

Confirm.

Board of

Game



ALASKA OUTDOOR COUNCIL

2932 C Street, Suite B
Anchorage, Alaska 99503
(907) 563-4AOC
FAX: (907) 561-0800

January 9, 1993

Mr. Tuckerman Babcock, Director
Boards & Commissions
Office of the Governor
P.O. Box A
Juneau, Alaska 99811

Dear Mr. Babcock:

The Alaska Outdoor Council wishes to advise you of our strong support for the following Board of Game candidates:

Roger Huntington
Edward Grasser
Mike Millar
Sue Entsminger
Ann Ruggles

All of these candidates are exceptionally well qualified. Each would bring an essential perspective to the board.

We urge their favorable consideration.

Sincerely,

Scott Bothwell *ts*
President

cc: Commissioner, Alaska Department of Fish and Game
Candidates listed
Alaska State Legislators



ALASKA OUTDOOR COUNCIL, INC.

2932 "C" Street, Suite B
Anchorage, Alaska 99503
(907) 563-4AOC
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March 9, 1993

The Honorable Mike Miller, Chair
Senate Resources Committee
Alaska State Legislature
State Capitol
Juneau, AK 99801-1182

Dear Senator Miller:

The Alaska Outdoor Council wishes to go on record in support of the Governor's appointment of Mr. Jack Didrickson to the Alaska Board of Game and we strongly urge the Legislature to give fair consideration to confirmation of this appointment. Mr. Didrickson's term on the Game Board is May 27, 1992 to January 31, 1994.

We are not aware of any reason not to confirm the appointment of Mr. Didrickson. According to state law, absent a finding of inefficiency, neglect of duty, misconduct in office, or a fish or game misdemeanor conviction, the Governor may not remove members he has appointed to the Board of Game. To the best of our knowledge no such finding has been made regarding Mr. Didrickson and, therefore, his confirmation should proceed.

We believe Mr. Didrickson should receive fair consideration and encourage the Legislature to meet its statutory responsibility to consider this legally valid appointment to the Board of Game. To do otherwise would in our view be inappropriate and would set a dangerous precedent regarding future confirmation procedures.

Our stated position is in no way intended to reflect either positively or negatively upon Mr. Ernest Polley.

Sincerely,

Scott Bothwell
President

February 9, 1993

Tuckerman Babesck, Director
Boards and Commissions
P.O. Box 110001
Juneau, AK 99811-0001

Dear Tuckerman,

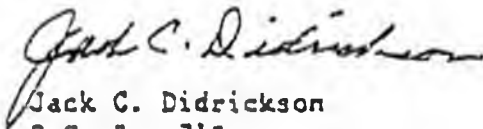
By the time my tenure on the Game Board will supposedly come to an end (March or April '93), I will have served for a year and through two legislative sessions.

I believe I was entitled to have my name appear before the legislature for confirmation as everyone has once the the appointment to the Game Board has been made by the Governor.

Counsel has advised that under certain circumstances, an individual may be removed from the Board, but none of these circumstances apply in my situation.

I do not intend to resign and prefer to have my name presented to the legislature for confirmation. It is my intent to fill out my full tenure with the Game Board if the legislature confirms my appointment.

Sincerely,



Jack C. Didrickson
P.O. Box 712
Palmer, AK 99645

FAX: All Board of Game members
Carl Rosier, Commissioner Department of Fish and Game
Dave Kalleyhouse, Director Division of Wildlife Conservation



OFFICIAL BUSINESS

Alaska State Legislature

Senate

Office of the Secretary

STATE CAPITOL
JUNEAU, ALASKA 99801-1182
(907) 465-3701
FAX: 465-2832

February 10, 1993

MEMORANDUM

TO: Senator Miller, Chair
Resources Committee

FROM: Nancy Quinto *NQ*
Secretary of the Senate

SUBJECT: Governor's Confirmations

Pursuant to AS 39.05.080, President Halford has referred the following names for legislative confirmation to your committee for a hearing, recommendation and report:

Big Game Commercial Services Board

Glenn W. Fredericks - Anchorage

Appointed 10/28/92 Expires 06/30/96

Paul E. Johnson - Elfin Cove

Appointed 08/29/89 Reappointed 07/13/92 Expires 06/30/96

Alaska Commercial Fisheries Entry Commission

Bruce C. Twomley - Juneau

Appointed 10/06/82 Reappointed 08/18/88, 07/21/92

Expires 07/01/96

Board of Fisheries

Larry Edfelt - Juneau

Appointed 07/23/91 Reappointed 01/31/93 Expires 01/31/96

John Hanson - Alakanuk

Appointed 02/08/89 Reappointed 07/13/92 Expires 01/31/95

Dick Jacobsen - Sand Point

Appointed 01/31/93 Expires 01/31/96

Deborah A. Lyons - Petersburg

Appointed 01/31/90 Reappointed 01/31/93 Expires 01/31/96

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Boards and Commissions

Board of Game

Susan Entsminger - Tok

Appointed 01/31/93 Expires 01/31/96

Roger Huntington - Galena

Appointed 04/14/92 Reappointed 01/31/93 Expires 01/31/96

Ernest E. Polley - Juneau

Appointment effective 04/05/93 Expires 01/31/94

Anne K. Ruggles - Fairbanks

Appointed 01/31/93 Expires 01/31/96

NQ/hc

Resumes attached

DIVISION OF LEGAL SERVICES

**LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA**

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

130 Seward Street, Suite 409
Juneau, Alaska 99801-2105

MEMORANDUM

February 26, 1993

SUBJECT: Board of Game Member (Work Order No. 8-LS0730)

TO: Senator Mike Miller
Attn: Teresa Sager-Stancliff

FROM: Jerry Luckhaupt *JL*
Legislative Counsel

QUESTIONS PRESENTED:

I. May Governor Hickel remove Jack Didrickson as a member of the Board of Game effective April 5, 1993, without cause, and appoint someone else to Mr. Didrickson's position?

ANSWER: No. A member of the Board of Game may only be removed from office by the governor for "inefficiency, neglect of duty, or misconduct in office, or because the member while serving on the board is convicted of a misdemeanor for violating a statute or regulation related to fish and game or of a felony. An interim appointee, as is Mr. Didrickson, may only be removed by the governor for the "cause" cited or, if the legislature should fail to confirm Mr. Didrickson, Mr. Didrickson would be removed from his position by operation of law - by the failure of the legislature to confirm. See discussion I.

II. What can the legislature do concerning the appointment of Mr. Didrickson to the Board of Game absent any communication from the governor?

ANSWER: The legislature can confirm or reject Mr. Didrickson's appointment or do nothing concerning Mr. Didrickson's appointment. If the legislature fails to take any action regarding Mr. Didrickson's appointment then by operation of law, AS 39.05.080(3), Mr. Didrickson would be removed from his membership on the Board of Game as of the last day of the legislative session. If the legislature rejects Mr. Didrickson's appointment by affirmatively voting in joint session not to confirm him, then by operation of law (AS 39.05.080(3)) Mr. Didrickson will be removed from his membership on the Board of Game as of that day and the governor will be free to appoint someone else at that time. If Mr. Polley is confirmed without Mr.

Didrickson being rejected, a court could rule that Mr. Didrickson is entitled to the office until the last day of the session or could decide that Mr. Polley's confirmation was an implicit rejection of Mr. Didrickson, thereby entitling Mr. Polley to the office. See Discussion II.

FACTUAL BACKGROUND

The facts as I understand them are that Governor Hickel's appointment of Donald Hanks to the Board of Game was rejected when the legislature failed to confirm Mr. Hanks. See 17th Alaska Legislature, Senate Journal at 3171 - 3172; House Journal at 3704 - 3705. Governor Hickel appointed Jack Didrickson to the position on the Board of Game that was vacant due to Mr. Hanks' rejection by the legislature. In late January or early February of 1993, Mr. Didrickson was notified by the Office of the Governor that Mr. Didrickson's appointment would not be submitted to the legislature for confirmation and that Mr. Didrickson was to be removed from his membership on the Board of Game sometime in late March or early April of 1993. Governor Hickel notified the legislature that he was submitting the name of Ernest E. Polley for the position on the Board of Game that will apparently become vacant when Mr. Didrickson is removed from office by the governor on April 4, 1993. 18th Alaska Legislature, Senate Journal at 304; House Journal at 279. Mr. Didrickson continues to serve as a member of the Board of Game. In news reports, Tuckerman Babcock, Director of Boards and Commissions for Governor Hickel, has stated that Mr. Didrickson was a mere "nominee" for a position on the Board of Game and that the Governor Hickel could withdraw Mr. Didrickson's nomination at anytime.

DISCUSSION

I

In answer to your first question, it is my opinion that Governor Hickel's appointment of Jack Didrickson to the Board of Game is valid and binding and Mr. Didrickson cannot be removed from office by the Governor absent a finding by the Governor that there is cause for Mr. Didrickson's removal from office as provided in AS 16.05.280.

Article III, § 26 of the Alaska Constitution provides:

Section 26. Boards and Commissions. When a board or commission is at the head of a principal department or a regulatory or quasi-judicial agency, its members shall be appointed by the governor, subject to confirmation by a majority of the members of the legislature in joint session, and may be removed as provided by law. They shall be citizens of the United States. The board or commission may appoint a principal executive officer when authorized by law, but the appoint-

ment shall be subject to the approval of the governor. [Emphasis supplied].

This provision clearly delineates the respective powers of the governor and the legislature regarding the appointment of members of boards and commissions. The governor has the exclusive power to appoint and the legislature has the exclusive power to confirm and to provide how a member of a board or commission may be removed from office.^{1/}

AS 16.05.221(b) provides that the Board of Game is "composed of seven members appointed by the governor, subject to confirmation by a majority of the members of the legislature in joint session."^{2/} AS 16.05.280 provides:

The governor may only remove a board member for inefficiency, neglect of duty, or misconduct in office, or because the member while serving on the board is convicted of a misdemeanor for violating a statute or regulation related to fish or game or of a felony, and shall do so by delivering to the member a written copy of the charges and giving the member an opportunity to be heard in person or through counsel at a public hearing before the governor or a designee upon at least 10 days' notice by registered mail. The member may confront and cross-examine adverse witnesses. Upon removal, the governor or a designee shall file in the proper state office the findings and a complete statement of all charges made against the member.^{3/}

The governor may appoint members of boards and commission, such as the Board of Game, to fill vacancies that occur while the legislature is not in session pursuant to art. III, § 27 of the Alaska Constitution.

Further, AS 39.05.080(4) provides that

Pending confirmation or rejection of appointment by the legislature, persons appointed shall exercise the functions, and have the powers

^{1/} Article III, § 26 of the Alaska Constitution only applies to boards and commissions that are "at the head of a principal department or a regulatory or quasi-judicial agency." The Board of Game is, I believe, clearly a regulatory board subject to art. III, § 26.

^{2/} AS 16.05.221 was amended by the legislature in section 1, chapter 121, SLA 1992. The quoted language was not affected.

^{3/} This section, as amended by section 3, chapter 121, SLA 1992, took effect September 20, 1992. The entire section is made applicable to all members of the Board as of September 20, 1992, by section 6, chapter 121, SLA 1992.

and be charged with the duties prescribed by law for the appointive positions or membership.

Clearly, Mr. Didrickson was appointed to the Board of Game in 1992 by Governor Hickel and he entered upon and was vested with all the duties of his office at that time. But is this interim appointment binding on Governor Hickel or may Governor Hickel withdraw Mr. Didrickson's appointment because he has not been confirmed by the legislature or otherwise remove Mr. Didrickson from office? It is my opinion that Mr. Didrickson's appointment is binding on Governor Hickel and that Mr. Didrickson may not be removed from office absent the legislature's failure to confirm Mr. Didrickson or Governor Hickel's compliance with the procedure provided in AS 16.05.280 by removing Mr. Didrickson for cause.

Support for this conclusion is found in the plain language of the Constitution and in the court decisions. The Constitution recites in art. III, sec. 26 that the members of those boards or commissions shall be "appointed" by the governor. To determine the meaning of "appointed" we can look to other provisions of the Constitution for assistance. Article II, sec. 5 of the Constitution refers to the terms "nominated," "elected," or "appointed" as exclusive alternatives which are "clearly intended to catalogue the routes by which one may attain an 'office or position of profit.'" Beigich v. Jefferson, 441 P.2d 27, 32 (Alaska 1968). In Alaska, "appointed" clearly does not mean "nominated."

That "nominated" and "appointed" are not synonymous terms in this state is further supported by the proceedings of the framers of our constitution. Art. III, § 26 of our constitution, as originally proposed in Committee Proposal No. 10a, by the Executive Branch Committee of the Alaska Constitutional Convention stated:

Whenever a board or commission is at the head of a principal department or of a regulatory or quasi-judicial body, the members thereof shall be **nominated and appointed** by the governor, with the advice and consent of the senate. . . . [Emphasis supplied].

This "nomination" language and reasoning was specifically rejected by the framers of our constitution as it was finally enacted.

The distinction between "nominated" and "appointed" is significant. In the federal system, the president "nominates" persons to the senate for confirmation. A federal "nominee" does not take office pending confirmation. In that situation:

There is no 'appointment' within the meaning of vesting final title to the office until acted upon affirmatively by the legislative branch of government. Justice Marshall states that until the legislature acts, the president is free to choose whom he will.

Munson v. Territory of Alaska, 16 Alaska 580 (1956). But, an "appointee" takes office and is vested with all the duties, powers, and responsibilities of the office subject only to the legislature's authority to fail to confirm the appointment. When a person is "appointed" and takes office and exercises the powers of the office, the governor has performed the "last act" necessary to vest the person with the powers of the office. The governor may not later withdraw or revoke the appointment except that he may remove the appointee as provided by law.

In Division of Elections v. Johnstone, 669 P.2d 537, 539-540 (Alaska 1983) the supreme court held that the term appointment as used in the Constitution means "to designate for office." The court also found that the appointment of a superior court judge was effective on the completion of the "last act" of the appointing authority, in that case, the letter of appointment issued to the judge by the governor.

The Alaska Supreme Court, in Johnstone, cited McChesney v. Sampson, 232 Ky. 395, 23 S.W.2d 584 (1930) in support of this proposition. McChesney is strikingly similar to the present case. In McChesney, the Kentucky Supreme Court was confronted with a situation where the governor, having the authority to appoint members of a board subject to confirmation by the Senate, appointed in the interim (between sessions of the legislature), McChesney who entered upon and performed the functions of the office. Several months later, before the legislature had again convened, the governor removed McChesney without cause and appointed another person. McChesney sued to retain his office. The court held that the governor's purported removal of McChesney was illegal. The court stated that the governor by naming and appointing McChesney had exhausted his power to appoint and performed the "last act" necessary to vest McChesney with his office, subject only to the state senate's authority to confirm or fail to confirm and to the governor's authority to remove McChesney for cause as provided by law. The court further contrasted the situation where an officer is "appointed" subject to confirmation by the legislature (as exists in Alaska by art. III, sec. 26 of the Constitution) with the situation where an officer is "nominated" subject to confirmation (as exists for federal appointments) and said:

Furthermore, in cases where the nomination must be confirmed before the officer can take the office or exercise any of its functions, the power of removal is not involved and nominations may be changed at the will of the executive until title to the office is vested. But under our system the appointee of the Governor takes the office, enters upon the performance of its duties, and is charged with responsibility. He holds then subject alone to the action of the Senate. His status is not that of a nominee awaiting confirmation, but that of an officer invested with the powers, privileges, and responsibilities of the position until the Senate acts. A recall of his designation would operate as a removal from office. It is argued that appointment to the office consists of two

separate acts, one by the Governor and one by the Senate, and until both have acted there is no appointment such as to bring the incumbent within the protection of the law. Even so, the two powers do not act concurrently, but consecutively, and action once taken and completed by the executive is not subject to reconsideration or recall . . . What, then, constitutes an appointment insofar as the chief executive has to do with it? Appointment to an office by one possessing the appointing power is the designation of another person to discharge the duties of the office. [Citation.] It is completed when the appointing authority has performed the acts incumbent upon him to accomplish the purpose. [Citations.] The fact that the title to the office, and the tenure of the officer, are yet subject to the action of the Senate, does not render incomplete the act of the chief executive in making the appointment. The appointment alone confers upon the appointee for the time being the right to take and hold the office, and constitutes the last act respecting the matter to be performed by the executive power. [Emphasis supplied].

McChesney, *supra*, at 587.

The court concluded by stating: "Such power as flows from the act of the Governor in making the appointment is invested by the statute in the appointee, and may not thereafter be recalled or bestowed upon another unless the consent of the Senate is withheld." See also Barrett v. Duff, 114 Kan. 244, 217 P. 918 (1923).

The rule discussed in McChesney v. Sampson has been variously stated by courts and commentators to be the "majority rule," the "general rule," and to be "universally held." See e.g., Barrett v. Duff, *supra*; State v. Essling, 128 N.W. 2d 307, 311 (Minn. 1964) ("well settled"); State v. Brewster, *supra*; 89 ALR 135 ("general rule").

McChesney and the rule discussed in it are based upon Marbury v. Madison, 1 Cranch 137, 5 U.S. 137, 159-60, 2 L.Ed 60, 68-69 (1803) in which Justice Marshall stated:

[W]hen the officer is not removable at the will of the executive, the appointment is not revocable, and cannot be annulled. It has conferred legal rights which cannot be resumed. The discretion of the executive is to be exercised until the appointment has been made. But having once made the appointment, his power over the office is terminated in all cases, where by law the officer is not removable by him.

While the principle of a strong executive is embraced by our Constitution and recognized by our courts, Bradner v. Hammond, 553 P.2d 1, 3, n.3 (Alaska 1976), that principle does not mandate a different conclusion than that reached by the United

States Supreme Court, the McChesney court and their progeny. When Governor Hickel appointed Mr. Didrickson, that is, named him to the office in the letter of appointment, there was a present vacancy on the Board of Game due to the legislature's failure to confirm Mr. Hanks. Under the rationale of the Alaska Supreme Court in Johnstone, supra, Mr. Didrickson was appointed at that time. If there is a present vacancy in office and when the governor performs that "last act," in this case the letter of appointment, then the appointment is effective and binding upon the administration, subject only to the legislature's power to confirm or not to confirm and the statutory authority of the governor to remove the appointee "as provided by law."

Support for this conclusion is found in the settlement of a lawsuit brought by a former member of the Alaska Commercial Fisheries Entry Commission, Michael Whitehead against the state. Mr. Whitehead was appointed to a position on the commission on October 16, 1982, by then Governor Hammond. Governor Sheffield took office in December, 1982, and on February 28, 1983, Governor Sheffield appointed another person to fill the position occupied by Mr. Whitehead. AS 16.43.030(a) provided that the members of the commission could only be removed for cause. Governor Sheffield contended that he had the authority to withdraw Mr. Whitehead's appointment as Mr. Whitehead had not as yet been confirmed by the legislature.^{4/} Mr. Whitehead then sued to retain his position on the commission. The state settled the lawsuit by paying Mr. Whitehead his salary and benefits as a member of the commission up to June 16, 1983, and an additional \$75,000.

The similarities between the Whitehead case and the present case are numerous. The settlement by the state seems to support a conclusion that a subsequent administration may not withdraw or revoke the valid, effective appointments of a previous administration, or replace an appointee except "as provided by law," where the appointee has taken office and is exercising the powers, duties, and responsibilities of the office. Similarly, if a subsequent administration cannot revoke the interim appointments of a previous administration, they surely cannot revoke their own.

Further support for this position is found in Governor Hickel's purported removal of Peter Sokolov as a member of the Alaska Public Utilities Commission in 1991. Mr. Sokolov had been appointment by Governor Cowper in November, 1990, to begin a new term after the expiration of Mr. Sokolov's previous term. In January 1991, Governor Hickel notified Mr. Sokolov that his appointment was being "withdrawn." The legislature that year took up Mr. Sokolov's appointment, even though the governor failed to send Mr. Sokolov's name to the legislature for confirmation. The legislature then failed to confirm Mr. Sokolov's appointment.

^{4/} It was apparently the state's position that Mr. Whitehead was a "nominee" and that the "last act" necessary to make his appointment effective was confirmation by the legislature.

Be advised that the Alaska Attorney General in an opinion from James L. Baldwin to Kevin Bruce, dated February 3, 1983 (copy attached) advised the Sheffield administration that the governor had the authority to withdraw an appointment made by a previous governor. The opinion does not cite any authority for this position other than another opinion from Rodger Pegues to Vicki Clayman issued on December 10, 1979. (Copy attached). That opinion also does not cite any authority other than Marbury v. Madison, *supra*, discussed earlier, but it is significant that in that opinion the Department of Law finds that midnight appointments by an outgoing governor that can be accomplished in their entirety "make some sense." Presumably if they make some sense they are also binding and effective on the new administration. And if they are binding and effective on a new administration they are most certainly binding upon the same administration, as in this case where the midnight appointment is analogous to an interim appointment.

II

You have asked what the legislature can do reference the Didrickson matter. I see the legislature as having two options: (A) hold confirmation proceedings for Mr. Didrickson and treat Governor Hickel's purported removal of Mr. Didrickson as ineffective; and (B) do nothing. I will discuss these options each in turn.

A

If the legislature decides that Governor Hickel's purported removal of Mr. Didrickson is ineffective then I believe the legislature can consider Mr. Didrickson for confirmation in the absence of a communication from the governor requesting the confirmation.

Art. III, sec. 26 provides:

When a board or commission is at the head of a principal department or a regulatory or quasi-judicial agency, its members shall be appointed by the governor, subject to confirmation by a majority of the members of the legislature in joint session, and may be removed as provided by law. They shall be citizens of the United States. The board or commission may appoint a principal executive officer when authorized by law, but the appointment shall be subject to the approval of the governor.^{5/}

^{5/} Art. III, § 25 provides that the governor may appoint the "head of each principal department" of the state.

This provision provides that the governor has the authority to appoint the members of each board or commission that "is at the head of a principal department or a regulatory or quasi-judicial agency." These appointees are subject to the legislature's constitutional authority to confirm or reject them.^{6/}

In Bradner v. Hammond, 553 P.2d 1, 7 (1976), the Alaska Supreme Court described the authority of the legislature to confirm the appointees described in sections 25 and 26 as:

not a distinct legislative power, but rather a part of the executive power of appointment which has in turn been delegated in some specific instances by constitution to the legislative branch of government.

Therefore, the power of confirmation of the governor's appointees to the "head of each principal department" and to membership on each board or commission that "is at the head of a principal department or a regulatory or quasi-judicial agency," though normally an executive branch function, has been exclusively delegated to the legislature by the Alaska Constitution.

To implement this confirmation power granted by the constitution the legislature has enacted AS 39.05.080. This section provides that the governor:

shall, within 30 days of the convening of the legislature in regular session, present to the legislature the names of the following persons: (A) persons appointed to a position or membership who have not previously been confirmed by the legislature or either house of it; (B) persons appointed subject to confirmation to fill an existing position or membership vacancy; (C) persons to be appointed subject to confirmation to fill a position or membership the term of which shall expire before July 2, following the session of the legislature. If an appointment is made after the deadline but while the legislature is in session, the appointing authority shall, within five calendar days after the appointment is made, present to the legislature for confirmation the name of the person appointed. The deadline may be extended by the legislature by the approval of a concurrent resolution. . . .

But what if the governor fails or refuses to transmit the names of his appointments, or a particular appointment, to the legislature? Is the legislature without authority

^{6/} Other appointments subject to legislative confirmation include certain military officers, art. III, §19; the non-attorney members of the judicial council, art. IV, §8; members of the Commission on Judicial Qualifications, art. IV, §10, and members of the University of Alaska Board of Regents, art. VII, §3.

to confirm or reject the appointment if the governor does not commence the confirmation process by transmitting the name? The Alaska Supreme Court has never considered this issue but the courts of several other states have. The leading case on the subject of the legislature's authority to confirm or reject a gubernatorial appointment in the absence of a communication by the governor appears to be People v. Shawver, 30 Wyo. 366, 222 P.2d 11 (1924). Shawver was cited by the Alaska Supreme Court in Bradner for the proposition that confirmation is actually a portion of the executive's appointment power that has been delegated to the legislature by the constitution. Bradner, *supra*, at 7, n. 19. In Shawver, the Wyoming Supreme Court after reaching this conclusion addressed the next part of the issue presented by that case: Whether the Wyoming Senate (granted the power to confirm the appointees of the governor by the Wyoming Constitution) could act to confirm or reject an appointee when the governor did not transmit the appointee's name to the Senate and did not ask that the appointee be confirmed? The case involved the appointment of an individual to a state office by a governor who was then succeeded by another governor. The new governor failed to submit the appointment to the Senate for confirmation. The court said:

But why may not the Senate act upon an appointment of which it has knowledge, if the Governor should refuse or neglect to ask for such action especially where the appointee is known to have entered upon the duties of the office? A provision for an appointment by the Governor with the consent of or to be confirmed by the Senate directs not only what shall be done, but also in effect what shall not be done. The affirmative act of the two governmental agencies is required to confer title to an office under such a provision. A completed appointment cannot be made in any other way than as so provided. [Citations omitted] While the Governor's act in selecting the person to be considered for an office may be the principal and perhaps the more important one of the two, it is not alone sufficient. A construction of such provision denying the right of the Senate to act in any case unless directly requested to do so by the Governor or by a communication from his office would obviously give him the power to ignore the coordinate right of the Senate, and might mean the abolition of that right, and certainly would make it entirely dependent upon the Governor's pleasure.

Shawver, *supra*, at 23 - 24. The court then held that the Wyoming Senate properly confirmed an appointee, though the governor had not requested the confirmation.

The Kansas Supreme Court reached a similar conclusion in Barrett v. Duff, 114 Kan. 220, 217 P. 918 (1923). That case involved the appointments to state offices by a governor during a recess of the legislature. The appointees entered upon the duties of their offices. A new governor took office and attempted to appoint others to the

offices and removed the previous governor's appointees. By constitution, the Kansas Senate had the authority to confirm the appointees of the governor and the governor could not remove the state officers involved here except as provided by law, for cause. The court said:

The plaintiffs deny any force or validity to the action of the Senate in considering and confirming the appointments of defendants because of the failure of the executive to directly transmit the names of defendants. No good reason is advanced why the Senate would not consider such recess appointments without such direct word from the executive. Judicial notice or knowledge is the cognizance of certain facts which judges and jurors may properly take and act upon without proof because they already know them. Judicial notice means that the court will bring to its aid and consider, without proof of the facts, its own knowledge of those matters of public concern which are known to all well-informed persons. Legislative notice is far broader than judicial notice. 23 C.J. 58. The legislative department is equipped to deal with any condition, general or special, however manifested or brought to the knowledge of the law-making power. The mass of individual legislation found among the statutes of all the states demonstrates this legislative attribute. [Citation omitted].

The offices in controversy are all located in the capitol building, in which the Senate holds its deliberations. They are important departments of the state government. The Senate may, and often does, have official business with them. It receives reports from them. It considers the service which the departments are, by law, required to perform. It considers the extent of such service and its requirements. It considers and passes appropriations in order that they may lawfully and properly function. Under all the circumstances, the Senate cannot shut its eyes to the facts as to whether their respective offices are filled; whether they are functioning under the law, or whether there is a vacancy therein. . . . The Senate, which has official knowledge of all of the acts of another state department, may not close its eyes to an existing fact merely because the executive has failed to transmit a communication giving it the advice. The fact that the Senate is called upon to consent to or confirm appointments presupposes an investigation upon which to base its judgment as to whether or not it should confirm or reject the named appointee. It is a matter of common knowledge that the Senate of Kansas, likewise the Senate of the United States, may, and frequently does, investigate the character, fitness, and ability of the appointee submitted for its consideration. The Senate must be permitted to investigate on its own initiative, and without communication from the Governor, the status of offices; otherwise the Governor

could fill and refill them at his pleasure by simply failing to advise the Senate. . . . We conclude that the Senate did not go beyond its powers in making the investigation concerning the offices held by the defendants, and, having satisfied itself, that it could properly exercise its judgment thereon. While it is the usual and customary courtesy of the executive to transmit such facts to the Senate, we believe it the better view to hold that the Senate may, on its own initiative, if it so desires, ascertain the facts upon which to base its deliberative and final judgment in confirming or rejecting appointees of the Governor.

Barrett, supra, 925-926. The Kentucky Supreme Court in McChesney, supra, discussed in Discussion I also reaches the same conclusion.

In fact, virtually all other courts that have considered this issue have reached the same conclusion. See, e.g., Bell v. Sampson, 232 Ky. 376, 23 S.W.2d 575 (1930); State v. Halladay, 219 N.W. 125 (S.D. 1928); State v. Brewster, 84 S.E.2d 231, 248 (W.Va. 1954); Commonwealth v. Stewart, 285 Pa. 511, 134 A. 392 (1926). Our research has disclosed only two court decisions that have reached an opposite conclusion, Attorney General v. Warner, 299 Mich. 172, 300 N.W. 63 (1941 and Burke v. Schmidt, 191 N.W. 2d 281 (S.D. 1971)). In Warner, the court though, held that under the Michigan Constitution and that State's court decisions that the confirmation power of the legislature is a legislative power, not a delegation of the executive's appointment power. As such, its reasoning is contrary to the Alaska Supreme Court's decision in Bradner and is distinguishable on that ground. In Burke, it appears the court held that the board members involved were not entitled to succeed to their offices and perform the duties thereof until they were confirmed. Burke, Supra, at 285. This is contrary to the procedure that is provided here in Alaska by constitutional provision and statute and is clearly distinguishable on that ground. See Art. I, § 27 of the Alaska Constitution and AS 39.05.080(4).

Therefore, I conclude that the legislature may properly consider the confirmation or rejection of Mr. Didrickson as an art. III, § 26 appointee of the governor. While it is hoped that the governor will comply with the reasonable procedure for communication of appointments the legislature has provided in AS 39.05.080, if the governor fails or refuses to request the confirmation of an appointee (as apparently is the case with Mr. Didrickson), the legislature may take notice of previous appointments and of the persons occupying the constitutional offices listed in section 26. To hold otherwise would allow the governor to prevent the legislature from exercising its constitutional confirmation power at his whim, caprice, or neglect and would render the confirmation function a nullity. Shawver, supra. Such an absurd result was not intended by the framers of our constitution and would not, I believe, be embraced by our courts.

B

The second alternative I have identified is for the legislature to do nothing. One result of this alternative would be that the legislature has refused to consent to Mr. Didrickson's removal. The ultimate result would be that the legislature would have failed to confirm Mr. Didrickson's appointment to the Board of Game. Such an act would be tantamount to a rejection under AS 39.05.080(3) on the day the session adjourns.^{7/} Munson v. Territory of Alaska, discussed earlier in answer to question 1, reaches a similar conclusion.

Although, AS 39.05.080(3) does anticipate an orderly procedure for confirmation or rejection of all appointments by providing that all appointments will be presented to the legislature, (and if not confirmed they are rejected by operation of law), it does not anticipate the situation where an appointment has been made and a request for confirmation is not communicated to the legislature. But, just as the legislature may take notice of an appointment for the purpose of confirming an appointee, as discussed in answer to your first question earlier, so too, is the legislature charged with notice when it fails to confirm a gubernatorial appointee even without communication from the governor. Shawver, supra; Bell v. Sampson, supra. Therefore, if the legislature does not act to confirm Mr. Didrickson with or without a communication from the governor, Mr. Didrickson's appointment will have been rejected by the legislature on the day the legislature adjourns this session. At that time, there will be a vacancy on the Board of Game and Governor Hickel will be free to appoint someone else to the seat.^{8/} I do not believe that Governor Hickel is free to appoint anyone else to that seat, including Mr. Polley as the governor has attempted to do, until the last day of the legislative session. If the legislature affirmatively votes and rejects Mr. Didrickson, then governor Hickel would be free to appoint someone to Mr. Didrickson's seat as of that day.

If the legislature were to confirm Governor Hickel's appointment of Mr. Polley to Mr. Didrickson's seat without refusing to confirm Mr. Didrickson, I believe a court could conclude that Mr. Didrickson is entitled to the office until the last day of the session or, I suppose, Mr. Polley's confirmation could be viewed as an implicit rejection of Mr. Didrickson's appointment, and Mr. Polley would be eligible to assume membership on the Board of Game at that time.

GPL:pl
93-131.plm
Enclosures

^{7/} AS 39.05.080(3) provides in part: "Failure of the legislature to act to confirm or decline to confirm an appointment during the session in which the appointment was presented is tantamount to a declination of confirmation on the day the session adjourns."

^{8/} This new appointment will, of course, be subject to confirmation at the next regular session of the legislature.

Vicki A. Clayman
Office of the Governor

DATE: December 10, 1979

FILE NO: J-66-334-80

TELEPHONE NO:

AVRUM M. GROSS
ATTORNEY GENERAL

SUBJECT: Reappointments to
boards or commissions

By:

Rodger W. Pegues
Assistant Attorney General

You have asked whether, prior to the expiration of his own term, the Governor can make reappointments of members of boards or commissions whose terms expire thereafter. You also ask whether, if that is the case, the new Governor can revoke the reappointment and appoint someone else.

We believe that the answer to both questions is yes.

When a term for an office is set by law, the term continues until its conclusion, regardless of the actual tenure of any person who may hold the office from time to time. Thus, when an incumbent leaves office prior to the expiration of his term, his successor is appointed for the remainder of that term, and the successor must be reappointed if he is to hold the position beyond the end of that term. Accordingly, no matter what an incumbent may do, his term continues until its prescribed end.

Nothing, however, precludes the Governor, as appointing authority, from anticipating the end of terms of office and making present appointments to fill the offices as those terms expire in the near future. Indeed, he is required to do this during each session of the legislature with respect to offices which have terms which will expire before July 2, and to submit the names of his appointees to the legislature for confirmation. AS 39.05.030(1). Hence, the Governor, even though he may be leaving office in early December, may make appointments for terms which begin the following January.

If the appointments are subject to confirmation, they are not complete until the legislature confirms them. Prior to confirmation, the new Governor may withdraw the nomination. And indeed, he need not even submit it and can merely revoke the nomination outright. If the appointments are not subject to nomination, they take effect when the appointee qualifies and takes office. That cannot happen until the new term for the office begins. Until that time,

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ORIGINAL
COPIES

Ms. Vicki A. Clayman
December 10, 1979
Page #2

the appointment can, as a general rule, be revoked.

It is probably because each new Governor has the power to countermand any appointive actions taken by each outgoing Governor which remain pending that the latter have not established a history of making midnight appointments to terms of office which begin after they leave office. Where, as in the famous case of Marbury v. Madison, 5 U.S. (1 Branch) 137 (1803), the appointments can be accomplished in their entirety before the expiration of the appointing authority's own term of office, midnight appointments make some sense. But where they remain pending, they will have been futile unless the incoming chief executive approves of them as well.

RWP/pjg

MEMORANDUM

State of Alaska

TO: Kevin Bruce, Special Assistant
Office of the Governor

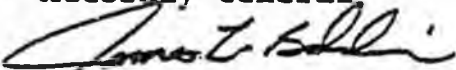
DATE: February 3, 1983

FILE NO: 366-391-83

TELEPHONE NO: 465-3600

FROM: Norman C. Gorsuch
Attorney General

SUBJECT: Withdrawal of
appointment


By: James L. Baldwin
Assistant Attorney General
Governmental Affairs-Juneau

You have asked if Governor Sheffield may refuse to forward to the legislature the name of a person appointed by the former governor to an office in the executive branch of state government.

We have attached a copy of our earlier memorandum of advice of December 10, 1979. In that memorandum we advised the governor that he may remove a person before confirmation by withdrawing the nomination, or if the name has not been forwarded to the legislature, by informing the person that he or she is no longer under consideration. We reaffirm that advice. However, you should consider the fact that no authority is cited for our earlier advice and that no Alaska case exists to guide us concerning the resolution of this issue.

If our reasoning expressed in the earlier memorandum is rejected by a court, and the appointment is not considered to be a nomination, then an appointee whose name is summarily withdrawn may have a cause of action for denial of a property right without due process of law. See Breeden v. City of Nome, 628 P.2d 924 (Alaska 1981).

JLB/pjg

Enc.

RECEIVED
FEB 1 1993

Al
Entsminger

S. COMM.

GOVERNOR'S OFFICE

FEB 1 6 1993

RESUME OF SUSAN ENTSMINGER
MILE 91 TOK CUTOFF, VIA TOK, AK 98790

A) PROFESSIONAL LICENSES

- 1982 - present Alaska Fur Dealers License
- 1976 - present Alaska Business License (Wilderness Taxidermy '76-'85),
(Wilderness Creations '85 -present) partnership with Frank Entsminger
- 1983, '84, '88- present Herring Beach Seine Permit Norton Sound
- 1983-'84 Roe & Kelp Permit, Bristol Bay
- 1981-'84 Commercial Fishing Crew members license
- 1973-present AK Hunting, Fishing & Trapping license

B) EDUCATION

1) Formal

- 1988, '90 Video Editing classes Prince William Sound Community College
- 1985 University of AK Ext. Ser. computer class
- 1977&'80 Universtiy of AK-Fairbanks journalism class
- 1965-'69 Newport High School, Newport, PA
- 1957-'65 Newport Union School, Newport, PA

2) Informal

1977 -present. I am a trapper with my husband. We successfully have trapped wolves, marten, beaver, muskrat, mink, wolverine and fox. I've worked with a known experienced wolf trapper to learn more about the methods of taking wolves. We live near Mentasta Village and have learned many interior Athabascan ways. I trapped muskrats and hunted with my native friends. I've helped with native potlaches. I've made skin garments for the people of Mentasta, a wedding dress for one and many skin dresses for native dancers and contestants in competition. I've lived without electricity since 1976 gaining an appreciation for a unique Alaskan lifestyle. Utilizing game for food and living away from people has shown me what a huge dependence we have upon natural resources. For the benefit of all, I care deeply that we use the best stewardship for our resources, now and in the future.

1973 to present. I've hunted and traveled throughout Alaska, including the North Slope, Brooks Range, Alaska Peninsula, Southeast, Western Alaska and the Interior. I've been successful in taking Dall sheep, moose, caribou, goats, Sitka black-tailed deer, grizzly, black bear musk-ox and small game. My family and I hunt for food and the outdoor experience. My respect for wildlife is genuine. We share game meat with our native friends when we have extra. From my farm expericence in PA, I've learned to utilize every edible game part including head meat, innerds, and bones for soup broth. Our family eats grizzly and black bears. I render the fat to use in frying, breads, cakes, and cookies. We have a large garden which we put up about all of our own vegetables. All winter, we are out running our traplines. My husband and I spend approximately three months a year afield. Frank, my husband, has studied wildlife in Alaska since 1962 for his taxidermy work and more recently for his bronze sculptures. I feel fortunate to have learned the wilds from a verteran. We taught our two sons this lifestlye.

1961-'73 I learned to hunt in Pennsylvania for small game, water fowl, and deer. My father started me hunting at age ten. He taught me respect of wildlife and utilization to it's fullest.

1961-'70 Junior member of NRA Rifle Club, Newport, Pa. I recieved my hunter safety training, competed in small bore still target shooting, and competed with larger caliber rifles at running deer shoots. I earned awards for best shot in the club twice, was rated Sharpshooter (7 awards), and took all female competitive running deer shoots.

1951-73 Born and raised on a dairy farm where my parents taught me how to hunt and how to utilize every edible part of animals. We used pig casings to stuff sausage, pig stomach to roast and all bones including deer were boiled off for soup stock.

C) COMMUNITY SREVICE POSITIONS

1987- 3/'91. Board member on the Alaska Outdoor Council

1985-present. Board member Tok Shooters Association

1979- present Founder & Member of Slana Alaskans Unite Currently board member.

1982-present Representative for the Tok Shooter Association and Slana Alaskans Unite to the Alaska Outdoor Council. Though our local clubs are not in total agreement with AOC, particularly concerning resolution of the subsistence issue, I believe representation is very important. With the increase anti-hunter pressure we must have some organization fighting for hunting, fishing, and trapping for all.

1980-1989 Election Chairman for Mentasta Voting Precinct.

1979-present Beginning founder and member of Slana Alaskans Unite

In, 1985, I was elected to represent the organization on the wolf control issue.

1989-present - treasurer of SAU

1979-1989 Member, Tok Cutoff-Nabesna Road Fish and Game Advisory Committee.

1978-'83 Chairperson, Tok Alaskans Unite Steering Committee. Main thrust of Tok Alaskans Unite was to insure that Eastern Interior residents were not adversely effected by d-2 legislation and subsequent federal regulations as they applied to hunting, fishing, trapping, and access in the Wrangell-St. Elias Monument, later Park and Preserve. Entailed extensive travel, including several trips to Washington DC working with Senators and Representatives.

1970-'73 Sunday School Advisor and teacher

1968-'69 President Newport High School Senior Class

1960's 4-H leader, Church Youth Group Leader, President of local NRA Club including other offices

D) EMPLOYMENT HISTORY

1976-present Self-employed. Partner in Wilderness Creations &Taxidermy, Inc. Flesh hides and prepare skins for mounting. Make forms, assist in casting forms sculptured by Frank. Keep business records of income and expenditures, post books, file, order supplies, and handle correspondence. Expanded business in 1978 to include fur sewing. Trap own furs and purchase others. Prepare furs, create patterns, and sew hats, mittens, parkas, mukluks, and ruffs plus novelty items. Initially sewed all by hand, recently with a treadle fur sewing machine. Travel extensively throughout Alaska to sell inventory. This includes spending a great deal of time at bazaars and manning a booth at the Anchorage Fur Rondy.
1990 - present crewed Prince Wm Sound herring pounding Kelp fishery.
1991 crewed Lower Cook Inlet Salmon seining.

1990 crewed Price Wm sound setnet salmon fishery
1983, '84, '86,-present Beachside herring in Norton Sound, seasonal.
1981-'84 Seasonal- Crew member on commercial fishing boats Heidi II and Amy Lee in Bristol Bay and Norton sound. Worked drift gillnet for salmon and herring including picking fish, delivering catch to tenders, with duties 20 hours per day during the peak. Picked kelp with roe.
1985, '86, '89 Summer volunteer work for four days at a time on a well used sheep lick. Assisted State Sheep biologist, Wayne Heimer, Ak Dept of Fish and Game to count and classify sheep.
1980 (April to June) Secretary- Veco, Inc. Prudoe Bay. Secretary to foreman of a heavy equipment maintenance shop.
1975, '80, '81 Seasonal -Worked as camp cook for registered guides in both central and eastern Brooks Range. Fleshed capes and performed camp chores to assure comfort of clients.
1975-76 Form Maker - Northland Taxidermy, Fairbanks. Fleshed animals and made paper-mache forms.
1975-77 Waitress - Club 11, Fairbanks, Ak.
1971-73 Bank Teller- Dauphin Deposit and Trust Co., Harrisburg, PA.
1968-73 Waitress work at several diners and a nightclub .
1951-73 Born and raised on a dairy farm southcentral Pa. At age six, my father started me out carrying milk from the barn to the milkhouse. The older I became, the more work duties I assumed. I helped with the milking one week on and one week in the house doing dishes for a family of seven. (I preferred barn work) I helped clean stables, haul manure, feed cows, throw hay, straw & silage. Each summer I helped with haying, I ran tractors, haybailers, pitched hay bails from wagons to elevators, stacked hay in the hayloft. I helped with silage cutting. I drove tractors and forked silage into elevators. We bailed three crops of hay and one crop straw. We worked long hours. I gathered and washed eggs from our chickens until they were sold in 1959. I helped mom with her garden. We put up all our own vegetables. We grew large quantities of corn and potatoes. My parents taught me the realities of life. We learned to work to earn a living. We learned that vegetables come from hard work of a garden, meat from slaughtering animals, milk from a cow, and eggs from a chickens or other birds.

E) ORGANIZATIONS

Life Member of the National Rifle Association. Associate Member of North American Hunting Club, Foundation of North American Wild Sheep, Tok Shooters Association, and Slana Alaskans Unite. Trustee Alaska Fish and Wildlife Conservation Fund.

F) HOBBIES

Hiking, photography, video editing, carpentry, gardening, trap & silhouette shooting. Hunting, fishing and trapping are my way of life and my love, not just a hobby.



Alaska State Legislature

SENATE

Official Business

March 9, 1993

State Capitol
Juneau, AK 99801-1182

The Honorable Rick Halford
President of the Senate
State Capitol
Juneau, AK 99801-1182


Dear Mr. President:

In accordance with AS 39.05.080, the Senate Resources Committee reviewed the following with regard to confirmation of the Governor's appointments:

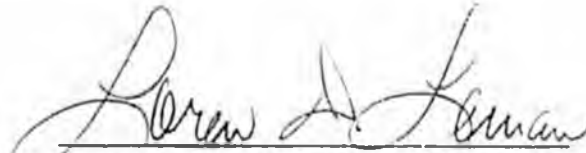
Board of Game:
Roger Huntington

There were no stated objections to the confirmation of the named individual by committee members. This does not reflect an intent by any of the members to vote for or against the individual during any further sessions.

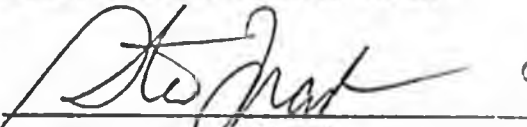
Respectfully,



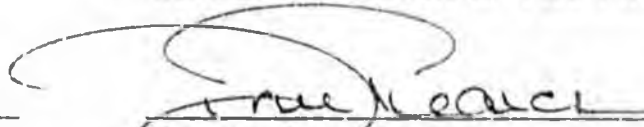
Senator Mike Miller, Chair



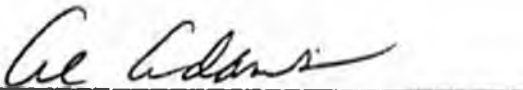
Senator Loren Leman, Vice-Ch.



Senator Steve Frank

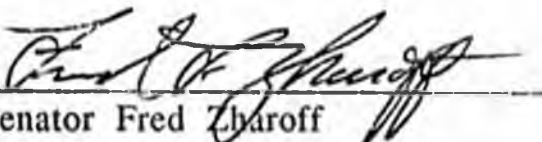


Senator Drue Pearce



Senator Al Adams

Senator Dave Donley



Senator Fred Charoff



Alaska State Legislature

SENATE

Official Business

March 9, 1993

State Capitol
Juneau, AK 99801-1182

The Honorable Rick Halford
President of the Senate
State Capitol
Juneau, AK 99801-1182

Dear Mr. President:

In accordance with AS 39.05.080, the Senate Resources Committee reviewed the following with regard to confirmation of the Governor's appointments:

Board of Game:
Jack Didrickson

There were no stated objections to the confirmation of the named individual by committee members. This does not reflect an intent by any of the members to vote for or against the individual during any further sessions.

Respectfully,

Senator Mike Miller, Chair

Senator Loren Leman, Vice-Ch.

Senator Steve Frank

Senator Dave Pearce

*Al Adams - Gov SHOULD
WITHDRAW NAME*

Senator Al Adams

Senator Dave Dorley

Senator Fred Zharoff



Alaska State Legislature

SENATE

Official Business

March 9, 1993

State Capitol
Juneau, AK 99801-1182

The Honorable Rick Halford
President of the Senate
State Capitol
Juneau, AK 99801-1182

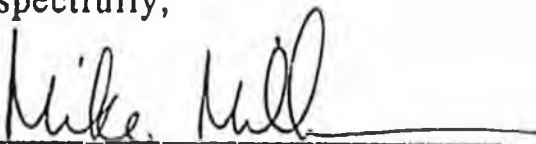
Dear Mr. President:

In accordance with AS 39.05.080, the Senate Resources Committee reviewed the following with regard to confirmation of the Governor's appointments:


Board of Game:
Anne Ruggles

There were no stated objections to the confirmation of the named individual by committee members. This does not reflect an intent by any of the members to vote for or against the individual during any further sessions.

Respectfully,



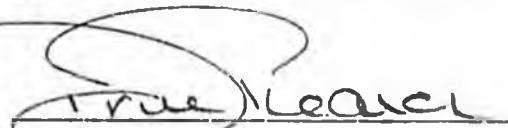
Senator Mike Miller, Chair



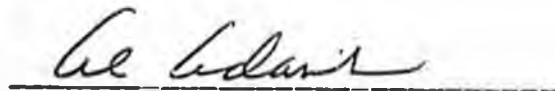
Senator Loren Leman, Vice-Ch.



Senator Steve Frank

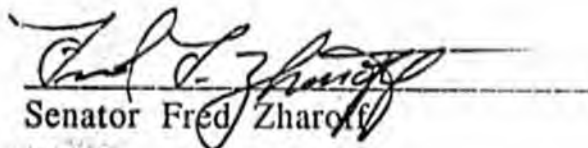


Senator Drue Pearce



Senator Al Adams

Senator Dave Donley



Senator Fred Zharoff



Alaska State Legislature

SENATE

Official Business

March 9, 1993

State Capitol
Juneau, AK 99801-1182

The Honorable Rick Halford
President of the Senate
State Capitol
Juneau, AK 99801-1182

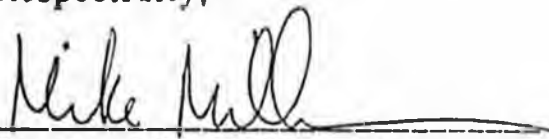
Dear Mr. President:

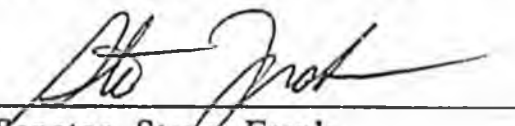
In accordance with AS 39.05.080, the Senate Resources Committee reviewed the following with regard to confirmation of the Governor's appointments:

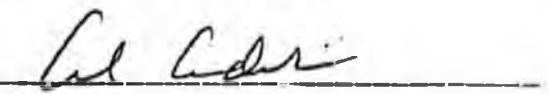
Board of Game:
Ernest Polley

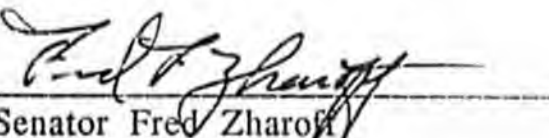
There were no stated objections to the confirmation of the named individual by committee members. This does not reflect an intent by any of the members to vote for or against the individual during any further sessions.

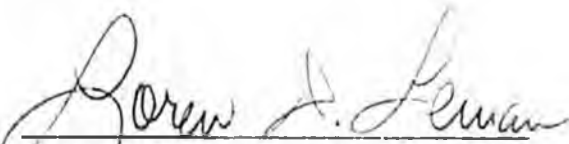
Respectfully,

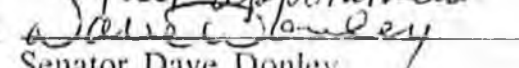

Senator Mike Miller, Chair


Senator Steve Frank


Senator Al Adams


Senator Fred Zharoff


Senator Loren Leman, Vice-Ch.
*I suggest the Governor
remove this appointment
+ true leave*

*Governor should withdraw
this appointment*

Senator Dave Donley

Perm/z

March 17, 1993

Ms. Sue Entsminger
Mile 91 Tok Cutoff
Tok, AK 99780

Dear Ms. Entsminger:

Thank you for your dedicated service to Alaska as a member of the Big Game Commercial Services Board.

Due to your recent appointment to the Board of Game, your service on this board is no longer required, effective March 9, 1993.

Your continued involvement with state issues and your commitment to public service are deeply appreciated.

With best regards.

Sincerely,

Walter J. Hickel

Walter J. Hickel
Governor

WJH:tb:kl:rt
LETTERS.M11

0109/04



Wilderness Creations & Taxidermy, Inc.

CUSTOM TAXIDERMY, WILDLIFE BRONZES, FUR FASHIONS

MILE 91
TOK CUTOFF, ALASKA 99780

TELEPHONE
(907) 883-2833

April 5, 1993
Sen. Mike Miller
Senate Resources Committee
State Capitol
Juneau, AK 99801-1182

Dear Sen. Miller,

I've been told some misunderstanding exists about my service on the Big Game Commercial Services Board. Questions about WHY I did not state this during the confirmation hearings in Juneau.

My resume has been on file in the Governor's office for many years. My resume was not updated after I was appointed to the Big Game Commercial Services Board. With the busy schedule I've been under lately (trying to make a living and be ready for all the meetings), I simply forgot to mention it at the committee hearings and didn't think to redo my resume. This was simply an oversight on my part and I apologize for any inconvenience. The 1991 legislature voted on my confirmation to the Big Game Commercial Services Board April of that year. I would hope that this public record demonstrates my integrity.

The Game Board (as I have found out) is a very high profile position which has taken an incredible amount of my time and some things fall through the cracks.

Thanks for your time on consideration of my position to the Game Board. One has to wonder about their sanity to accept this huge task and special interest scrutiny. I care deeply about Alaska and it's wise use of our natural resources.

Sincerely,

FRANK & SUE ENTSMINGER, OWNERS



OFFICIAL BUSINESS

Alaska State Legislature
Senate
Office of the Secretary

STATE CAPITOL
JUNE AU, ALASKA 99801-1182
(907) 485-3701
FAX: 465-2832

April 13, 1994

MEMORANDUM

TO: Senator Miller, Chair
Resources Committee

FROM: Nancy Quinto
Secretary of the Senate

SUBJECT: Governor's Confirmations

Pursuant to AS 39.05.080, President Halford has referred the following name for legislative confirmation to your committee for a hearing, recommendation and report:

Board of Game

Thomas Johnson - Nome

Appointed: 04/08/94; Expires: 01/31/96

NQ/hv

Resume attached

THOMAS JOHNSON'S RESUME

Thomas Johnson
 SS#574-09-1069
 P.O. Box 608
 Nome, Alaska 99762
 Phone #443-2842

Born 2-14-24 in Kinak, Alaska to John Johnson (Norwegian) & Anna P. (Esk.)
 Attended the Moravian Childrens Home in Kwethluk, Ak.
 Morrison-Knudsen Constr. Co. over a two yr period of time sent me to the
 following: Euclid Gymi Corp., Cleveland, Ohio
 Cedar Rapids Crushers & Hot Plants
 International Harvesters, in Mel Rose Park in Chicago, Ill.

Retired from work in 1986. From the International Operating Engineers
 Local 302.

1975 to 1986

Worked from Barrow, Ak to King Salmon, Ak as a Business Agent.
 Part of my time was spent on the pipe line and camps. Also traveled
 into the villages listing what occupations were available in the villages
 for construction hire.
 I carried telephone #'s of all available village people to have them
 accessible for contractors who called and needed some one rite away also to
 have an available list for the contractors who would be moving in to
 their village for construction jobs.
 If a contractor went into a village for work. I met with the contractor
 and gave them a list of people in that village available to work. If
 they found some one to work, I would dispatch & do up the nessesary paper
 work for them.
 I also contacted my wife daily if there was a request from other contractors.
 I asked her to dispatch the people who belonged to the Union 1st and whom
 the Contractor requested.
 Some times the Contractor would request me to be their for a pre job meeting
 in a village. I then would charter a plane & meet them there.
 Some years traveling with commercial airlines. I would pay as high as
 \$24,000. for traveling to do this work. Totaly paid by the Union.

1974 to 1976

Worked at Prime Camp, Prudhoe Bay as an operator running a 3500 KW
 generator. Also at Dietrich same as above for the Pipe Line Camp.

1956 to 1974

Worked as a Lead Mechanic in charge of all mechanics & up keep of all
 Bldgs, Roads, & Equip. for the White Alice System in Nome, Ak. For M-K.

Every year I took my vacation time June 20th to July 20th fishing in
 Bristol Bay anually.

1953 tp 1956

Working for Morrison-Knudsen who had the Contract to build 26 White Alice
 Sites. I was stationed in Anchorage and I was suppose to be the Northern
 Region Master Mech. in charge of 135 mechanics which covered NW Alaska,
 as far as Pedro Dome, Lisburne & Romansoff.

Thomas Johnson's Resume continued:

When the job was completed, I had to make arrangements to take all the equipment out of the Sites & ship back to Anchorage.

I had the use of approx six C-124's Airforce, chartered ASA, Wiens, & Reeve Aluetion planes. I also moved all passengers that needed to be flown to the remote Sites for employment.

1944 to 1953

Worked for Morrison-Knudsen Construcion Co as a mechanic at Anchorage, Fairbanks, & Ketchikan.

1944 to 1946

In the US Army Engineers. Never left Alaska. Stationed on the Seward Penninsula, and the island of Adak.

Thru the years while in the City of Nome. I was elected to the Nome Lite & Power Board for 7 years.

Also served on the Nome City Council for 6 years.

I served the Nome Volunteer Fire Depart. for 16 years and rose to the rank of Battalion Commander for 3 years.

I served on the Human Rights Commission 8 years.

I sit on the Bering Straights Native Corp. Board of Directors.

1952 I married Myrtle Fagerstrom Chambers from Golovin, Ak She had 4 children and we had two of our own. All 4 stepchildren I put thru the U of A. One of our sons was killed on his snow machine in 1973 a Sr in High School. Our youngest Son Jack is a commercial Fisherman & Commercial Pilot. Flying for Bering Air.

FISHING EXPERIENCE

My Father was a Bristol Bay fisherman in the sailboat days. My fishing experience started in the sailboat era. In 1944. We have our own a 32' Solid Gold gillnetter and equiped for seining herring, also equiped to fish for halibut. Have been a fisherman all my life.

Fished in the Bering Sea for subsistence for crabs, salmon, herring, pinks, tomcods.

Have taught several classes on how to mend : nets & hang nets all sizes. In Nome & Shishmaref.

After fishing season we go to cur mining claims at Granite Mt. to mine for gold. Also to harvest our winter meat of caribou, & berries.

Alaska is a wonderful place to live and I want to help keep it that way.

April 1994:

At the present I serve on the Norton Sound Advisory Board to Fish & Game.

Have just organized the Nome Fisherman Cooperative.



Alaska State Legislature

SENATE

Official Business

April 21, 1993

State Capitol
Juneau, AK 99801-1182

The Honorable Rick Halford
President of the Senate
State Capitol
Juneau, AK 99801-1182


Dear Mr. President:

In accordance with AS 39.05.080, the Senate Resources Committee reviewed the following with regard to confirmation of the Governor's appointments:

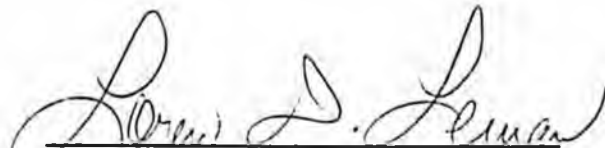
Board of Game:
Sue Entsminger

There were no stated objections to the confirmation of the named individual by committee members. This does not reflect an intent by any of the members to vote for or against the individual during any further sessions.

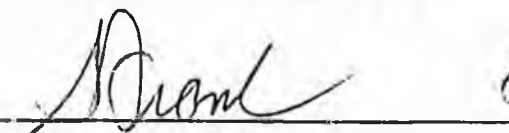
Respectfully,



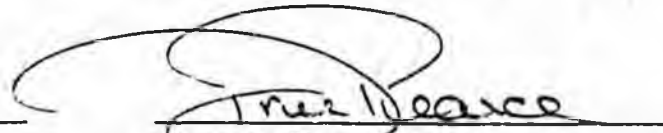
Senator Mike Miller, Chair



Senator Loren Leman, Vice-Ch.

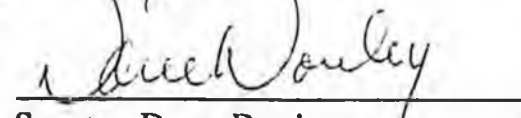


Senator Steve Frank

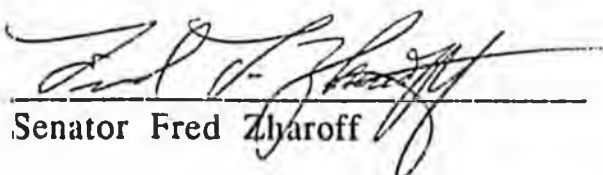


Senator Drue Pearce

Senator Al Adams



Senator Dave Donley



Senator Fred Zharoff

BOARD: GAME, BOARD OF

BOARD IDENTIFICATION NUMBER: 40

TITLE: Board of Game

DEPT: Department of Fish and Game

AUTHORITY: AS 16.05.221(b)

STATUS: ACTIVE

REQUIREMENTS: LEGISLATIVE CONFIRMATION AND FINANCIAL DISCLOSURE

PROHIBITIONS:

TERM: 3 years

DESCRIPTION: 7 members appointed by Governor: residents of the state, appointed without regard to political affiliation or geographical location of residence; Commissioner of the Dept. of Fish and Game is not a member, but serves as ex-officio secretary.

SPECIAL FACTS: Regulatory; quorum - majority. AS 16.05 states: may be removed only for inefficiency, neglect of duty, or misconduct in office; AS 39.05 states: serve at pleasure of the Governor.

FUNCTION: Conservation and development of game resources.

COMPENSATION: Members compensated at a rate equal to Step A, Range 20 of the salary schedule for Juneau for each day going to and from and for each day in actual attendance at board meetings. For other meetings or conferences authorized by a board, members compensated at a rate each to 1/2 of Step A, Range 20, of the salary schedule for Juneau for each day going to and from and for each day in actual attendance. Also standard travel/per diem.

MEETINGS: At least once a year (board selects time/place); at least one meeting per year with the Board of Fisheries in joint session; and other meetings as necessary. Board of Game historically meets twice each year, for a total of approximately 35-40 days. Joint Boards of Fisheries and Game historically meet for approximately 7-15 days each year.

*FOR FURTHER INFORMATION CONTACT: Director, Division of Boards,
Dept. of Fish and Game, P.O. Box 25526, Juneau, AK 99802-5526
PHONE: 465-4110 (Revised 12/15/92)

STATE OF ALASKA - OFFICE OF THE GOVERNOR
Boards and Commissions Office

Membership Roster

(040) GAME

Member	Appointed	Reappointed	Term Exp.
Richard A. Burley Public 1165 Coppet Street Fairbanks, AK 99709	02/19/91		01/31/94
Jack C. Didrickson Public P.O. Box 712 Palmer, AK 99645	05/27/92		01/31/94
Albert W. Franzmann Public P.O. Box 666 Soldotna, AK 99669	03/06/92		01/31/95
Roger Huntington Public P.O. Box 10 Galena, AK 99741	04/14/92		01/31/93
Kenneth P. Johns Public P.O. Box 189 Copper Center, AK 99573	03/06/92		01/31/95
Rosemarie Maher Public P.O. Box 474 Northway, AK 99764	01/31/90		01/31/93
Carl W. Posier Commissioner/Fish and Game Comm., F & G, Box 3-2000 Juneau, AK 99802	03/01/00		
R.T. Wallen Public P.O. Box 21063 Juneau, AK 99802	01/31/90		01/31/93

Resume
Ernest E. Polley

Age: 56

Birthplace Skagway, Alaska

Residence 634 W. 12th, Juneau 99801

Phone ~~585-1437~~
789-9607

Education Degrees

Juneau High School — Diploma

Arizona State University — BS

San Francisco State University — MA

Military

US Army, 1960-1963. Electronic Warfare Instructor
Honorable Discharge.

Short-Term & Seasonal Employment

labor foreman, laborer, plumbers helper, fish buyer,
fisherman, waiter, bartender, retail sales,
US Fish & Wildlife Enforcement Patrolman, Choker
setter, University Instructor, Lobbyist, consultant,
assistant guide, etc.

Long Term Employment

Juneau School District, teacher, 1967-1969

Alaska Dept. of Education, varied, 1969-1987

Service to Other

2 terms as President of SE Conference
Vice-President, Alaska Conference of Mayors
Mayor, City and Borough of Juneau
Assemblyman, City and Borough of Juneau
Member of Board of Directors, Governors
Conference on Small Business

JACK C. DIDRICKSON

P.O. BOX 712
PALMER, ALASKA 99645

(907) 745-3496-Home

(907) 745-3178-Work

EMPLOYMENT HISTORY:

1988 to 1990 - MATANUSKA VALLEY SPORTSMEN-Board Of Directors,
ALASKA RAILROAD-Consultant re: Train/Moose problems
ALASKA OUTDOOR COUNCIL, Member since it's inception.
MATANUSKA VALLEY FISH and GAME ADVISORY COMMITTEE,
Member.

1959 to 1987 - ALASKA DEPARTMENT OF FISH & GAME

RESPONSIBILITIES: Surveyed and monitored wild life refuges and game areas, enforced conservation regulations. Designed budgets and implemented game management activities and research projects with 17,230 square miles in Southcentral Alaska. Analyzed and evaluated statistics and reports, which led to annual harvests. Supervised and directed research projects about which little information is valid or available. Had frequent public contact and represented the State of Alaska in such contacts. Acted as a State representative in cooperating with State and Federal agencies. Studied moose habitat and mortality rates, as well as surveying and establishing habitats for waterfowl, goats, sheep and hares.

Established land ownership patterns in the Matanuska Valley which assist Alaska Department of Fish and Game to inform land management agencies regarding critical habitat areas for ungulates.

I started as a junior biologist then gradually ascended to game biologist, eventually becoming Assistant to the Regional Supervisor, then moved to the position of Area Game Management Biologist of Game Management Units 14 and 16 in Southcentral Alaska which includes the Susitna and Matanuska Valleys as well as portions of the Alaska Range, Talkeetna Mountains, and Chugach Mountains.

The preceding is just a diminutive description of the duties and accomplishments during my tenure with The Alaska Department of Fish and Game. During this time I have also written forty-five published reports on various wild life species, the listing is available upon request.

In addition, in 1986 I was awarded Game Conservationist Of The Year by the Alaska Outdoor Council.

JACK DIDRICKSON

RESUME

Galena, Alaska
1974

ROGER HUNTINGTON

PERSONAL DATA: Born: March 12, 1944 In Koyukuk Alaska,
Father Sidney Huntington, Mother Angela Pitka Huntington,
Carole Carlsen Huntington, Sons: Thomas, Dwayne, and
Charles, Address is P.O. Box 26 Galena, Alaska 99741

EDUCATION: 1-12 Grades, Holycross, Alaska Mission, Huslia
SIA School, High School in Mt. Edgecumbe: Post High School
in Haskell Jr. College, in Lawrence Kansas, Received Degree
in Electronic Technology. Western Carolina University, 28
semester credits in Business Management and Accounting,
University of Alaska Anchorage. 26 Credits Business
Management and Accounting, Several hours in Seminars
relating to Tax Planning, Business Management Techniques,
Banking, Management in Banking: ANCSA and ANILCA Analysis,
Other Short Seminars on Small Business Principles.

PAST EXPERIENCES: First work was following my Father on the
Hunting and Trapping grounds in the winter and cutting fish
for dogs in summer, Wage Labor came when Bureau of Land
Management needed Fire Fighters, One summer involved Killing
and blubbering Fur Seals on the Pribiloffs for the U.S.
Government and Being a Deck Hand loading and unloading River
Barges. With Electronic Training I worked in Kansas City
Mo. for 18 Months, Before being drafted in the Army, where

ROGER HUNTINGTON

after Basic Training I continued my Electronic career which took me to Chitose, Japan for 22 months and to New Jersey, Virginia, New Mexico, Arizona, Massachusetts, and California. Out of Service Honorably in 1971 I came back to Alaska and accepted a job as a Local Government Specialist which required me to travel throughout the state to assist Rural Communities with their Self Government problems. At the time became involved in the Tanana Chiefs Conference and its formation of Doyon Limited. My personal priority went from Electronic's to Public service oriented activities thus formulating a decision to go back to school for business training. In 1975 I accepted the Leadership of Gana-A-Yoo Limited, the Joint ANCSA Village corporation for Galena, Koyukuk, Nulato, and Kaltag. During that period I was a Boardmember and also Chairman for the Doyon Limited, to 1976; Board member of United Bank of Alaska, and Alaska Housing Financial Corporation up to 1981. In 1977 Carole and I started a Retail Business in Galena. Today we continue the Business. During periods of not having a wage earning job I earned money Trapping and Fishing Commercially; although having a full or part time jobs and continuing the Business, we maintained our Trapping each season.

PUBLIC ACTIVITIES: I been involved in several Public functions, they include: Being City council Member, Mayor, and Fireman to the Firechief, Traditional Council Member, and Chief; Board member on the Alaska Native Commission on

Alcohol and Drug Abuse. Board Member on the local Public Radio Station K.I.Y.U., Review Board and other support for the local Boys scout Troops in Galena.

LEISURE ACTIVITIES: Other than Reading Carole's large collection of Alaska Books. I enjoy riding the river in a boat, the land on a snow machine and to fly in our PA-18. I also can sit for hours listening to the elders telling times of old, especially stories relating to Hunting, Trapping and Fishing, and the changing aspects of the trees, and Finally sitting home with Carole and fighting off the ~~three~~ **FOUR** grandkids.

Anne Kathryne Ruggles
P.O. Box 82950
Fairbanks, Alaska 99708
phone: (907)474-3755

I enjoy and am comfortable and effective as an educator and in interacting with the public. I enjoy the challenge of using research results and the needs and wishes of the public to devise ways in which humans and wildlife can coexist.

Education

- 1972: BA Anthropology, University of Texas at Austin
- 1981: BS Zoology, University of Texas at Austin
- 1981-1985: 25 Graduate hours in Science Education, University of Texas, Austin
- 1991: MS Wildlife Biology, University of Alaska Fairbanks

Professional Experience

- Summer 1992: Contract with ADF&G to research and write a technical paper on the distribution and population estimates of all five species of loon (*Gaviidae*) in Alaska for presentation at the 1992 meeting of the North American Loon Fund.
- Feb. 1992 to present: substitute teacher FNSB School district. (High School: Biology, Marine Biology, Earth Science, Physics, Chemistry, Algebra, Geometry and Spanish)
- Nov. 1990 to Nov. 1991: Member Alaska Department of Fish and Game's Wolf Management Planning Team.
- Summer 1991: Interpreter and facilitator for NASA project in Reconquista, Argentina.
- 1989-1991: Teaching Assistant and Lecturer, University of Alaska Biology and Wildlife Department; anatomy and physiology, genetics, general biology and biology for non-majors.
- 1988-1990: Design and complete field and analytical work for MS thesis; Habitat selection by Common loons (*Gavia immer*) in the Maranuska Susitna Valley of south central Alaska. major professor: Dr. R. Weeden.
- 1988-1989: Library Assistant, University of Alaska Rasmussen Library, Polar Regions Rare Papers archives.
- 1987-1988: Collections management assistant, University of Alaska Museum. supervisor: Gary Selinger.
- 1980-1987: Research Science Assistant II, Department of Zoology, University of Texas, Austin, Texas. supervisors: Dr. R. H. Richardson (population geneticist) and Harold Zakon (Neurophysiology). Duties included: Karyological and biochemical analysis of insect pests; fluorescent microscopy, electrophoresis (starch and polyacrylamide), fly culture, computer data management, and general lab and data management; photography and darkroom work for publication. This position involved the characterization of breeding populations of screwworms, *Cochliomyia hominivorax* and of fireants, *Solenopsis invicta*. In the lab of Dr. Zakon I participated in the study of electroreception in the mildly electric fish in the Gymnotid group. This position included: paraffin sectioning, microscopy, darkroom work for publication, microsurgery, care and breeding of fish and management of the lab.
- Dec. 1983 to Feb. 1984: Field Collections of wild screwworm larvae (from domestic and feral cattle and horses) and their subsequent rearing to adult stage, in Belize, Central America.
- 1981: karyotyping of North American canids using blood and tissue culture and R,Q,C and G banding techniques. supervisor Dr. John Ellison, Texas A & M University, Department of Entomology - genetics section.
- 1980: state and local archival research to determine the western boundary of the Red Wolf (*Canis rufus*), in Texas during the early 20th century (primary sources were predator

control and bounty records located in county courthouses throughout Texas and in the Library of Congress). Supervisor: Dr. Robin Doughty, Geography Department, University of Texas.

1978-1980: Reference librarian (periodicals and microforms), General Libraries, University of Texas, Austin, Texas. supervisor: Ira Carver. Duties included: reference work, reorganization of all microform holdings, binding procedures, and searches for "missing" periodicals.

1975-1978: Naturalist at Northwest Trek Wildlife Park, Eatonville, WA. supervisor: Roger Thacker (currently Director of Animal Care Services, University of Ky. Medical School, Lexington, Ky.). Duties included: program development and design for the general public and for school groups both for on-site and off-site use; park interpretation (on and off-site), behavioral and habitat use observations of native animals (primarily ungulates) in the wild photography; design and construction of museum exhibits, park interpretive displays. Director of public programs and of the Docent program. Design and production of slide-tape shows and printed educational materials.

1976: design and build a nature trail oriented for use by the visually impaired for the Veterans Hospital, Tacoma, Wa.

1975-present: several weeks of each year spent searching for, mapping and inventorying caves in the west with the National Speleological Society.

1972-1978: Owner/Operator of Georginia Enterprises, freelance photography in the Pacific Northwest.

winter 1971: photograph pre-Colombian gold collections in the National Museum of Costa Rica for the University of Texas at Austin.

1969-1972: collection of ethnographic data in Olintepeque, Guatemala on the present day use of the Maya calendar by inhabitants of the highlands and on the market round system for the University of Texas

1967 to May 1987: spring and fall cattle camps (Costa Rica, Belize, Washington and Texas) -- collecting, separating, tagging, inoculating, and culling cattle.

awards and honors

1. Reviewer, Eastern Timber Wolf, Canis lupus lycaon, recovery plan in Minnesota (USFWS)
2. Reviewer, predator control in the west (USFWS)
3. Reviewer, Mexican Wolf, Canis lupus baileyi, recovery plan (USFWS)
4. Reviewer, Red Wolf, Canis rufus, reintroduction plans at Land Between the Lakes and at Alligator River National Wildlife Refuge (USFWS)
5. Reviewer, Model State Regulation for the Control of Zoological Animals (Southeastern Cooperative Wildlife Disease Study)
6. Phi Kappa Phi Honor Society
7. Stelmock Scholarship in Wildlife Biology 1988 (U. of Alaska, Fairbanks)
8. Scholarships from the University of Alaska Foundation 1989
9. Award of competitive grants from the North American Loon Fund in support of field research (1988, 1989 and 1990)

Professional papers/Abstracts/presentations

1. Ruggles, A.K. 1993 in press. Habitat Selection by common loons (Gavia immer) in Southcentral Alaska. *Hydrobiologia*.
2. Harms, C., Ruggles, A., Hagstrom, D., Stevenson, R. 1993 in press. Citizen participation in developing a wolf management plan for Alaska. in *Proceedings of the Second International Wolf Symposium*, Edmunton, Alberta, Canada. August 1992. editor, L. Carbyn.

References

professional references

Roger Thacker, Director (formerly director of Northwest Trek Wildlife Park)
Division of Animal Care Services University of Kentucky Medical School
Lexington, KY 40536
phone: (606)233-6015

Dr. R.H. Richardson, professor and Dr. H. Zakon, professor
Zoology Dept. Patterson Lab University of Texas
Austin, TX 78712
phone: (512)471-4128

Cathy Harms, Wildlife Biologist
Alaska Department of Fish and Game
1300 College Rd.
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phone: (907)456-5156

Dave Kellyhouse, Director Division of Wildlife Conservation
Alaska Department of Fish and Game
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Juneau, Alaska 99802-5526
phone: (907)456-5156

Nancy Tankersley, Wildlife Biologist
Alaska Department of Fish and Game
333 Raspberry
Anchorage, AK 99518
phone: (907)267-2149

graduate work

Dr. R. Weeden (major professor)
RR 4 LePage C-27
Ganges, BC
Canada V0S 1E0
phone: (606) 537-5403

Douglas Schamel, Director UAF
Biology and Wildlife Department Bunnel 20 . UAF
Fairbanks, AK 99775
phone: 474-7542

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Woodbine, MD 21797
phone: (410) 795-4932

Marsha Sousa
(907) 474-3912

Janis Ott
331 Ester Dr.
Fairbanks, AK 99709
phone: 479-2411

Nan Hampton
16817 RR 2222 #2
Austin, Texas 78730
phone: (512) 338-1813

3. Ruggles, A.K. 1992. Summer and winter distribution and population estimates for loons (*Gaviidae*) in Alaska. Alaska Department of Fish and Game unpub. rept.
4. Tankersley, N. and A. K. Ruggles. 1992. Status and Distribution of loons in Alaska. (abstract in proceedings of the Conference of the North American Loon Fund. Maine).
5. Ruggles, A. K. 1992. Citizen participation in developing a wolf management plan for Alaska. Second International Wolf Symposium, Edinunton, Alberta, Canada. August 1992. (presentation).
6. Ruggles, A.K. 1992. Loons; Biology and management. Third Alaska Loon Fest. Alaska Dept. of Fish and Game. (presentation).
7. Ruggles, A.K. 1991. Habitat Selection by common loons (*Gavia immer*). Alaska Bird Conference, Anchorage, Alaska. (presentation and abstract)
8. Ruggles, A.K. 1990. Loons and Bonaparte's Gulls in the Mat-Su Valley, Alaska. Second Alaska Loon Fest. Alaska Dept. of Fish and Game. (presentation).
9. Ruggles, A.K. 1989. Loons in the Mat-Su Valley, a priliminary consideration of habitat selection. First Alaska Loon Fest. Alaska Dept. of Fish and Game. (presentation).

memberships

1. Association of Conservation Biology
2. Wildlife Society
3. Laboratory of Ornithology at Cornell
4. National Speleological Society
5. Nature Conservancy
6. American Museum of Natural History
7. Wilderness Society
8. North American Wolf Society
9. Girl Scouts USA
10. Phi Kappa Phi Honor Society