

HCR

12

Alaska State Legislature
House of Representatives

INTERIM

3111 C Street
Anchorage, Alaska 99503
(907) 561-2032



SESSION

P.O. Box V
Juneau, Alaska 99811
(907) 465-2995

Representative Dabe Choquette



Commissioner Harold Heinze
Department of Natural Resources
400 Willoughby Ave.
Juneau, AK 99801

April 5, 1991

Dear Commissioner Heinze,

Attached please find a summary of the results of hearings held in Anchorage and Wasilla last Saturday on the non-motorized portion of the Susitna Basin Rivers Recreation Management Plan. Given the breakdown of percentages of the testimony received, I call your attention to the final paragraph which states that, "based upon the testimony provided at these public hearings, it is evident that motorized restrictions would be against the best interest of the public in the Matanuska-Susitna Valley and in Anchorage. HCR 12 is an effective means of maintaining the Alaskan experience and necessary access for power boaters as well as floaters, while still supporting the essentials of the Susitna Basin Recreation Rivers Management Plan."

Of further concern is that the Recreation Rivers Act was not satisfied as relating to the non-motorized restrictions found in the Plan that was developed. AS 41.23.420 (c), which addresses general management of the recreational rivers and corridors, states, "The commissioner may regulate boating, if necessary, under the Management Plan adopted under AS 41.23.440" (emphasis added). AS 41.23.440 (a)(1) addresses the Management Plan and instructs the commissioner to "establish guidelines and restrictions, if necessary, for an activity occurring under AS 41.23.410" (emphasis added). AS 41.23.410 addresses compatible activities.

Any 'necessity' to ban completely all motorized recreational rivercraft during key months has not been established concerning the rivers listed in HCR 12. The subcommittee therefore requests that you reconsider that portion of the Management Plan and allow reasonable motorized recreational rivercraft unless and until the department makes specific factual findings that restrictions are, in fact, necessary as required under both statutes.



Kindest personal regards,

Dave Choquette
Chairman, State Affairs Subcommittee

.cc Governor Walter J. Hickel
Lieutenant Governor Jack Coghill

INTRODUCTION

On Saturday, March 30, 1991, public hearings were held on HCR 12 at the Mat-Su Resort in Wasilla from 9:00 to 11:00 a.m., and at the Anchorage Assembly Chambers in Anchorage from 2:00 until 5:00 p.m.

Members present at the Mat-Su Resort were Representatives Dave Choquette, Larry Baker and Pat Carney, and Tom Anderson, Legislative Aide to Representative Mary Miller.

At the Anchorage hearing Representatives Baker and Choquette were joined by Commissioner Harold Heinze and Representatives Betty Davis, Betty Bruckman, and Max Gruenberg.

The purpose of the hearing was to obtain public comment on the non-motorized portion of the Susitna Recreation Rivers Management Plan and HCR 12 - Susitna Basin Motorized Use Restrictions resolution sponsored by Representative Dave Choquette and co-sponsored by Representative Larry Baker.

OVERVIEW

HCR 12 would alter the Susitna Management Plan by preventing the restriction of motorized craft on rivers within the scope of the plan, excluding the Little Susitna River.

There were 79 individuals who signed the attendance roster at both public hearings. Of the 79 present, 59 (75%) signed up to testify. Of the 59 who testified, 26 (44%) testified at the Mat-Su hearing (2 testified twice) and 33 (56%) testified at the Anchorage hearing.

Of those who testified, 61% were in favor of HCR 12, 12% were opposed to HCR 12, 15% spoke in favor of the Management Plan, and 12% expressed no opinion either way towards the resolution or the Plan.

ANALYSIS

As evidenced by the numbers above, the majority of testimonials were in favor of HCR 12. During testimony, 61% indicated that any motorized restrictions would be an encroachment of Alaskan experience and public

enjoyment, as well as subsistence and livelihood. Further, many felt that these restrictions would further increase congestion on the remaining portion of the unrestricted areas. 7% of those in favor of HCR 12 were guides who felt that if motorized restrictions were imposed, they would be put out of business or would suffer substantial financial hardship. An additional 7% expressed the need for education and safety courses for handling boats on the rivers. Some concern was also expressed that there was insufficient reason for the commissioner of the Department of Natural Resources to proscribe such restrictions, based upon the statutory standard of 'necessity' required to do so.

Of the 12% who spoke against HCR 12, only 8% opposed the removal of non-motorized restrictions. The remaining 4% expressed as their primary concern the fact that HCR 12 did not include the Little Susitna River. These people felt that if the Little Su were included, then support would be given to this resolution. This would mean that 65% of those who testified would be in support of HCR 12 if it included the Little Susitna River. (See Charts 1 and 2)

Those 15% who testified in favor of the Susitna Management Plan simply expressed satisfaction with the work and effort that went into putting it together. It is of significance that 5% of those who spoke in favor of the Plan were on the Advisory Committee that worked with the planning team.

COMMENTS

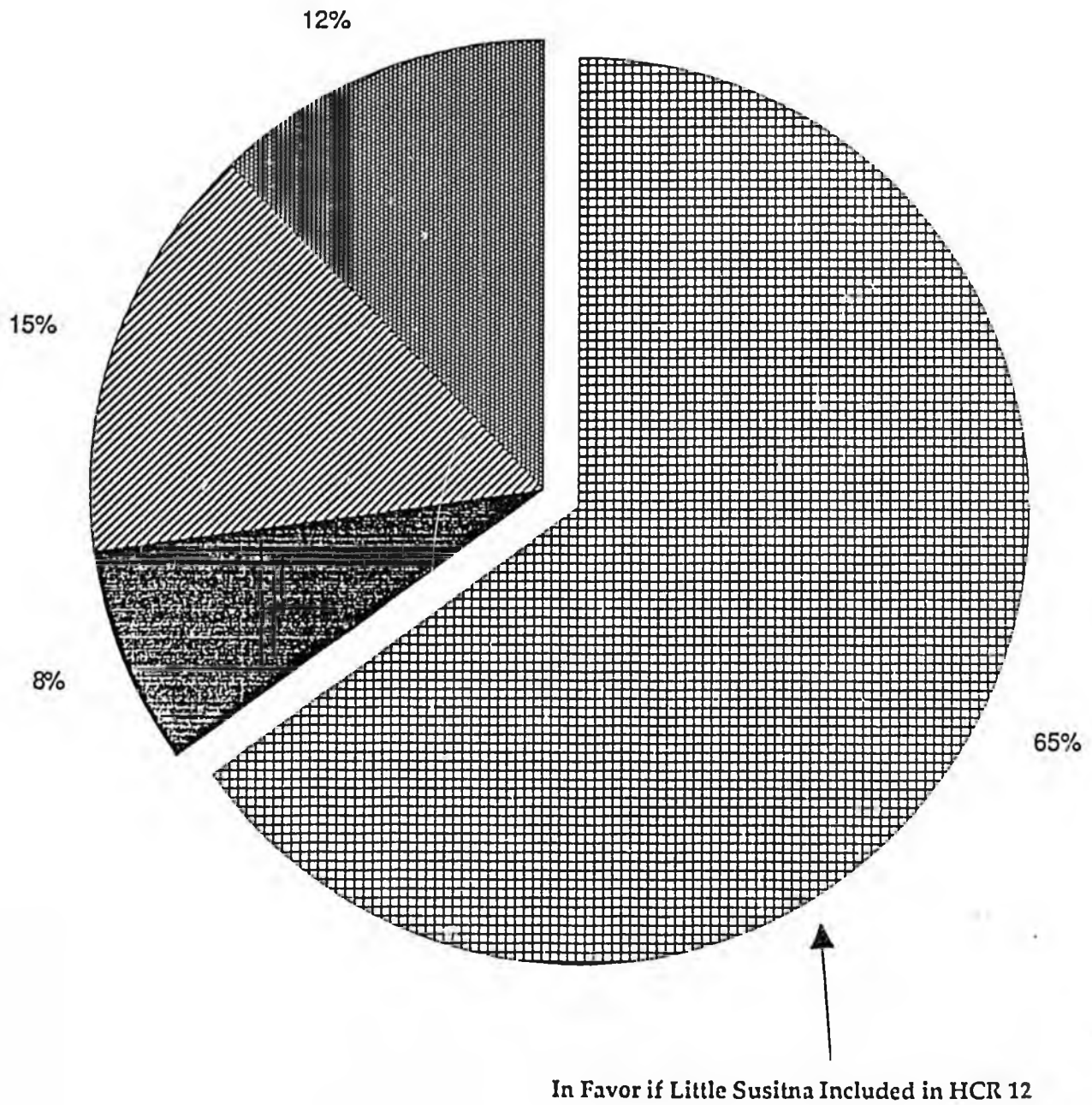
Some of the comments expressed by participants are as follows:

- "Can't support yet. Must include Little Su."
- "Against restrictions. Boating is my wilderness experience."
- "Keep area open to all, not just special interests."
- "Spend money on enforcement rather than restricting access."
- "Never fished where I can't walk. Management Plan violates constitution based on sustained yield."
- "Restrictions unduly impair power boating public. There is no shallow water boating safety class in U.S."
- "Opposed to restrictions. Safety program and proper equipment are what's needed."
- "I support management plan."
- "Support restrictions. Compromises need to be made."
- "Plan should not be implemented."

CONCLUSIONS

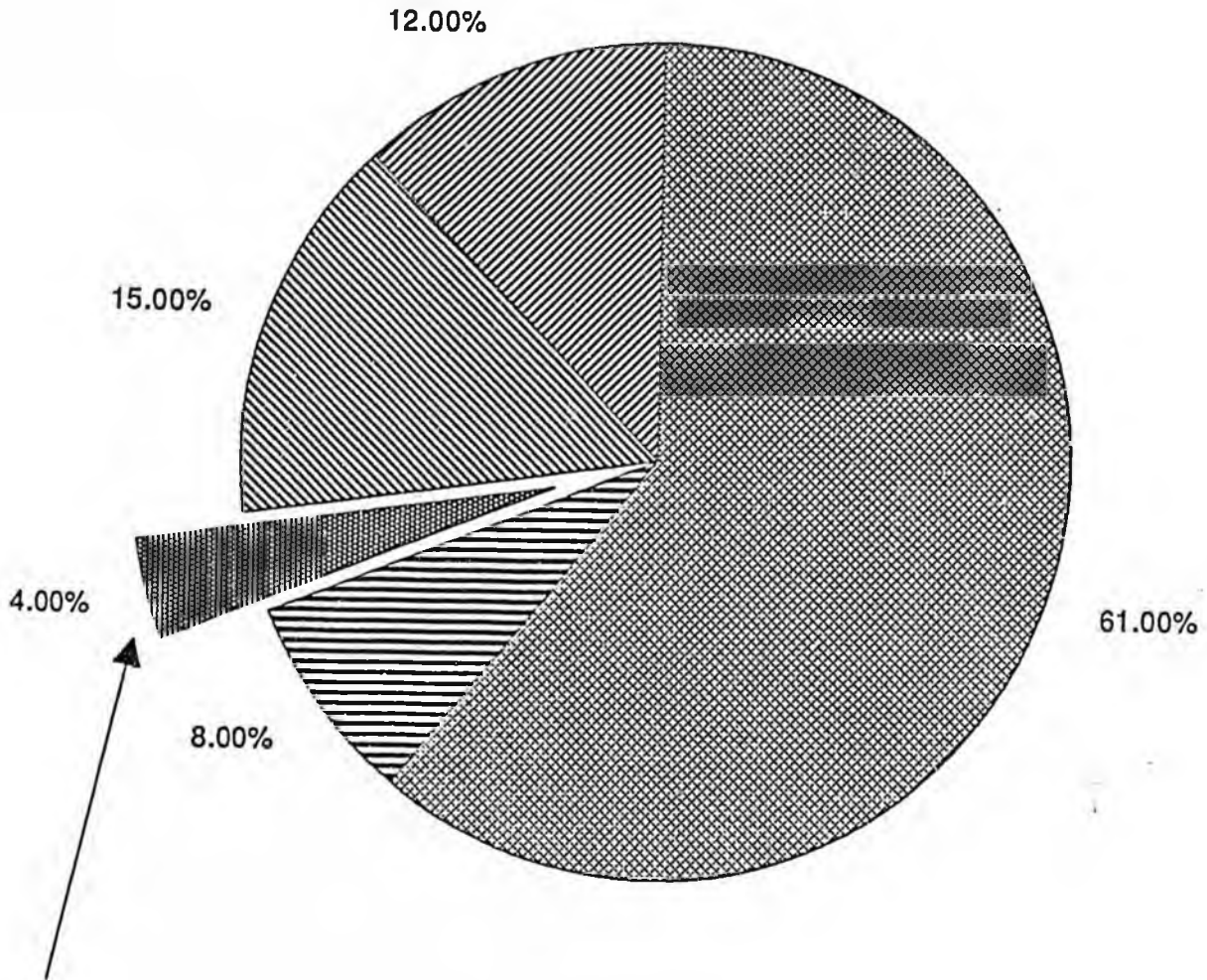
Based upon the testimony provided at these public hearings, it is evident that motorized restrictions would be against the best interests of the public in the Matanuska-Susitna valley and in Anchorage. HCR 12 is an effective means of maintaining the Alaskan experience and necessary access for power boaters as well as floaters, while still supporting the essentials of the Susitna Basin Recreation Rivers Management Plan.

HCR 12 - Susitna Basin Recreation Rivers Management Plan Hearing Results With Little Susitna

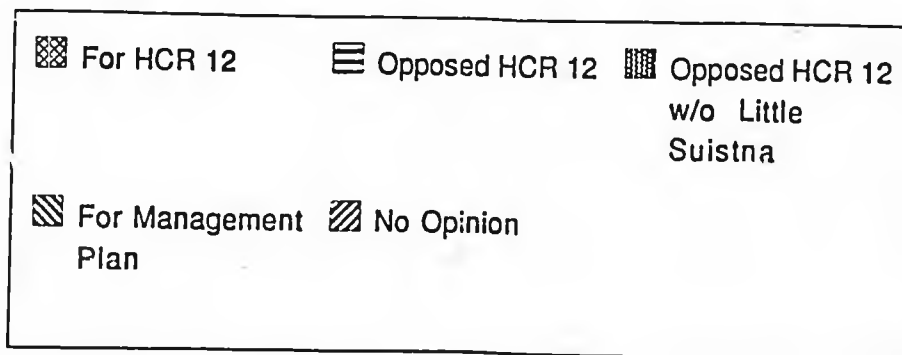


☒ For HCR 12 ■ Opposed HCR 12 ▨ For Management Plan ▩ No Opinion

HCR 12 - Susitna Basin Recreation Rivers Management Plan Hearing Results Without Little Susitna



Opposed HCR 12 Without Little Susitna Included



APPENDIX B

Recreation Rivers Act

Section	Section
400. Purposes	460. Acquisition of additional land
410. Compatible activities	470. Application of public land laws
420. General management of recreation rivers and corridors	480. Cooperative management agreements
430. Advisory board	490. Limitation on establishment
440. Management plan	500. Establishment of recreation rivers and recreation corridors
450. Management of municipal land	510. Definition

Sec. 41.23.400. Purposes. (a) The purpose of AS 41.23.400 - 41.23.510 is to establish as recreation rivers the land and water now owned by the state and the land and water acquired in the future by the state that lies within the recreation rivers and the river corridors described in AS 41.23.500.

(b) The primary purpose for the establishment of the six recreation rivers is the maintenance and enhancement of the land and water described in AS 41.23.500 for recreation.

(c) The primary purpose for the management of the six recreation rivers are:

- (1) the management, protection, and maintenance of the fish and wildlife populations and habitat on a sustained-yield basis;
- (2) continued recreation and economic use, including the uses described in (3) and (4) of this subsection, and enjoyment by the public and individuals of recreational activities that include hunting, fishing, trapping, camping, boating, hiking, snowmachining, skiing, dog mushing, and wildlife viewing, while ensuring the scenic and natural integrity of the recreation river;
- (3) multiple use management of upland activities within the recreation river corridor to ensure that mitigation measures to alleviate potential adverse effects on water quality and stream flow will take place; and
- (4) accommodation of access for resource uses, including recreation and tourism, within or adjacent to the river corridor. (§ 2 ch 122 SLA 1988)

Sec. 41.23.410. Compatible activities. The commissioner shall allow the following activities on a recreation river or within a recreation corridor when they are compatible with AS 41.23.400 and consistent with a management plan adopted under AS 41.23.440;

- (1) the use of aircraft, powerboats, snowmachines, all-terrain vehicles, motorized transportation, and transportation by animal;
- (2) the sale and harvest of wood products under AS 41.23.470(b);
- (3) sand and gravel extraction under AS 41.23.470(b);
- (4) the construction and operation of recreation facilities; and
- (5) other uses permitted in the management plan required by AS 41.23.440.

including mining and mineral development. (§ 2 ch 122 SLA 1988).

Sec. 41.23.420. General management of recreation rivers and corridors. (a) The state-owned land and water within the area established as a recreation river under AS 41.23.500, including the recreation river corridor, is assigned to the commissioner for management consistent with the purposes of AS 41.23.400.

- (b) The commissioner shall reserve to the state under AS 46.15.145 an instream flow or level for the water in the rivers described in AS 41.23.500 that is adequate to achieve the purposes of AS 41.23.400.
- (c) The commissioner may regulate boating, if necessary, under the management plan adopted under AS 41.23.440.
- (d) The provisions of AS 41.23.400 - 41.23.510 do not affect the authority of:
 - (1) the Department of Fish and Game, the Board of Fisheries, the Board of Game, or the Guide Licensing and Control Board under AS 08.54, AS 16, or AS 41.99.010;
 - (2) the Department of Environmental Conservation under AS 46.03; or
 - (3) state agencies and municipalities under AS 44.19.145(a)(11) and AS 46.40.100.
- (e) The commissioner may not restrict the use of weapons, including firearms, within a recreation river and a recreation river corridor except in sites of high public use such as picnic areas, boat ramps, camping grounds, and parking areas when the commissioner determines that the use of weapons constitutes a threat to public safety. Except as provided in this subsection, the commissioner may not restrict fishing, hunting, or trapping with a recreation river and its recreation river corridor.
- (f) The authority of the commissioner under AS 41.23.400 - 41.23.510 ceases where the land and water established as a recreation river under AS 41.23.400 - 41.23.510 meets land and water that is not established as a recreation river. (§ 2 ch 122 SLA 1988)

Sec. 41.23.430. Advisory Board¹. (a) A thirteen-member Recreation Rivers Advisory Board is established and shall be appointed by the governor. Board members serve without compensation and are not entitled to per diem and travel expenses authorized by law for boards and commissions under AS 39.20.180. The governor shall appoint members representing:

- (1) commercial fishing;
- (2) sport fishing;
- (3) sport hunting;
- (4) conservation;
- (5) subsistence;
- (6) forest products;
- (7) mining;
- (8) powerboat users;
- (9) recreationally-oriented commercial users;
- (10) other recreational users; and
- (11) private property owners within the recreation river corridors;

¹ When AS 41.23.230 was codified as AS 41.23, the changes made as a result of HB 30, which expanded the advisory board to 13 members, were inadvertently omitted. Legislative Affairs has been notified and the correct version of AS 41.23.430 is shown here.

- (12) the Matanuska-Susitna Borough Planning Commission from the membership of the planning commission; and
 - (13) the mayor of the Matanuska-Susitna Borough or the designee of the mayor.
- (b) The commissioner shall consult with the advisory board in preparing, adopting, and revising the recreation river management plan and regulations affecting use and management of the recreation rivers. (§ 2 ch 122 SLA 1988)

Sec. 41.23.440. Management Plan. (a) The commissioner, in consultation with representatives of affected municipalities, shall prepare and adopt and may revise a management plan for each of the six recreation rivers and their recreation river corridors. In preparing or revising the plan, the commissioner and each affected municipality shall consult with the public and state agencies, including the commissioner of fish and game and the advisory board established under AS 41.23.430. In preparation or revision of the plan, the commissioner shall comply with the notice requirements of AS 38.05.945 and provide written notice by first-class mail to private property owners in the recreation river corridors and shall hold at least two public hearings in municipalities and communities near the recreation river and the recreation river corridor. The management plan shall establish long-range guidelines and management practices consistent with AS 41.23.400 to:

- (1) establish guidelines and restrictions, if necessary, for an activity occurring under AS 41.23.410 to implement the purposes of AS 41.23.400;
 - (2) protect, maintain, or enhance the fish and wildlife habitat and the free-flowing nature of the river;
 - (3) identify special recreation values and manage the level of intensity and types of recreation uses;
 - (4) designate management guidelines for development activities;
 - (5) designate management guidelines for commercial recreation activities or development, including recreation services;
 - (6) provide for necessary public services, such as transportation and utility corridors, crossing or fording corridors, public safety, and law enforcement;
 - (7) allow reasonable access to public land and private inholdings, including municipal land that is offered for sale or lease, and to land beyond or adjacent to the recreation river and the recreation river corridor;
 - (8) establish criteria and expedient timelines to review future proposed uses for compatibility with AS 41.23.400.
- (b) The commissioner shall adopt regulations necessary to implement the management plan. The commissioner may not adopt regulations before a management plan takes effect. The commissioner may designate employees of the department as peace officers to enforce the provisions of AS 41.23.400 - 41.23.510.
- (c) A management plan proposed by the commissioner under (a) of this section shall be submitted to the legislature for review within the first 10 days of the first regular session of the legislature to convene after completion of the plan by the commissioner. The plan takes effect 100 days after submission of the plan to the legislature unless rejected by an act of the legislature. (§ 2 ch 122 SLA 1988)

Sec. 41.23.450. Management of municipal land. If a municipality commits land for

inclusion in a recreation river corridor described in AS 41.23.500, the commissioner shall obtain the concurrence of the municipality to the management plan proposed under AS 41.23.440 as it applies to municipal land. The commissioner shall cooperate, at the request of a municipality, in planning for municipal land adjacent to a recreation river corridor. Municipal land not committed by a municipality for inclusion in a recreation river corridor is excluded from the operation of the management plan. (§ 2 ch 122 SLA 1988)

Sec. 41.23.460. Acquisition of additional land. (a) The commissioner may acquire in the name of the state land that is adjacent to or located within the land described in AS 41.23.500 by purchase, lease, gift, or exchange for inclusion within a recreation river corridor.

(b) The commissioner may not acquire land for inclusion in a recreation river corridor by eminent domain. (§ 2 ch 122 SLA 1988)

Sec. 41.23.470. Application of public land laws. (a) The provisions of AS 38.04, AS 38.05, AS 38.35 and AS 38.95 apply to land described in AS 41.23.500 except to the extent that a provision of AS 41.23.400 - 41.23.510 is inconsistent.

(b) The commissioner may conduct only a negotiated timber or material sale under AS 38.05.115 to provide for personal use, including house logs and firewood, or for a use incidental to the construction of access, or for habitat enhancement.

(c) The commissioner may permit mining leasing under AS 38.05.205 on upland within a recreation river corridor if leasing is allowed under a management plan that has been adopted by the commissioner. The commissioner shall establish appropriate conditions for permits, operating plans, and leases to mitigate the effects of mineral development activities on the environment and to prevent to the extent practicable degradation of the recreation uses of the river.

(d) To enhance public use and enjoyment of a recreation river corridor under a management plan adopted under AS 41.23.440, the commissioner may provide for the construction and operation of commercial facilities such as lodges, campgrounds, and boat launches by:

(1) leasing land under AS 38.05.070, including competitive leasing to a prequalified bidder; and

(2) contracting for the construction and operation of a facility under AS 36.30 so long as the facility is not in competition with a private facility or enterprise.

(e) The commissioner of administration shall separately account for funds collected under this section and deposited in the general fund. The annual estimated balance in the account may be appropriated by the legislature to the department to carry out the purposes of AS 41.23.400 - 41.23.510. (§ 2 ch 122 SLA 1988)

Sec. 41.23.480. Cooperative management agreements. (a) The commissioner may enter into a cooperative management agreement for the management of land and water described in AS 41.23.500 or of other adjacent land and water with a federal agency, a municipality, another agency of the state, or a private landowner.

(b) The commissioner may transfer the management of a specific site within a recreation river corridor described in AS 41.23.500 to a state agency, a municipality, or a private entity to carry out a program authorized by law or to enhance the objectives of the management plan adopted under AS 41.23.440.

FISCAL NOTE

STATE OF ALASKA
1991 LEGISLATIVE SESSION

BILL NO. HCR 12

Revision Date: April 15, 1991 Department Affected: Dept. of Natural Resources

Title: Susitna Basin Motorized Use BRU: _____

Restrictions Component: _____

Sponsor: Rep. Choquette

Requestor: House State Affairs Committee COMPONENT/ SERIAL NO.

--	--	--	--

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES	-0-	-0-	-0-	-0-	-0-	-0-
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
----------------	-----	-----	-----	-----	-----	-----

REVENUE	-0-	-0-	-0-	-0-	-0-	-0-
----------------	-----	-----	-----	-----	-----	-----

FUNDING: (Thousands of Dollars)

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

POSITIONS: N/A

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year impact: _____

ANALYSIS: (Attach a separate page if necessary.)

Prepared By: House State Affairs Committee Phone: 465-4859

Division: _____ Date: April 15, 1991

Approved by Commissioner: Representative Gene Kubina, Chair *Gene Kubina*

Agency: House State Affairs Committee Date: April 15, 1991

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).



Alaska Boating Association

P.O. Box 210430
Anchorage, Alaska 99521

Don Sherwood, President
(907) 333-6268

The Susitna Basin Recreation Rivers Management Plan has been transmitted to the Alaska Legislature by the Commissioner of the Department of Natural Resources as required by the Recreation Rivers Act (AS 41.23.440).

The Alaska Boating Association, representing the largest user group of the Recreation Rivers, respectfully requests that the Alaska Legislature modify the submitted plan to eliminate all reference to "non-motorized" areas, or reject the plan entirely.

The single largest user group of these rivers are those individuals seeking recreation opportunities utilizing motorized craft, primarily powerboats, but also including aircraft, off-road and all-terrain vehicles.

According to documents prepared by the National Park Service, in 1989, "... 621 floaters and 2,733 [powerboaters] users per year", were counted on a representative river section (Little Susitna).

The overwhelming testimony and comments in response to the "Public Review Draft, September 1990" were opposed to the "non-motorized" provisions.

The "Summary of Comments on Boating, November 14, 1990" prepared by DNR stated, "At these three meetings [Anchorage, Wasilla, and Willow], most (over 90%) of the people who spoke opposed non-motorized areas."

In, "Public Comments on the Draft Plan, November 1990, and January 1991", letters regarding "non-motorized" areas received from the Planning Team, Advisory Board, Organizations, Companies, and the Public numbered approximately 260 and divided almost evenly "for non-motorized" and "opposed to non-motorized" areas.

However, "Form Letters and Petitions" totalled 4,129 individuals, "opposed to non-motorized" areas. None were received in favor.

The proposed Recreation Rivers Management Plan excludes the single largest user group from the prime of the recreational river systems.

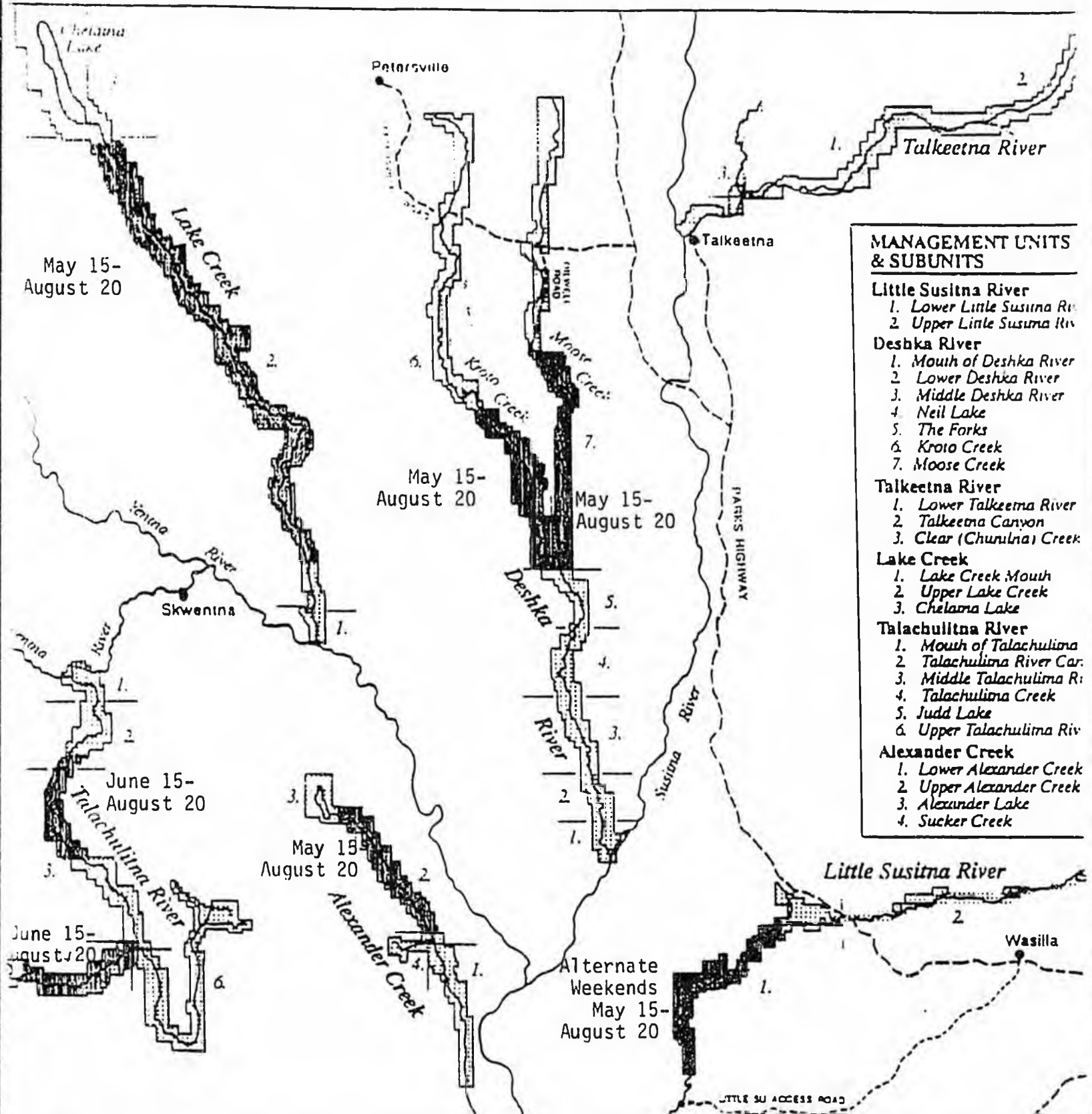
The proposed Recreational Rivers Plan ignores the overwhelming response to the proposed "non-motorized" areas.

The "Susitna Basin Recreation Rivers Management Plan, January 1991" should be modified to remove the "non-motorized" areas, or should be rejected by the Alaska Legislature for failing to accommodate the needs of the largest user groups and for ignoring the overwhelming response to the plan.

February 4, 1991

See map on reverse

SUSITNA BASIN RECREATION RIVERS MANAGEMENT PLAN



 NON-MOTORIZED AREA

To: Rep Gene Kubina

MAR 1 1991

RE: SUSITNA BASIN RECREATIONAL/RIVERS MANAGEMENT PLAN

After talking to the commissioner, Harold Heinze, on February 27, 1991 about the Six Rivers Management Plan, I feel it is important for you to help us stop the unnecessary non-motorized zones on the Deshka, Alexander, Talachulitna, and Lake Creek. He told me that what he meant when he said "you may wish to consider the policy issue at the threshold of use at which certain recreational activities are prohibited" is that if we are at the states threshold for imposing restrictions on boating and airplane landings on these rivers, then there are at least 25 other rivers in Alaska that are suseptable to the same policy. So you might take a look at the rivers in your district and if there are power boats or airplanes using them, someone could be looking at restricting their movement. There are no safety concerns or environmental impact or detriment to the resource reported or implied on the Deshka, Alexander, Talachulitna, or Lake Creek. There isn't even a conflict between the user groups beyond the normal competition for fishing holes and camp sites. The Deshka is a beautiful area and has been shared by all Alaskans for more than 30 years and for the past 18 years I've been going up that river. I've not seen one argument or fight between a boater and a floater. The Alexander, Lake Creek and Talachulitna have natural barriers that limit boat travel for most of the summer but on a good week end and favorable water levels you can travel up the river beyond the normal natural restriction. There shouldn't be a law against that.

The rivers in Alaska are the highways of the outdoorsmen and are used to access our fishing spots, camp sites, and hunting grounds. Our pwerboats and airplanes are the vehicles needed to transport our families around this large state. Please support the efforts of other legislators to recommend these restrictions be removed from the Susitna Basin Recreational Rivers Management Plan. This plan is reviewed every year and updated every 5 years and can be ammended any time the commissioner deem it necessary. So, for purposes of habitat protection or safety the commissioner has the authority to impose restrictions if its ever necessary.

Sincerely,



George M. Piaskowski
2101 Paxson #4
Anchorage, Alaska 99504

HM 338-0602
WK 274-1322

PLACES TO FLOATBOAT IN SOUTHCENTRAL ALASKA

Selected from: Alaska Paddling Guide
Moss and Dapkus
1986

Available from: National Park Service
Alaska Public Public Lands Information Center
605 West Fourth Avenue Suite 105
Anchorage, AK

This listing provides the names, and access mode, for available locations for floatboating in Southcentral Alaska. This list does not include the Susitna Basin Recreational Rivers, but is provided to demonstrate the availability of alternative float areas, most of which are not available and/or conducive to motorized boats. The trips on these waters range from 4 hour trips to trips of up to a week.

<u>River or Creek</u>	<u>Access</u>
Chickaloon	drive
Chitna <i>17-</i>	drive
Chulitna	drive or rail.
Copper <i>OK</i>	drive or fly
Delta <i>17C</i>	drive
East Fork-Six Mile Creeks	drive
Fish Creek (Mat-Su)	drive
Glacier Creek	drive
Granite Creek	drive
Gulkana River <i>OK</i>	drive
Gulkana-Middle Fork <i>OK</i>	drive
Kenai River <i>not in this region</i>	drive
Klutina River	drive or fly
Knik <i>OK - all boats mostly</i>	drive
Matanuska	drive
Meadow Creek	drive
Mendeltna Creek	drive
Nancy Lakes <i>OK</i>	drive
Nelchina-Tazlina Rivers	drive
Nenana <i>OK</i>	drive
Portage Creek <i>OK</i>	drive
Quartz Creek	drive
Six Mile	drive
Swan Lakes	drive
Swanson Lakes	drive
Swanson River	drive
Tonsina	drive
Trappers Creek	drive

STATE OF ALASKA

DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

WALTER J. HICKEL, GOVERNOR

MAR 15 1991

400 WILLOUGHBY AVENUE
JUNEAU, ALASKA 99801-1796
PHONE: (907) 465-2400
FACSIMILE: (907) 586-2754

March 15, 1991

The Honorable Gene Kubina, Chair
House State Affairs Committee
P.O. Box V
Juneau, AK 99811

Dear Representative Kubina:

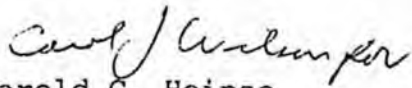
Subject: HCR 12, which relates to the Susitna Basin Recreation Rivers Management Plan.

Position: On February 1, 1991, as required by the Recreation Rivers Act (AS 41.23.440), the Department of Natural Resources transmitted copies of the Susitna Basin Recreation Rivers Management Plan to the Legislature for its consideration. We welcome the opportunity to learn your concerns about the plan.

Background: The Susitna Basin Recreation Rivers Management Plan is the result of several years of work by an interagency planning team and advisory board. The planning team included representatives from the departments of Natural Resources, Fish and Game, Transportation and Public Facilities, and Environmental Conservation, as well as the Matanuska-Susitna Borough. The advisory board included representatives of eleven varied user groups appointed by the Governor, and two Matanuska-Susitna Borough representatives appointed by the borough mayor. The public was actively involved in the planning process. Numerous people attended the 23 public meetings held on the plan.

Enclosed with this letter is information about the plan's motorized use restrictions. Please let me know if you or members of your committee would like an in-depth briefing on the recreation rivers plan.

Sincerely,


Harold C. Heinze
Commissioner

enclosure

cc: Representative Choquette
Representative B. Davis
Committee Members
Bruce Kendall, Legislative Liaison, Office of the Governor

FISCAL NOTE

STATE OF ALASKA
1991 LEGISLATIVE SESSION

BILL NO. HCR 12

Revision Date: 15-Mar-91 Department Affected: Natural Resources
 Title: Susitna Recreational Rivers BRU: Land and Water Management
 Components: Land and Water Management
 Sponsor: Representative Choquette
 Requestor: House State Affairs COMPONENT SERIAL NO. 431

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND&STRUCTURES						
GRANTS,CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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

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

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of Current year impact: None

ANALYSIS: (Attach a separate page if necessary)

Prepared by: Ron Swanson Phone: 762-2680
 Division: Land & Water Management Date: 15-Mar-91
 Approved by Commissioner: Harold Heinze *awf* Date: 15-Mar-91
 Agency: Department of Natural Resources

Distribution (by preparer) : Legislative Finance, legislative Sponsor, Requestor, OMB,
& Impacted Agency(ies).



Susitna Basin Recreation Rivers Management Plan

Alaska Department of Natural Resources
Division of Land & Water Management
Land & Resource Section

SUSITNA BASIN RECREATION RIVERS DRAFT PLAN

What is the Purpose of the Plan?

To decide how to manage the state land and water in the corridors along six Recreation Rivers including: Little Susitna River, Deshka River (including Kroto and Moose creeks), Talkeetna River, Lake Creek, Talachulitna River, and Alexander Creek.

How was the Plan Developed?¹

Recreation Rivers Act signed	June	1988
<i>Public meetings to identify issues</i>	December	1988
Gather resource and use information	January	1989 - present
Alternatives developed	Fall	1989
<i>Public meetings to review alternatives</i>	December	1989
Develop agency then public review draft plans	March-Sept.	1989
<i>Public meetings to review draft plan</i>	October	1990
Develop draft plan for legislative review	November	1990
<i>30-day public comment period before legislative review</i>	December	1990
Plan T. and Advisory B. review com., make changes	January	1991
<i>Legislature reviews draft plan</i>	January-May	1991
Begin plan implementation	May	1991

Who Develops the Plan?

Planning team - 12 members including representatives from state agencies, the Matanuska-Susitna Borough, and the City of Houston
 Advisory Board - 13-member advisory board established by the legislature and appointed by the governor and the Matanuska-Susitna Borough
 Municipal and Community Advisors - Eight representatives from the community councils and the cities in the planning area
 Staff - Staff from the DNR Division of Land and Water
 Technical Advisors - Advisors funded by the National Rivers and Trails Conservation Planning Assistance Program

¹*Italics* indicate plan phases that provide opportunities for public involvement.

RR11/March 14, 1991/briefing

What does the plan do?

Sets general areawide goals based on the legislation

Sets management intent for each subunit and issue

Establishes public uses sites

Establishes habitat management areas

Recommends additions to the corridors

Sets guidelines for:

Shoreline and upland development

Recreation

Commercial use

Access

Intent

Boating

Off-road vehicles

Air access

Water and solid waste management

Education

Enforcement

Mining and Forestry

How will the plan be Implemented?

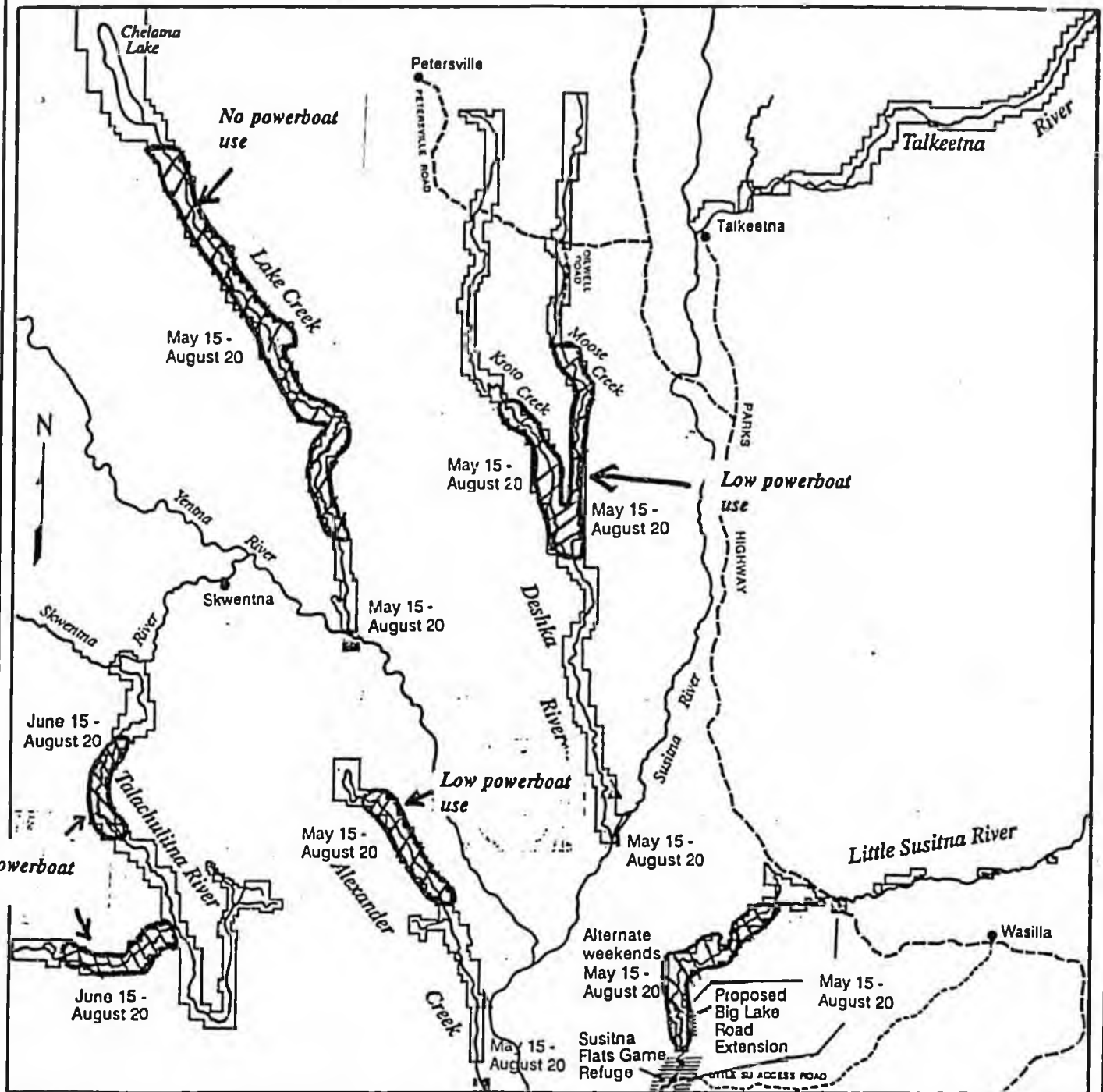
Implementation is dependent on funding, staffing, and promulgation of regulations

Plan implementation will be phased





Important components of field presence include: field staff, litter patrols, enforcement, signage, public information, and developing and maintaining primitive public facilities

SUSITNA BASIN RECREATION RIVERS MANAGEMENT PLAN

BOATING REGULATIONS



TYPES OF SEASONAL REGULATIONS

-  Non-motorized Area
-  Voluntary No-wake Area
-  Place Warning Sign
-  Proposal or Recommendations

 Recreation River Corridors

**BOATING REGULATIONS, NON-MOTORIZED AREAS, VOLUNTARY
NO-WAKE AREAS, AND SAFETY SIGNS**

RIVER	SEGMENT	RIVER MILES	REGULATION OR SIGN	DATES
Little Susitna River	Parks Highway	67.5 - 69.6	No-Wake, Voluntary, One-Year Trial Basis	May 15 - August 20
Little Susitna River	Nancy Lake Creek to Game Refuge Boundary	33.2 - 60.5	Non-motorized	Alternating weekends May 15 - August 20
Deshka River	Mouth	0.0 - Island	No-wake, Voluntary	May 15 - August 20
Deshka River	Silver Hole	3.8 - 4.9	Place sign: "Reduce speed to 5 MPH when anglers present"	May 15 - August 20
Deshka River	Forks to 2 mi. below Amber Lake Creek and Forks to 3 mi. below Oilwell Road	0.0 - 19.1 (Kroto Creek) 29.7 - 54.2 (Moose Creek)	Non-motorized, Recommendation to Board of Fish to open lower Moose Creek to king salmon fishing	May 15 - August 20
Lake Creek	Whitewater	8.1 - 51.2	Non-motorized	May 15 - August 20
Lake Creek	Mouth	0.0	Establish voluntary no-wake area at the mouth on a one-year trial basis	May 15 - August 20
Talachulitna Creek	Lower	0.0 - 17.0	Non-motorized	June 15 - August 20
Talachulitna River	Canyon	9.0 - 18.2	Non-motorized	June 15 - August 20
Alexander Creek	Upper	23.0 - 38.3	Non-motorized	May 15 - August 20
Alexander Creek	Pierce Creek Confluence	7.4	Place sign that cautions large boats above this point	May 15 - August 20

GENERAL ACCESS

Goals

See *Boating, Upland Access, Air Access, and Special Management Areas* in this chapter.

Management Guidelines

Permits for Access to Private Land and Mining Claims. The department should promulgate a regulation requiring a permit for all motorized access to private land or active mine operations that crosses state land or water closed to motorized use³. Permits for motorized access may be issued across closed areas, to private lands or mine operations when the use provides a need for which there is no feasible and prudent alternative. The cost of these permits should be minimal. Fees may be waived in cases where they would constitute an undue hardship on the permittee or act to discourage compliance with the permit requirement. Filing fees may not be waived. Also see *Upland Access, Access to Private Land and Mining Camps*.

Government Use of Motorized Transportation. The department should promulgate regulations that allow the operation of motorized vehicles including boats, aircraft, helicopters, and ground vehicles in non-motorized areas by governmental agency for the purposes of law enforcement, emergency search and rescue, medical evacuations, fire suppression; or for fish, game, recreation, or natural resource management.

³ "Motor Use" refers to motors associated with vessels, aircraft, and vehicles used for transportation, not use of motors such as chainsaws and generators.

BOAT ACCESS

Goals

Spectrum of Boating Opportunities. Provide for a spectrum of boating opportunities on the six Recreation Rivers.

Specific Opportunities on River Segments. Provide specific motorized and non-motorized boating opportunities on individual river segments.

Public Safety and Property. Protect public safety and property through the established of no-wake areas and float-plane landing areas.

Minimize Conflicts. Minimize conflicts between user groups while providing opportunities for boaters on all rivers.

Public Use Doctrine. Maintain consistency with the Public Trust Doctrine in the Alaska Constitution.

Management Guidelines

Overall Management Intent. Specific restrictions on boating have been developed to achieve two different goals. The primary goal is to provide for a range of recreation opportunities on the six rivers. This includes providing for motorized and non-motorized recreation experiences. The second goal concerns boating safety. Boating guidelines were not based on the protection of river banks and fish habitat from powerboat-caused erosion. Although these effects may be occurring, relationship between powerboats and these impacts has not been conclusively shown at any site in the Recreation Rivers at this time.

References to powerboats includes all water-dependent vessels propelled by a motor, include jetboats, prop-driven boats, hovercraft, airboats, and hydroplanes. Personal water craft and floatplanes are exceptions. Personal watercraft are discussed later in this section. Floatplanes are covered under *Air Access* in this chapter.

The following section describes the relationships between boating guidelines and these goals, outlines the factors that were considered in developing guidelines, and identifies which river segments are affected.

Recreation Experience. Information from the user survey, alternatives workbook, and public meetings shows that a significant number of floaters and bank anglers believe their recreation experiences are compromised by the use of motorized boats. Specific concerns include: noise impacts, boat speeds, and wake sizes. Many floaters and bank anglers define high quality experience in terms of the absence of motorized use. However, powerboaters have expressed concern that opportunities for powerboat access should be maintained. To balance the concerns of these competing interests, provide quality floating and bank fishing and provide for both powerboat and floatboat use, some river segments have been seasonally designated as "non-motorized," "powerboats only," or have been left unrestricted.

1 Safety. Boating safety is a prime concern on the Recreation Rivers. Although few boating
2 fatalities or serious accidents have been documented, users have identified safety problems,
3 particularly in congested areas. To address these problems, some river segments have been
4 designated as "voluntary no-wake areas."

5 Erosion and Other Environmental Impacts. There is concern that erosion and damage to fish
6 habitat may be increasing as a result of extensive powerboat use on some river segments.
7 However, there is no conclusive quantitative evidence of a casual relationship. The US
8 Department of the Interior, University of Alaska and DFG are working on a cooperative
9 research project to study the effects of jetboats on fish. In addition, the Division of Geological
10 and Geophysical Surveys will examine the effects of powerboat use and its relationship to
11 erosion on the Little Susitna River. The results of these studies will be used when updating or
12 amending this plan.

13
14 Other Factors. In addition to the recreation experience and safety goals, other variables that
15 were considered include:

- 16 1. *Accommodating access to private land.* Non-motorized areas were not established
17 in areas where property owners commonly reach their land by powerboat. If
18 powerboats offer the only practical access to private property in or adjacent to
19 the river corridors, landowners may be issued a permit to use powerboats in the
20 non-motorized area to reach their land. See *General Access, Permits for Access to*
21 *Private Land and Mine Claims* in this chapter.
- 22 2. *Minimizing restrictions.* Non-motorized areas are only designated for segments
23 where the current demand for non-motorized opportunities is considered
24 significant. Similarly, no-wake areas are only proposed for areas where
25 congestion is significant and safety risks are high.
- 26 3. *Accommodating use.* Non-motorized areas are generally designated in areas that
27 receive relatively little or no powerboat use. These areas typically include the
28 upper segments of rivers where there is considerable whitewater or other
29 impediments to safe powerboat use. Conversely, frequent powerboat-use areas
30 are not restricted to powerboat use. Exceptions include segments of the Little
31 Susitna where there is demand for both motorized and non-motorized use. In
32 this area, the plan prescribes alternating non-motorized and powerboat-only
33 weekends during the fishing season.
- 34 4. *Physical characteristics of the rivers.* Non-motorized areas generally begin and
35 end at landmarks identified as common limits of most current powerboat travel.
36 No-wake areas begin and end at landmarks identified as common limits of boat
37 and bank angler congestion.
- 38 5. *Seasons.* Non-motorized and powerboat-only periods generally apply to fishing
39 seasons when conflicts between users occur most often.
- 40 6. *Future technologies and potential conflicts.* Non-motorized areas on the
41 Talachulitna River and Lake Creek are established on segments that do not
42 currently receive powerboat use. This limitation on use is based on the concern
43 that future technologies will allow powerboats access to traditionally non-

1 motorized areas. Defining these areas before motorized access is possible will
2 prevent future conflicts and preserve traditional use patterns.

3 **Regulations.** Under Section 41.23.420(c), the commissioner may, if necessary, regulate boating
4 under the management plan. Non-motorized and powerboat-only areas will be established by
5 regulation. No-wake areas are all voluntary and do not require regulations. Both voluntary
6 and regulatory areas shall be marked by signs at their upper and lower limits. River segments,
7 seasons, and justifications are described under *Management Guidelines* for each management
8 unit in Chapter 3. Recommended boating regulations for areas not in the Recreation Rivers
9 or proposed to be added to the Recreation Rivers are described in Chapter 4. The following
10 figure and tables summarize the regulations.

11 **Non-motorized Areas.** The operation of a powerboat is prohibited on designated river segments
12 during designated non-motorized periods. Motors in or attached to boats are allowed as long
13 as they are not operated in the non-motorized area.

14 **Powerboat-only Areas.** Boats that are not powered by motors are prohibited on the designated
15 segment of the Little Susitna River on the second and fourth weekends of each month between
16 May 15 and August 20.

17 **Voluntary No-wake Areas.** In these areas signs are placed to encourage boaters to operate at
18 speeds less than five-miles per hour. Compliance is voluntary and these areas are not
19 established by regulations.

20 **Personal Watercraft.** With the exceptions of the Susitna, Skwentna, and Yentna rivers where
21 they overlap with the Recreation Rivers personal watercraft are prohibited in the planning
22 area because of concerns for safety, recreation experience, and shore-nesting birds. This
23 restriction should be established by regulation. Also see *Appendix A, Personal Watercraft* for
24 a definition of personal watercraft.

25 **Registering Commercial Boats.** See *Commercial, Standards* in this chapter.

26 **Access to Private Lands.** See *General Access, Permits for Access to Private Land and Mining*
27 *Claims* in this chapter.

28 **Public Trust Doctrine.** Under the Alaska Constitution the state has special duties and
29 management constraints with respect to state-owned land underlying navigable waters. The
30 Alaska Constitution contains principles commonly known as the public trust doctrine. This
31 doctrine requires the state to exercise authority to ensure that the right of the public to use
32 navigable waters for navigation, commerce, recreation, and related purposes is not substantially
33 impaired.

34 The Alaska Constitution (Article VIII, sections 3, 13, and 14) and Alaska Statutes (38.05.127 and
35 38.05.128) are the legal basis for applying the public trust doctrine in Alaska. This doctrine
36 guarantees the public right to engage in such things as commerce, navigation, fishing, hunting,
37 swimming, and protection of areas for ecological study.

38 The Constitution provides that "free access to the navigable or public waters of the state, as
39 defined by the legislature, shall not be denied any citizen of the United States or resident of
40 the state, except that the legislature may by general law regulate and limit such access for other

1 beneficial uses or public purposes." Eliminating private upland owners' reasonable access to
2 navigable waters may result in compensation.

3 Both federal and state laws providing for the transfer of land to private parties also provide
4 for public access to navigable waters. Implementing the state constitutional guarantee of access
5 to navigable waters under Article VIII, Section 14, AS 38.05.127 requires that the state
6 commissioner of natural resources must "provide for the specific easements or rights-of-way
7 necessary to ensure free access to and along the body of water, unless the commissioner finds
8 that regulating or eliminating access is necessary for other beneficial uses or public purposes."

9 It has never been held that any lands normally subject to the public trust doctrine in Alaska
10 are exempt from it, including land occupied and developed.

11 These statutes and concepts are considered and used throughout this plan. Any management
12 actions will be consistent with the public trust doctrine as defined by the Alaska Constitution,
13 statutes, court decisions, and public involvement.

MEMORANDUM

State of Alaska

Department of Law

TO: Gary Gustafson
Director, Division of Land
and Water Management, DNR

DATE: December 17, 1990

FILE NO:

276-3550

TEL NO:

SUBJECT: Recreation Rivers' management plan - power

boat restrictions

FROM: Kenneth C. Powers
Assistant Attorney General
Natural Resources - Anchorage

This memorandum follows up recent informal conversations our office has had with members of the Susitna Basin Recreation Rivers Management Planning Team concerning DNR's statutory and constitutional authority to regulate powerboat use on the recreation rivers. This memorandum expresses our rough thoughts only, and should not be treated as either a formal or an informal legal opinion.

Under AS 41.23.410, the DNR commissioner is required to allow the use of powerboats within a recreation river corridor "when they are compatible with AS 41.23.400 and consistent with a management plan adopted under AS 41.23.440." AS 41.23.410. The purposes of the recreation rivers' creation set out in AS 41.23.400 include recreation. The commissioner is given specific power in AS 41.23.420(c) to "regulate boating, if necessary, under the management plan adopted under AS 41.23.440." In AS 41.23.440(b), the commissioner is given authority to adopt regulations necessary to implement the management plan, but not before the management plan takes effect.

As we understand it, the proposed plan suggests the adoption of regulations which will have the effect in certain areas and at certain times of regulating boats and boat traffic. Such potential restrictions include the establishment of no wake zones and non-motorized zones where powerboat use would be prohibited.

Similar boating restrictions are now quite common throughout the United States. They are also in use on a number of Alaska's streams and lakes. For example, the Susitna Flats State Game Refuge regulations prohibit the use of motor boats from May 15 to August 31 on the Theodore River upstream from a designated private parcel. See 5 AAC 95.515. In the Palmer Hay Flats State Game Refuge, Rabbit Slough is closed to motor boat use on weekends from July 15 through August 15. Except for the Knik River and Rabbit Slough, use of a motor boat on all other refuge water is restricted such that from August 16 through March 31 only a motor boat with an outboard motor of 20 horsepower or less may be used. 5 AAC 95.505.

Gary Gustafson
Director, Division of Land
and Water Management

December 17, 1990

Page 2

DNR Division of Parks and Outdoor Recreation regulations prohibit the use of motors on many lakes within the state park system, including Byers Lake in Denali State Park, and Kepler, Bradley, Matanuska, Long, Irene, and Canoe Lake and the South Rolly Lake in Nancy Lake Recreation area. Also, on Rocky Lake, jet skis, air boats and jet boats are prohibited. See the park regulations at 11 AAC 20 et seq.

In addition to certain non-motorized zones and no wake zones, regulations governing the Kenai River Special Management Area limit the maximum boat horsepower size to 35 horsepower. See 11 AAC 20.860 (KRSMA boat motor horsepower regulation); 11 AAC 20.865 (KRSMA non-motorized areas); and 11 AAC 20.870 (KRSMA no wake zone). The horsepower regulation was upheld by the Alaska Supreme Court. Citizens For The Preservation Of The Kenai River, Inc. v. Sheffield, 758 P.2d 624. (Alaska 1988)

Locally, the Municipality of Anchorage has prohibited the use of boat motors on a number of area lakes, including some lakes with private residences located along the lakeshore, as apparently also has the City of Wasilla for certain lakes within its jurisdictional boundaries.

Boating restrictions when duly promulgated by an authorized agency of the State of Alaska will ordinarily stand on quite firm constitutional ground. The Alaska Constitution, article VII, section 14 expressly authorizes the Legislature to "by general law regulate and limit such access (to the navigable or public waters of the State) for other beneficial uses or public purposes."

We understand that the question has been raised whether, under the Alaska Supreme Court decision in Wernberg v. State, 516 P.2d 1191 (Alaska 1973), reh. denied, 519 P.2d 801 (1974), the state is required to compensate riparian land owners if their use of power boats is regulated or restricted. The answer is no.

In Wernberg, the court held that the state's construction of the Minnesota By-pass, which destroyed the navigability of Chester Creek and completely blocked plaintiff's access from his property across the abutting tidelands to Cook Inlet, entitled the plaintiff to compensation for a taking of his private littoral right of access to navigable waters. For more than 20 years, the plaintiff in that case had used Chester Creek and the adjoining tidewaters to navigate his fishing boats between his property and the deep waters of Cook Inlet for commercial fishing.

The decision in Wernberg was not intended to be a general statement of the law governing compensation for takings of riparian rights. To the contrary, the court specifically emphasized that its holding was limited to the particular facts of that case. Id.

Gary Gustafson
Director, Division of Land
and Water Management

December 17, 1990
Page 3

at 1201. Based upon those unique facts, Wernberg is best understood as a highway access case, in which compensation is required when existing road access to a parcel of land abutting a public highway is eliminated or damaged.

The Alaska Supreme Court has consistently treated Wernberg as a highway access case. See, e.g., Triangle, Inc. v. State, 632 P.2d 965 (Alaska 1981); B & G Meats, Inc., 601 P.2d 252, 254 n.3 (Alaska 1979). The court has also clarified that the discussion in Wernberg concerning riparian water rights is dicta that need not be considered established law. In Classen v. State, Dept. of Highways, 621 P.2d 15, 17 n.4 (Alaska 1980), the Alaska Supreme Court specifically noted that "[o]ur decision in Wernberg implied that the 'use of water' language of art. VIII, sec. 16 [of the Alaska Constitution] is coterminous with riparian rights". (emphasis to "implied" added). Thus, although Wernberg implied that a riparian right is a use of water for which compensation may be required under art. VIII, sec. 16, that issue was not decided. The note also strongly suggests that the issue is subject to reconsideration.

In our view, and we expect that the Alaska Supreme Court will someday clarify the issue, the prohibition on uncompensated takings of a person's "right to the use of waters" in art. VIII, sec. 16 of the Alaska Constitution, is properly understood to refer to the right "to use the water of a natural stream, or water furnished through a ditch or canal, for general or specific purposes, such as irrigation, mining, power or domestic use." See definition of "water rights" in Black's Law Dictionary 1427 (5th ed. 1979). In Alaska, these water rights are not riparian rights, but are acquired by appropriation under the Alaska Water Use Act, AS 46.15.010 - 46.15.270.

In summary, the state has the statutory and constitutional authority to regulate powerboat use. That authority has been delegated to DNR in AS 41.23.400 - 41.23.510 (Recreational Rivers). Moreover, there is nothing in the Alaska Constitution or the Alaska Supreme Court decision in Wernberg that requires the state to compensate riparian landowners for regulations that restrict or prohibit the general use of power boats.

¹ A regulation which effectively foreclosed a person from gaining all waterbody access from a shoreline private parcel might be subject to constitutional attack. However, it is doubtful such a restrictive regulation would ever be finally promulgated, since it would first have to survive the Department of Law review mandated under the Alaska Administrative Procedures Act. See AS 44.62.067(060).

Gary Gustafson
Director, Division of Land
and Water Management

December 17, 1990

Page 4

We hope the foregoing provides at least a rough outline of the applicable law in this area. If the planning team has any further questions, we will be happy to help.

The Alaska Constitution provides that the Legislature shall have the power to regulate the use of water. This power is not exclusive, however, and the courts have held that the public trust doctrine also applies to water. The public trust doctrine is a common law doctrine that requires the state to hold certain resources in trust for the benefit of the public. In Alaska, this doctrine has been applied to water, and the courts have held that the state has a duty to protect the public's interest in water. This duty includes the obligation to regulate the use of water in a way that is consistent with the public trust doctrine. The Alaska Constitution also provides that the Legislature shall have the power to regulate the use of water. This power is not exclusive, however, and the courts have held that the public trust doctrine also applies to water. The public trust doctrine is a common law doctrine that requires the state to hold certain resources in trust for the benefit of the public. In Alaska, this doctrine has been applied to water, and the courts have held that the state has a duty to protect the public's interest in water. This duty includes the obligation to regulate the use of water in a way that is consistent with the public trust doctrine.

In addition, the Alaska Constitution provides that the Legislature shall have the power to regulate the use of water. This power is not exclusive, however, and the courts have held that the public trust doctrine also applies to water. The public trust doctrine is a common law doctrine that requires the state to hold certain resources in trust for the benefit of the public. In Alaska, this doctrine has been applied to water, and the courts have held that the state has a duty to protect the public's interest in water. This duty includes the obligation to regulate the use of water in a way that is consistent with the public trust doctrine. The Alaska Constitution also provides that the Legislature shall have the power to regulate the use of water. This power is not exclusive, however, and the courts have held that the public trust doctrine also applies to water. The public trust doctrine is a common law doctrine that requires the state to hold certain resources in trust for the benefit of the public. In Alaska, this doctrine has been applied to water, and the courts have held that the state has a duty to protect the public's interest in water. This duty includes the obligation to regulate the use of water in a way that is consistent with the public trust doctrine.

The Alaska Constitution also provides that the Legislature shall have the power to regulate the use of water. This power is not exclusive, however, and the courts have held that the public trust doctrine also applies to water. The public trust doctrine is a common law doctrine that requires the state to hold certain resources in trust for the benefit of the public. In Alaska, this doctrine has been applied to water, and the courts have held that the state has a duty to protect the public's interest in water. This duty includes the obligation to regulate the use of water in a way that is consistent with the public trust doctrine. The Alaska Constitution also provides that the Legislature shall have the power to regulate the use of water. This power is not exclusive, however, and the courts have held that the public trust doctrine also applies to water. The public trust doctrine is a common law doctrine that requires the state to hold certain resources in trust for the benefit of the public. In Alaska, this doctrine has been applied to water, and the courts have held that the state has a duty to protect the public's interest in water. This duty includes the obligation to regulate the use of water in a way that is consistent with the public trust doctrine.

A regulation which restricts the use of water in a way that is consistent with the public trust doctrine is a valid exercise of the state's power to regulate the use of water. The Alaska Constitution provides that the Legislature shall have the power to regulate the use of water. This power is not exclusive, however, and the courts have held that the public trust doctrine also applies to water. The public trust doctrine is a common law doctrine that requires the state to hold certain resources in trust for the benefit of the public. In Alaska, this doctrine has been applied to water, and the courts have held that the state has a duty to protect the public's interest in water. This duty includes the obligation to regulate the use of water in a way that is consistent with the public trust doctrine. The Alaska Constitution also provides that the Legislature shall have the power to regulate the use of water. This power is not exclusive, however, and the courts have held that the public trust doctrine also applies to water. The public trust doctrine is a common law doctrine that requires the state to hold certain resources in trust for the benefit of the public. In Alaska, this doctrine has been applied to water, and the courts have held that the state has a duty to protect the public's interest in water. This duty includes the obligation to regulate the use of water in a way that is consistent with the public trust doctrine.

Alaska State Legislature

Chairman
State Affairs
Committee

Legislative Council

Transportation
Committee



Representative Eugene Kubina

During Session:
State Capitol
P.O. Box V
Juneau, Alaska 99811
(907) 465-4859

During Interim:
P.O. Box 2463
Valdez, Alaska 99686
(907) 835-2111

April 28, 1991

Mr. Wilbur O'Brien, President
Era Aviation
6160 South Airpark Drive
Anchorage, AK 99502

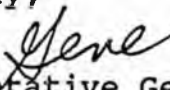
Dear Mr. O'Brien,

Thank you for your recent letter regarding the Susitna Basin Recreational Rivers Management Plan. The bill in the House State Affairs Committee which addressed this issue was HCR 12. HCR 12 was heard and placed in a subcommittee for further study. After the subcommittee reviewed the legislation, HCR 12 was passed out of the committee on April 12, 1991 and is currently in the House Resources Committee awaiting future scheduling.

Along with the passage of the bill, the House State Affairs Committee sent a letter to Commissioner Harold Heinze stating the conclusions of the subcommittee. I have enclosed a copy of this letter for your information.

Thank you for your interest in this matter. If you need more information on this or any matter, please feel free to contact me.

Sincerely,


Representative Gene Kubina, Chairman
House State Affairs Committee

— DISTRICT SIX —

• Chenega Bay • Chitina • Cooper Landing • Cordova • Hope • Moose Pass • Seward • Tatitlek • Valdez • Whittier •



Era Aviation, Inc.

April 11, 1991

The Honorable Representative Gene Kubina
House State Affairs Chairman
Post Office Box "V"
Juneau, Alaska 99811

Ref: Susitna Basin Recreational Rivers
Management Plan

Dear Representative Kubina,

Era opposes those portions of the Susitna Basin Recreational Rivers Management Plan (SBRRMP) that would restrict motorized access to portions of Lake Creek, Alexander Creek, Deshka River and Talachulitna River. We are particularly disturbed to see these restrictions applied to aircraft.

The inclusion of aircraft in these restrictions was purely gratuitous -- with no meaningful discussion and certainly no justification. There are no biological, habitat, or other environmental bases for such restrictions. And neither the Advisory Board (which opposed the motorized restrictions in any event), nor the Department of Natural Resources, sought or received any input from the aviation community.

These are among the best salmon fishing waters in the area. We and others have fished them for decades, primarily by helicopter. In addition, airplanes on floats and wheels have been another important and traditional means of access. We have fished these rivers with countless numbers of people: little tots to men and women in their eighties; poor people and rich people; handicapped people and people better able to get around; influential people and ordinary citizens.

These new restrictions would deny the public access to portions of these rivers by the most environmentally compatible mode of conveyance -- air travel. This would be completely unfair; and it is totally unnecessary.

Representative Kubina
April 11, 1991
Page 2

Re: Susitna Basin Recreational River Management Plan

Already, helicopter access to vast portions of our state is restricted to government employees and people on government business. Increasingly, airplane access is being limited. We are deeply concerned by what we perceive to be an ever increasing trend toward locking out Alaskans from reasonable access to our lands.

These most recent restrictions are poor land management, poor public policy, and poor service by the DNR. We support HCR 12, HB 201, and, if necessary, SB 166.

Thank you for considering our views on this matter.

Sincerely,



Wilbur O'Brien
President

cc: Governor Walter Hickel
Commissioner Harold Heinze
Representative Tom Moyer
Representative Larry Baker
Representative Betty Bruckman
Representative Dave Choquette
Representative Max Gruenberg
Representative Mark Hanley
Representative Mike Miller
Senator Drue Pearce



Era Aviation, Inc.

DATE 5.8.91

NUMBER OF PAGES 3
(Including Cover Sheet)

TO: REPRESENTATIVE GENE KUBINA

COMPANY: HOUSE OF REPRESENTATIVES 465-2444

FROM: JACK BIRMINGHAM

PLEASE CHECK TRANSMISSION AFTER THE LAST PAGE. IF YOU DO NOT RECEIVE THIS FAX CLEARLY, OR HAVE ANY PROBLEMS WITH THIS TRANSMISSION, PLEASE CALL US BACK AT (907) 248-4422,

EXTENSION 326

OUR FAX LINE NUMBER IS (907) 266-8350.

MESSAGE: _____

MAILING ORIGINALS YES NO REQUEST RESPONSE YES NO

8160 South Airpark Drive, Anchorage, Alaska 98502. (907) 248-4422. Telecopier: (907) 266-8350. Telex: 25324



Era Aviation, Inc.

May 8, 1991

Harold Heinze
Commissioner
State of Alaska
Department of Natural Resources
400 Willoughby
5th Floor
Juneau, Alaska 99801

Ref: Restriction on Aircraft Access;
Susitna Basin Recreational Rivers
Management Plan.

Dear Commissioner Heinze,

I was disappointed to receive Mr. Gustafson's letter dated February 19 (sic), 1991, in response to my letter to you of April 11, 1991. Based on our past dealings, I never expected a letter like this out of any department headed by you.

I may be naive, but I still expect public servants to serve the public -- to make rationale decisions based on objective analyses of accurate facts. On this issue we have met with hidden agendas, manufactured justifications, half truths and doublespeak.

Harold Heinze
Department of Natural Resources
May 8, 1991
Page 2

Now, Mr. Gustafson suggests that the appropriate solution is to look to the legislature to take time from its busy schedule to right the wrongs done by the DNR. The public would be far better served if the DNR would correct its own mistakes.

Sincerely,

Wilbur O'Brien

Wilbur O'Brien
President

cc: Governor Walter Hickel
Commissioner Harold Heinze
Senator Dru Pearce
✓ Representative Gene Kubina
Representative Tom Moyer
Representative Larry Baker
Representative Betty Bruckman
Representative Dave Choquette
Representative Max Gruenberg
Representative Mark Hanley
Representative Mike Miller
Janet Burleson, SERO
Bruce Talbot, LRS

Alaska State Legislature
House of Representatives



MAR 20 1991

INTERIM

3111 C Street
Anchorage, Alaska 99503
(907) 561-2032

SESSION

P.O. Box V
Juneau, Alaska 99811
(907) 465-2995

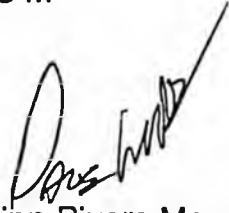
Representative Dave Choquette

M



MEMORANDUM

TO: All Legislators

FROM: Representative Dave Choquette 
Chairman, Susitna Basin Recreation Rivers Management Plan, State
Affairs Subcommittee

DATE: March 19, 1991

SUBJECT: Non-Motorized Restrictions in the Susitna Basin Recreation Rivers
Management Plan, HCR 12

Representatives Choquette and Baker are holding hearings on HCR 12 sponsored by Representative Choquette. This piece of legislation addresses the non-motorized restrictions in the Susitna Basin Recreation Rivers Management Plan.

The hearings will be held on Saturday, March 30 in the Matanuska-Susitna Valley in the upper conference room of the Mat-Su Resort from 9:00 AM to 11:00 AM, and in Anchorage from 2:00 PM to 5:00 PM in the Anchorage Assembly Chambers. Please contact your constituents who have concerns with the non-motorized portions of the Susitna Basin Recreation Rivers Management Plan.



Alaska State Legislature
House of Representatives

INTERIM

3111 C Street
Anchorage, Alaska 99503
(907) 561-2032




SESSION

P.O. Box V
Juneau, Alaska 99811
(907) 465-2995

Representative Dave Choquette



MEMORANDUM

TO: Representative Gerie Kubina
FROM: Representative Dave Choquette 
DATE: March 11, 1991
SUBJECT: HCR 12, a resolution requesting reconsideration of non-motorized zones in the Susitna Basin Recreation Rivers Management Plan

I am writing to ask that you schedule the committee hearing of HCR 12 at the earliest possible date. The Sustina Plan will go into effect 100 days after its submission to the Legislature.

Thank you.

