASKA'S ECONOMY AND THE STATE'S INTEREST IN THE CONTINUATION OF PLACER MINING OPERATIONS IN AN ENVIRONMENTALLY RESPONSIBLE MANNER;

° ARGUES THAT A BLANKET INJUNCTION AGAINST MINING OPERATIONS WOULD NOT SERVE THE INTERESTS OF ALASKA AND ITS CITIZENS, BECAUSE IT WOULD PENALIZE INDIVIDUAL MINERS FOR BLM'S ALLEDGED LEGAL ERRORS;

° NOTES THAT IN 1986, WHILE THE DISTRICT COURT ACTION WAS PENDING, THE STATE HELPED THE PARTIES NEGOTIATE AN INTERIM SETTLEMENT AGREEMENT THAT ALLOWED MINING TO PROCEED DURING THE 1986 MINING SEASON WHILE REQUIRING BLM TO INSTITUTE COMPREHENSIVE MEASURES TO ASSESS AND RESPOND TO ENVIRONMENTAL PROBLEMS;

° SUGGESTS THAT IF THE COURT DECIDES TO ISSUE AN INJUNCTION PENDING ITS CONSIDERATION OF THE APPEAL, THE COURT SHOULD FASHION THE INJUNCTIVE RELIEF CONSISTENT WITH THE 1986 INTERIM SETTLEMENT AGREEMENT OR, ALTERNATIVELY, TO REQUEST THAT THE PARTIES NEGOTIATE A REVISED INTERIM AGREEMENT;

AND LASTLY,

° OFFERS THE STATE'S ASSISTANCE IN HELPING THE PARTIES TO NEGOTIATE AN AGREEMENT ACCEPTABLE TO THE COURT.

THE APPROACH PROVIDED IN THE LETTER WOULD ENSURE THAT THE BURDEN FOR BLM'S ALLEGED ERRORS DOES NOT FALL SOLELY ON INDIVIDUAL PLACER MINERS, BUT IT DOES NOT MAKE THE STATE'S POSITION A MATTER OF COURT RECORD, THE FILING OF AN AMICUS BRIEF ON THE OTHER HAND WOULD.

WHILE I APPLAUD THE OFFICE OF THE GOVERNOR FOR CALLING TO THE COURT'S ATTENTION THE VALUABLE ROLE THE STATE CAN PLAY IN BRINGING THE PARTIES TOGETHER TO ENSURE THAT ENVIRONMENTALLY RESPONSIBLE PLACER MINING CAN PROCEED IN 1987, I WOULD HOPE THAT PASSAGE OF THIS RESOLUTION WOULD ENCOURAGE THEM TO TAKE THE STATE'S POSITION ONE STEP FURTHER, AND MAKE IT A MATTER OF COURT RECORD.

I ENCOURAGE YOU TO PASS THE RESOLUTION OUT OF COMMITTEE TODAY, WITH INDIVIDUAL DO PASS RECOMMENDATIONS.

THANK YOU MR. CHAIRMAN.

STATE OF ALASKA



SENATE JUDICIARY COMMITTEE

SEN. JAY KERTTULA
SEN. ARLISS STURGULEWSKI
SEN. RICK HALFORD
SEN. JOE JOSEPHSON
SEN. PAT RODEY

P.O. BOX V
STATE CAPITOL
JUNEAU, ALASKA 99811
(907) 465-3717
(907) 465-3771

2-23-87

MEMO

TO: SENATE JUDICIARY MEMBERS

FROM: Beth Kerttula, Staff Co-counsel

For your information: Richard I. Pegues, Director of Administrative Services, says that the cost for one hour of an attorney's time and over-head for the Department of Law to do Legal work is \$90.00.

For a seven and one-half hour work day the amount would equal \$675.00. For one week's worth of work the amount would equal \$3,375.00. For two week's worth of work the amount would equal \$6,750.00.

STEVE COWPER
GOVERNOR



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

February 25, 1987

United States Court of Appeals for
the Ninth Circuit
United States Court of Appeals &
Post Office Building
P.O. Box 547
Seventh & Mission Street
San Francisco, CA 94101

RE: Sierra Club, et al v. Penfold, et al,
No. A86-083 (D. Alaska Jan. 29, 1987)
(Order granting partial summary judgment),
appeal docketed, No. 87-3597 (9th Cir. February
12, 1987).

Gentlemen:

On February 12, 1987, the plaintiffs in the above-entitled litigation filed an appeal from the United States District Court's January 29, 1987 order which denied plaintiffs' motion for partial summary judgment. On February 17, 1987, the plaintiffs also filed with this court a motion for injunctive relief pending appeal. The State of Alaska has not participated in this litigation. However, the state may wish to submit an amicus curiae brief pursuant to Fed. R. App. P. 29 at an appropriate time during appellate briefing.

Although the state is not a current participant in the litigation, the state wishes to share with the court and the parties the state's concern over the pending motion for injunctive relief. The state shares plaintiffs' legitimate desire to ensure adequate protection of Alaska's unique land and water resources. The state also recognizes that one must understand potential environmental harms before one can properly balance such harms against the need for economic development. Environmental assessments and environmental impact statements may provide one method to assess and understand such harms. However, the mining activities

February 25, 1987

plaintiffs seek to enjoin play a significant role in Alaska's economy. Alaska's current economic plight, caused by sharply reduced world oil prices, increases the importance of a viable placer mining mineral industry. In short, the state has a substantial interest in the continuance of placer mining operations in an environmentally responsible manner.

A blanket injunction against mining operations on Bureau of Land Management ("BLM") land would not serve the interest of Alaska and its citizens. The injunction would also penalize the individual miners for BLM's alleged legal errors. If BLM has misapplied federal law, the burden for BLM's mistakes should not fall solely on the individual miners.

During the 1986 mining season, while the district court action was pending, the state helped the various parties negotiate a compromise interim settlement agreement. The interim settlement agreement allowed mining to proceed during 1986, but also required BLM to institute comprehensive measures to assess and respond to environmental problems caused by placer mining.

If plaintiffs' position warrants injunctive relief, the state urges the court to fashion relief in a manner consistent with the 1986 interim settlement agreement. In the alternative, the court might request the parties to negotiate a revised interim agreement and to submit the revised agreement to the court for approval. As in 1986, the state stands ready to assist the parties in any such negotiations.

The State of Alaska appreciates the court's consideration of the views expressed in this letter. Copies of this letter have been mailed to all parties of record.

Sincerely,



Pete Jeans
Chief of Staff

The letter to the Ninth Circuit Court of Appeals addresses the court's consideration of a "motion for injunction pending appeal" in the Sierra Club's lawsuit against the Bureau of Land Management (BLM). The Sierra Club alleged that BLM had failed to assess adequately the environmental impacts associated with placer mining on BLM lands. The appeal is from a ruling by the U.S. District Court. At this stage, however, the merits of the appeal are not yet before the Court of Appeals. The state is not a participant in this litigation.

The letter raises concerns about the possible effects of an injunction and makes the following points:

- Expresses the state's desire to ensure adequate protection of Alaska's unique land and water resources;
- Recognizes that potential environmental harms must be understood before they can be balanced against the need for economic development activities;
- Describes the significant role of placer mining in Alaska's economy and the state's interest in the continuation of placer mining operations in an environmentally responsible manner;
- Argues that a blanket injunction against mining operations would not serve the interests of Alaska and its citizens

because it would penalize individual miners for BLM's alleged legal errors;

Notes that in 1986, while the district court action was pending, the state helped the parties negotiate an interim settlement agreement that allowed mining to proceed during the 1986 mining season while requiring BLM to institute comprehensive measures to assess and respond to environmental problems;

Suggests that if the court decides to issue an injunction pending its consideration of the appeal, the court should fashion the injunctive relief consistent with the 1986 interim settlement agreement or, alternatively, to request that the parties negotiate a revised interim agreement;

Offers the state's assistance in helping the parties to negotiate an agreement acceptable to the court.

The approach provided by the letter would ensure that the burden for BLM's alleged errors does not fall solely on individual placer miners. Through the letter, the Office of the Governor has also called the court's attention to the valuable role the state can play in bringing the parties together to ensure that environmentally responsible placer mining can proceed in the 1987 mining season.

Senator John B. (Jack) Coghill
Alaska State Legislature

Pouch V
Juneau, Alaska 99811
(907) 465-4921

Box 55028
North Pole, Alaska 99705
(907) 488-0862

MEMORANDUM

TO: Senator Jay Kerttula
Chairman, Senate Judiciary Committee

FROM: Senator Coghill

RE: SR 11; Requesting the Governor to direct the filing of an amicus brief in Sierra Club v. Bureau of Land Management to advise the court of the state's position.

DATE: February 19, 1987

SR 11 is a clear, concise request of the Governor to follow through on some of the statements he made along the campaign trail. I realize the governor is a very busy man right now, so this resolution is primarily intended to be a reminder.

Although the resolution does not go as far as the mining community would like, namely full intervention in the lawsuit, it does address their primary concern - that the state support their legitimate position as a segment of our economy.

The state must take this opportunity to support, at no liability, an industry which has such deep roots in the history of the development of Alaska.

I have included with this memorandum, two others which were prepared by my staff before we filed this resolution. Also included is a letter from the Miners Advocacy Council, and two articles from the Fairbanks Daily News-Miner.

I strongly urge do pass recommendations.

Alaska State Legislature

Senate Resources Committee



Sen. John B. (Jack) Coghill, Chairman
Sen. Paul Fischer, Vice-Chairman
Sen. Lloyd Jones
Sen. Arliss Sturgulevski
Sen. Jim Duncan
Sen. Fred Zharoff
Sen. Dick Ellason

Box V
Juneau, Alaska 99811
(907) 465-4907

MEMORANDUM

TO: Senate Resource Committee Members

FROM: Resource Committee Staff *BJG*

RE: SR 11; Requesting the Governor to direct the filing of an amicus brief in Sierra Club v. Bureau of Land Management to advise the court of the state's position.

DATE: March 11, 1987

The following is a list of the contents of information included in your packets:

- 1) Sierra Clubs original complaint without the Memorandum in Support of the Motion for Preliminary Injunction.
- 2) A letter from the Governors Office signed by Mr. Pete Jeans to the Ninth Circuit Court of Appeals
- 3) Senator Coghill's comments before Senate Judiciary March 3, 1987
- 4) Senator Coghill's sponsor memo to Senate Judiciary
- 5) Memorandum to Senate Judiciary from committee staff
- 6) Zero (0) fiscal note
- 7) Senator Coghills comments before Senate Judiciary February 24, 1987
- 8) An example of further cases from the environmental organizations the state can expect.

Page two (2) of this memo highlights documentable impacts to the mining industry of the type of lawsuit addressed in SR 11.

March 11, 1987

- 2 - Senate Resource Staff Memo

1. Environmental litigation has three (3) major effects on industry:
 - a. it completely stops some operators from conducting their activity;
 - b. it causes tremendous additional costs through court ordered stipulations that forces additional operators out of business;
 - c. and it destabilizes the business environment through continually changing the conditions of operation, which impact long-term operating plans and financial commitments.
2. Although the mining industry experienced some economic advantages in 1986, gold production fell 16% over 1985.
Advantages include: a 25% rise in the price of Gold
Fuel costs dropped 50%
Labor was plentiful and eager for work
The decline in gold production would have been greater had it not been for the BIMA dredge operation in Nome.
3. Even with favorable economic conditions, mine permit applications dropped 29%.
4. Exploration expenditures fell to a twelve year low of only \$10 million. Down from \$76 million in 1981.
5. Jobs were lost as a result of fewer mines and fewer exploration dollars. It is estimated that in the Interior alone, 340 jobs were lost.
6. In the Interior, Fairbanks specifically, the decline in mining activity also showed up in expenditures for mining equipment in local business. In one years time, 1985 to 1986, expenditures in this one city fell from \$27 million to \$12.6 million, that's a 56% decline.
7. One of the primary reasons industry representatives cite as being responsible for the decline in mining activity, are the several lawsuits, including the Sierra Club action, which indirectly affects the willingness of miners to invest further sums of capital to continue mining.

Alaska State Legislature

Senate Resources Committee



Sen. John B. (Jack) Coghill, Chairman
Sen. Paul Fischer, Vice-Chairman
Sen. Lloyd Jones
Sen. Arliss Sturgulevski
Sen. Jim Duncan
Sen. Fred Zharoff
Sen. Dick Eliason

Box V
Juneau, Alaska 99811
(907) 465-4907

March 11, 1987

Honorable Grace Schaible
Attorney General
P.O. Box K
Juneau, AK 99811

Dear Madame Attorney General:

Presently the Senate Resources committee is considering a senate resolution (SR 11), which requests "the Governor to direct the filing of an amicus brief in Sierra Club v. Bureau of Land Management to advise the court of the States position." Several concerns were expressed by committee members during the initial hearing on this matter.

In order to clarify these concerns I would like to request the Department of Law to express it's opinion on the following point:

1. Please define amicus curiae actions, with particular regard to;
 - a. their purpose;
 - b. their usefulness;
 - c. their general content from a state's perspective.
2. Does the filing of an amicus brief constitute "taking sides," with regard to the litigants, in a matter before the court?
3. If "side taking" is a result of filing an amicus brief, can the brief be written in a manner that is consistent with the state's policy regarding the matter before the court?
4. Would the request presented in SR 11 place the state in a position that is inconsistent with it's mining and environmental policies?
5. Can inconsistencies with policies be avoided if the amicus is filed strictly as a toll to present evidence to the court?

The Honorable Grace Schiabe - 2 -

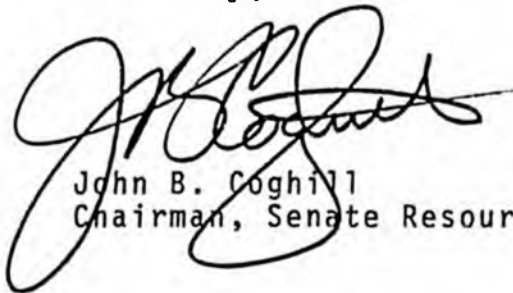
March 12, 1987

Finally, I would further respectfully request, that primary responsibility for the drafting of the Opinion on this issue not be assigned to any of the Assistant Attorneys General, assigned to either mining or environmental matters. In that way the Opinion can not be questioned based on any alleged bias of the author.

The resolution, SR 11, is rescheduled before Senate Resources, Monday, March 16, at 1:30 pm. I would greatly appreciate a reply by that time.

Thank you for your assistance.

Sincerely,



John B. Coghill
Chairman, Senate Resource

Enclosure

JC/brg

Hand Delivered
3/16/87 2:30pm

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

STEVE COWPER, GOVERNOR

P.O. BOX K—STATE CAPITOL
JUNEAU, ALASKA 99811
PHONE: (907) 465-3600

March 13, 1987

Honorable Jack Coghill, Chairman
Senate Resources Committee
Alaska State Legislature
P. O. Box V
Juneau, Alaska 99811

Re: SR 11 (amicus brief in
Sierra Club v. Bureau
of Land Management)

Dear Senator Coghill:

Your March 11, 1987 to the attorney general regarding SR 11 has been forwarded to me for reply.

I note that the text of the resolution does not simply seek an amicus curiae brief that will "advise the court of the state's position," as the heading says. The text "requests the Governor to direct the attorney general to file an amicus curiae brief with the Court of Appeals in this matter," and further requests the brief to "address the state's opposition to any injunction that stops mining activity..." and to address four specified points. The four points state policy or value judgments, and the word "address" in this context implies that the four points are to be urged or supported.

You asked five questions regarding amicus curiae briefs.

In your first question, you seek information regarding an amicus curiae brief's purpose, usefulness, and "general content from a state's perspective." As you no doubt know, "amicus curiae" is Latin for "a friend of the court." The purpose of an amicus curiae brief is, essentially, to aid the court in analyzing the issues in a case presented to it. Such a brief can be very useful if the issues are well researched and well analyzed and the brief is well written. The brief can present a viewpoint different from that of either of the primary litigants. An amicus brief is not very helpful if it merely repeats arguments already well-presented by the parties.

You asked whether filing such a brief constitutes "taking sides." It can, but it need not.

You asked whether, if "side taking" is a result of

Hon. Jack Coghill, Chairman
Senate Resources Committee

March 13, 1987
Page 2

filing an amicus brief, can the brief be written in a manner that is consistent with the state's policy regarding the matter before the court. The answer is yes. However, SR 11 is written in a way that requires the brief to take a particular position. That is not appropriate since the attorney general's office would have to analyze the law, apply it to the facts, and write the brief so that the issues are addressed in the way that appears to us legally appropriate.

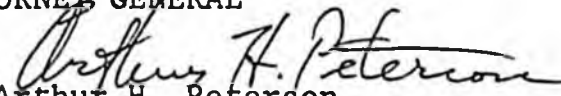
You asked whether SR 11's request would place the state in a position that is inconsistent with its mining and environmental policies. I have not discussed this with the governor and do not know the answer to that.

Finally, you asked whether inconsistencies with policies can be avoided if the amicus brief is filed simply to present evidence to the court. The brief would most likely provide analysis and argument rather than evidence, but I think that the answer to your question is yes. Whatever the State of Alaska's policy might be with regard to the issues being litigated, the brief could probably be written in such a way that those issues are brought into sharper focus and the court is indeed aided by the amicus's additional research and analysis.

If I may be of further assistance on this matter, please let me know.

Very truly yours,

GRACE BERG SCHAIBLE
ATTORNEY GENERAL

By: 
Arthur H. Peterson
Assistant Attorney General

AHP:md

*File
Fairbank
Plan*

RECEIVED
OFFICE OF
U.S. ATTORNEY

FEB 18 2 52 PM '86
~~ANCHORAGE~~
FAIRBANKS, ALASKA

Lauri J. Adams
Philip S. Barnett
Sierra Club Legal Defense Fund, Inc.
419 Sixth Street, Suite 321
Juneau, AK 99801
(907) 586-2751

Attorneys for Plaintiffs

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

SIERRA CLUB, NORTHERN ALASKA)
ENVIRONMENTAL CENTER, WILDERNESS)
SOCIETY, BIRCH CREEK VILLAGE)
COUNCIL, MINTO VILLAGE COUNCIL,)
GOLOVIN TRADITIONAL COUNCIL,)
NUNAM KITLUTSISTI, and CENALIULRIIT)
COASTAL MANAGEMENT DISTRICT,)

Plaintiffs,)

vs.)

MICHAEL PENFOLD, Director of the)
Alaska State Office of the Bureau)
of Land Management; DONALD P.)
HODEL, Secretary of the Interior,)
ROBERT F. BURFORD, Director of the)
Bureau of Land Management; DONALD)
E. RUNBERG, Acting District Manager)
of the Fairbanks District Office of)
the Alaska State Office of the)
Bureau of Land Management; WAYNE)
A. BODEN, District Manager of the)
Anchorage District of the Alaska)
State Office of the Bureau of Land)
Management; DEPARTMENT OF THE)
INTERIOR; and BUREAU OF LAND)
MANAGEMENT,)

Defendants.)

No. A86-083

MOTION FOR PRELIMINARY
INJUNCTION

Plaintiffs move for a preliminary injunction in order
to protect themselves from the adverse effects of

unlawfully approved mining operations. The accompanying Memorandum sets forth in detail the reasons why plaintiffs are entitled to a preliminary injunction.

Plaintiffs request that the preliminary injunction prohibit the federal defendants from taking the following actions:

- (1) approving notices or plans of operations for mines on the public lands in Alaska without preparing environmental assessments;
- (2) issuing long-term camping permits to mines in the Fortymile National Wild and Scenic River corridor without preparing environmental assessments;
- (3) approving notices or plans of operations for mines within the Birch Creek National Wild River corridor, the Fortymile National Wild and Scenic River corridor, or the Beaver Creek National Wild River corridor, or upon any tributary to any of these rivers, without preparing a comprehensive environmental impact statement analyzing cumulative impacts;

- (4) approving notices or plans of operations for mines on the public lands in Alaska without preparing subsistence evaluations under title VIII of the Alaska National Interest Lands Conservation Act (ANILCA); and
- (5) approving notices or plans of operations for mines within the Birch Creek National Wild River corridor or upon any of its tributaries or any of the streams or rivers flowing into Minto Flats without complying with the notice and hearing requirements of title VIII of ANILCA.

Plaintiffs further request that the preliminary injunction order the federal defendants to stay every mine on the public lands in Alaska, whether previously approved or not, until such time as the federal defendants complete the following reviews:

- (1) an environmental assessment of the mine;
- (2) if the mine is within the Birch Creek National Wild River corridor, the Fortymile National Wild

and Scenic River corridor, or the Beaver Creek National Wild river corridor, or upon any tributary to any of these rivers, a comprehensive environmental impact statement analyzing cumulative impacts;

(3) a subsistence evaluation of the mine under title VIII of ANILCA; and

(4) if the mine is within the Birch Creek National Wild River corridor or upon any of its tributaries or any of the streams or rivers flowing into Minto Flats, a subsistence review under the notice and hearing provisions of title VIII of ANILCA.

Respectfully submitted,

SIERRA CUB LEGAL DEFENSE FUND, INC.

DATE: 2/14/86

BY: Philip S. Barnett

Philip S. Barnett

ATTORNEYS FOR PLAINTIFFS

ROBERT W. ADLER
PATTI J. SAUNDERS
Trustees for Alaska
735 Christensen Drive, Suite 4
Anchorage, AK 99501
(907) 276-6244

RECEIVED
REGIONAL SCIENCE, LTD.

FILED

FEB 1 1987

FEB 09 1987

ANCHORAGE, ALASKA

UNITED STATES DISTRICT COURT
DISTRICT OF ALASKA

By _____ Deputy

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF ALASKA

TRUSTEES FOR ALASKA, ALASKA CENTER FOR)
THE ENVIRONMENT, NATIONAL PARKS AND)
CONSERVATION ASSOCIATION, AMERICAN)
WILDERNESS ALLIANCE, NORTHERN ALASKA)
ENVIRONMENTAL CENTER, SOUTHEAST ALASKA)
CONSERVATION COUNCIL, and DENALI CITIZENS)
COUNCIL,)

Plaintiffs)

v.)

UNITED STATES DEPARTMENT OF THE INTERIOR)
and DONALD HOEDEL, Secretary of the United)
States Department of the Interior,)
Defendants)

AG 7-055 CIV
Civ. No.

COMPLAINT AND PETITION FOR
REVIEW OF REGULATIONS

INTRODUCTION

1. This action seeks judicial review of the final regulations promulgated by the Secretary of the Interior at 43 C.F.R. Part 36 on September 4, 1986. 51 Fed. Reg. 31619-31635. These regulations ("Access Regulations") were enacted under the Alaska National Interest Lands Conservation Act, 16 U.S.C. 3101 et seq., and concern transportation system, utility system and vehicle access to certain federal lands.

2. Plaintiffs are requesting that the Court declare unlawful and set aside various parts of the Access Regulations as arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law, and in excess of statutory jurisdiction, authority or limitations, or short of statutory right, as authorized by Sections 705(2)(A) and 706(2)(C) of the Administrative Procedure Act, 5 U.S.C. 705(2)(A) and 706(2)(C) and 28 U.S.C. 2201. Plaintiffs are also requesting that the Court, pursuant to Fed. R. Civ. P. 65, enjoin the Secretary from applying the Access Regulations, or unlawful portions thereof, and enjoin the Secretary to apply the interim regulations until such time as lawful final regulations are promulgated.

JURISDICTION AND VENUE

3. This Court has jurisdiction over this complaint pursuant to 28 U.S.C. 1331 because Plaintiffs' claims arise under the laws of the United States, specifically the Administrative Procedure Act, 5 U.S.C. 551 et seq. and the Alaska National Interest Lands Conservation Act, 16 U.S.C. 3101 et seq.

4. Venue lies in this Court under 28 U.S.C. 1391(e)(3) and/or (e)(4) because the defendants are officials and agencies of the United States, the federal land involved in the action is situated in Alaska and some of the plaintiffs are situated in Alaska.

PARTIES

5. The plaintiffs in this action are:

sa. Trustees for Alaska, a nonprofit public interest environmental law firm with approximately 750 members, approximately half of whom live in Alaska. Members of Trustees for Alaska use

and enjoy the public lands that will be affected by the Access Regulations for recreational and other purposes.

b. Alaska Center for the Environment ("ACE"), a nonprofit environmental education and advocacy organization with approximately 650 members, approximately 500 of whom live in Alaska. Members of ACE use and enjoy the public lands that will be affected by the Access Regulations for recreational and other purposes.

c. National Parks and Conservation Association ("NPCA"), a nonprofit environmental education organization with approximately 50,000 members, approximately 300 of whom live in Alaska. Members of NPCA use and enjoy the public lands that will be affected by the Access Regulations for recreational and other purposes.

d. American Wilderness Alliance, a nonprofit environmental advocacy organization with approximately 5,000 members, approximately 50 of whom live in Alaska. Members of American Wilderness Alliance use and enjoy the public lands that will be affected by the Access Regulations for recreational and other purposes.

e. Northern Alaska Environmental Center ("NAEC"), a nonprofit environmental education and advocacy organization with approximately 700 members, approximately 450 of whom live in Alaska. NAEC's members use and enjoy the public lands that will be affected by the Access Regulations for recreational and other purposes.

f. The Southeast Alaska Conservation Council ("SEACC"), an environmental education and advocacy organization with approxi-

ately 650 members, approximately 400 of whom live in Alaska. Members of SEACC use and enjoy the public lands that will be affected by the Access Regulations for recreational and other purposes.

g. Denali Citizens Council, an environmental advocacy organization with approximately 150 members, approximately 120 of whom live in Alaska. Members of Denali Citizens Council use and enjoy the public lands that will be affected by the Access Regulations for recreational and other purposes.

6. The plaintiff organizations and their members are and will be adversely affected by the promulgation and application of the unlawful Access Regulations because those regulations will result in the elimination or reduction of the natural and wilderness values of the public lands affected by the regulations and will decrease the suitability of those areas for the recreational and other pursuits engaged in by members of plaintiff organizations. Adverse effects will include, but are not limited to: (1) Significant damage to the soil and vegetation of areas, especially to tundra and permafrost, and scarring of the landscape by tracks and trails due to the expanded access authorized by the Access Regulations (particularly for snowmachines and off-road vehicles ("ORVs")); (2) increased noise, visual and air pollution from increased levels of vehicular access; and (3) injury to the extent that the regulations allow Interior and those seeking access to evade the procedural safeguards required by ANILCA for Transportation and Utility Systems ("TUS").

7. Defendant United States Department of the Interior ("Interior") is a department of the United States government.

8. Defendant Donald Hodel ("Secretary") is sued in his capacity as Secretary of the United States Department of the Interior.

STATEMENT OF FACTS

9. On December 2, 1980 Congress enacted the Alaska National Interest Lands Conservation Act, 16 U.S.C. 3101 et seq. ("ANILCA"), which, among other things, established or expanded national parks, wildlife refuges, wild and scenic rivers, wilderness, forest monuments, conservation areas, recreation areas and wilderness study areas. The first five of these categories are designated "conservation system units" ("CSU's"). 16 U.S.C. 3102(4). CSU's, national conservation areas, and recreation areas are defined as "areas" in 43 C.F.R. 36.2(e). The regulations on access to inholdings, special access and temporary access also include designated wilderness study areas in the definition of "areas." 43 C.F.R. 36.10(a)(2), 36.11(a)(1) and 36.12(a)(1).

10. On June 17, 1981 Interior promulgated interim regulations for implementation of Title XI of ANILCA, "Transportation and Utility Systems In and Across, and Access Into, Conservation System Units." 36 C.F.R. Part 13 (National Park System Units in Alaska) and 50 C.F.R. Part 36 (Alaska National Wildlife Refuges) ("Interim Regulations").

11. On July 15, 1983 Interior published draft final Access Regulations. 43 Fed. Reg. 32506.

12. Plaintiff organizations submitted comments to Interior concerning the draft final Access Regulations.

13. On September 4, 1986 Interior promulgated final Access Regulations, which superseded the Interim Regulations.

CAUSE OF ACTION

Transportation and Utility Systems

14. 43 C.F.R. 36.2(h), which defines "economically feasible and prudent alternate route," is arbitrary and capricious, an abuse of discretion, not in accordance with law and violates ANILCA.

15. 43 C.F.R. 36.2(i), which defines "incident to its management of the unit or area," is arbitrary and capricious, an abuse of discretion, not in accordance with law, in excess of statutory authority and violates ANILCA because it is vague and overbroad.

16. 43 C.F.R. 36.3 is arbitrary and capricious, an abuse of discretion, not in accordance with law and violates ANILCA because it does not require pre-application activities permits for areas managed the Bureau of Land Management.

Access to Inholdings

17. 43 C.F.R. 36.10 is arbitrary and capricious, an abuse of discretion, not in accordance with law and violates ANILCA because it fails to regulate multiple use of inholder rights-of-way by other inholders and the public.

18. 43 C.F.R. 36.10 is arbitrary and capricious, an abuse of discretion, not in accordance with law and violates ANILCA because it fails to regulate the use of inholder rights-of-way by fee-paying guests and invitees.

19. 43 C.F.R. 36.10(a)(1) is arbitrary and capricious, an abuse of discretion, not in accordance with law, in excess of statutory authority and violates ANILCA because:

a. it does not limit "adequate and feasible access" to pedestrian and vehicular access, and

b. it weakens the standard set forth in Section 1110(b) of ANILCA for allowing a particular route and method of access by changing "necessary" to "reasonably necessary."

Special Access

20. 43 C.F.R. 36.11 is arbitrary and capricious, an abuse of discretion, not in accordance with law, in excess of statutory authority and violates ANILCA because it does not limit access to methods traditionally employed for a particular use.

21. 43 C.F.R. 36.11 is arbitrary and capricious, an abuse of discretion, not in accordance with law, in excess of statutory authority and violates ANILCA because it does not limit access to the areas or parts of areas where particular uses have traditionally occurred.

22. 43 C.F.R. 36.11 is arbitrary and capricious, an abuse of discretion, not in accordance with law, in excess of statutory authority and violates ANILCA because it does not limit various modes of transportation to traditional activities and travel to and from villages and homesites.

23. 43 C.F.R. 36.11(f)(4) is arbitrary and capricious, an abuse of discretion, not in accordance with law, in excess of statutory authority and violates ANILCA because it authorizes the use of helicopters at designated landing areas pursuant to permit or pursuant to a memorandum of understanding, while Section 1110(a) of ANILCA allows only airplanes.

24. 43 C.F.R. 36.11(g) is arbitrary and capricious, an abuse of discretion, not in accordance with law, in excess of statutory

authority and violates ANILCA because it allows the use of ORVs on established roads and parking areas, in designated areas or pursuant to permit, while Section 1110(c) does not.

Temporary Access

25. 43 C.F.R. 13.16 is arbitrary and capricious, an abuse of discretion, not in accordance with law, in excess of statutory authority and violates ANILCA because:

- a. it does not put any absolute time limit on temporary access permits,
- b. it does not prohibit renewals, and
- c. it does not restrict temporary access to undeveloped state and private lands.

REQUEST FOR RELIEF

WHEREFORE, Plaintiffs request that the Court:

A. Issue a declaration that the Access Regulations, as described above, are unlawful because they are arbitrary and capricious, an abuse of discretion, not in accordance with law, and in excess of statutory authority.

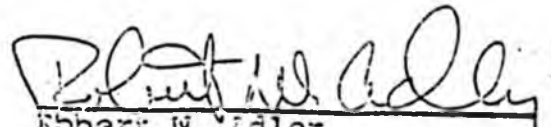
B. Enjoin Defendants from issuing any permits, processing any applications or otherwise applying the Access Regulations.

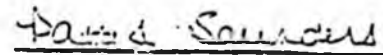
C. Enjoin Defendants to apply and to enforce the Interim Access Regulations until such time as lawful final regulations are enacted.

D. Grant Plaintiffs their costs of suit, including attor-

neys' fees.

E. Grant such other relief as is just and proper.


Robert W. Adler


Patti G. Sauncers

Date: February 9, 1987

Attorneys for Plaintiffs

United States District Court	DISTRICT Alaska
Trustees for Alaska, Alaska Center for the Environment, National Parks, and Conservation Association, American Wilderness Alliance, Northern Alaska Environmental Center, Southeast Alaska Conservation Council, Donald Citizens Council	SUITS NO. A 37-058 CIV
United States Department of the Interior, Donald Noel, Secretary of the U.S. Department of the Interior	TO: (NAME AND ADDRESS OF DEFENDANT) United States Department of the Interior Washington, D.C. 20240

YOU ARE HEREBY SUMMONED and required to serve upon

PLAINTIFF'S ATTORNEY (NAME AND ADDRESS)

Robert W. Adler
 Robert J. Saunders
 Trustees for Alaska
 725 Christensen Drive, Suite 4
 Anchorage, AK 99501

an answer to the complaint which is herewith served upon you, within ~~30~~ 60 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

CLERK

JoAnn Myres

DATE

FEB 09 1987

(BY) DEPUTY CLERK

Joe M. Whizard

CIVIL 10/121

SUMMONS IN A CIVIL ACTION

Handwritten notes:
10/121
10/121
10/121

<p>United States District Court</p>	<p>DISTRICT Alaska</p>
<p>Trustees for Alaska, Alaska Center for the Environment, National Parks and Conservation Association, American Wilderness Alliance, Northern Alaska Environmental Center, Southeast Alaska Conservation Council, Denali Citizens Council</p>	<p>DOCKET NO. 807-058 057</p>
<p>v. United States Department of the Interior, Donald Hodel, Secretary of the U.S. Department of the Interior</p>	<p>TO: (NAME AND ADDRESS OF DEFENDANT) Donald Hodel, Secretary United States Department of the Interior Washington, DC 20240</p>

YOU ARE HEREBY SUMMONED and required to serve upon

<p>PLAINTIFF'S ATTORNEY (NAME AND ADDRESS)</p> <p>Robert W. Adler Patti J. Saunders Trustees for Alaska 725 Christensen Drive, Suite 4 Anchorage, AK 99501</p>	<p>RECEIVED REGIONAL SCHEDULE U.S.D.C. FEB 10 1987 ANCHORAGE, ALASKA</p>
--	--

an answer to the complaint which is herewith served upon you, within 60 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

<p>CLERK</p> <p>JoAnn Myers</p>	<p>DATE</p>
<p>BY: DEPUTY CLERK</p> <p><i>JoAnn M. Weingard</i></p>	<p>FEB 09 1987</p>