

**S J R**

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Working for the Nature of Tomorrow.

## NATIONAL WILDLIFE FEDERATION

750 W. Second Ave., Suite 200, Anchorage, AK 99501 (907) 258-4000

December 22, 1989

Bud Cassidy  
Kodiak Island Borough  
710 Mill Bay Road  
Kodiak, Alaska 99615

Dear Mr. Cassidy:

This is in response to your request for information on the present debate over management of Alaska's wetlands, including the recently released Memorandum of Agreement between the Environmental Protection Agency (EPA) and the U.S. Army Corps of Engineers (the Corps) regarding wetlands mitigation, and implementation of President Bush's policy of no net loss of the nation's wetlands. I have included a copy of the EPA/Corps Memorandum of Agreement and a copy of the Final Report of the National Wetlands Policy Forum.

On November 14, 1989, the Assistant Secretary of the Army (Civil Works) Robert Page and EPA Administrator for Water, LuJuana Wilcher, signed the Memorandum of Agreement (MOA) articulating how mitigation requirements would be determined for individual Corps of Engineers' dredge and fill material discharge permits pursuant to the Clean Water Act Section 404 and EPA's Section 404(b)(1) Guidelines. The MOA articulated the basic policy that adverse impacts to waters of the United States, including wetlands, must first be avoided if possible, then minimized, and, as a last resort, compensated through creation or restoration of similar aquatic resources.

This MOA is an important step forward for the Section 404 program and for protection of all "waters of the United States," including but not limited to wetlands. For years the sequential mitigation policy described in the MOA has in fact been EPA's mitigation policy based on its interpretation of the Clean Water Act and the 404(b)(1) Guidelines. But the Corps has resisted the implementation of this policy on a nationwide scale, leaving its districts with broad discretion to dictate mitigation requirements to permittees on a case by case basis. Failure to use a common policy has led to widely varying mitigation requirements, often to the detriment of wetlands resources. The MOA responds to the concerns of developers as well as environmentalists by outlining a consistent, uniform and predictable policy to be applied nationwide.

Contrary to the position of the Alaska Congressional delegation and oil industry representatives, the MOA does not establish new wetlands policy. There exists an important distinction (which the delegation and oil lobbyists obfuscate) between the Corps and EPA's necessary ongoing administration of the Section 404 permit program, already firmly established in law, and the Domestic Policy Council's deliberations on a "National No Overall Net Loss of Wetlands Policy." The MOA mitigation policy is clearly embodied in the existing Clean Water Act Section 404 and EPA's Section 404(b)(1) Guidelines, as well as the Council on Environmental Quality's (CEQ) NEPA regulations and the U.S. Fish and Wildlife Service's Mitigation Policy (both of which have been in existence for over ten years and are relevant to Section 404 permitting decisions.) The MOA does not create new policy--it clarifies existing policy.

The MOA's only reference to the no overall net loss of wetlands goal is the recognition that the Clean Water Act has already established a no net loss goal for wetlands and other aquatic resources by seeking "to restore and maintain" those resources; that it will continue to be a goal of the Section 404 permit program to "contribute" to the achievement of a national no overall net loss goal; and that EPA and the Corps will work with the Domestic Policy Council Task Force toward achievement of this goal.

While EPA and the Corps have voiced their commitment to work with the Domestic Policy Council Task Force, necessary clarification and consistent interpretation of the existing Section 404 regulatory program and protection of wetlands and other aquatic resources cannot await the Task Force's deliberations. It is the responsibility of EPA and the Corps to effectively implement the Clean Water Act, regardless of the outcome of the Task Force.

This MOA is not a presumptive reaction to the Bush Administration's professed commitment to No Net Loss of Wetlands, but the product of interagency negotiations which span years. The 1988 GAO Report and subsequent House Subcommittee hearing testimony, which preceded the issuance of the National Wetlands Policy Forum Report and the Bush Presidency, identified the need for a consistent, predictable mitigation policy and directed EPA and the Corps to work together to develop consistent mitigation procedures.

I suspect the turmoil generated over this MOA has its source in oil industry efforts that seek to minimize the cost of their operations on Alaska's North Slope. The oil industry--not EPA or the Corps--is seeking a deviation from established Section 404 mitigation policy. They are asking to be exempted from compensation requirements altogether, a step backward from the level of protection Alaska wetlands presently have. Such a change in policy would be contrary to the Clean Water Act, the Section 404(b)(1) Guidelines, and the CEQ NEPA regulations. While I appreciate the industry's efforts to honor their obligations to their shareholders by maximizing profits, actions taken to benefit oil company shareholders, although they may translate to short-term gains in local economies, are not always in the public's best interest. If we have learned nothing else from the Exxon Valdez oil spill, I hope we have learned this.

To exempt Alaska from requirements to offset wetland and other aquatic ecosystem losses resulting from development activities also betrays the consensus reached by the National Wetlands Policy Forum which prompted President Bush's commitment to No Net Loss. The MOA closely tracks one of the fundamental recommendations of the Forum, i.e., that federal and state agencies implement a policy establishing a "clear preferred sequence of mitigation options that begins with avoidance of adverse effects on wetlands and the reduction of unavoidable adverse effects and allows compensation only as a last resort..." When the Forum principals met on July 19, 1989 to finally approve recommendations of the Forum, the State of Alaska and petroleum industry representatives, along with the other principals, specifically addressed the Alaska mitigation issue and confirmed their agreement that Alaska would be held to a sequential mitigation policy, including compensation for unavoidable losses, but that such requirements would be administered flexibly, with consideration for the unique circumstances in Alaska. The MOA very clearly provides this flexibility.

The hue and cry over application of President Bush's policy of no overall net loss of wetlands in Alaska borders on hysteria. Claims that the MOA will be "the death knell for the future of Alaska" are grossly inaccurate and misleading. The MOA clearly allows for flexible and rational consideration of mitigation in Alaska. Indeed, the State of Alaska's own wetlands resource managers have already adopted the sequential

road to no net loss as a workable one that will not paralyze the Alaskan economy.

The argument I find most troubling in this debate is the claim that because Alaska was not able to undertake unchecked draining and filling of wetlands and waterways in order to promote economic growth within its borders as other states were able to do before the mid 20th century, the state should be exempted until at least 5% of our wetlands are gone. This argument erroneously suggests that all Alaskan wetlands are the same, and would condemn over 8 million acres of wetlands to destruction without consideration of their values for flood storage, filtration, shoreline stabilization, groundwater recharge, and fisheries and wildlife habitat. It also erroneously suggests that Alaska has nothing to learn from the past history of wetlands abuse in the Lower 48. As state and municipal governments all across the country struggle with monumental problems of flood damage, ground water contamination, loss of valuable fisheries resources, and water pollution (all problems that result from the loss of wetlands functions and that will cost millions of tax dollars to fix), it would seem prudent for Alaskans to pay heed and endeavor not to make the same mistakes.

I believe the best approach to this issue for the Kodiak Island Borough is to consider developing a comprehensive Wetlands Management Plan that clearly identifies the functions and values of wetlands within your region, and spells out a consistent, predictable policy for accommodating wetlands protection and economic growth. This would seem to be a particularly good idea in an area whose economy is based almost entirely on the fishing industry, an industry that is critically dependent upon protection and wise management of wetlands resources.

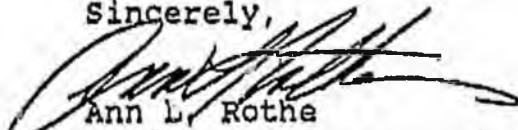
I have included for your information a copy of the Anchorage Wetlands Plan, which I think will serve as a good starting point. Please be aware there are a number of significant flaws in the Anchorage Wetlands Plan; the major one being the manner in which it was implemented. The Plan was to be reviewed every five years--it has not been. Review of the Plan and management recommendations were to be provided by a citizens task force that included representatives from a broad spectrum of community interests--the Task Force has been dissolved. In some cases, protection designations outlined in the Plan have been ignored and development has been allowed in

areas where wetlands values were determined to be very high. Anchorage realized the cost of some of these development decisions this past autumn when the community sustained extremely costly flood damages from unusually high rainfall-- flood damages that could have in part been ameliorated had the Wetlands Plan been implemented properly.

I believe a comprehensive Wetlands Management Plan developed with ample opportunity for citizen participation could achieve necessary wetlands protection in your region while at the same time allowing for economic development. Such a plan that is designed to protect wetlands functions and values could meet the goal of no overall net loss without necessarily requiring acre for acre replacement of wetlands. Rather, specific functions that individual wetlands provide (flood storage, filtration, shoreline stabilization, fisheries habitat) are the key factors to be protected and maintained when development activities are proposed. In situations where disturbance of wetlands functions is unavoidable and cannot be mitigated, functional replacement of those wetlands would be required, not always resulting in a 1 to 1 replacement ratio. If existing functions and values can be effectively protected in some manner other than wetland replacement, no replacement would be required.

I hope this information proves helpful to you, Mr. Cassidy. If you have further questions, please do not hesitate to call us. We would be most happy to assist you in any way we can in your efforts to best manage the wetlands of the Kodiak Island Borough.

Sincerely,



Ann L. Rothe  
Regional Representative

Enclosures

ALR

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FAX TRANSMITTAL MEMO

TO: Becky  
DEPT: Executive Div. FAX #: 276-3887  
FROM: Darin Hasley PHONE: 343-4309  
CC: DEDP FAX #: 274-5718

NO. OF  
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Post-it brand fax transmittal memo 7871

Submitted by: Office of the Mayor  
at the Request  
of the Mayor  
Prepared by: Office of the  
Municipal Manager  
For Reading: October 17, 1989

APPROVED  
Date: 10-17-89

ANCHORAGE, ALASKA  
AR NO. 89-296(S)

*manj*

A RESOLUTION OF THE MUNICIPALITY OF ANCHORAGE REGARDING A  
NATIONAL POLICY FOR "NO NET LOSS" OF WETLANDS

WHEREAS, the National Wetlands Policy Forum, in November 1988, released recommendations designed to: "establish a national wetlands protection policy to achieve no overall net loss of the nation's remaining wetlands base as defined by acreage and function, and to restore and create wetlands, where feasible, to increase the quality of the nation's wetlands resource base", and

WHEREAS, approximately 100 million acres remain of the over 200 million acres of wetlands that originally existed in the contiguous United States, and wetlands purportedly are being filled at the rate of some 1 million acres per year in these contiguous states, and

WHEREAS, Alaska's wetlands areas cover more than 170 million acres, and only 80,000 acres (0.05%) of Alaska's wetlands have been altered, and

WHEREAS, Alaska communities acknowledge the vital importance of wetlands to a healthy environment and are committed to protecting and enhancing those of greatest productivity and highest value, and

WHEREAS, the perceived need for a "no net loss" of wetlands policy is caused by wetlands losses in the contiguous United States and not in Alaska, and Alaska's wetlands are not endangered from a quantity or quality perspective, and

WHEREAS, an absolute prohibition of further "loss" or "use" of wetlands is inappropriate in Alaska where less than one-half of one percent of its total land base has been developed, and additional development is needed to support present and future populations, and

WHEREAS, local Alaska communities are attempting to diversify their economies, necessitating the development of basic infrastructure such as roads, airports, marine repair, on-shore processing, and port and harbor facilities, some of which are built in wetlands, and

WHEREAS, local Alaska communities have undertaken responsible management of wetlands resources through development of coastal management programs which are incorporated into the overall Alaska Coastal Management Program and approved in accordance with requirement of the Coastal Zone Management Act and the U. S. Army Corps of Engineers Section 404 permitting program, and

WHEREAS, the extent of wetlands development varies from state to state, and the characteristics, functions and values of wetlands differ on an area-by-area basis within each state, but the proposed policy recommends they be treated uniformly regardless of these differences, and

WHEREAS, a blanket "no net loss" policy applied to Alaska would be an onerous detriment to the state's future development and to its contributions to the federal treasury and to the nation's resource base, and

NOW, THEREFORE, the Municipality of Anchorage resolves:

Section 1. the President of the United States, in amending Executive Order 11990, and the Alaska delegation, include language that assures protection of valuable wetlands in states having significant losses of wetlands acreage in any future national wetlands legislation.

Section 2. Language be included in the Executive Order and future legislation that allows states in which cumulative wetlands losses are less than five percent (5%) of the state's total wetlands to be excluded from provisions of a national "no net loss" policy until such time as the threshold of five percent (5%) has been met and exceeded.

PASSED AND APPROVED by the Anchorage Assembly, this 17th day of October, 1989.

Heather Lynn  
Chairman

ATTEST:  
Ruby E. Tullberg  
Municipal Clerk

# SOUTHEAST CONFERENCE

P.O. Box 22286

Juneau, Alaska 99802

## SOUTHEAST CONFERENCE RESOLUTION #89-23

### RELATING TO ALASKA NOT BEING SUBJECTED TO A BLANKET NATIONAL POLICY FOR "NO NET LOSS" OF WETLANDS

WHEREAS, the Domestic Policy Council is considering advancing for Presidential approval a national "no net loss of wetlands" policy; and

WHEREAS, the perceived need for a "no net loss" policy is caused by wetlands loss in the continental United States, not Alaska; and

WHEREAS, the original concept of wetlands has become increasingly expanded since the Clean Water Act was implemented; and

WHEREAS, 88% of the total land mass of Alaska is still owned by the federal or state government which already exercises strict control on its development; and

WHEREAS, Alaska's wetland areas cover approximately 170 million acres and only 80,000 acres (0.05%) of Alaska's wetlands have been altered since 1867; and

WHEREAS, Alaska's wetlands are not endangered from a quantity or quality perspective; and

WHEREAS, most coastal communities in Alaska are undertaking port and harbor development and expanding marine repair facilities and most rely on water-based transportation for the marine highway system, fishing, processing, recreation, and tourism; and

WHEREAS, said port facilities and other infrastructure will be built to some degree on wetlands; and

WHEREAS, local communities have been actively attempting to diversify their economies away from the petroleum sector and such diversification is extremely dependent on the aforementioned infrastructure; and

WHEREAS, Alaska is actively trying to attract more business to support its rich fisheries and bring it ashore, supporting the home fleet and creating value-added jobs to build its economy; and

WHEREAS, local communities in Alaska have already undertaken responsible management of wetlands resources through development of coastal management programs which are incorporated into the overall Alaska Coastal Management Program and approved in accordance with the requirements of the Coastal Zone Management Act (CZMA) in addition to the Alaska Corps of Engineers Section 404 permitting program; and

Scutheast Conference Resolution #89-23, P.2

WHEREAS, an absolute prohibition on any further "loss" or "use" of wetlands is inappropriate in relatively undeveloped Alaska and will be a onerous detriment to the coastal communities of Alaska without producing any beneficial effect on the wetlands situation in the continental United States.

NOW THEREFORE BE IT RESOLVED that the Southeast Conference respectfully requests that President Bush, in coping with wetlands problems in other states, will consider the negative effects a "no net loss policy" will have on vital economic development in Alaska and will avoid subjecting Alaska to a blanket policy which portends so much potential harm to its local communities.

Adopted by the Southeast Conference this 22nd day of September, 1989.



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William B. Privett, President

# City of Delta Junction

Box 229

Delta Junction, Alaska 99737

907-895-4656

The North End of the Alaska Highway

## RESOLUTION 90-11

A RESOLUTION REQUESTING RECONSIDERATION AND WITHDRAWAL OF THE MEMORANDUM OF AGREEMENT (MOA) IN THE DETERMINATION OF MITIGATION UNDER THE CLEAN WATER ACT SECTION 404 (b)(1) GUIDELINES:

WHEREAS, the Governor of Alaska has stated that this MOA eclipses the policy process and leaves States without a role in decisions affecting their economic futures; and

WHEREAS, the MOA usurps Domestic Policy Council deliberations and violates the Administrative Procedures Act by "rule-making without public input"; and

WHEREAS, 170,000,000 acres of State of Alaska Wetlands are intact; and

WHEREAS, the development restrictions imposed by this MOA would adversely effect the development of the acreage.

NOW, THEREFORE, BE IT RESOLVED that the Mayor of Delta Junction forward to the President of the United States this resolution requesting reconsideration and withdrawal of the MOA.

Passed and approved by a duly constituted quorum of the City Council of Delta Junction this 2nd day of January, 1990.

EMORY W. BOHANAN, MAYOR Emory W. Bohanan  
MARY A. LEITH DOWLING, MAYOR PRO TEM Mary A. Leith Dowling  
LEONARD A. LEMON, COUNCILMEMBER Leonard A. Lemon  
FRANK W. GEIGER, COUNCILMEMBER Frank W. Geiger  
RAYMOND L. DINGER, COUNCILMEMBER Raymond L. Dinger  
GLEN E. WRIGHT, COUNCILMEMBER \_\_\_\_\_  
DAVID L. KAMRATH, COUNCILMEMBER \_\_\_\_\_

ATTEST: [Signature]  
ROBBY L. EBELIN  
CITY CLERK/TREASURER/ADMINISTRATIVE ASSISTANT TO THE MAYOR

RECEIVED JAN 10 1990

DRAFT--DRAFT--DRAFT--DRAFT--DRAFT--DRAFT--DRAFT--DRAFT--DRAFT--DRAFT

RESOLUTION OF THE NORTHERN ALASKA ADVISORY COUNCIL  
REGARDING WETLANDS AND THE FORTHCOMING NATIONAL POLICY  
FOR "NO NET LOSS" OF WETLANDS

WHEREAS, the National Wetlands Policy Forum, in November 1988, released recommendations designed to "establish a national wetlands protection policy to achieve no overall net loss of the nation's wetlands base as defined by acreage and function, and to restore and create wetlands, where feasible, to increase the quality of the nation's wetlands resource base;" and

WHEREAS, this policy was embraced by President Bush during his campaign and is now under study by the President's Domestic Policy Task Force on Wetlands; and

WHEREAS, in the contiguous United States there are approximately 100 million acres of wetlands; and

WHEREAS, under the existing definition of wetlands over 45 percent or 170 million acres of Alaska is classified as wetlands in contrast to the other states where only a small percentage of the area is classed as wetlands; and

NOW, THEREFORE, BE IT RESOLVED, that the Northern Alaska BLM Advisory Council urges the BLM to work with the National Task Force toward recognition that Alaska is truly different and that the definition of wetlands should be changed to reflect the Alaskan environment. Existing wetlands policy must be revised to allow responsible access to and use of Alaska's vast land resources.

PASSED AND APPROVED THIS 7<sup>th</sup> DAY OF December, 1989.

*Approved*  
*12-7-89*

RECEIVED DEC 11 1989

Sponsored by Mayor Van Brocklin  
Agenda of 11/29/89

CITY OF CORDOVA, ALASKA

RESOLUTION 89-111

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CORDOVA,  
ALASKA, RELATING TO ALASKA NOT BEING SUBJECTED TO A BLANKET  
NATIONAL POLICY FOR "NO NET LOSS" OF WETLANDS

WHEREAS, the Domestic Policy Council is considering advancing for Presidential approval a national "no net loss of wetlands" policy; and

WHEREAS, the perceived need for a "no net loss" policy is caused by wetlands loss in the continental United States, not Alaska; and

WHEREAS, the original concept of wetlands has become increasingly expanded since the Clean Water Act was implemented; and

WHEREAS, 88% of the total land mass of Alaska is still owned by the federal or state government which already exercises strict control on its development; and

WHEREAS, Alaska's wetland areas cover approximately 170 million acres and only 80,000 acres (0.05%) of Alaska's wetlands have been altered since 1867; and

WHEREAS, Alaska's wetlands are not endangered from a quantity or quality perspective; and

WHEREAS, most coastal communities in Alaska are undertaking port and harbor development and expanding marine repair facilities and most rely on water-based transportation for the marine highway system, fishing, processing, recreation, and tourism; and

WHEREAS, said port facilities and other infrastructure will be built to some degree on wetlands; and

WHEREAS, local communities have been actively attempting to diversify their economies away from the petroleum sector and such diversification is extremely dependent on the aforementioned infrastructure; and

WHEREAS, Alaska is actively trying to attract more business to support its rich fisheries and bring it ashore, supporting the home fleet and creating value-added jobs to build its economy; and

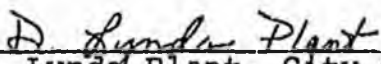
WHEREAS, Local communities in Alaska have already undertaken responsible management of wetlands resources through development of coastal management programs which are incorporated into the overall Alaska Coastal Management Program and approved in accordance with the requirements of the Coastal Zone Management Act (CZMA) in addition to the Alaska Corps of Engineers Section 404 permitting program; and

WHEREAS, An absolute prohibition on any further "loss" or "use" of wetlands is inappropriate in relatively undeveloped Alaska and will be a onerous detriment to the coastal communities of Alaska without producing any beneficial effect on the wetlands situation in the continental United States;

NOW, THEREFORE, BE IT RESOLVED that the Mayor and City Council of the City of Cordova, Alaska, hereby respectfully requests that President Bush, in coping with wetlands problems in other states, will consider the negative effects a "no net loss policy" will have on vital economic development in Alaska and will avoid subjecting Alaska to a blanket policy which portends so much potential harm to its local communities.

PASSED AND APPROVED THIS 6 DAY OF December, 1989.

  
\_\_\_\_\_  
Mayor Robert Van Brocklin

  
\_\_\_\_\_  
D. Lynda Plant, City Clerk

RESOLUTION CONCERNING THE MEMORANDUM OF AGREEMENT BETWEEN THE ENVIRONMENTAL PROTECTION AGENCY AND THE DEPARTMENT OF THE ARMY REGARDING THE DETERMINATION OF MITIGATION UNDER THE CLEAN WATER ACT SECTION 404(b) (1) GUIDELINES

WHEREAS, the Interstate Oil Compact Commission (IOCC) has long advocated the production of oil and gas consistent with sound environmental policies; and

WHEREAS, the IOCC and its 29 member states recognize that the nation's wetlands are an important national and international resource worthy of special consideration and that there is a need for a national wetlands policy; and

WHEREAS, members of the IOCC participated in a National Wetlands Policy Forum (Forum) convened by the Conservation Foundation in the summer of 1987 at the request of the U.S. Environmental Protection Agency; and

WHEREAS, the Forum, a group with representatives from the energy industry, agriculture, construction trade, environmental groups, national, state, and local governments, and academic experts, developed policy recommendations to stop and reverse the loss of the nation's wetlands; and

WHEREAS, in the wake of the Forum's recommendations, the President had directed the Domestic Policy Council to develop an executive order to address the nation's wetlands, and legislation concerning wetlands has recently been introduced in Congress; and

WHEREAS, local, state and federal government agencies, affected applicants, environmental organizations and other interested parties have an important interest in the management of the nation's wetlands and are involved in a number of public processes to develop practical solutions to implement the Forum's no overall net loss of wetlands recommendations; and

WHEREAS, the U.S. Army Corps of Engineers and the Environmental Protection Agency have recently entered into a Memorandum of Agreement which departs from current agency guidelines by requiring the imposition of compensatory mitigation; and

WHEREAS, the Memorandum of Agreement was developed and executed without notice to the public or input from the Domestic Policy Council, members of the public, state and local government agencies and other interested and affected parties; and

WHEREAS, no Takings Implication Assessment was completed for the Memorandum of Agreement, although it adopts new permitting requirements and limitations on private property use subject to Executive Order No. 12630; and

WHEREAS, no Regulatory Impact Analysis and Review was completed for the Memorandum of Agreement as required by Executive Order No. 12291 although the costs of providing the compensatory mitigation required by the Memorandum of Agreement is likely to exceed many millions of dollars per year and is also likely to greatly increase costs for fill-dependent industries, particularly in areas like Alaska's north slope; and

WHEREAS, the IOCC and its member states are not taking a position at this time on the substantive issues of wetlands preservation, but rather concerning the process of establishing and implementing that policy through the existing Memorandum of Agreement.

NOW, THEREFORE, BE IT RESOLVED that:

The IOCC, recognizing the critical importance of state and public involvement in the development of balanced resource management regulations and policies, and recognizing that the Memorandum of Agreement Concerning the Determination of Mitigation Under the Clean Water Act Section 404(b)(1) Guidelines amounts to regulation, formally requests President Bush to direct the U.S. Environmental Protection Agency and the U.S. Army Corps of Engineers to:

- (1) immediately rescind their Memorandum of Agreement Concerning the Determination of Mitigation Under the Clean Water Act Section 404(b)(1) Guidelines;
- (2) prepare a Takings Implication Assessment as required by Executive Order No. 12630;
- (3) prepare a Regulatory Impact Analysis and Review as required by Executive Order No. 12291; and
- (4) follow the procedures set forth in the Administrative Procedures Act for the formal adoption of regulations if, following review by the Domestic Policy Council, consideration of public comment, and consideration of the Takings Implication Assessment and the Regulatory Impact Analysis, it is determined that rulemaking consistent with statutory authority is appropriate.

FIRST SESSION OF THE TENTH ANNUAL  
NORTH AND NORTHWEST ALASKA MAYORS' CONFERENCE  
NOORVIK, ALASKA

October 31 - November 3, 1989  
"ECONOMIC DEVELOPMENT IN ACTION"

RESOLUTION NO. 90-25

Redistributed by RDC, Inc.

A RESOLUTION CONCERNING THE PRESERVATION OF WETLANDS.

- WHEREAS, The President of the United States has announced his policy that there should be "no net loss of wetlands" in the United States;
- WHEREAS, Federal agencies, such as EPA, Fish and Wildlife, and the U.S. Army Corps of Engineers, have not yet adopted that policy in their regulations and programs;
- WHEREAS, If adopted as a decisional requirement in Federal programs applicable to Alaska, a "no net loss of wetlands" policy will effectively halt even temporary conversion of wetlands in Alaska, particularly on Native Corporation-owned "wetlands";
- WHEREAS, Through creation of vast National Conservation System Units and various other regulatory programs, Congress put in place for Alaska wetland-protective programs unparalleled in the lower '49 states for the severity, already placing serious restraints on development in the few places where private property exists in Alaska;
- WHEREAS, Alaska is the largest State, having 2/3 of all coastline and 2/3 of all "wetlands" in the United States, 2/3 of its non-mountainous land area as "wetlands" and still maintaining 99.95% of its original lands;

Resolution No. 90-25

North and Northwest Mayors' Conference

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**WHEREAS,** A "no net loss of wetlands" policy, if interpreted inflexibly by Federal regulatory and land managing agencies, could result in frustrating the Native land development purposes of the Alaska Native Claims Settlement Act, stopping Federal lessees from developments on wetlands, and taking private property without just compensation;

**NOW THEREFORE BE IT RESOLVED BY THE NORTH AND NORTHWEST ALASKA MAYORS' CONFERENCE THAT: THE FEDERAL AGENCIES SHOULD REVISE THEIR WETLAND-PROTECTION PROGRAMS FOR ALASKA TO CONCENTRATE ON CLASSIFICATION AND PROTECTION OF PRODUCTIVE WETLANDS THAT ACTUALLY PROVIDE FISH AND WILDLIFE, AND WATER QUALITY, BENEFITS;**

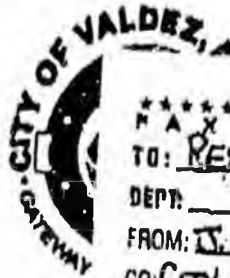
**BE IT FURTHER RESOLVED BY THE NORTH AND NORTHWEST ALASKA MAYORS' CONFERENCE THAT: FEDERAL AGENCIES OPERATING IN ALASKA SHOULD WORK COOPERATIVELY WITH ALASKA MUNICIPALITIES TO DECIDE WHERE DEVELOPMENT SHOULD AND SHOULD NOT OCCUR IN WETLANDS;**

**BE IT FURTHER RESOLVED BY THE NORTH AND NORTHWEST ALASKA MAYORS' CONFERENCE THAT: MUNICIPAL GOVERNMENTS IN ALASKA SHOULD JOIN IN A WELL-INFORMED ALLIANCE TO EFFECTIVELY RESHAPE THE FEDERAL WETLANDS POLICY TO CONFORM TO THE REALITIES AND NEEDS OF ALASKA AND ITS CITIZENS.**

**PASSED AND APPROVED BY THE FIRST SESSION OF THE TENTH ANNUAL NORTH AND NORTHWEST ALASKA MAYORS' CONFERENCE THIS \_\_\_\_\_ DAY OF NOVEMBER, 1989.**

\_\_\_\_\_  
**ALBERT WASHINGTON**  
PRESIDENT

\_\_\_\_\_  
**ROBERT FOOTE**  
SECRETARY



\*\*\*\*\*  
 FAX TRANSMITTAL MEMO  
 TO: RESOURCE DEVELOPMENT COUNCIL  
 DEPT: \_\_\_\_\_ FAX #: 276-3887  
 FROM: J. DONALD PHONE: 835-4313  
 CO: CITY OF VALDEZ FAX #: 835-2992  
 Post-It brand fax transmittal memo 7871

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December 13, 1989

Redistributed by RDC, Inc.

The Honorable George Bush  
 President of the United States  
 White House  
 Washington, DC 20500

RE: Recent EPA/Army Corps Memorandum of Agreement  
 Regarding Wetlands Preservation

Dear President Bush:

As the Mayor of the City of Valdez, I must ask you to reconsider a pending action regarding the development of a national wetlands policy. It is clear to us in Alaska that this action, designed to stop and reverse the decline of the nation's wetlands base, is well motivated. However, the proposed Memorandum of Agreement between the Environmental Protection Agency and the Army Corps of Engineers, which asserts as its goal a "no net loss" of wetlands policy, is not applicable to the situation in Valdez or the State of Alaska.

There is no escaping the fact that Alaska and its municipalities are unique and this is certainly true as it pertains to this proposed policy. Alaska and Valdez continue to develop in a slow and reasonable manner, and the activities of our state are always closely scrutinized by state and federal officials and the environmental community. The development in Alaska, which provides twenty-five percent of the nation's domestic oil production and has the potential to serve the nation well in areas of mining, timber, and fishing, has not had an adverse affect on the nation's wetlands base.

This issue presents virtually a no-growth option for Alaska and, as a young state with much development promise, the prospect of another obstacle to fully realizing our potential is disheartening. This brake on coastal and wetlands development will also hurt my City economically as it, like the State, seeks to diversify its economy so that we are not so dependent on oil production and transportation. I urge you to rescind this proposed Memorandum of

The Honorable George Bush  
President of the United States  
December 13, 1989  
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Agreement because it usurps the Domestic Policy Council deliberations and violates the Administrative Procedure Act due to the lack of public input in this rule-making process.

Thank you very much for your attention to this matter.

Sincerely,

A handwritten signature in cursive script, appearing to read "Lynn Chrystal".

Lynn Chrystal, Mayor  
City of Valdez

LC:DG:blp



LANSTON CHINN  
BOROUGH MANAGER

TELEPHONE  
(907) 246-4224  
FAX  
(907) 246-8633

# Bristol Bay Borough

BOX 189 • NAKNEK, ALASKA 99633

## RESOLUTION 89-25

### RELATING TO ALASKA NOT BEING SUBJECTED TO A BLANKET NATIONAL POLICY FOR "NO NET LOSS" OF WETLANDS

- WHEREAS, the Domestic Policy Council is considering advancing a national "no net loss of wetlands" policy for Presidential approval; and
- WHEREAS, the perceived need for a "no net loss" policy is caused by wetlands loss in the continental United States, not Alaska; and
- WHEREAS, the original concept of wetlands has become increasingly expanded since the Clean Water Act was implemented; and
- WHEREAS, 80% of the total land mass of Alaska is still owned by the Federal or State governments who already exercise strict control over its development; and
- WHEREAS, Alaska's wetlands area cover approximately 1700 million acres and only 80,000 acres (0.05%) of Alaska's wetlands have been altered since 1867; and
- WHEREAS, Alaska's wetlands are not endangered from a quantitative or qualitative perspective; and
- WHEREAS, most coastal communities in Alaska are undertaking port and harbor development and expanding marine repair facilities and rely on water based transportation for the marine highway system, fishing, processing, recreation and tourism; and
- WHEREAS, said port facilities and other infrastructure will be built to some degree on wetlands; and
- WHEREAS, local communities have been actively attempting to diversify their economies away from the petroleum sector and such diversification is extremely dependent on the aforementioned infrastructure; and
- WHEREAS, Alaska is actively trying to attract more business to support its rich fisheries and bring it ashore, supporting the home fleet and creating value-added jobs to build its economy; and


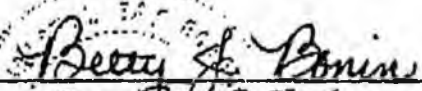
- WHEREAS, local communities in Alaska have already undertaken responsible management of wetlands resources through development of coastal management programs which are incorporated into the overall Alaska Coastal Management Program and approved in accordance with the requirements of the coastal Zone Management Act (CZMA) in addition to the Alaska Corps of Engineers Section 404 permitting program; and
- WHEREAS, an absolute prohibition on any further "loss" or "use" of wetlands is inappropriate in relatively undeveloped Alaska and will be an onerous detriment to the coastal communities of Alaska without producing any beneficial effect on the wetlands situation in the continental United States; and
- WHEREAS, the Army Corps of Engineers has classified all of Bristol Bay Borough as wetlands using air photography and a not net loss policy would completely stop development in the Borough; and
- WHEREAS, the Army Corps of Engineers will not perform site specific determinations regarding the presence of wetlands;

NOW 'THEREFORE BE IT' RESOLVED, that the Bristol Bay Borough Assembly respectfully requests that President Bush, in coping with wetlands problems in other states, will consider the negative effects a "no net loss policy" will have on vital economic development in Alaska and will avoid subjecting Alaska to a blanket policy which portends so much potential harm to its communities.

PASSED AND APPROVED BY THE ASSEMBLY OF THE BRISTOL BAY BOROUGH this 4<sup>th</sup>  
day of December, 1989.

  
\_\_\_\_\_  
Mayor

ATTEST:

  
  
\_\_\_\_\_  
Borough Clerk

## MATANUSKA-SUSITNA BOROUGH

## ASSEMBLY RESOLUTION SERIAL NUMBER 89-255

"A RESOLUTION OF THE MATANUSKA-SUSITNA BOROUGH ASSEMBLY REQUESTING THAT PRESIDENT GEORGE BUSH DIRECT THE ENVIRONMENTAL PROTECTION AGENCY AND THE U.S. ARMY CORPS OF ENGINEERS TO DELAY ANY IMPLEMENTATION OF A NEW NATIONAL WETLANDS POLICY UNTIL THE DOMESTIC POLICY COUNCIL HAS FORMULATED A MORE REASONABLE AND FLEXIBLE NATIONAL POLICY"

WHEREAS, the Environmental Protection Agency and the U.S. Army Corps of Engineers have developed a new national wetlands policy that requires "no net loss" of wetlands; and

WHEREAS, the Environmental Protection Agency and the U.S. Army Corps of Engineers have entered into a Memorandum of Agreement to implement this policy; and

WHEREAS, the Memorandum of Agreement eclipses the policy process of the President's Domestic Policy Council and the States of the Union; and

WHEREAS, the present Memorandum of Agreement does not contain sufficient decision making criteria and will therefore lead to ad hoc decision making at the local level; and

WHEREAS, the present Memorandum of Agreement does not contain sufficient flexibility to recognize regional differences; and

WHEREAS, the present Memorandum of Agreement considers Alaska, which contains one-fifth of the land mass of the nation and has only lost .05% of its wetlands, as the lower 48 States which have lost 54% of their wetlands; and

WHEREAS, Alaskan wetlands are different than other wetlands within the nation because Alaskan wetlands are mostly underlain by permanently frozen ground that makes it impossible for these lands to provide many of the functions for which wetlands in the lower 48 States are valued; and

WHEREAS, the present Memorandum of Agreement will have a chilling effect on economic development projects of the Matanuska-Susitna Borough such as the Port of Alaska, South Denali Visitor Center, Hatcher Pass Ski Resort as well as many others; and

WHEREAS, the present Memorandum of Agreement will have a deleterious effect on public safety projects since erosion and flood control projects will be subject to the "no net loss" criteria;

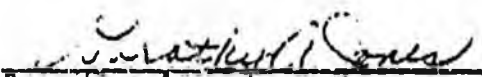
WHEREAS, a reasonable accommodation to the wetlands issue may be found in wetland protection programs for Alaska that concentrate on classification and protection of productive wetlands that actually provide vital fish and wildlife and water quality benefits; and

WHEREAS, an accommodating approach will allow states in which cumulative wetlands losses are less than 5% to 20% of the state's total wetlands to be excluded from provisions of a national "no net loss" policy until the threshold has been met and exceeded; and

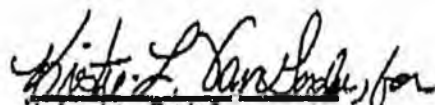
WHEREAS, an approach stressing avoidance and minimization of wetlands disturbances is preferred.

NOW, THEREFORE, BE IT RESOLVED: that the Assembly of the Matanuska-Susitna Borough strongly opposes the current "no net loss" national wetlands policy and urges the EPA and Corps to delay implementation of the present "no net loss" wetland policy and use the President's Domestic Policy Council work to redraft wetland policy to recognize regional differences, incorporate flexibility and define a set of criteria for implementation.

PASSED AND APPROVED by the Assembly of the Matanuska-Susitna Borough this 19 day of December, 1989.

  
\_\_\_\_\_  
Dorothy A. Jones  
Mayor  
Matanuska-Susitna Borough

ATTEST:

  
\_\_\_\_\_  
Linda Dahl  
Borough Clerk

MIKE  
Your copy  
BUS H  
8/11/7

EFFECTIVE DEC. 15, 1979



**MEMORANDUM OF AGREEMENT<sup>1</sup>  
BETWEEN THE ENVIRONMENTAL PROTECTION AGENCY  
AND THE DEPARTMENT OF THE ARMY CONCERNING  
THE DETERMINATION OF MITIGATION UNDER THE  
CLEAN WATER ACT SECTION 404(b)(1) GUIDELINES**



*I. Purpose*

The United States Environmental Protection Agency (EPA) and the United States Department of the Army (Army) hereby articulate the policy and procedures to be used in the determination of the type and level of mitigation necessary to demonstrate compliance with the Clean Water Act (CWA) Section 404(b)(1) Guidelines ("Guidelines"). This Memorandum of Agreement (MOA) expresses the explicit intent of the Army and EPA to implement the objective of the CWA to restore and maintain the chemical, physical, and biological integrity of the Nation's waters, including wetlands. This MOA is specifically limited to the Section 404 Regulatory Program and is written to provide clarification for agency field personnel on the type and level of mitigation required to demonstrate compliance with requirements in the Guidelines. The policies and procedures discussed herein are consistent with current Section 404 regulatory practices and are provided in response to questions that have been raised about how the Guidelines are implemented.

Although the Guidelines are clearly applicable to all discharges of dredged or fill material, including general permits and Corps of Engineers (Corps) civil works projects, this MOA focuses on standard permits (33 CFR 325.5(b)(1))<sup>1</sup>. This focus is intended solely to reflect the unique procedural aspects associated with the review of standard permits, and does not obviate the need for other regulated activities to comply fully with the Guidelines. EPA and Army will seek to develop supplemental guidance for other regulated activities consistent with the policies and principles established in this document.

This MOA is a directive for Corps and EPA personnel and must be adhered to when considering mitigation requirements for standard permit applications. The Corps will use this MOA when making its determination of compliance with the Guidelines with respect to mitigation for standard permit applications. EPA will use this MOA in developing its positions on compliance with the Guidelines for proposed discharges and will reflect this MOA when commenting on standard permit applications.

<sup>1</sup>Standard permits are those individual permits which have been processed through application of the Corps public interest review procedures (33 CFR 325) and EPA's Section 404(b)(1) Guidelines, including public notice and receipt of comments. Standard permits do not include letters of permission, regional permits, nationwide permits, or programmatic permits.

## II. Policy

A. The Council on Environmental Quality (CEQ) has defined mitigation in its regulations at 40 CFR 1508.20 to include: avoiding impacts, minimizing impacts, rectifying impacts, reducing impacts over time, and compensating for impacts. The Guidelines establish environmental criteria which must be met for activities to be permitted under Section 404.<sup>2</sup> The types of mitigation enumerated by CEQ are compatible with the requirements of the Guidelines; however, as a practical matter, they can be combined to form three general types: avoidance, minimization and compensatory mitigation. The remainder of this MOA will speak in terms of these more general types of mitigation.

B. The Clean Water Act and the Guidelines set forth a goal of restoring and maintaining existing aquatic resources. The Corps will strive to avoid adverse impacts and offset unavoidable adverse impacts to existing aquatic resources, and for wetlands, will strive to achieve a goal of no overall net loss of values and functions. In focusing the goal of no overall net loss to wetlands only, EPA and Army have explicitly recognized the special significance of the nation's wetlands resources. This special recognition of wetlands resources does not in any manner diminish the value of other waters of the United States, which are often of high value. All waters of the United States, such as streams, rivers, lakes, etc., will be accorded the full measure of protection under the Guidelines, including the requirements for appropriate and practicable mitigation. The determination of what level of mitigation constitutes "appropriate" mitigation shall be based on the values and functions of the aquatic resource that will be impacted. This determination shall not be based upon characteristics of the proposed project such as need, societal value, or the nature or investment objectives of the project's sponsor. "Practicable" shall be defined as in Section 230.10(a)(2) of the Guidelines. However, the level of mitigation determined to be appropriate and practicable under Section 230.10(d) may lead to individual permit decisions which do not fully meet this goal because the mitigation measures necessary to meet this goal are not feasible, not practicable, or would accomplish only inconsequential reductions in impacts. Consequently, it is recognized that no net loss of wetlands functions and values may not be achieved in each and every permit action. However, it remains a goal of the Section 404 regulatory program to contribute to the national goal of no overall net loss of the nation's remaining wetlands base. EPA and Army are committed to working with others through the Administration's interagency task force and other avenues to help achieve this national goal.

C. In evaluating standard Section 404 permit applications, as a practical matter, information on all facets of a project, including potential mitigation, is typically gathered and reviewed at the same time. Notwithstanding this procedural approach, the Corps will, except as indicated below, first make a determination that potential impacts have been avoided to the maximum extent practicable; remaining unavoidable impacts will then be

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<sup>2</sup>(except where Section 404(b)(2) applies).

mitigated to the extent appropriate and practicable by requiring steps to minimize impacts and, only as a last resort, compensate for aquatic resource values. This sequence will be considered satisfied where the proposed mitigation is in accordance with specific provisions of a Corps and EPA approved comprehensive plan that ensures compliance with the compensation requirements of this MOA, as set forth at Section II.B (examples of such comprehensive plans may include Special Area Management Plans, Advance Identification areas (Section 230.80), and State Coastal Zone Management Plans). In some circumstances, it may be appropriate to deviate from the sequence when EPA and the Corps agree the proposed discharge is necessary to avoid environmental harm (e.g., to protect a natural aquatic community from saltwater intrusion, chemical contamination, or other deleterious physical or chemical impacts), or EPA and the Corps agree that the proposed discharge can reasonably be expected to result in environmental gain. This environmental gain must be solely attributable to the project itself, exclusive of benefits which may accrue from proposed compensatory mitigation.

In determining "appropriate and practicable" measures to offset unavoidable impacts, such measures should be appropriate to the scope and degree of those impacts and practicable in terms of cost, existing technology, and logistics in light of overall project purposes. The Corps will give full consideration to the views of the resource agencies when making this determination.

1. **Avoidance.**<sup>3</sup> Section 230.10(a) allows permit issuance for only the least environmentally damaging practicable alternative.<sup>4</sup> The thrust of this section on alternatives is avoidance of impacts. Section 230.10(a)(1) requires that, to be permissible, an alternative must be the least environmentally damaging practicable alternative. In addition, Section 230.10(a)(3) sets forth rebuttable presumptions that 1) alternatives for non-water dependent activities that do not involve special aquatic sites<sup>5</sup> are available and 2) alternatives that do not involve special aquatic sites have less adverse impact on the aquatic environment. Compensatory mitigation may not be used as a method to reduce environmental impacts in the selection of the least environmentally damaging practicable alternatives for the purposes of requirements under Section 230.10(a).

2. **Minimization.** Section 230.10(d) states that appropriate and practicable steps to minimize the adverse impacts will be required through project modifications and permit

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<sup>3</sup>Avoidance as used in this MOA does not include compensatory mitigation.

<sup>4</sup>It is important to recognize that there are circumstances where the impacts of the project are so significant that even if alternatives are not available, the discharge may not be permitted regardless of the compensatory mitigation proposed (40 CFR 230.10(e)).

<sup>5</sup>Special aquatic sites include sanctuaries and refuges, wetlands, mud flats, vegetated shallows, coral reefs and riffle pool complexes.

(3)

conditions. Subpart H of the Guidelines describes several (but not all) means for minimizing impacts of an activity.

**3. Compensatory Mitigation.** Appropriate and practicable compensatory mitigation will be required for unavoidable adverse impacts which remain after all appropriate and practicable minimization has been required. Compensatory actions (e.g., restoration of existing degraded wetlands or creation of man-made wetlands) should be undertaken, when practicable, in areas adjacent or contiguous to the discharge site (on-site compensatory mitigation). If on-site compensatory mitigation is not practicable, off-site compensatory mitigation should be undertaken in the same geographic area (i.e., in close physical proximity and, to the extent possible, the same watershed). In determining compensatory mitigation, the functional values lost by the resource to be impacted must be considered. In most cases, in-kind compensatory mitigation is preferable to out-of-kind. There is continued uncertainty regarding the success of wetland creation or other habitat development. Therefore, in determining the nature and extent of habitat development of this type, careful consideration should be given to its likelihood of success. Because the likelihood of success is greater and the impacts to potentially valuable uplands are reduced, restoration should be the first option considered.

In the situation where the Corps is evaluating a project where a permit issued by another agency requires compensatory mitigation, the Corps may consider that mitigation as part of the overall application for purposes of public notice, but avoidance and minimization shall still be sought.

Mitigation banking may be an acceptable form of compensatory mitigation under specific criteria designed to ensure an environmentally successful bank. Where a mitigation bank has been approved by EPA and the Corps for purposes of providing compensatory mitigation for specific identified projects, use of that mitigation bank for those particular projects will be considered as meeting the requirements of Section ILC.3 of this MOA, regardless of the practicability of other forms of compensatory mitigation. Additional guidance on mitigation banking will be provided. Simple purchase or "preservation" of existing wetlands resources may in only exceptional circumstances be accepted as compensatory mitigation. EPA and Army will develop specific guidance for preservation in the context of compensatory mitigation at a later date.

### **III. Other Procedures**

A. Potential applicants for major projects should be encouraged to arrange preapplication meetings with the Corps and appropriate federal, state or Indian tribal, and local authorities to determine requirements and documentation required for proposed permit evaluations. As a result of such meetings, the applicant often revises a proposal to avoid or minimize adverse impacts after developing an understanding of the Guidelines

requirements by which a future Section 404 permit decision will be made, in addition to gaining an understanding of other state or tribal, or local requirements.

B. In achieving the goals of the CWA, the Corps will strive to avoid adverse impacts and offset unavoidable adverse impacts to existing aquatic resources. Measures which can accomplish this can be identified only through resource assessments tailored to the site performed by qualified professionals because ecological characteristics of each aquatic site are unique. Functional values should be assessed by applying aquatic site assessment techniques generally recognized by experts in the field and/or the best professional judgment of federal and state agency representatives, provided such assessments fully consider ecological functions included in the Guidelines. The objective of mitigation for unavoidable impacts is to offset environmental losses. Additionally for wetlands, such mitigation will provide, at a minimum, one for one functional replacement (i.e., no net loss of values)<sup>6</sup>, with an adequate margin of safety to reflect the expected degree of success associated with the mitigation plan, recognizing that this minimum requirement may not be relevant in some cases, as discussed in Section II.B of this MOA.

C. The Guidelines are established as the environmental standard for Section 404 permit issuance under the CWA. Aspects of a proposed project may be affected through a determination of requirements needed to comply with the Guidelines to achieve these CWA environmental goals. Other reviews, such as NEPA and the Corps public interest review, cannot be used to nullify any Guidelines requirements or to justify less rigorous Guidelines evaluations.

D. Monitoring is an important aspect of mitigation, especially in areas of scientific uncertainty. Monitoring should be directed toward determining whether permit conditions are complied with and whether the purpose intended to be served by the condition is actually achieved. Any time it is determined that a permittee is in non-compliance with mitigation requirements of the permit, the Corps will take action in accordance with 33 CFR Part 326. Monitoring should not be required for purposes other than these, although information for other uses may accrue from the monitoring requirements. For projects to be permitted involving mitigation with higher levels of scientific uncertainty, such as some forms of compensatory mitigation, long term monitoring, reporting and potential remedial action should be required. This can be required of the applicant through permit conditions.

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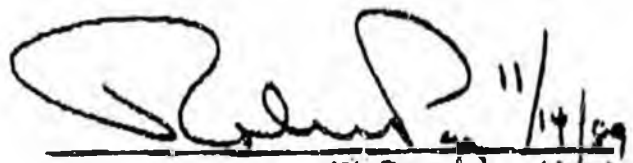
<sup>6</sup>In most cases a minimum of 1 to 1 acreage replacement of wetlands will be required to achieve no net loss of values. However, this ratio may be greater where the functional values of the area being impacted are demonstrably high. Conversely, the ratio may be less than 1 to 1 for areas where the functional values associated with the area being impacted are demonstrably low and the likelihood of success associated with the mitigation proposal is high.

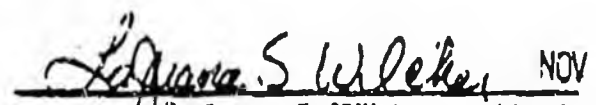
*EPAA Army MOA Concerning the Determination of Mitigation under the Section 404(b)(1) Guidelines*

E. Mitigation requirements shall be conditions of standard Section 404 permits. Army regulations authorize mitigation requirements to be added as special conditions to an Army permit to satisfy legal requirements (e.g., conditions necessary to satisfy the Guidelines) [33 CFR 325.4(a)]. This ensures legal enforceability of the mitigation conditions and enhances the level of compliance. If the mitigation plan necessary to ensure compliance with the Guidelines is not reasonably implementable or unenforceable, the permit shall be denied.

F. Nothing in this document is intended to diminish, modify or otherwise affect the statutory or regulatory authorities of the agencies involved. Furthermore, formal policy guidance on or interpretation of this document shall be issued jointly.

G. This MOA shall take effect thirty (30) days after the date of the last signature below, and will apply to those completed standard permit applications which are received on or after the effective date. This MOA may be modified or revoked by agreement of both parties, or revoked by either party alone upon six (6) months written notice.

  
\_\_\_\_\_  
Robert W. Page (date)  
Assistant Secretary of the Army  
(Civil Works)

  
\_\_\_\_\_  
LaJuana S. Wilcher (date) NOV  
Assistant Administrator for Water  
U.S. Environmental Protection Agency



# National Audubon Society

ALASKA-HAWAII REGIONAL OFFICE  
308 G STREET, SUITE 219, ANCHORAGE, ALASKA 99501 (907) 276-7034

## OIL INDUSTRY THREATENS ALASKA WETLANDS

POSITION STATEMENT  
OF THE  
NATIONAL AUDUBON SOCIETY'S  
ALASKA-HAWAII REGIONAL OFFICE

Anchorage, Alaska

January 10, 1990

Alaskans are being misled about the meaning of new federal policies on getting permits to develop in wetlands. The pressure is coming from the oil industry and other development interests who are passing along incorrect information in an apparent attempt to attack our nation's Clean Water Act.

Targets of their wrath include a recently released Memorandum of Agreement (MOA) between the Environmental Protection Agency (EPA) and the Corps of Engineers regarding how damage to public wetland resources should be avoided or mitigated, and how President Bush's policy of "no net loss" of our nation's wetlands should be implemented in regulatory programs.

Contrary to what the misinformed critics are saying, the MOA does not establish new wetlands policy for Alaska. Furthermore, the President's "no net loss" goal does not mean that all development activities will be thwarted in our state.

The federal Clean Water Act requires that permits be obtained by developers when they damage wetlands by dredging or filling. What the MOA really does is provide a higher level of predictability and consistency for determining appropriate mitigation for the permitting process. It also attempts to avoid capricious and arbitrary decisions by the regulatory agencies. Thus it addresses concerns voiced for many years by both development and conservation interests.

For example, the MOA makes clear that a reasonable, logical, sequential approach to wetlands permitting will be taken. First, a permit would be issued for only the least damaging practical project alternative where wetlands cannot be avoided. This encourages good planning. However, in cases where public interest values are significant and where damage proves unavoidable, the permit would require that reasonable steps be taken to minimize the adverse impacts. Finally, compensatory mitigation actions would be required only as a last resort in cases where major adverse impacts prove unavoidable in high value wetlands even after all appropriate and practical steps have been taken to minimize the damage. Such compensatory actions might be to restore already degraded wetlands in the area, enhance important functions of existing wetlands, or provide functional replacement of wetlands if other compensatory options are not available or feasible.

The goal of "no net loss" does not require recreation of the exact conditions that existed before a wetlands development project commenced. Instead, it requires that reasonable efforts be made to replace important wetland functions and public values. This is essential if we are to continue to have adequate supplies of clean water, habitats for fish and wildlife, and thriving businesses and outdoor recreational activities that are dependent on wetlands.

For example, all that might be required in building in a portion of a wetland whose primary values are storage of floodwater and recharging groundwater, would be to install culverts and insure adequate cross-drainage flow.

Even though wetlands coverage in Alaska is considerable, the critics fail to mention that resource values of the various wetland types vary greatly one to the other. Some are low value, others medium value, while many are high value in terms of biological productivity and public interest. For example, high value coastal salt marsh in Alaska comprises only 7 percent of the nation's total.

In addition, wetland losses in some areas of Alaska have been dramatic. The U.S. Fish and Wildlife Service estimates that approximately 50 percent of wetlands in the Anchorage bowl and 30 percent in Juneau's Mendenhall Valley have already been lost to development.

Although Alaska's wetlands are estimated to compromise 170 million acres of Alaska's land base, the National Wetlands Inventory shows that only about 21 million (11 percent) are coastal wetlands and deepwater habitat. Yet it is these near shore zones that are particularly important as spawning, feeding and rearing areas for fish and shellfish that support Alaska's multi-billion dollar fishing industry. The proximity of these habitats to adjacent uplands makes them particularly vulnerable to human development pressures.

Despite various types of coastal wetlands being dramatically different from interior tundra wetlands, they too are included in industry's "exempt Alaska campaign".

According to the National Fisheries Service (NMFS), if Alaska is made exempt from the "no net loss" wetland policy and MOA, ... "OUR ABILITY TO CONSERVE COASTAL WETLANDS HABITATS VITAL TO MAINTENANCE OF ALASKA'S FISHERIES WILL BE SEVERELY COMPROMISED."

It appears that the principal reason for much of the misinformation fueling the current anti-wetlands campaign is the oil industry's special interest to reduce regulatory constraints on construction in wetlands on the North Slope. This is all set forth in a 1989 report entitled Effects of Petroleum Operations in Alaska Wetlands, authored by oil-industry consultant Robert Senner.

Scientists with the U.S. Fish and Wildlife Service, Alaska Department of Fish and Game and other organizations have concluded that the Senner report was never subjected to peer review and contains numerous technical flaws largely related to the improper use of references. They also found that it fails to recognize the great diversity of arctic wetlands and their unique wildlife inhabitants, and the basic ecological

principles involved in the functioning of wetlands. It improperly attempts to shift responsibility for establishing wetlands mitigation requirements from government to industry.

Furthermore, the report erroneously concludes that arctic wetlands are understocked and thus not limiting to populations of fish and wildlife.

It is inevitable that a campaign based on inaccurate and misleading reporting such as in the Senner report risks damaging the credibility to all parties who choose to associate themselves with it, including over-anxious politicians or uninformed citizens.

Industry is saying, again based on misinformation in the Senner report, that North Slope wetlands are not as valuable as other wetlands so should be exempted from protection under the Clean Water Act's section 404 permitting requirements.

The fact is, many North Slope wetlands are unique in the nation. For example, no other state has diverse types of tundra wetlands underlain by permafrost that produce millions of shorebirds and waterfowl annually; species like golden plovers, sandhill cranes, tundra swans, white-fronted geese, king eiders, Arctic loons, pintail ducks and many others. Migratory birds like these travel to other states and nations where they are enjoyed by millions of people. We have international treaty obligations to protect them.

Furthermore, Alaska's tundra wetlands serve as an important safety net to many continental waterfowl populations. In years of severe drought in the great duck factory of the prairie states and Canadian provinces, many displaced birds must fly north to Alaska just to survive until another nesting season. Without such a safety net, many duck populations would be even more severely depressed than they already are.

As wetlands destruction continues in other areas of the continent, Alaska is becoming increasingly important for duck species in trouble. For example, in 1988 60 percent of the continent's pintail ducks were found in Alaska. This species has declined from a population high of 10 million in 1956 to a current all time low of 2.5 million, or 55 percent below average. Meanwhile, the continent's total duck population is the lowest on record.

Because of the plight of our ducks, conservationists and sportsmen throughout the continent have banded together in an unprecedented effort to save them. They are doing this under the umbrella of the North American Waterfowl Management Plan. Should Alaska be exempted from the "no net loss" wetland policy, this plan could be placed in serious jeopardy.

No other state has tundra wetlands that provide such big game species as caribou and muskox with vital habitat for calving and feeding during the Arctic summer. And no other state has grizzly bears, polar bears, wolves and wolverines foraging around tundra wetlands.

Not to be overlooked is the fact that Alaska wetlands produce hundreds of millions of dollars worth of salmon, char, herring, pike, grayling and a variety of other fish pursued by sportsmen, subsistence users and commercial fishermen each year.

All this is not to ignore the fact that the serenity and beauty of the vast pristine wetlands of Alaska contribute to making Alaska our nation's last great wilderness.

One of the most disturbing aspects to the current anti-wetlands campaign is the assertion that because Alaska has not been able to undertake unchecked draining and filling of wetlands in order to promote economic growth as other states were able to do before the mid-1900's, the state should be exempted until at least 5 to 20 percent of our wetlands are gone.

This argument erroneously suggests that all Alaska wetlands are the same and aren't worth protecting. It would condemn an additional 8 to 32 million acres to destruction regardless of their many values before wetland conservation would be given serious consideration here.

This would be a giant step backward in protecting Alaska's wetlands-based economies and lifestyles. Such thinking reminds me of the famous British historian Arnold Toynbee when he said, "The only thing we learn from history is that we don't learn from history".

It will be important to determine how would the public will fit into industry's wetlands destruction scenario? What if someone's favorite duck march, fishing hole, moose hunting ground, subsistence use area, wildlife viewing retreat or neighborhood greenbelt were involved? How many Alaskans will really be willing to leave it up to industry to decide the fate of such wetlands from them? And then once the destruction is done, to allow the wetland developers to walk away without making compensation for damages? This appears to be exactly what they are asking for.

Following the tragic Exxon Valdez oil spill, the oil industry mounted a multi-million dollar public relations campaign to improve its image. Television commercials and the print media show its operations in harmony with the environment. Promises are again being made to trust the oil companies to develop the Arctic National Wildlife Refuge in an "environmentally responsible way". But the question has to be

asked: IS THE INDUSTRY'S CURRENT ANTI-WETLANDS CAMPAIGN THE STANDARD BY WHICH THEY WOULD TREAT WILDLIFE RICH TUNDRA AND COASTAL WETLANDS ON THE ARCTIC NATIONAL WILDLIFE REFUGE'S COASTAL FLAIN?

The current oil-industry backed misinformation campaign on Alaska's wetlands is misguided, and puts Alaska out of step with the rest of the nation in terms of wetlands conservation.

It commits Alaska to going blindly down the road to exploitation saying that it has nothing to learn from the tragic mistakes of our sister states. Furthermore, it only confirms in the minds of many Americans that we are a greedy oil state willing to compromise the spectacular beauty of our countryside and its unmatched wildlife abundance for even greater industry profits and bigger dividend checks. And we wonder why so many Americans voice such strong support for an Alaska National Interest Lands Conservation Act (ANILCA).

A much wiser and more sensible approach would be for our political leaders to help get diverse wetland interest groups working together on the issue, and to provide them with factual information. It is time that we recognize and take pride in Alaska's diverse wetlands for all their many values to society. It is time to make a strong commitment to their conservation, and to realize that this can be done while at the same time promoting sustainable development. In the end, our economic stability, the quality of our lives, and our image as stewards of the Great Land will be much the better for it.

Dave Cline  
January 10, 1990



UNITED STATES DEPARTMENT OF COMMERCE  
National Oceanic and Atmospheric Administration

National Marine Fisheries Service

P.O. Box 21668

Juneau, Alaska 99802-1668

January 2, '1990

MEMORANDUM FOR: F - William W. Fox, Jr.  
FROM: *for* F/AKR -- Steven Pennoyer *James H. Bonds*  
SUBJECT: No Net Loss of Wetlands and Alaska

President Bush's proposed policy of No-Net-Loss of Wetlands has generated considerable interest, concern, and even hysteria here in Alaska, despite the fact that, to date, specifics of this policy remain undefined. Almost every other day we see another media article that suggests that this Policy will "cripple" Alaska's economy. Alaska's elected officials and the oil companies have undertaken an active campaign to have Alaska excluded both from any policy developed by the Domestic Policy Council and from the EPA/COE Memorandum of Agreement (MOA) concerning mitigation. If they are successful, our ability to conserve coastal wetland habitats vital to the maintenance of Alaska's fisheries will be severely compromised. NMFS needs to launch its own campaign to 1) assert the importance and value of coastal wetland habitats in Alaska, 2) outline the inaccuracies in the arguments made by those who seek to exclude Alaska from national wetland policies, 3) support EPA and the COE in their proposed mitigation MOA, and 4) work with other agencies to obtain needed data on the areal extent and loss rates of specific wetland habitat types in Alaska. Our overall short-term goal should be to ensure that, at a minimum, western and southeastern Alaska's coastal wetlands are included in all national policy/programs that are developed.

Most of the concerns expressed by elected officials and industry representatives center around the regulation of fill in tundra wetlands associated with north slope oil and gas development. Studies to date show that these tundra wetlands provide limited fisheries habitat values. Therefore, F/AKR generally does not object to the issuance of permits for tundra fill. Conversely, coastal marine, estuarine, and riverine wetland habitats in western and southeastern Alaska provide vital spawning, rearing, and feeding area for many of Alaska's premier commercial and sport fisheries, e.g., five species of Pacific salmon, steelhead trout, herring, and Dungeness, tanner, and king crab. The current "exempt Alaska campaign" lumps all of Alaska's wetlands into one exclusion category without acknowledging the major differences both in fisheries values and, very probably, in loss rates between coastal wetlands and interior tundra wetlands.



Much of the pro-exclusion arguments (See attachment) seems to rest on the "fact" that Alaska has lost about 0.05% of its wetland base to human development. This loss estimate appears to have originated in a report (Senner 1989) prepared for ARCO Alaska, Inc. and BP Exploration (Alaska) Inc. We have reviewed this document and find that this loss estimate is not substantiated with data or even a thorough discussion of the methods used to derive the estimate. The only wetland loss estimates we are aware of for coastal wetlands in Alaska indicate that, at least locally, coastal wetland loss rates are much higher. Adamus et al. (1987) estimated that Juneau wetlands have been reduced by 13% since 1948. Wetland reductions in the Anchorage area for 1982-1987 were estimated at nearly one-third (27-31%) of the community's 1982 wetland base (Municipality of Anchorage 1988).

Without differentiation by habitat type and geographic area, the significance of wetland losses to fisheries is obscured. According to estimates, wetlands comprise 170,000,000 acres of Alaska's land area. However, according to the National Wetlands Inventory (Hall 1988), only 20,961,566 (11%) of these acres are coastal wetland and deepwater habitat. The majority of this coastal wetland habitat (90%) consists of estuarine subtidal habitat. Estuarine intertidal vegetated wetlands comprise only 1.7% of the state's coastal wetland area, and marine and estuarine intertidal unvegetated flats comprise the other 8.3%. These shallow nearshore zones are particularly important as spawning, feeding, and rearing areas for fishery resources. However, their proximity to upland makes these areas particularly vulnerable to human development pressure.

We have been working diligently to ensure that the same level of protection mandated in the Clean Water Act is afforded to coastal wetlands in Alaska as in the rest of the United States (Faris et al. 1988). Because of the frontier perspective and geographic isolation, this has been an extremely difficult task. If Alaska is excluded from the no-net loss policy and the COE/EPA MOA, our habitat conservation efforts will be dealt a serious setback. We cannot allow regulatory agencies and industry to get the message that wetlands in Alaska are less important than wetlands in the rest of the country.

Coastal wetlands in Alaska continue to support the Nation's largest fisheries and one of the State of Alaska's greatest industries. Additionally, these wetlands generally provide the important societal functions of water quality improvement, floodwater desynchronization, sediment and shoreline stabilization, nutrient export, and buffers to storm and other surface water disturbances. These coastal wetlands warrant additional measures for their protection and maintenance. It is imperative that NMFS direct a concerted effort to ensure that Alaska coastal wetlands are not excluded from any national

policies or programs. An increased commitment is also needed to ascertain accurate habitat-specific data on Alaska's wetlands.

We await your direction on what approach you wish the agency to take in these matters. The Alaska Region Habitat Conservation Division staff are prepared to assist in this effort.

Attachment

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cc: ADFG, Juneau  
FWS, Juneau, Anchorage  
ADEC, Juneau, Redburn  
F/PR, Foster, Hall, Risenhoover  
F/NER74 - Bigford  
F/SER1 - Mager  
Mark Dalton, Anchorage Dept. of Econ. Dev. Plan.

EPA, Anchorage, Seattle  
CE, W.W. Kakel  
F/AKR, Morris, Smith  
ADNR  
ADGC

United States Senate  
COMMITTEE ON APPROPRIATIONS  
WASHINGTON, DC 20510-6028

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- BOB DODD, OKLAHOMA

December 1, 1989

The Honorable Richard G. Darman  
Director  
Office of Management and Budget  
Old Executive Office Building  
17th Street and Pennsylvania Ave., N.W.  
Washington, D.C. 20503

Dear Dick:

There are serious problems with a recently promulgated Corps of Engineers/ Environmental Protection Agency Memorandum of Agreement [MOA] concerning permits under section 404 of the Clean Water Act. The agencies maintain that this MOA is merely a clarification of existing mitigation policy in light of the national goal of no overall net loss of wetland functions and values. We disagree.

While the application of this MOA to Alaska has the potential for disaster, it is objectionable on much broader grounds. It is not a clarification of existing policy. The Corps admits that the "no overall net loss" goal had not been articulated before this MOA. It is, in fact, a new policy setting an objective of no net loss of wetlands, and directing the agencies to use existing mitigation policies to achieve that objective.

As such, it undercuts and supercedes efforts within the Administration and in Congress to articulate a workable no overall net loss policy for wetlands protection. Further, it has been promulgated without opportunity for public comment, in violation of the Administrative Procedures Act.

Either of these objections would justify revocation of this MOA -- a step which we urge be taken immediately. And in addition to policy and procedural issues, there are substantive problems with it as well. Putting it simply, implementation of this MOA can not be done with the flexibility which the agencies claim to have worked into the document.

The Honorable Richard G. Darman  
December 1, 1989  
Page Two

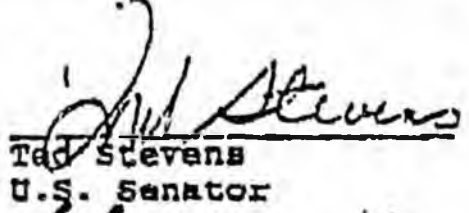
Both agencies admit that no measuring stick has been agreed to for determining whether they are meeting this new goal. The Corps does not know if it is trying to achieve no net loss of wetland functions at a District, Region, State or National level. The MOA claims to recognize that no net loss may not be achieved in each permit. But in the absence of guidance, the agencies will -- by default -- try to achieve no net loss on a permit by permit basis.

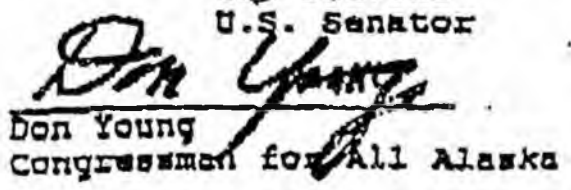
The MOA effectively requires no net loss to be the objective in each permit decision. Under the MOA, this objective would be abandoned only under limited circumstances. The absence of an alternative measuring stick forces a decision in each case between abandoning the national goal and rejecting the claim of special circumstance. This is particularly critical in Alaska. As you know, 60% of Alaska is estimated to be wetlands. While the "South 48" has lost 54% of its wetlands, Alaska has a net loss to date of .05% of its wetlands. We want to be part of the national program and we want to protect our wetlands, but an area 1/5th the size of the whole United States should be looked at as a whole and not on a permit by permit basis.

There is a need for a national wetlands policy, which should include a goal of no overall net loss. Alaska can play a constructive role in shaping a flexible but effective wetlands policy, and can be accommodated by such a policy.

However, this MOA does not advance that cause. It is more of a barrier than a help to developing a workable wetlands policy. It should be revoked. If it is not going to be revoked, then it should be withdrawn and subjected to appropriate public comment. At the very least it should be limited to the 48 contiguous states and a special study made of Alaska's need for a policy of protection of special wetlands and a recognition of our right to use our Statehood and Native lands to assure survival of our state.

  
Frank Murkwoski  
U.S. Senator

  
Ted Stevens  
U.S. Senator

  
Don Young  
Congressman for All Alaska



STATE OF ALASKA  
OFFICE OF THE GOVERNOR  
JUNEAU

October 3, 1989

The President  
The White House  
Washington, DC 20500

Dear Mr. President:

You have committed your Administration to the goal of reversing the loss of our nation's wetlands. Your White House Domestic Policy Council will begin in the coming weeks to take action on this national wetlands policy by revising existing administrative and regulatory tools. To aid in this task, several recommendations were developed by the National Wetlands Policy Forum, chaired by Governor Kean of New Jersey, and in which Alaska has participated. The forum also is recommending actions that can be taken by the Congress and by the states.

Alaska has a large portion of the nation's wetlands--about 170 million acres, or nearly double the acreage found in the contiguous United States. Most of Alaska's wetlands remain in their natural state. In contrast to losses of more than 200,000 acres of wetlands per year in many other parts of the United States, the acres of Alaskan wetlands lost as a result of development since territorial days are something less than 80,000 acres. Alaska is committed to the continued protection and wise stewardship of these areas.

Alaska's wetlands are distinguishable not only by their quantity and relatively undisturbed state, but by physical characteristics as well. Alaska's wetlands are diverse and often continuous over large areas. Among them are America's only high latitude wetlands, many characterized by permafrost.

For example, vast areas of North Slope tundra are considered "wetlands" because they have standing water and saturated soils during part of the year. However, the reason these

arctic or high latitude soils are "wet" is because they are underlain by permafrost--soil that remains constantly below freezing and thereby impermeable, trapping rain and snowmelt on the surface.

Because of the unique features of many, but not all Alaskan wetlands, it is important to the State that policies reflect the physical differences that distinguish our wetlands from those in other parts of the United States. While "no net loss" is a laudable national goal, it has been recognized that it must be balanced by evaluation of the nation's wetlands not only by acreage, but also by physical characteristics and function.

Wetlands can function in more ways than one; as wildlife habitat, as natural flood control mechanisms, as water purifiers, as recreation areas, as the nursery grounds for marine organisms. But not all wetlands perform all these functions. For example, North Slope tundra wetlands do provide wildlife habitat, however, these areas do not perform the hydrologic and water purification functions typical of wetlands in the contiguous United States.

This qualifier is essential for evaluating Alaskan wetlands. It has been embraced by the National Wetlands Forum, the National Governors' Association, and others. We have achieved consensus in these forums that national policy should be no overall net loss of the nation's remaining wetlands base, as defined by acreage and function. We urge you to include such a clarifying statement in any regulatory proposals aimed at conservation and restoration of America's wetlands.

It also is essential that States retain the flexibility to conduct management and regulatory programs that reflect the special characteristics of their wetlands. For example, in Alaska, wetlands underlain by permafrost pose unique scientific challenges to successful restoration activities. We are examining a variety of approaches to avoid wetland alteration, but where it is unavoidable, to minimize it, and compensate for it. We must make sure our capacity to respond to unique circumstances and to tailor our mitigation efforts is not constrained by a nationwide, one-of-a-kind approach. Whatever national goal your Administration sets in executive action or regulatory policy must be tempered by the recognition that the goal may have to be implemented differently in various regions of the country.

The President

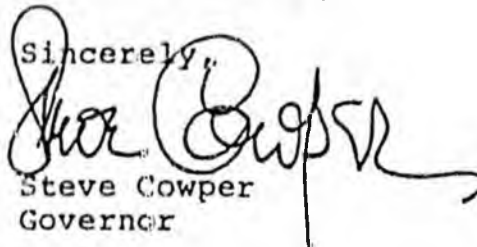
- 3 -

October 3, 1989

We look forward to working with you to devise a national strategy that will ensure that America's wetland resources and their valuable contribution to wildlife habitat and water quality are protected.

Thank you for your consideration of our views.

Sincerely,

A handwritten signature in black ink, appearing to read "Steve Cowper", written in a cursive style. The signature is positioned to the right of the word "Sincerely," and above the printed name and title.

Steve Cowper  
Governor

cc: Secretary, Department of the Interior  
Secretary, Department of Commerce  
Administrator, Environmental Protection Agency  
Commander, U.S. Army Corps of Engineers  
Chairman, President's Council on  
Environmental Quality



STATE OF ALASKA  
OFFICE OF THE GOVERNOR  
JUNEAU

December 7, 1989

The President  
The White House  
Washington, D.C. 20500

Dear Mr. President:

I wrote to you in October regarding your goal of no net loss of our valuable national wetlands. At that time, I expressed the desire of the State of Alaska to work with your Administration toward this goal in a manner that recognizes regional differences and the need for flexibility.

It was our understanding that your Domestic Policy Council was undertaking a thorough and considered review of a variety of options and approaches to developing a National Wetlands Policy, and that this was the forum in which to make our views known. It was therefore quite a surprise to see that the Environmental Protection Agency (EPA) and the Army Corps of Engineers (Corps) already have executed an agreement on mitigation guidelines to implement a "no net loss" policy.

Although both agencies contend that this agreement is nothing more than a restatement of existing policy, it appears from our analysis to make major changes in the way federal agencies are required to make decisions about activities in wetlands. Furthermore, the so-called "guidelines" do not provide any policy or criteria; they provide only unrestrained discretion at the local agency level. This is not an expression of "national wetlands policy". It is an example of ad hoc decision making. As such, this memorandum will have a chilling effect on community expansion and economic development, because it leaves permit applicants without any certainty about how decisions will be made from region to region, state to state, or even within one state.

While those who participated in the National Wetlands Forum looked for some flexibility in national wetlands policy, this memorandum eclipses the policy process and leaves States without a role in decisions affecting their economic futures. In our

case, it will affect activities on the entire North Slope, from state and federal lands that hold petroleum potential to the development on acreage that was conveyed by the federal government to the Arctic Slope Regional Corporation established pursuant to the Alaska Native Claims Settlement Act.

Our objections, however, do not turn on the philosophical implications of the agreement. My main purpose in writing is to register our dismay at the process by which this document was executed. If it is, indeed, nothing more than a clarification of existing authority, why was it necessary for the EPA and Corps to execute it at this time, well ahead of the Domestic Policy Council process through which we believed the Administration's goals would be articulated?

This agreement was signed well before the Domestic Policy Council's Wetlands Task Force had completed its work. While we all were assured our views would become part of national wetlands consideration, a critical operating element of those deliberations--mitigation requirements--has been locked in by two agencies operating independently of the policy-making process. Further, although the document purports to provide policy and guidelines, it does neither. Instead, the agreement bestows virtually unfettered discretion upon regional agency personnel who are not at a policy-making level. By doing so, the agreement does not clarify or codify existing regulation, nor does it provide any certainty to permit applicants.

Most importantly, it is our view that the memorandum is a significant enough change in the regulatory posture of the two agencies that it should have been subject to the requirements of the Administrative Procedure Act. It affects policy that heretofore has been characterized by extensive public involvement. Indeed, it is the importance of wetlands to a variety of diverse public interests that motivated the Forum and your Administration to focus on the topic in the first place. It is disturbing that we have here the first manifestation of wetlands policy, and the public was absent.

Mr. President, preservation of our dwindling national wetlands base is a laudable goal, and I support you in it. However, it will take time to tailor actions that will work in the diverse regions of our nation. We had hoped that your Administration was taking the time to develop a thoroughly considered policy. This MOA is not in keeping with that approach and we urge you, for procedural reasons, to ask the agencies to withdraw it.

Thank you for your consideration of our views on this important matter.

Sincerely,

A handwritten signature in cursive script, appearing to read "Steve Cowper".

Steve Cowper  
Governor

cc: The Honorable Ted Stevens, Senator  
The Honorable Frank Murkowski, Senator  
The Honorable Don Young, Member of Congress  
The Honorable Clayton Yeutter, Secretary of Agriculture  
The Honorable Robert Mosbacher, Secretary of Commerce  
The Honorable James Watkins, Secretary of Energy  
The Honorable William Reilly, Administrator of EPA  
The Honorable Jack Kemp, Secretary of HUD  
The Honorable Manuel Lujan, Jr., Secretary of Interior  
The Honorable Samuel Skinner, Secretary of Transportation

BY REP. COTTEN, Menard, Barnes

1 IN THE HOUSE

2

HOUSE JOINT RESOLUTION NO. 61

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

SIXTEENTH LEGISLATURE - SECOND SESSION

5

Requesting the President not to imple-

6

ment the "no net loss" of wetlands

7

policy as to the State of Alaska.

8

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

9

WHEREAS the Domestic Policy Council, the United States Environmental

10

Protection Agency, the United States Army Corps of Engineers, the United

11

States Fish and Wildlife Service, and other federal agencies are advancing

12

a new wetlands policy for the nation; and

13

WHEREAS the proposed policy calls for "no net loss" of wetlands in the

14

United States; and

15

WHEREAS the rationale for a "no net loss" policy is based on the loss

16

of 54 percent of the total wetlands in the continental United States; and

17

WHEREAS less than one percent of the 170,000,000 acres of wetlands in

18

the state have been affected by encroachment; and

19

WHEREAS Alaska has land characteristics that are unique to the state

20

and require special consideration in a wetlands policy for the nation; and

21

WHEREAS the "no net loss" policy fails to recognize that permafrost

22

qualifies as wetlands; and

23

WHEREAS Alaska, through its state and municipal governments, has done

24

an outstanding job in protecting and preserving highly valued wetlands; and

25

WHEREAS the subjection of the state to a "no net loss" policy con-

26

ceived without an understanding of Alaska's unique characteristics would

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prevent the reasonable, responsible, and appropriate development of wet-

28

lands in Alaska; and

29

WHEREAS the future development and extraction of Alaska's natural

1 resources and diversification of the state's economy would be deleteriously  
2 affected by subjection to this "no net loss" policy;

3 BE IT RESOLVED that the Alaska State Legislature urges the President  
4 of the United States to determine that application of a "no net loss"  
5 policy to wetlands in Alaska would not be in the best interest of the state  
6 or nation, and would jeopardize the energy security of our nation; and be  
7 it

8 FURTHER RESOLVED that the President direct federal agencies to account  
9 for the unique circumstances and needs of the State of Alaska in developing  
10 and implementing national wetlands policy.

11 COPIES of this resolution shall be sent to the Honorable George Bush,  
12 President of the United States; Lieutenant General Henry J. Hatch, Chief of  
13 Engineers, Commanding General, U.S. Army Corps of Engineers; William K.  
14 Reilly, Administrator, U.S. Environmental Protection Agency; and to the  
15 Honorable Ted Stevens and the Honorable Frank Murkowski, U.S. Senators, and  
16 the Honorable Don Young, U.S. Representative, members of the Alaska delega-  
17 tion in Congress.

6-1871J  
Bradley  
1/11/90

Original sponsor(s): SEN. FRANK, Kelly, Coghill, Sturgulewski, Uehling, Pearce, Faiks, Zharoff, Fahrenkamp, Jones, Fischer, Binkley, Adams, Halford, Szymanski, Duncan, Rodey, Pourchot

1 IN THE SENATE

BY THE RESOURCES COMMITTEE

2 HOUSE CS FOR CS FOR SENATE JOINT RESOLUTION NO. 54 (Resources)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - SECOND SESSION

5 *Relating to*  
6 ~~Opposing~~ the "no net loss of wetlands"  
7 *and opposing the MOA between*  
8 policy ~~of~~ the United States Army Corps  
9 of Engineers and the United States  
10 Environmental Protection Agency.

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

12 WHEREAS the Domestic Policy Council, the United States Environmental  
13 Protection Agency, the United States Army Corps of Engineers, the United  
14 States Fish and Wildlife Service, and other federal agencies are advancing  
15 a new wetlands policy for the nation; and

16 WHEREAS the November 15, 1989, Memorandum of Agreement between the  
17 United States Corps of Engineers and the United States Environmental Pro-  
18 tection Agency fails to distinguish Alaska's fundamentally different wet-  
19 lands from those of the other states; and

20 WHEREAS the "no net loss" policy stems from the 54 percent wetlands  
21 loss in the continental United States; and

22 WHEREAS the definition of wetlands has expanded significantly since  
23 the Clean Water Act was originally implemented; and

24 WHEREAS Alaska has land characteristics that are unique to the state  
25 and require special consideration in a wetlands policy for the nation; and

26 WHEREAS 88 percent of the total land mass of the state is owned by the  
27 federal and state government, and the state *is committed to*  
28 ~~presently does an outstanding~~  
29 ~~job in~~ protecting and preserving highly valued wetlands; and

WHEREAS under the existing definition of wetlands, up to 170,000,000  
acres of Alaska are wetlands in contrast to the other states where only a  
small percentage of the area is wetlands; and

1 WHEREAS the "no net loss wetlands" <sup>MOA</sup> ~~policy~~ fails to recognize the  
2 unique nature of permafrost in the state as well as the vast areas of the  
3 state that cannot be developed; and

4 WHEREAS the subjection of the state to a "no net loss" policy con-  
5 ceived without an understanding of Alaska's unique characteristics would  
6 prevent the reasonable, responsible, and appropriate development of wet-  
7 lands in Alaska; and

8 WHEREAS the future development and extraction of Alaska's natural  
9 resources and diversification of the state's economy would be deleteriously  
10 affected by subjection to a "no net loss" policy that did not consider  
11 Alaska's unique circumstances; and

12 WHEREAS the wetland areas of the state cover up to 170,000,000 acres  
13 and only 80,000 acres, approximately 0.05 percent of the wetlands, have  
14 been altered since 1867;

15 BE IT RESOLVED by the Alaska State Legislature that George Bush,  
16 President of the United States, is respectfully requested to rescind the  
17 application to the state of the wetlands Memorandum of Agreement; and be it

18 FURTHER RESOLVED that the Alaska State Legislature urges the President  
19 of the United States to determine that application of a "no net loss"  
20 policy to wetlands in Alaska that does not consider Alaska's unique circum-  
21 stances would not be in the best interest of the state or nation; and be it

22 FURTHER RESOLVED that the President direct federal agencies to account  
23 for the unique circumstances and needs of the State of Alaska in developing  
24 and implementing national wetlands policy; and be it

25 FURTHER RESOLVED that the President direct the White House Domestic  
26 Policy Council to propose a wetlands conservation strategy that recognizes  
27 the role of the states and provides resources for them to plan wetlands  
28 conservation strategies, allows for regional diversity, allows the national  
29 goal to be pursued through individual state wetlands management programs,

1 and provides flexible approaches that recognize the uniqueness of Alaskan  
2 wetlands.

3 COPIES of this resolution shall be sent to the Honorable George Bush,  
4 President of the United States; Lieutenant General Henry J. Hatch, Chief of  
5 Engineers, Commanding General, U.S. Army Corps of Engineers; William K.  
6 Reilly, Administrator, U.S. Environmental Protection Agency; and to the  
7 Honorable Ted Stevens and the Honorable Frank Murkowski, U.S. Senators, and  
8 the Honorable Don Young, U.S. Representative, members of the Alaska delega-  
9 tion in Congress.