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STEVE COWPER  
GOVERNOR



STATE OF ALASKA  
OFFICE OF THE GOVERNOR  
JUNEAU

March 2, 1990

The Honorable Tim Kelly  
President of the Senate  
Alaska State Legislature  
P.O. Box V  
Juneau, AK 99811

Dear Mr. President:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a joint resolution proposing an amendment to the Alaska Constitution to give rural residents a priority for subsistence uses of fish and wildlife.

In Title VIII of the Alaska National Interest Lands Conservation Act ("ANILCA"), P.L. 96-487, 94 Stat. 2371, 2422 (1980), the United States Congress established a priority for subsistence uses of fish and wildlife by rural residents on federal land, and provided that the priority would be implemented by the secretaries of interior and agriculture unless the state enacted legislation affording the same priority. In ch. 52, SLA 1986, the legislature gave rural residents a priority for subsistence uses of fish and wildlife. The legislature enacted ch. 52, in part, to prevent a federal takeover of fish and wildlife management on federal land, an action with which I wholeheartedly agree.

In McDowell v. State, 785 P.2d 1 (1989), however, the Alaska Supreme Court held that a subsistence priority for rural residents violates the Alaska Constitution. This raises the distinct possibility that the state will lose management of fish and wildlife on federal land and, conceivably, statewide. Such a result is simply unacceptable. It also means that the state might find it difficult, if not impossible, to ensure that rural residents most reliant on fish and wildlife have the necessary opportunities to take those resources when needed.

Section one of the joint resolution would add a new section to art. VIII of the Alaska Constitution to ensure that the constitution does not prohibit (1) a subsistence priority for rural residents, and (2) the allocation of fish and wildlife for subsistence uses on the basis of local or

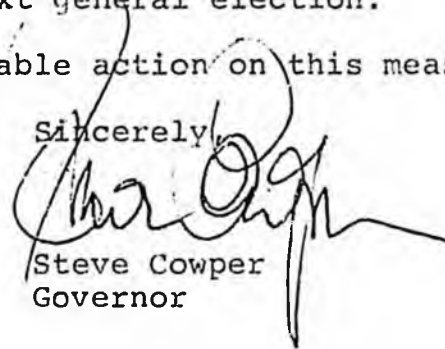
community residence, availability of alternative resources, and customary and direct dependence on a fish or game population as a mainstay of livelihood. This would give the legislature clear constitutional authority to enact laws that are consistent with the subsistence provisions of ANILCA.

Section 2 of the joint resolution would validate, ratify, and reinstate those provisions enacted by ch. 52, SIA 1986, held invalid by the Alaska Supreme Court in the McDowell decision. While the court declared that those provisions were inconsistent with the constitution as it read at the time of the decision, they have not been repealed by the legislature nor declared void in a final court judgment. (In any event, while there is a presumption that a constitutional amendment is not retrospective, case law from this and other jurisdictions makes clear that an amendment will have retroactive effect if such an intent is clearly expressed, as here. See Mathews v. Quinton, 362 P.2d, 932, 938 -- 939 [Alaska 1961].) By reinstating and ratifying the provisions of the 1986 law, the state would be back in the same position it was in before the McDowell decision, but with the certainty that the provisions of the 1986 law are constitutional.

Section 3 of the joint resolution is, essentially, the standard language directing the lieutenant governor to place the proposed constitutional amendment, including the statement of intended effect, before the voters in a single ballot proposition at the next general election.

I urge your prompt and favorable action on this measure.

Sincerely,



Steve Cowper  
Governor

## FISCAL NOTE

**REQUEST:**

Revision Date: 3/2/90  
 Title: Constitutional Amendment:  
Subsistence  
 Sponsor: Rules Committee  
 Requestor: Governor

Agency Affected: Dept. of Fish and Game  
 BRU: \_\_\_\_\_  
 Components: \_\_\_\_\_

**EXPENDITURES/REVENUES:** (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	0	0	0	0	0	0
<b>CAPITAL</b>	0	0	0	0	0	0
<b>REVENUE</b>	0	0	0	0	0	0

**FUNDING:** (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>	0	0	0	0	0	0

**POSITIONS:**

FULL-TIME						
PART-TIME						
TEMPORARY						

**ANALYSIS :** (Attach a separate page if necessary)

No FY 90 impact.

Prepared by: Molly McCammon  
 Division: Commissioner's Office

Phone: 465-4100  
 Date: 3/1/90

Approved by Commissioner: *William H. Piley*  
 Agency: \_\_\_\_\_

Date: 2-28-90

Distribution (by preparer):

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

go0450sJ  
Utermohle  
5/4/90

Original sponsor(s): Rules/Governor

1 IN THE SENATE

BY THE RESOURCES COMMITTEE

2 CS FOR SENATE JOINT RESOLUTION NO. 78 (Resources)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - SECOND SESSION

5 Proposing an amendment to the Constitu-  
6 tion of the State of Alaska relating to  
7 subsistence uses of fish and wildlife;  
8 and providing for an effective date for  
9 the amendment.

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

11 \* Section 1. Article VIII, Constitution of the State of Alaska, is  
12 amended by adding a new section to read:

13 SECTION 19. SUBSISTENCE USES OF FISH AND WILDLIFE. Consistent  
14 with the sustained yield principle, the legislature may grant a pref-  
15 erence to and among residents of rural areas of the State for the  
16 taking of fish and wildlife for subsistence uses.

17 \* Sec. 2. In addition to authorizing the legislature to enact laws  
18 relating to granting a preference for subsistence uses, the intent of the  
19 amendment proposed by this resolution is to (1) validate, ratify, and  
20 reinstate state subsistence laws, including provisions of ch. 52, SLA 1986,  
21 that are consistent with federal laws relating to subsistence uses; and (2)  
22 allow the state to retain management of fish and wildlife on federal land.

23 \* Sec. 3. The amendment proposed by this resolution, and the intent of  
24 the amendment as set out in this resolution, shall be placed before the  
25 voters of the state as one ballot proposition at the next general election  
26 in conformity with art. XIII, sec. 1, Constitution of the State of Alaska,  
27 and the election laws of the state.

28 \* Sec. 4. The amendment proposed by this resolution if approved by the  
29 voters is effective immediately upon certification of the election returns

1 by the lieutenant governor.

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