

SJR

19




Alaska State Legislature

Session:
State Capitol
Juneau AK 99801-1182

SENATE RESOURCES COMMITTEE

Interim:
716 W 4th Avenue
Anchorage AK 99501-2133

To: All Legislators

From: Senator Loren Leman, Chair
Senate Resources Committee 

Re: Public Hearing Schedule for SJR 19

Date: March 24, 1995

Over the next three weeks the Senate Resources Committee will hold public hearings in Fairbanks, Soldotna, and Juneau on Senate Joint Resolution 19 which urges Congress to amend the Alaska National Interest Lands Conservation Act (ANILCA) to clarify that the term "public lands" means only federal lands and waters in Alaska. I invite all interested legislators to participate by teleconference. The hearing schedule is below.

These meetings are intended to provide resource user groups and individuals in Alaska who will be affected by further federal intervention into state resource management with a first hand opportunity to provide input on SJR 19. The first portion of the meetings will be reserved for testimony by invitation of various organizations, while the latter portion will be set aside for individual public testimony. The Fairbanks and Soldotna hearings will be teleconferenced listen-only, while the Juneau hearing will be teleconferenced for public testimony statewide.

At the time of enactment of ANILCA in 1980 it was clearly the intent of Congress that all provisions in the Act related to public lands refer only to federal lands and waters; however, recently the Department of Interior has attempted to extend management authority to *state* lands and waters. This encroachment upon our resource management authority will have significant and far reaching impacts, ultimately on all resource use, whether private or commercial. Hearings to address this federal action are critical, and failure to do so will serve only to demonstrate to Congress and the federal

courts that Alaska is willing to relinquish an extremely important right of the state.

I welcome your participation in these important hearings. If you have questions, please contact Annette Kreitzer at 4907.

Senate Resources Committee
Meeting Schedule for SJR 19

March 29, 1995	Fairbanks North Star Borough Assembly Chambers 809 Pioneer Rd. (Teleconference listen only.)	10:00 a.m. to 4:30 p.m.
April 8, 1995	Soldotna (Teleconference listen only.)	Time to be announced.
April 10, 1995	Juneau (Statewide teleconference.)	3:30 p.m. to 7:00 p.m.

MAJOR ANILCA CONFLICTS

- * Customary trade provisions allow for commercial sale of subsistence taken resources.
- * Federal courts will not give deference to state agencies.
- * Federal court oversight.
- * Federal court interpretations that "all competing uses must be eliminated before subsistence uses are restricted."
- * Definition of "public lands," as described by the federal courts, may include state and private lands and waters.
- * Definition of public lands applies to all sections in ANILCA and not just Title VIII.
- * Federal definition of rural will be difficult to implement in Alaska.

Distributed by Senator Mike Miller

FISCAL NOTE

STATE OF ALASKA
1995 LEGISLATIVE SESSION

BILL NO. SJR 19

Revision Date: _____ Dept. Affected: Fish and Game
 Title: Ask Feels to Amend ANILCA BRU: Subsistence
 Component: Subsistence
 Sponsor: Senator Miller
 Requester: Senate Resources COMPONENT SERIAL NO. 483

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
PERSONAL SERVICES	0.0	0.0	0.0	0.0	0.0	0.0
TRAVEL	0.0	0.0	0.0	0.0	0.0	0.0
CONTRACTUAL	0.0	0.0	0.0	0.0	0.0	0.0
SUPPLIES	0.0	0.0	0.0	0.0	0.0	0.0
EQUIPMENT	0.0	0.0	0.0	0.0	0.0	0.0
LAND & STRUCTURES	0.0	0.0	0.0	0.0	0.0	0.0
GRANTS, CLAIMS	0.0	0.0	0.0	0.0	0.0	0.0
MISCELLANEOUS	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY95) cost: \$ 0.0

POSITIONS

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

ANALYSIS: (Attach a separate page if necessary)

There are no direct costs to the Department of Fish and Game that would result from passage of this resolution. Should Congress amend ANILCA as the resolution requests, fiscal implications could result but they would be variable depending on subsequent actions of the federal government and the Alaska Legislature.

Prepared by: Rob Bosworth Phone: 485-6143
 Division: Subsistence Date: 3/15/95
 Approved by Commissioner: Cecil Deane Jr. Date: 3/20/95
 Agency: Fish and Game

PREPARER TO PROVIDE ALL INFORMATION TO THE LEGISLATIVE OFFICE
For further distribution

SENATE COMMITTEE REPORT

First Committee of Referral

DATE: 3/6/95

FURTHER:

Date of 5-Day Notice: 3-15-95
(in accordance with Uniform Rule 23)

DATE TURNED INTO OFFICE: 4-11-95

Resources Committee considered SJR 19

Requesting Congress to amend Alaska National Interest Lands Conservation Act.

and recommends:

- be replaced with CS SJR 19 (RES)
- adopt previous CS ()
- attached amendment(s)
- adopt Letter of Intent by _____ Committee
- further referral to the _____ Committee

Senate Bill:
 same title
 new title
 House Bill:
 same title
 technical title
 new: SCR# _____

SIGNING DP/PASS	DP	OTHER RECOMMENDATIONS	NR	DNP	AM
<i>Rick Stedman</i>	<input checked="" type="checkbox"/>	<i>[Signature]</i>		<input checked="" type="checkbox"/>	
<i>Christ Taylor</i>	<input checked="" type="checkbox"/>	<i>[Signature]</i>		<input checked="" type="checkbox"/>	
<i>[Signature]</i>	<input checked="" type="checkbox"/>				
<i>[Signature]</i>	<input checked="" type="checkbox"/>				
CHAIR: <i>[Signature]</i>					

NEW FISCAL NOTE(S):

Department	Date	Zero	Fiscal

PREVIOUS FISCAL NOTE(S):*

Department	Date	Zero	Fiscal
<i>DFWG</i>	<i>3/20</i>	<input checked="" type="checkbox"/>	

APPROPRIATION -- no fiscal note

*include fiscal notes accompanying Governor's bill

**CS FOR SENATE JOINT RESOLUTION NO. 19(RES)
IN THE LEGISLATURE OF THE STATE OF ALASKA
NINETEENTH LEGISLATURE - FIRST SESSION**

BY THE SENATE RESOURCES COMMITTEE

Offered:

Referred:

Sponsors): SENATORS MILLER, Pearce, Green

A RESOLUTION

1 Requesting the Congress to amend the Alaska National Interest Lands Conservation
2 Act to clarify that the term "public lands" means only federal land and water
3 and that any extension of federal jurisdiction onto adjacent land and water is
4 expressly prohibited.

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

6 **WHEREAS** the State of Alaska entered into the Union on an equal footing with all other
7 states, and the Statehood Compact specifically granted authority over fish and wildlife to the
8 State of Alaska; and

9 **WHEREAS** the issue of fisheries management was one of the most prominent
10 justifications for statehood, and

11 **WHEREAS** the State of Alaska contends that the Statehood Compact cannot be legally
12 modified by either party without the consent of the other party; and

13 **WHEREAS** the Congress and the President of the United States are presently embarking
14 on a campaign to return rights and authority to the states; and

15 **WHEREAS** Title VIII of the Alaska National Interest Lands Conservation Act
16 (ANILCA, P.L. 96-487), enacted in 1980, grants a subsistence priority on federal public land

1 in Alaska; and

2 **WHEREAS** the Secretary of the Interior and the Secretary of Agriculture have
3 threatened unilateral federal preemption of state fish and wildlife management on state and
4 private land and water in Alaska; and

5 **WHEREAS** the State of Alaska, the federal government, and other parties are attempting
6 to sort out the complexities of the federal law related to jurisdictional issues created by
7 ANILCA; and

8 **WHEREAS** the legal process for developing a final resolution to the jurisdictional
9 questions is extremely slow, and major social and economic disruption is imminent if the federal
10 government continues on a course to illegally and unconstitutionally preempt state management
11 of fish and wildlife; and

12 **WHEREAS** the Congress specifically declined to grant preemption authority to the
13 Secretary of the Interior and the Secretary of Agriculture in ANILCA; and

14 **WHEREAS** the Congress specifically reemphasized that the jurisdiction and authority
15 of the state were to be maintained; and

16 **WHEREAS** the Alaska State Legislature is confident that the Alaska delegation in the
17 Congress and the people of Alaska would never have agreed to the final compromise ANILCA
18 package had they been advised that ANILCA contained provisions to allow federal preemption
19 of all state fish and wildlife management in Alaska; and

20 **WHEREAS** the federal agencies and some parties are arguing in recent court cases
21 concerning state/federal jurisdiction that federal reserved water rights and the navigational
22 servitude provide legal basis for a claim of federal title to land and resources; and

23 **WHEREAS** this interpretation of federal laws related to federal reserved water rights and
24 the navigational servitude is contrary to all existing related laws and policies adopted by the
25 Congress and threatens to undermine existing reserved water rights and navigable waters policies
26 that are critical to all western states;

27 **BE IT RESOLVED** that the Alaska State Legislature respectfully and urgently requests
28 the Congress to amend the Alaska National Interest Lands Conservation Act (ANILCA) to
29 clarify that the original intent of the Congress was not to violate the Statehood Compact or to
30 preempt state management of fish and wildlife in Alaska; and be it

31 **FURTHER RESOLVED** that the Alaska State Legislature respectfully requests that the
32 Congress amend ANILCA to clarify that the definition of "public lands" means only federal

1 public land and water; and be it

2 **FURTHER RESOLVED** that, while the federal courts are resolving the federal/state
3 conflicts created by Title VIII of ANILCA, the Alaska State Legislature respectfully requests that
4 the Congress amend ANILCA to expressly prohibit preemption of state jurisdiction on state and
5 private land and water unless specifically authorized by the Congress and the State of Alaska;
6 and be it

7 **FURTHER RESOLVED** that the Alaska State Legislature respectfully requests the
8 Congress to clarify that neither ANILCA nor another federal law provides authority for the
9 federal agencies to claim title to resources or land through federal reserved water rights or
10 through the navigational servitude; and be it

11 **FURTHER RESOLVED** that the Alaska State Legislature respectfully requests the
12 Alaska delegation in Congress to oppose any other amendments to ANILCA until the Congress
13 takes action to confirm state management and to limit the definition of "public lands."

14 **COPIES** of this resolution shall be sent to the Honorable Al Gore, Jr., Vice-President
15 of the United States and President of the U.S. Senate; the Honorable Newt Gingrich, Speaker
16 of the U.S. House of Representatives; the Honorable Strom Thurmond, President Pro tempore
17 of the U.S. Senate; the Honorable Bob Dole, Majority Leader of the U.S. Senate; and to the
18 Honorable Ted Stevens and the Honorable Frank Murkowski, U.S. Senators, and the Honorable
19 Don Young, U.S. Representative, members of the Alaska delegation in Congress.

9-LS0848C
Utermohle
3/30/95

CS FOR SENATE JOINT RESOLUTION NO. 19()
IN THE LEGISLATURE OF THE STATE OF ALASKA
NINETEENTH LEGISLATURE - FIRST SESSION

BY

Offered:
Referred:

Sponsor(s): SENATORS MILLER, Pearce, Green

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17 of the U.S. Senate; the Honorable Bob Dole, Majority Leader of the U.S. Senate; and to the
18 Honorable Ted Stevens and the Honorable Frank Murkowski, U.S. Senators, and the Honorable
19 Don Young, U.S. Representative, members of the Alaska delegation in Congress.

Walter J. Hickel

JNH
4-10-95
Box 101700
Anchorage, Alaska 99510-1700
907-276-7400

April 4, 1995

The Honorable Loren Leman
State Capitol (MS-3100)
Juneau, AK 99801

Dear Senator Leman:

I am pleased to offer my support of Senate Joint Resolution (SJR) 19.

As a person who was deeply involved in the creation of our Statehood Compact, I remember many of the hard-fought battles. One of the major disputes centered around who would manage Alaska's fish and game.

Congress eventually agreed to grant Alaska the authority to manage its fish and wildlife on all state and non-public lands. However, Alaska did not become a state with just the passage of a statehood bill. Alaskans needed to ratify those terms--and we did.

Alaskans were acutely aware of the provisions in the bill, as the terms of statehood were printed in most of the local papers. When we voted "yes" to statehood, we were voting for more than just becoming another star on the American flag. We voted "yes" to the terms of the Statehood Bill, which included the right to manage our fish and wildlife.

However, since Congress created The Alaska National Interest Conservation Act (ANILCA) in 1980, the management of our resources has been in jeopardy. Recently, the courts have interpreted ANILCA to mean that Congress intended for the federal government to have management authority of our fish and game that extends beyond federal lands.

Whether it is the fault of the courts, the lack of understanding by Congress, or the ambiguity of ANILCA, Alaska faces a fish and wildlife management crisis that needs to be addressed.

SJR 19 is a step in the right direction. This resolution will help clarify Alaska's position that the federal government does not have the authority to manage our fish and game resources, as stipulated in our Statehood Act. And this resolution petitions Congress to amend ANILCA, by reaffirming that "public lands" means only federal public land and water.

This issue is not solely a subsistence issue, it is a state's rights issue. Whether one agrees with a rural preference or not, we as Alaskans cannot allow our sovereign rights as a state to be diminished because of an issue that is currently dividing us.

I urge all Alaskans to support SJR 19.

Sincerely,


Walter J. Hickel



Grand Camp
Alaska Native Brotherhood
ALFRED MCKINLEY, SR., GRAND PRESIDENT
ALASKA NATIVE BROTHERHOOD

TESTIMONY

10 APRIL 1995

MR. CHAIRMAN AND MEMBERS OF THE SENATE RESOURCES COMMITTEE

WHEN THE ALASKA NATIVE CLAIMS SETTLEMENT ACT OF 1971 BECAME LAW, THE CONFERENCE COMMITTEE OF U. S. SENATE AND U. S. HOUSE MEMBERS EXPECTED THE SECRETARY OF INTERIOR AND THE STATE OF ALASKA TO USE THEIR EXISTING AUTHORITY TO TAKE ACTION NECESSARY TO PROTECT THE SUBSISTENCE NEEDS OF THE ALASKA NATIVES. THE FAILURE OF THE FEDERAL AND STATE GOVERNMENTS TO HEED CONGRESSIONAL ADMONITIONS CAUSED THE NATIVES TO SEEK A SOLUTION THROUGH FEDERAL LEGISLATION. AS A RESULT, THERE IS A TITLE VIII OF THE ALASKA NATIONAL INTEREST LANDS CONSERVATION ACT (ANILCA). CONGRESS RECOGNIZED THE NEED TO PRESERVE THE SUBSISTENCE LIFESTYLE AS PRACTICED BY ALASKA NATIVES FROM "TIME IMMEMORIAL" AND THE FACT THAT THE FINAL VERSION CONTAINED PROVISIONS FOR "RURAL ALASKANS" DID NOT DILUTE THE PRIMARY PURPOSE OF PROTECTION AND PRESERVATION OF THE NATIVE SUBSISTENCE LIFESTYLE.

WITH THIS BACKGROUND TO MY REMARKS, I NOW STATE ALASKA NATIVE BROTHERHOOD'S OPPOSITION TO THE PASSAGE OF SENATE JOINT RESOLUTION NO. 19. THE RESOLUTION, ON IT FACE, WOULD SEEK TO NULLIFY RECENT NATIVE SUBSISTENCE VICTORIES IN THE U.S. DISTRICT

COURT, INCLUDING THE DECISION IN THE KATIE JOHN CASE (ON APPEAL TO THE NINTH CIRCUIT) WHICH HELD THAT FEDERAL JURISDICTION (FOR TITLE VIII) SHOULD EXTEND TO ALL NAVIGABLE WATERS IN THE STATE OF ALASKA. AT LEAST 60% OF NATIVE SUBSISTENCE TAKES PLACE IN NAVIGABLE WATERS IN ALASKA UNLESS THE STATE COMES INTO COMPLIANCE WITH TITLE VIII OF ANILCA IN ORDER FOR NATIVES TO FULLY BENEFIT FROM THE SUBSISTENCE PRIORITY PROVIDED BY TITLE VIII OF ANILCA, FEDERAL JURISDICTION MUST BE ABLE TO REGULATE NON-FEDERAL HUNTING AND FISHING ACTIVITIES THAT IMPACT ON SUBSISTENCE HARVEST EFFORTS.

ADDITIONALLY, I SUPPORT THE PETITION SUBMITTED TO THE SECRETARIES OF INTERIOR AND AGRICULTURE ON BEHALF OF A NUMBER OF NATIVE ORGANIZATIONS THAT SEEK TO EXPAND FEDERAL SUBSISTENCE MANAGEMENT JURISDICTION BEYOND FEDERAL PUBLIC LANDS.

I CANNOT, NOW, SUPPORT A RESOLUTION CALCULATED TO RESTRICT THE NATIVE SUBSISTENCE RIGHTS BEYOND WHAT IS SET OUT IN TITLE VIII AND INTERPRETED BY THE COURTS. I EMPHATICALLY OPPOSE ANY EFFORT TO AMEND TITLE VIII THAT DOES NOT FIRST, THROUGH A SERIES OF CONSULTATIONS, GAIN THE SUPPORT OF THE ALASKA NATIVES.



The Aleut Corporation

Sent Via Facsimile & 1st Class Mail

April 12, 1995

The Honorable Loren Leman
Chairman, Senate Resources Committee
Room 113, Alaska State Capitol
Juneau, Alaska 99801

Dear Mr. Chairman:

Thank you for inviting me to submit testimony to Senate Joint Resolution 19.

The Aleut Corporation does not support adoption of SJR 19. Its passage will not bring Alaska one step closer to solving the real subsistence issue: the continued existence of Native villages throughout the bush. On the contrary, SJR 19 proposes that the Congress deliver a death blow to the villages by reducing current federal subsistence protections to an empty rhetorical shell.

Alaska must not destroy its rural areas in order to serve a vocal urban minority which is so afraid of the majority that it will do anything to keep the question from going to the voters. Rural Alaskans (Native and non-Native) must be guaranteed nutritional resources for family and community survival in times of resource shortage. That is all that Title VIII does, despite the frenzied attempt in Juneau to redefine the issue as "management," "states' rights," or "equality."

Title VIII is a reasonable, justifiable policy enacted by the Congress and agreed to by the state in 1980. By trying to reverse it, SJR 19 proposes to pull the economic and cultural rug out from under rural Alaska - and to pass along the enormous cost of its collapse to every future governor, legislator, and taxpayer.



Chairman Leman
April 12, 1995
Page 2

We at The Aleut Corporation strongly object to SJR 19 - not only because it advocates a disastrous social policy - but because it asks the wrong people to decide the issue. We agree with Senator Stevens that subsistence must be decided in Alaska, by Alaskans, not in Washington D.C.

Sincerely,

THE ALEUT CORPORATION



Alice Petrivelli
President

/kgd



The Aleut Corporation

FACSIMILE TRANSMITTAL

DATE: APRIL 12, 1995 TIME: :

FAX NUMBER:	(907) 465-3810
SENT TO:	The Honorable Loren Leman
	Chairman, Senate Resources Committee
	Room 113, Alaska State Capitol
	Juneau, Alaska 99801

FROM: Alice Patrivelli, President

THE ALEUT CORPORATION
ONE ALEUT PLAZA, SUITE 300
4000 OLD SEWARD HIGHWAY
ANCHORAGE, AK 99503

FAX NUMBER: (907) 563-4328

SUBJECT:	Senate Joint Resolution 19

NUMBER OF PAGES (including this cover sheet) 3

IF YOU HAVE NOT RECEIVED ALL PAGES PLEASE CALL: Natasha



Arctic Slope
Native Association Limited

April 8, 1995

Senate Resources Committee
Alaska State Legislature
State Capitol
Juneau, Alaska 99801-1182

Dear Senate Resources Committee:

I would like to submit the following into the record as written testimony to Senate Joint Resolution (SJR) #19.

Please be aware that the Arctic Slope Native Association, Limited (ASNA) is strongly opposed to the passage of SJR #19, requesting Congress to amend the Alaska National Interest Lands Conservation Act (ANILCA) to clarify that the term "public lands" means only federal land and water and that any extension of federal jurisdiction onto adjacent land and water is expressly prohibited.

It is our understanding that one of the most important features of ANILCA was to:

provide the opportunity for continued subsistence use by local residents.

Any effort to amend any sections of ANILCA will be seen as a threat to the subsistence lifestyle that has been practiced for centuries, passed down from one generation to the next.

Let me remind you that on March 30, 1994, in Federal District Court, Judge Holland ruled that the federal government has the legal authority to regulate subsistence hunting and fishing on all such public lands and waters. In other words, the federal government has direct management authority over subsistence takings of fish and wildlife on federal public lands during state non-compliance.

At this moment in time, ASNA also believes that federal law is the best protection subsistence users have in this state.

Letter to the Senate Resources Committee
April 8, 1995

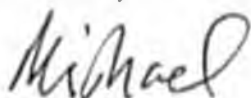
PAGE 2

The best solution to resolve the subsistence impasse in Alaska is an amendment to the Alaska Constitution to recognize a rural subsistence priority.

In closing, and let me say it again, ANILCA is the only protection for Native residents in rural Alaska. We are able to continue a lifestyle that is vital to the different cultures in each region of Alaska, and that is the subsistence lifestyle, a tradition that has been practiced since time immemorial by all Native Alaskans.

I thank you for the opportunity to provide written comments for the record.

Sincerely,



Michael D. Pederson
Natural Resources Specialist



STR-19

Post Office

Fax Transmittal Memo 7872

Sen. Lyman Hoffman

State of AK

Juneau

465-4523

Comments

(1) No of Pages 3
 From Myron Naneng
 Company AVCP
 Location Bethel
 Phone 543-3594
 Date 4-14-95
 Original Discussion Copy Return Call to p. #

Lyman,
Please distribute copies to State legislature. Thank you

AVCP

Association of Village Council Presidents
PO Box 218 • Bethel, Alaska 99559 • Phone 543-3521

Mid-Year Conference
Resolution No. 95-03-01

A RESOLUTION OF THE ASSOCIATION OF VILLAGE COUNCIL PRESIDENTS, INC (AVCP),
OPPOSING ALASKA LEGISLATURE HOUSE JOINT RESOLUTION 11 (HJR-11) AND SENATE
JOINT RESOLUTION 19 (SJR-19) AMENDING TITLE VIII OF ANILCA.

WHEREAS, ANILCA TITLE VII provides for a priority for rural subsistence uses and provides a
protection of the subsistence way of life of the people of the AVCP region, and

WHEREAS, the subsistence way of life is the most important sustainable cultural tradition and economy
of the people of the AVCP region, and

WHEREAS, the subsistence way of life extends beyond the simple use of the resource, it also validates
the spiritual and cultural association of the people to the land and its resources, and

WHEREAS, the people of the AVCP region have little or no other economic resources to provide for the
subsistence of the people and the culture, and

WHEREAS, Title VIII of ANILCA is the law of the land which must be implemented by courts and
enforced and complied by the State of Alaska, and

WHEREAS, without this protection the conservation of the subsistence resources would be placed in
jeopardy by curtailing the rural protection provisions of the law during times of shortages of the resources,
and

WHEREAS, the Alaska Legislature, by enacting this legislation is losing sight of its responsibility to the
future of its people and to the future of the resources of the land, and

WHEREAS, Senator Stevens has already told the Alaska Legislature that he will not ask the U.S.
Congress to resolve the conflict on subsistence, and

WHEREAS, the proposed amendments to ANILCA will only further deplete the people of Alaska and
deplete the resources until there is nothing left.

NOW THEREFORE BE IT RESOLVED THAT THE DELEGATES TO THE ASSOCIATION OF
VILLAGE COUNCIL PRESIDENTS, INC. OPPOSES ANY ACTION TO AMEND ANILCA THAT
REMOVES THE PROTECTION OF RURAL SUBSISTENCE AND THE SUBSISTENCE WAY OF
LIFE OF THE PEOPLE OF RURAL ALASKA.

PASSED THIS 29TH DAY OF MARCH, 1995, WITH A DULY CONSTITUTED QUORUM OF
MEMBERS PRESENT AT BETHEL, ALASKA.

David O. David, Chairman

Myron F. Naneng, President

Distributed by:
Senator Lyman F. Hoffman
State Capitol Room #7
Juneau, AK 99811



BRISTOL BAY NATIVE CORPORATION

800 CORDOVA / PO BOX 100220 / ANCHORAGE, ALASKA 99510 / (907) 278-3602
TELECOPY (907) 278-3974

April 5, 1995

Senator Loren Leman, Chairman
Senate Resources Committee
Alaska State Legislature
State Capitol
Juneau AK 99801-1182

Dear Senator Leman,

Re: Senate Joint Resolution No. 19

This is to advise you that the Bristol Bay Native Corporation opposes Senate Joint Resolution No. 19 for various reasons.


First, the Governor of the State of Alaska and not the Alaska Legislature represents the State of Alaska on federal matters. The Ninth Circuit Court of Appeals recognized this principle when it denied the Alaska Legislature permission to intervene in the Katie John case. It was a Republican governor of the State of Alaska, Governor Hammond, who supported the provisions now included in Title VIII of the Alaska National Interest Lands Conservation Act (ANILCA). A Democratic governor, Governor Knowles, now supports the provisions of Title VIII of ANILCA.

Second, the subsistence provisions of Title VIII of ANILCA are supported by the Alaska delegation in Washington. Senate Joint Resolution No. 19 will be irrelevant in any discussion of the issue in Washington.

Third, the Alaska Legislature should allow the voters of Alaska to vote on the question whether they support state management of fish and game on federal land and waters. Why does the Alaska Legislature oppose the right of Alaska voters to vote on an issue of such importance? The Alaska Legislature will be responsible for the loss of state fish and game management on federal land and waters if the federal courts rule in favor of the Alaska Natives and the federal government in the Katie John litigation.

I would appreciate it if you would include this letter in the hearing record of Senate Joint Resolution No. 19.

Sincerely,


Njalmar Olson
Chairman and President

Calista Corporation

MAR 31 1995

601 W. 5th Avenue, Suite 200 • Anchorage, AK 99501-2225 • (907) 279 5516 • FACSIMILE (907) 272 5060

SENT VIA FACSIMILE: (907) 465-3810

March 29, 1995

The Honorable Loren Leman
Chairman, Senate Resources Committee
Alaska Legislature
State Capitol
Juneau, AK 99801-1182

Dear Senator Leman:

I am writing to you in opposition to SJR19, which asks Congress to amend Title VIII of ANILCA to dispose of the rural preference provision.

Calista Corporation supports the rural preference as stated in Title VIII of ANILCA. The provisions of ANILCA must be implemented by the United States Courts and agencies, and the State of Alaska as agreed upon by the federal and state governments in 1980. The State of Alaska has not upheld its part of the agreement since the McDowell decision in 1989.

ANILCA is the only legal force protecting the economic and cultural survival of subsistence based rural communities. The federal preference is a humane, intelligent policy, that allows rural Alaskans to survive by their own self-sustaining economic base, which minimizes their dependency on government programs and welfare.

The continuance of the rural preference for subsistence resources is especially important in light of the predicted cutbacks in federal and state funding, which will have its most dramatic effect on rural Alaska. These cutbacks will increase the needs of rural Alaskans to depend on subsistence resources for survival.

In addition, rural Alaska does not have a developed economy in place, whereby people can "just go out and get a job and shop at the local grocery store," to meet their needs. For the most part there are no jobs to be had, and the people's primary survival skill is their ability to hunt, fish and gather wild edibles in order to put food on the table.

The Honorable Loren Leman
March 29, 1995
Page 2

The reality of the situation is that there is a limited amount of fish and game in Alaska, and the anti-subsistence groups' talk of "equality" basically takes food out of the mouths of rural Alaska's elders and children, in order to make it available to urban based guides and sports hunter/fishermen who list hunting and fishing on their resume as a hobby.

The intent of the founding leaders when they passed the Alaska Native Claims Settlement Act and ANILCA, was the preservation of fundamental human rights. Many rural communities are entirely dependent upon wild animals and fish for their physical survival, as well as fulfillment of their cultural and spiritual needs in a way no other group has ever been or will ever be.

The time is right for the State of Alaska to get in tune with the rural preference provision of ANILCA, and let the citizens of Alaska collectively decide at the voting booth whether a constitutional amendment is acceptable to them to resolve the subsistence preference issue, and bring the State back in compliance with ANILCA.

Sincerely,

CALISTA CORPORATION



Matthew Nicolai, President

cc: Alaska Federation of Natives, Inc.
Representative Ivan M. Ivan
Senator Lyman Hoffman
Governor Tony Knowles

SJR19

3700 Airport Way
Fairbanks, Alaska 99709 4699
(907) 451-2775
Fax: 451-2761



Citizens' Advisory Commission on Federal Areas

April 6, 1995

APR 11 1995

Senator Loren Leman, Chairman
Senate Resources Committee
Alaska State Legislature
State Capitol
Juneau, AK 99801-1182

Dear Senator Leman:

Recently the Citizens' Advisory Commission on Federal Areas was invited by the Senate Resources Committee to give testimony regarding Senate Joint Resolution 19. Because the Commission members had not, at that point, had the opportunity to discuss SJR 19 and formulate a position, we were unable to present testimony at the March 29 hearing in Fairbanks. However, SJR 19 was placed on the agenda for our April 1 Commission meeting in Juneau. At that meeting, the Commission members present voted unanimously to endorse SJR 19.

This Commission believes that the language in the Alaska National Interest Lands Conservation Act (ANILCA) is very specific in applying the provisions of Title VIII of that statute. ANILCA Section 102(3) contains the following definition for the term "public lands:"

The term "public lands" means lands situated in Alaska which, after the date of enactment of this Act are Federal lands¹, except-

- (A) land selections of the State of Alaska which have been tentatively approved or validly selected under the Alaska Statehood Act and lands which have been confirmed to, validly selected by, or granted to the Territory of Alaska or the State of Alaska under any provision of Federal law;
- (B) land selections of a Native Corporation made under the Alaska Native Claims Settlement Act which have not been conveyed to a Native Corporation, unless any such selection is determined to be invalid or is relinquished; and
- (C) lands referred to in section 19(b) of the Alaska Native Claims Settlement Act

¹ The term "Federal land" means lands the title to which is in the United States after the date of enactment of this Act. (ANILCA Section 102(2))

Senator Loren Leman
April 6, 1995

2

Further, we believe that any attempt to extend management by the Federal Subsistence Board beyond federal public lands is unacceptable. The management and allocation of fish and game resources on all lands and waters of Alaska is the responsibility of the Board of Fisheries and the Board of Game. However, the conflict between the Constitution of the State of Alaska and the provisions of ANILCA Title VIII has resulted in the current dual management system. Until this conflict is resolved and the State Boards resume their management roles for all lands and waters in the state, every effort must be made to prevent further expansion of the federal management program.

Thank you for the opportunity to provide testimony on SJR 19. If you or the other committee members have questions regarding our position on SJR 19, or if we can clarify anything, please do not hesitate to contact our office.

Sincerely,

A handwritten signature in cursive script, appearing to read "Stan Leaphart".

Stan Leaphart
Executive Director

LINDA W. DEMIENTIEFF
3010 JILLIAN SQUARE, APT. 31
FAIRBANKS, ALASKA 99709

(3010 DAVIS Rd. Apt. B-31)

APR 4 1995

March 30, 1995

Senator Mike Miller
State Capitol
Juneau, Alaska 99801-1182

RE: SJR 19

Dear Senator,

I attended the hearing in Fairbanks but didn't get a chance to speak and I hope that my letter will help. I will begin by saying that I oppose the passage of SJR 19 by the Senate.

I am a full blooded Indian woman with two children who like to eat our native food. I was born and raised in Allakaket and went to high school in Mt. Edgecumbe. In Mt. Edgecumbe because of the nature of Alaskan Natives we learned a lot about the different cultures all over Alaska. One of our favorite pastimes was to get into a big group and take turns telling about the foods we miss.

As you heard time and time again yesterday that this bill as it stands does not say anything about subsistence but we know from past experience how the rural people have been treated as far as their subsistence rights are concerned. Unless you are a poor listener and only hear what you like you should have noticed the people who support SJR 19. These people spoke with vengeance, pure hatred, and have a very poor image of the native people. What will you think of us and more importantly what will we think of ourselves if we allow people to speak out like that against us without standing up for ourselves.

When I was a child we did not have any money in our family. But there was never a day that we went without food. Sam White the Game Warden at that time use to tell my Dad not to let his children get too hungry. Because we use to live on the South Fork of the Koyukuk River above Allakaket, Sam was worried that if Dad didn't get his moose that we would run out of food. Throughout our childhood we never received any outside assistance. When things got too rough Dad would guide anthropologists, work in a mine, or go firefighting. It was hard for him to leave us but my Mother would stay in camp with us and do all the hunting and fishing and gathering to feed us. Almost every summer while Dad was out working, a moose would come out near our camp and my Mother got out the gun and shot it so that we can have some meat again.

I will now tell you what our Dad told us when we were very small and when he started telling us how important it is to learn to hunt and fish and live off the land. He said that yes there is a being that is all over the world. It has a big Spirit. That Spirit is in all of us and that Spirit is also in all the animals and living things. The only reason we are allowed to kill is to feed ourselves and our families. We do not kill in anger and when we kill for food we say Thank You everytime. As long as we are good to all living things, the world will be good to us.

We moved to Allakaket when I was old enough to start first grade. That was the absolute worst year of my life. Because the village people's income was below poverty level the Territory School began a lunch program. They tried to force me to eat the white man's food at lunch. I cried and cannot eat and kept crying until they let me go home where my Mother had moose meat or fish waiting for me. After I ate I sometimes would go back to school. Today my daughters do not like the school lunch and ask me to pack a lunch every day. Throughout Alaska all our strongest family ties are based on food and the sharing of it.

You heard Malinda Chase yesterday when she said that a young man in Anvik was a changed man after he killed his first moose. In all the big events in our lives our Native food is shared. When a baby is born we share a big dinner, in Allakaket every Birthday is celebrated with a dinner, when that young man kills his first moose it is celebrated with dinner, when that young lady becomes a woman she is brought food, when a couple gets married food is shared, when there is a new building in the village food is shared and finally and most importantly when a person dies food is shared. I most recently went through some trying times and the first call I got was my friends bringing food.

I hope you also heard Margie Mayo speak yesterday when she talked about the use of public assistance in the village. I hope I never have to depend on public assistance because my goal in life to teach my children to provide for themselves. That is the reason I need to write this letter. I need to speak out and let people know when someone makes such degrading remarks about our people. If I sit quietly and let this happen I will be teaching my children to sit quietly and let people treat them bad.

This will end my testimony and hope you have learned a little about our lifestyle. Thank you.

Sincerely,



Linda W. Demientieff

cc: Senators Drue Pearce, Steve Frank, Rick Halford, Lyman Hoffman, Loren Leman, Georgeianna Lincoln, Robin Taylor

My name is Joanne Grace. I am an assistant attorney general in the Natural Resources Section. I have a brief statement to make about SJR 19 on behalf of the Department of Law.

The department presently is representing the state in litigation raising the issues addressed in SJR 19, and the state's position in this litigation generally corresponds to the resolution's requests for amendments. Nevertheless, the administration's position is that although amendments to ANILCA might be part of a final solution to the subsistence dilemma in Alaska, we need consensus among Alaskans about how to resolve the many problems rather than a solution imposed by lawmakers in Washington, D.C. The administration's goals are to regain state management of fish and wildlife for all lands in Alaska and to preserve the rural priority.

The amendments SJR 19 suggest differ in one respect from the issues in the litigation. SJR 19 addresses two issues, which we refer to as the "Where I" issue and the "Where II" issue. The "Where I" issue is the question of whether the subsistence priority and the FSR's management authority extend to navigable waters in Alaska. The plaintiffs in the Katie John litigation argue, and Judge Holland held, that they do, for this reason. The subsistence priority applies to "public lands." Generally "public lands" are understood to mean federal lands, but Congress can define this term

differently in different contexts. In ANILCA, Congress defined "public lands" as "lands, waters, and interests therein, title to which is in the United States." I believe that Congress thought it was defining "public lands" as federally-owned lands. The Katie John plaintiffs argued, however, that if the United States has any property interest in lands or waters, that converts them to "public lands" under this definition, regardless of who owns them. Thus, they argue, if the United States has a water right in a river, the river is "public lands" subject to federal management.

The United States does not claim to have title to these state and private lands, as SJR 19 seems to imply. Lines 21-22 on page two and 9-10 on page three refer to a claim of federal title to land and resources based on federal reserved water rights or the navigational servitude. The plaintiffs' claim is not that the United States owns the land and resources based on these doctrines, but that it has authority to regulate fish and wildlife on lands and waters subject to federal water rights, navigational servitude, or any other federal property interest. In other words, the existence of any federal interest mandates federal regulation.

The status of the litigation is as follows. The "Where I" issue, that I've described, was decided by the U.S. District Court last March. Judge Holland held that all navigable waters in Alaska are public lands subject to ANILCA because the United States has title to the navigational servitude. The state and the United

States appealed this to the Ninth Circuit. On appeal both the state and the United States argue that navigational servitude does not convert waters into public lands, but the United States argues that some waters are public lands by virtue of the United States' water rights. The court heard oral argument in February and has the case under advisement.

The "Where II" issue, that is the issue of whether the Departments of Agriculture and Interior have authority to regulate fish and wildlife on state and private lands to effect the subsistence priority on public lands, is currently before the district court in four different cases. The court has indicated that it will not address this issue while the U.S. considers a petition by the Northwest Arctic Regional Corporation to promulgate regulations to extend the FSB's authority off public lands.

Thank you for the opportunity to testify.

Executive Director
 Duke Bertke
 Chelona Lake Lodge
 (907) 243-7767

President
 Ken Dale
 Waterfall Resort
 (907) 225-9461

**ALASKA
 SPORTFISHING INDUSTRY
 ASSOCIATION**

Vice President
 Bud Hodson
 Tikchik Narrows Lodge
 (907) 243-8450

Executive Committee
 Bill Sims
 Newhalen Lodge
 (907) 522-3355

Loren Leman
 Chairman, Senate Resources Committee
 State Capitol
 Juneau, Alaska 99801

April 10, 1995

Dear Senator Leman,

The Alaska Sportfishing Industry Association supports Senate Joint Resolution No. 19.

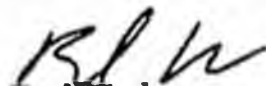
This is Alaska's last stand to maintain management authority over Fish & Game.

As a past Chairman of the Alaska Board of Fisheries, I can attest that fisheries management decisions are complex matters where the input of all users must be considered to make decisions that are fair and in the best over all interest of the State.

If the authority granted to the Federal Government under ANILCA is extended to include State lands and waters, only the considerations of one user group will be considered.

We agree with the arguments set forth in SJR 19 and encourage that SJR 19 move forward.

Thank you,



Bud Hodson
 Vice President
 Alaska Sportfishing Industry Ass.



Alaska State Legislature

Please enter into the record my testimony to the Resource
 committee name
 committee on SJR 19, dated April 8 1995
 bill/subject

Mr. Chairman, Senators Miller and Senator Ferguson,
 my name is David Martin. I'm Chairman of the Central Peninsula
 Advisory Committee in Sitka. Thank you for passing Resolution
 No. 19 and for providing this opportunity to testify. Our Advisory
 Committee unanimously supports SJR No. 19. The Advisory Committee is
 made up of 10 members and two alternates from the Sitka area.
 Each member is elected by the local public, to serve a three year
 term. The duty of our advisory committee and the other Advisory Committees
 around the state is to be a channel to relay the local public's input
 including advice, recommendations, concerns, etc. to any and all state
 and Federal agencies on matters pertaining to Fish and Game issues.
 We live here and we first hand what is going on with our fish and
 game and know what's best for proper management of the resources.
 Most all people, families and communities livelihoods and life style
 are dependant upon properly managed resources.

This system of local Advisory Committees, Boards of Fish and Game
 and the opportunity for public involvement of our fish and game management,
 under state jurisdiction is for the most part working very well and in
 the survey of many places in the lower 48. Alaska can boast record
 fish and abundant game. (over)

Signed: David R. Martin
 Testifier

Central Peninsula Advisory Committee
 Representing (Optional)

HC-2 Box 866 Chm Gulch, Ak. 99568
 Address

567-3300
 Phone No.

To maintain this effective fish and game management we must have State management on all land, waters and navigable waters within the State. This is not only a necessity but is also a Right given to the State at statehood. Even with the enactment of ANILCA it was never, ever the intent to apply Federal jurisdiction to State lands and waters.

Again we support SRS Sec. 19 and give you our wholehearted support in getting this resolution enacted. If we can be of any assistance please let us know.

Thank You.

Sincerely,
David R. Martin

Parker Recreational Services
4440 Columbia Blvd.
Juneau, Alaska 99801

April 10, 1995

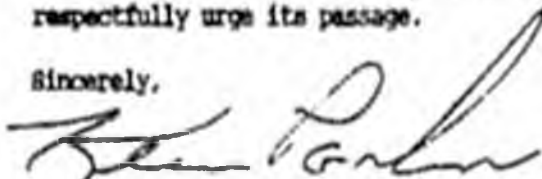
Senator Loren Leman
Chairman, Senate Resources Committee
State Capitol
Juneau, Alaska 99801-1102

Dear Senator Leman:

I would like to take this opportunity to provide comments in support of Senate Joint Resolution No. 19. I originally intended to testify at today's Senate Resource Committee hearing but will now be unable to attend.

My comments are provided on behalf of the Juneau Charter Boat Owners and Operators Association to which I belong. I am also on the Board of Directors of the Alaska Sportfishing Industry Association, a newly formed association to address issues facing our industry. Clearly the issue addressed in SJR 19, the future direction of Fish and Game management in Alaska, is of the utmost importance to all of us involved in recreational fisheries. It is our unanimous position that the State of Alaska must at all cost remain solely responsible for the management of fish and wildlife on State and private lands as well as the navigable inland waters and marine waters out to the 12 mile limit. Federal preemption of Alaska's fish and wildlife management program is intolerable, illegal, and violates the intent of the Statehood Compact. During my 19 years as a State of Alaska fisheries manager, I witnessed first hand the serious problems and ineffectiveness of federal management of natural resources. Since statehood, our management program, guided by the Alaska State Legislature and the Alaska Board of Fisheries and implemented by the Alaska Department of Fish and Game has brought back the health and abundance to our fishery resources that were decimated by federal management. Lets not let history repeat itself and end up with Washington bureaucrats dictating what is right for Alaska. Senate Joint Resolution No. 19 is a good first step to turning this situation around and I respectfully urge its passage.

Sincerely,



Kenneth P. Parker

JOSEPH D. RIEDERER, M.D.
4800 NO. DOUGLAS
JUNEAU, ALASKA 99801
TELEPHONE 907 • 586-2900

4/10/95

TO SENATE RESOURCES COMMITTEE
FAR 465-3810

I strongly support SJR 19

that requests Congress to
clarify the ANILCA Act - so
that "public lands" refer only
to federal land/waters.

Joseph D Riederer
63 4R Alaska Resident
4800 NO Douglas Hwy
Juneau 99801

JOHN A. SANDOR

P O Box 21135

Juneau, Alaska 99802-1135

PHONE: (907) 586-2497

FAX: (907) 586-2490

STATEMENT FOR THE ALASKA STATE SENATE RESOURCES COMMITTEE HEARING ON SJR NO.19

I am John Sandor, a resident of Juneau, Alaska with over 28 years of professional resource management experience in Alaska. I am representing myself as an individual citizen.

I support Senate Joint Resolution No. 19, because it seeks assurance that the State of Alaska will retain its management responsibilities for fish and wildlife on state and private lands and navigable waters.

It is essential the Congress of the United States reaffirm the intent of the Statehood Compact and ANILCA that the State of Alaska retain this management responsibility.

The President of the United States and the Congress have expressed their support of returning rights and authorities to the States. Most Alaskans are surely in agreement with this principle, so hopefully a consensus can quickly be reached on this important issue.

It should also be noted that as Federal agencies continue to centralize more of their decision-making authorities in Washington, D.C. and in Regional Headquarters in the "lower 48" states, Alaska's people and resources will be at greater risk.

I urge adoption of SJR 19.

Thank you for giving Alaskans the opportunity to express their views on the management of fish and wildlife in our great State.

April 10, 1995

cc: House Speaker Gail Phillips
House Natural Resources Committee
Alaska's Congressional Delegation

*Filed
to Borough*

TO: SENATE RESOURCE COMMITTEE MARCH 29, 1995

FROM: PETER E. K. SHEPHERD, 1012 GALENA ST, FAIRBANKS, AK 99709

SUBJECT: SJR 19

I am testifying in favor of SJR 19 to amend ANILCA. I strongly believe this move is necessary to protect the Statehood Compact, our state constitution, state fish and game management authority, and state jurisdiction over navigable waters.

Since territorial days my entire livelihood has been based on renewable resource management and use. For the past fifteen years more than two thirds of my annual income has been from big game guiding and trapping on state lands. Pre-emption by federal authority over state owned resources would certainly impact the future of this lifestyle.

Management of renewable resources on state lands and federal public lands is a state prerogative. Such management should not be that by a distant body of Washington D.C. bureaucrats under the influence of non-resident pressure groups.

State owned resources should be managed primarily for the benefit of Alaskans--not at the pleasure and desire of non-resident environmentalists. Federal withdrawals have already set aside ample dedicated areas for hands-off management. Section 8 of ANILCA holds many contradictions and is contrary to the intent of equal use established by the state constitution.

Alaskans must be free to chart their own destiny unhampered by Federal intervention in life styles, use, and management of renewable resources.

Peter E.K. Shepherd

BONNIE WILLIAMS
freelance & other writings

March 27, 1995

Senae Resources Committee
Alaska State Senate
Juneau, Alaska 99801-1182

RE: SJR 19 - Amending ANILCA

Dear Senators:

I strongly urge your support of Senator Miller's SJR 19.

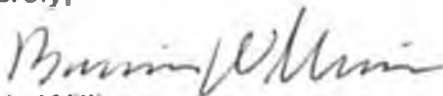
We must address and take action to resolve our subsistence problem, and we must regain State control of fish and game management.

The legal problem lies in the federal ANILCA statutes, which require that Alaska treat its citizens unequally and in blatant violation of Article VIII of the State constitution as well.

The alternative is to give up statehood, and revert to territorial status.

Please seize this opportunity and opening on the federal Congressional level.

Sincerely,



Bonnie Williams

Chairman
Senate Resources Committee
Dear Senator Leman,

30 March 1995

The founding fathers of our country sacrificed their lives and fortunes to form the greatest doctrine of government yet to be written. One of the basic principles of the Constitution of the United States was the separation of powers to keep the federal government from becoming a central totalitarian core. It was believed that the Executive powers would be balanced by the Legislative powers and both of these would be kept within the bounds of the constitution by the Judicial. Today we have courts who write legislation and the Executive doing the same. It was never intended that these separate powers would work together, particularly to raise one group over other groups in respect to rights accorded by the government. The preamble to our Constitution is quite clear on this. "..... the separate and equal Station to which the Laws of Nature and of Nature's God entitle them,"

The constitution was an attempt at the elevation of principles over institutions. But it appears that the government has lost touch with these founding principles and now offers institutional granting of rights to certain groups over others on the commonly held lands of the country.

The State of Alaska has carried the preamble of the U.S. further by including these founding principles in our own constitution: "This constitution is dedicated to the principles that all persons have a natural right to life, liberty, the pursuit of happiness, and the enjoyment of the rewards of their own industry; that all persons are equal and entitled to equal rights, opportunities, and protection under the law; and that all persons have corresponding obligations to the people and to the state." These words have the ring of a preamble (which is not, in a legal sense, a working part of a constitution). However, the section is a substantive part of the constitution and expresses important, legally enforceable rights. (Alaska's Constitution ...A Citizen's Guide...by Gordon S. Harrison).

It is clear here that we have a widening gulf between the principles of the founding of our nation and state and those of governmental institutions as they are presently composed.

The time for resolution of these dichotomies is rapidly approaching and will surely arrive in our life times. Whether the resolution will be in favor of the founding principles of our nation, or not, will have much to do with the stance of our elected representatives.

In the name of all of those who have sacrificed their lives and honor to uphold the principles of the Constitution of the United States over the past 200 years, I humbly ask you to work and vote for Senate Joint Resolution 19.

David L. Williams

1335 Sunny Slope Rd.
Fairbanks, Alaska 99709
(907) 455-6652

Rural Alaska Community Action Program, Inc.

March 28, 1995

Mr. Loren Leman, Chairman
Senate Resources Committee
Alaska State Legislature
Juneau, Alaska

RE: Senate Joint Resolution No. 19

Dear Senator Leman,

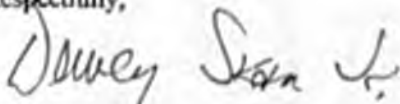
Over sixty rural Alaskan leaders are currently meeting in Juneau, Alaska at the Village Participation Conference at the Alaska Native Brotherhood Hall. A major concern of these rural leaders is the fact that the Senate Resources Committee will meet in Fairbanks on Wednesday, March 29, 1995 to hear testimony on the amendment of ANILCA, which rural subsistence users strongly oppose. These rural leaders are being denied the opportunity to testify face to face with your important legislative committee and to be heard because the hearing is being moved out of Juneau, even though these village leaders are in Juneau this week and this would provide an opportunity for input. Many leaders believe it is very important that the committee hear from those in Alaska who will be most affected if ANILCA is opened. Rural communities will be the last people from whom testimony will be taken by the Senate Resources Committee and it is to be taken by teleconferencing. Most communities do not even have teleconference sites, and are subjected to calling a toll free 800 number until they can get on. With over 200 communities which wish to testify, this is an incredible hurdle. It is extremely disconcerting to the 60 village leaders who are in Juneau this week that they are being put in this position.

The village leaders at the 1995 Village Participation Conference urge the Senate Resources Committee to hold hearings on this important matter in every regional hub of Alaska: Barrow, Kotzebue, Bethel, Dillingham, Nome, Copper Center, Tok/Tanacross, Ft. Yukon, Ketchikan, Kodiak and major urban area, Juneau so that all constituents in Alaska have an equal and fair opportunity to provide input.

Rural people unanionously oppose opening ANILCA which would radically divide our state. Rural Alaskans have few opportunities for economic development, and unemployment is more than 65% in most villages. The Subsistence take (around 2%) is vitally needed by rural Subsistence users.

Please reconsider your stand on opening of ANILCA; and, please reconsider your not allowing members of the 1995 Village Participation Conference to testify while they are in Juneau this week. Thank you.

Respectfully,



Dewey Skan, Jr.,
President RurAL CAP
Chair of the Village Participation Conference 1995

cc: Members Senate Resources Committee
Senator Ted Stevens
Representative Don Young



Alaska State Legislature

Please enter into the record my testimony to the Senate Resources
committee name

committee on SJR 19, dated April 10, 1995.
bill/subject

I support Senator Millers SJR 19. I feel we need to amend the ANILCA to clarify what public lands means. It should only mean federal land and water as pointed out in Senator Millers resolution, and mean hands off to adjacent land and water.

Signed: Don Shields
Testifier

Representing (Optional)
P.O. Box 7481 Nikiski, AK 99635
Address
776-5142
Phone No.

April 14, 1995

Senator Loren Lemman
Alaska Senate
State Capitol Building
Juneau, AK 99801-1182

Dear Senator Loren Lemman:

Yesterday the Senate passed a resolution regarding ANILCA purporting to address a state's rights issue which is allegedly clouded by the ANILCA wording. This resolution will come up, I understand, on a reconsideration vote next week. I urge you to reject it.

State's rights is nothing more than a red herring argument when it comes to this resolution. The real issue is clearly one of sports hunting and fishing vs subsistence and urban pleasures vs rural needs. I believe that this issue should be resolved in favor of subsistence.

Rep. Masek is absolutely correct when she indicates that this issue divides the state. However, her capitulation to urban pressures and subsequent abandonment of is not, in my estimation, the way this issue needs to be resolved. Changing ANILCA to eliminate a rural subsistence preference is wrong.

You and I, as urban dwellers, can walk in to any corner supermarket and purchase almost anything we might want or need. Our meat and produce comes prepackaged. We don't have to worry about spoilage because its all refrigerated, pasteurized, and processed. There are also, choices. If we don't like one, we can choose another. And the only shortages are when the strawberries, grapes, or oranges get frosted or flooded out in California or Florida and you don't get to choose between types and sizes.

The same is not true in Rampart, Stevens Village, or Allakaket. There choices are limited, prices are high, and cash paying jobs are very limited -- sometimes only four or five. Shortages mean you don't get to choose at all. Subsistence harvesting, however, is a way of life which is available even when the single store in town is closed. Salmon, moose, caribou, berries -- all may be harvested for the subsistence needs of the rural resident who, in reality, has very few other choices.

In times of shortages of subsistence resources, it is only realistic to make the limited resource available to those who really need it and rely on it and to limit access to those who have alternative food sources. This really

is a responsibility of a humane government. Alaska must either recognize this responsibility or bow to the pressure of a higher government which does recognize this responsibility. When a state government abrogates its responsibility to its citizens or when it refuses to recognize and meet the needs of its citizens it is appropriate for the federal government to intervene. This is one of those issues.

ANILCA established an appropriate policy which recognizes the unique needs and options available to Alaskan rural residents. This policy needs to be maintained, not abrogated. If you can not recognize this and support rural subsistence rights then, I am afraid that you find yourself in the position of the lawmakers described in Sister Goodwin's poem.

an eye for an eye

the ancient inuit ladies
eyed ravenously
the first tiny steel needles
at the trading post

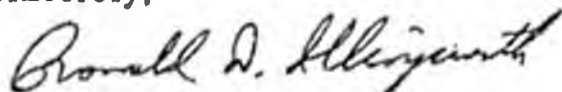
and now the lawmakers
eye ravenously
the land and the subsistence ways
they want to take it away
and give nothing in return

trading post my eye

from A Lagoon Is In My Backyard
by Sister Goodwin

I urge you to reject this resolution when it comes up for reconsideration.

Sincerely,



Ronald D. Illingworth
3046 Taxi Lane C
North Pole, AK 99705
488-0446

UNIVERSITY OF ALASKA FAIRBANKS

Interior-Aleutians Campus

College of Rural Alaska

Harper Building, Room 145 • P.O. Box 756720 • Fairbanks, Alaska • 99775-6720 • (907) 474-5439

FAX # (907) 474-5208

Facsimile Cover Sheet

To: Loren Leman

Company:

Phone:

Fax: 465-3810

From: Ron Illingworth

Company: Interior-Aleutians Campus

Phone:

Fax: 474-5208

Date: April 17, 1995

Pages including this
cover page: 3

Comments:



APR 10 1995

Sent Via Facsimile & 1st Class Mail

April 12, 1995

The Honorable Loren Leman
Chairman, Senate Resources Committee
Room 113, Alaska State Capitol
Juneau, Alaska 99801

Dear Mr. Chairman:

Thank you for inviting me to submit testimony to Senate Joint Resolution 19.

The Aleut Corporation does not support adoption of SJR 19. Its passage will not bring Alaska one step closer to solving the real subsistence issue: the continued existence of Native villages throughout the bush. On the contrary, SJR 19 proposes that the Congress deliver a death blow to the villages by reducing current federal subsistence protections to an empty rhetorical shell.

Alaska must not destroy its rural areas in order to serve a vocal urban minority which is so afraid of the majority that it will do anything to keep the question from going to the voters. Rural Alaskans (Native and non-Native) must be guaranteed nutritional resources for family and community survival in times of resource shortage. That is all that Title VIII does, despite the frenzied attempt in Juneau to redefine the issue as "management," "states' rights," or "equality."

Title VIII is a reasonable, justifiable policy enacted by the Congress and agreed to by the state in 1980. By trying to reverse it, SJR 19 proposes to pull the economic and cultural rug out from under rural Alaska - and to pass along the enormous cost of its collapse to every future governor, legislator, and taxpayer.

Chairman Leman
April 12, 1995
Page 2

We at The Aleut Corporation strongly object to SJR 19 - not only because it advocates a disastrous social policy - but because it asks the wrong people to decide the issue. We agree with Senator Stevens that subsistence must be decided in Alaska, by Alaskans, not in Washington D.C.

Sincerely,

THE ALEUT CORPORATION



Alice Petrivelli
President

/kgd

Kotlik Yupik Corporation
P.O. Box 20207
Kotlik, Alaska 99620-0207
April 13, 1995

APR 20 1995

Alaska State Legislature
Senate Resource Committee
State Capitol Building
Juneau, Alaska 99811

Dear Members:

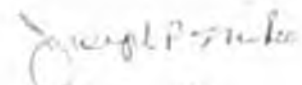
We the people of Kotlik are adamantly opposed to the passage of House Resolution 33, and Senate Resolution 19, both of which are designed to do away with subsistence protection under Title VII of ANILCA.

As you may be aware, Title VIII remains our only hope to restore and maintain our right to hunt and fish as we have since time immemorial. Our people here in Kotlik depend on subsistence hunting and fishing to survive. It is also an important part of our culture.

Thank you for your time and consideration.

Sincerely,

KOTLIK YUPIK CORPORATION



Joseph P. Mike,
President



UNITED FISHERMEN OF ALASKA

211 Fourth Street, Suite 112
Juneau, Alaska 99801
907/586-2820
Fax: 907/463-2545

Testimony on SJR 19
by
Jerry McCune
United Fishermen of Alaska
May 2, 1995

My name is Jerry McCune. I am President of United Fishermen of Alaska. United Fishermen of Alaska is composed of 21 member organizations plus individual members representing about 18,000 fishermen. United Fishermen of Alaska is Alaska's only statewide commercial fishing organization. We have 17 committees that gather information, analyze it, and recommend actions necessary to safeguard the fishing industry. We promote the Alaska commercial fishing industry as a whole and that is why we are supporting SJR 19.

United Fishermen of Alaska strongly supports SJR 19 as both a statement of state's rights and as a statement as to who has the ability to best manage fish and game for all Alaskans.

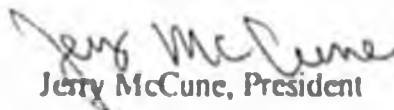
United Fishermen of Alaska does not view SJR 19 as a challenge to subsistence.

Alaskan fish and game resources should be managed by Alaska.

Perhaps memories are fading--but federal management prior to statehood in 1959 brought our industry to its knees. Immediately prior to statehood, federal mismanagement resulted in Alaska's salmon catch plunging to a 60-year low of about 25 million salmon. Alaska's fisheries resources and the 18,000 fishermen that UFA represents cannot survive history being repeated. The people of Alaska were stuck picking up the remnants of this abused resource. Through responsive management by Alaska and a lot of belt tightening by fishermen, myself included, Alaskans brought the salmon resource back to provide the record 194 million salmon harvest we saw last year. This was a spectacular conservation achievement.

You be the judge -- two different agencies, the same resource. One agency almost destroyed it; the other agency rebuilt it. Our fisheries resource and the thousands of subsistence, sport, and commercial fishermen who depend on it need to have management by Alaskans for Alaskans. Pass SJR 19.

Respectfully submitted,


Jerry McCune, President

MEMBER ORGANIZATIONS

Alaska Crab Coalition • Alaska Longline Fishermen's Association • Alaska Trollers Association • Area K Seiners Association
Bering Sea Fishermen's Association • Bristol Bay Driftnetters Association • Concerned Area "M" Fishermen
Cook Inlet Aquaculture Association • Cordova District Fishermen United • Ketchikan Peninsula Fishermen's Association
North Pacific Fisheries Association • Northern Southeast Regional Aquaculture Association • Peninsula Marketing Association
Petersburg Vessel Owners Association • Prince William Sound Aquaculture Corporation • Purse Seine Vessel Owners Association
Seafood Producers Cooperative • Southeast Alaska Seiners Association • Southern Southeast Regional Aquaculture Association
United Cook Inlet Drift Association • Western Alaska Cooperative Marketing Association

April 11, 1995

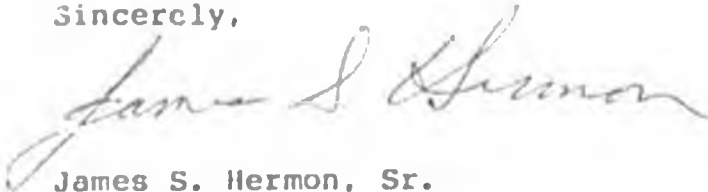
APR 18 1995

Senate Resource Committee
Senator Loren Lemman

Dear Senator,

The Federal Government's threat to take over our Dept. of Fish & Game is just another way of stirring unrest in the American people. The Federal Government is the worst abuser of causing racial hatred. ANILCA is another lawyers holiday. The Federal Government has enough other problems to solve as it is. Why duplicate Fish & Game management? They need not control the Alaskan fish & wildlife. The bottom line is, all people are created equal! My congratulations to Beverly Masek for speaking out as a honest American citizen.

Sincerely,



James S. Hermon, Sr.
P.O. Box 451
Palmer, AK 99645

ph. # (907) 745-3558

Mr. Hermon was unable to attend
the hearing because he wanted
this entered as part of the testimony
if possible. The card arrived at
the law office the following day
Thank you
Nat - Du L 10

SJR 19
Soldotna Hearing
April 8, 1995

NAME	ORGANIZATION	CONFIRMED	SIGNATURE
✓ Sterling Elde	Cook Inlet Sportfishing Assoc.	X	<i>S. Elde</i>
✓ Dick Bower	AK Board of Fisheries	X	<i>D. Bower</i>
Bud Hodson	Tikchik Narrows Lodge		
Larry Van Ray			
Mika Chihuly			
✓ Tim Evers	Deep Creek Charters Assoc.	X	<i>Tim Evers</i>
Joe Haines	Cook Inlet Professional Sportfishing Assoc.		
✓ Lyman Nichols	Cooper Landing Advisory Committee	X	<i>Lyman Nichols</i>
Ephim Moonin	English Bay/ Port Graham Advisory Comm.		
✓ Dave Martin	Central Peninsula Advisory Committee	X	<i>Dave Martin</i>
Lynn Whitmore	Homer Advisory Committee	X	
Carl Gravogal	Mal-Su Valley Advisory Committee		
Warren A. Brown	Soldotna Advisory Committee		
Willard Dunham	Seward Advisory Committee		
Adam Groio	Tyonek Advisory Committee		
Howard Davis	Cook Inlet Fisherman Fund	X	
Jeff Hetrick	Alaska Shellfish Growers Association		
Theo Mathews	United Cook Inlet Drill Association	X	
Charles Walkden, Sr.	Cook Inlet Seiners Association		
✓ Loren Flagg	Kenai Peninsula Fishermen's Association	X	<i>Loren Flagg</i>
Jere Murray	The Alliance Against IFO's	X	
Drew Scatzi	North Pacific Fisheries Association		
Brad Dickey	Ketch Sealoods, Inc.		
<i>TOM WALKER</i> ✓ Tom Mears	Cook Inlet Aquaculture Association	X	<i>Tom Mears</i>
Beaver Nelson			
Deborah Euf	Women's Fisheries Network		
✓ Chris Moss	North Pacific Fisheries Assoc.	X	<i>Chris Moss</i>
Jamie Ross			
	Kvichak Seiners Association		
Scott Highleyman	Alaska Marine Conservation Council		
Fish McGahn			
	Northern District Seiners		

SOLDOTNA
d. f. s.

SJR 19
 Soldotna Hearing
 April 8, 1995

Mako Haggerty	North Pacific Fisheries Association		
Drew Sparlin			
Halmar Nelson	Bristol Bay Native Corporation		
Michael Brown	Chugach Alaska Corporation		
John Merrick	Koniag Inc.	X	
Sandra Moller	The Aleut Corporation		
Jacob Adams	Arctic Slope Regional Corporation		
Plo Y. Park	Calista Corporation		
Carl Marrs	Cook Inlet Region Inc.		
Charlie Curtis	NANA Regional Corporation		
✓ Richard Link	Safari Club International, Kenai Peninsula Chapter	X	<i>Richard Link</i>
✓ Dan Haskins	Alaska Bowhunters Association	X	<i>Dan Haskins</i>
✓ Leon Ketz <i>MFR</i>	Alaska Trappers Assoc. Kenai Chapter	X	<i>Leon Ketz</i>
✓ Merle Wallford	Home Charter Assoc.	X	<i>Merle Wallford</i>

✓ Ed Kishin Kenai Soldotna ACFPA AC X *Ed Kishin*
 ✓ Lynn Whitmore Homer F.I.C. NUIS. X *Lynn Whitmore*
 Eddie GRASSER *ADAMS VALLEY SPANISH* X *Eddie Grass*
 Jim Roarby Homer, Self-invited by Son. M.I.L.C. Jim Roarby



COOK INLET PROFESSIONAL SPORTFISHING ASSOCIATION

P.O. Box 151
Kenai, AK. 99611

Testimony on SJR 19
Presented by Sterling Eide
April 8, 1995

Mr. Chairman, distinguished members of the Senate Resources Committee, my name is Sterling Eide. I am here today representing the Cook Inlet Professional Sportfishing Association. Our Association has approximately 120 members. Most members are professional guides, but some are operators of Bed and Breakfasts, or both.

Activities which our members conduct each year include an annual clean-up of the Kenai River, organization of the Soldotna Silver Salmon Derby and the operation of a childrens Fishing Pond at the Local Sportsmans Show. We are also a Chapter of Trout Unlimited and our members are active on the local fish and game advisory committee and the Kenai River Special Management Area Board.

Each year we participate in the Fish Board process and other public hearings such as this one. However, our primary activity is to take people fishing. This is becoming more difficult to do, as each year new regulations further restrict our ability to preserve our livelihoods. For this reason we must and do pay attention to as many facets of fisheries management and regulation as we can.

Recently one of our Congressman was quoted as saying that the Federal Government may take over management of fish and game in Alaska; including state land and waters. Since most of our fishing activities occur on the state waters of nearby rivers and the Cook Inlet, we felt that this could bring additional demands on our time to attend meetings. Consequently, when Senate Joint Resolution 19 was introduced we felt it was our responsibility to express support for SJR 19. Our reasons for supporting this legislation are fairly simple.

First, we believe that the state management is bound to be superior to federal management, since the state already has personnel and technical equipment such as sonar counters in place. Just last week our members attended a demonstration

by the Alaska Department of Fish and Game on the state of the art sonar counter that will be used on the Kenai River. The personnel operating these counters are experienced not only with counters, but with the problems of the Kenai River.

Second, the State of Alaska already has a system for making management decisions at the local level. The State's emergency regulation authority may cause us short term problems, but it does allow for timely management decisions that are designed to protect the resource in the longer view. Day to day management decisions will probably take longer and resource damage would probably occur under federal management.

Third, the state regulatory system starts with local advisory committees making and commenting on proposed regulatory changes. Then the Boards of Game and Fish distribute these proposed changes and provide for public comment. Even to the extent of paying travel per diem for local advisory committees to attend the Board meetings. After the Boards have met and regulations have passed, then the State distributes these regulations to fish and game offices and licensed vendors. The federal government does not have a system in place that is as fair or as thorough. The members of CIPSA do ask we to mention for those managers who are listening, not to become to complacent because even the state system is not always perfect.

Fourth, our association believes the federal managers already have traditional roles involving fish and wildlife management in Alaska that may exhaust all of their financial resources. We are aware of thousands of King Salmon being taken as by-catch in groundfish trawls on the high seas. We know the Stellar Sea Lion populations are dangerously low and may be listed as endangered.

In summary, the Cook Inlet Professional Sportfishing Association strongly supports SJR 19. We urge the Congressional delegation to amend ANILCA so we, our children and their children can continue to hunt and fish, at least on State lands. We thank you for the opportunity to make these comments.



COOK INLET
AQUACULTURE ASSOCIATION

HC 2, BOX 849
SOLDOTNA, AK 99689-9707
(907) 283 5781

April 8, 1995

The Honorable Loren Lemam, Chairman
Senate Resources Committee
Alaska State Senate
State Capitol
Juneau, Alaska 99801-1182

Dear Senator Lemam:

We appreciate the opportunity to comment on Senate Joint Resolution 19 because the management of our resources, particularly our anadromous salmon resources, is a matter which goes to the core of the purposes for which our organization was formed nearly twenty years ago.

Because the long-term strength of our salmon resources is so dependent on effective management, the experience and philosophy of the management agency and its personnel is a matter of substantial concern. It is our belief that the State of Alaska through its Department of Fish and Game is best suited to manage these resources. They have a long history of fishery management and a demonstrated capability to carry out that management with balanced concern for both the health of the resource and the needs of the various user groups.

To the extent that clarification of the term "public lands" will help to assure state management of the resources at least on State-owned and non-public lands it has our support.

Our experience has been that the federal agencies and their personnel have a perspective which is narrow in focus and sufficiently inflexible to accommodate the day-to-day and season-to-season management adjustments which are necessary for the optimum protection and use of the resource.

We encourage passage of Senate Joint Resolution 19 by the Alaska State Legislature and are hopeful that the Alaska delegation to the United States Congress will take up this issue and resolve it successfully.

Sincerely,

Thomas P. Walker



Alaska State Legislature

Please enter into the record my testimony to the S Res
 committee name
 committee on SJR 19 , dated 4-8-95
 bill/subject

Please Support The Above Resolution

No Federal Control of Fish + Wildlife

Signed: Allen J. McHardy
 Testifier

Representing (Optional)

110 Third Ave. Nena AK 99611

Address

(907) 293-7558

Phone No.



Alaska State Legislature

Please enter into the record my testimony to the Senate Resource Committee
 committee name
 committee on SJR 19, dated 4/8/95
 bill/subject:

I'd like to add my support for SJR 19.

Signed: [Signature]
 Testifier

Representing (Optional)

2000 2nd Kenai - Ak 99610

Address

262-3943

Phone No.



Alaska State Legislature

Please enter into the record my testimony to the Resource
 committee name
 committee on SPR 19 , dated 4-8-95
 bill/subject

We are a state in name only if we can't
 manage our own resources.

Whether the states constitution is amended or not,
 laws not under the fact that the language in Alaska
 needs to be changed. If there is confusion now
 there always will be until "public lands" is clarified.
 we don't want the courts to define Public lands.

Signed: Stephen Vornick
 Testifier

Representing (Optional)

163 N. Mitchell Tr. 99639
 Address

47-567-3470
 Phone No.



Alaska State Legislature

Please enter into the record my testimony to the _____
committee name
committee on SEN 19 , dated April 9, 1995
bill/subject

Signed: [Signature]
Testifier

Representing (Optional)

P.O. Box 499 Pitme G. rd, AK 99568
Address

907-266-3778
Phone No.

SJR 19
Invitational Testimony List

Organization	REPRESENTATIVE	FAIRBANKS	SOLDOTNA	JUNEAU
AHTNA, Inc.	Roy Ewan, President			
(1) ✓ DOYON Limited	Morris Thompson, Pres.	X		
(3) ✓ Tanana Chiefs Conference	Mitch Demientieff	X		
Alaska Federation of Natives	Julie Kitka			X
Greater Fairbanks Chamber of Commerce				
Citizen's Advisory Commission on Federal Areas	Stan Leaphart, Exec. Dir.			X
Alaska Miners Association	Mary Nordale	X		
(4) ✓ Alaska Outdoor Council	Dick Bishop, Exec. Dir.	X		
Alaska Dog Musers Association	Dave Lambert, Pres.			
Fairbanks Industrial Development Co.	Ron Ricketts, Exec. Dir.			
Alaska Trappers Association	Pete Bulst	No Position
(5) ✓ Alaska Wildlife Conservation Association	Ralph Seekins	X		
Resource Development Council	Becky Gay, Exec. Dir.			
Fairbanks North Star Borough				

FDX 3-29-95

SJR 19
Invitational Testimony List

ORGANIZATION	REPRESENTATIVE	FAIRBANKS	SOLDOTNA	JUNEAU
(2) ✓ Fish & Game Advisory Committees	Lynn Levengood	X		
(6) ✓ Alaska Independence Party	Lynette Clark	X		
(7) ✓ Alaska Reclamation Crew	Dexter Clark	X		
Fairbanks Native Association	John Regitano			
(8) Golden North Archery Assoc.	Ken Vorisek	X		
(10) Interior Wildlife Association	Chuck Gray Bud Weise	X		
(11) Fairbanks Republican Party	David Wilson Bonnie Williams	X		
Fairbanks Democratic Party	David Guitenberg			
Fairbanks Green Party	Lane Thompson			
Clear Skies Sportsman Assoc.	?	X		
(12) Tanana Valley Sportsman Assoc	Tom Scarborough	X		
(13) Alaska Sportfishing Association	Dennis Petre	X		
(14) Delta Sportsman Club →	Joe Strunka Gally Burris	X		
(15) Fairbanks Snow Travelers	Scott Haldorn	X		Greg MacLurek

(16) Chitina Depositions

Byron Haley

(17) (18) (19)

(2) DENIED

Jerry Sam



Alaska State Legislature

Session:
State Capitol
Juneau AK 99801-1182

Interim:
716 W 4th Avenue
Anchorage AK 99501-2133

TO: Senator Loren Leman
Chairman, Senate Resources Committee
VIA FAX: 456-3346

FROM: Annette E. Kreitzer, Aide to
Senate Resources Committee

A handwritten signature in dark ink, appearing to be "AK", written over a circular stamp or mark.

THROUGH: Melba Piispanen, Fairbanks LIO

DATE: March 29, 1995 11:25 a.m.

RE: Village Participation Conference Testimony in JUNEAU

Due to the unfortunate scheduling conflict between the Village Participation Conference in Juneau, and the Senate Resources hearing in Fairbanks, the Senate Resources Committee Chairman and Senate President extended an invitation to the Village Participation Conference attendees to participate via teleconference in the hearing on SJR 19.

Five or six representatives of the village regions will be selected by conferees, according to Dewey Skan. They will participate from the Juneau teleconference site.

A reminder that statewide testimony on SJR 19 will be taken from 3:30 p.m. to 7:00 p.m. on April 10.

BRIEFING BY ATTORNEY GENERAL BRUCE BOTELHO
MARCH 8, 1995

This transcript was prepared without using a tape log as a tape log was not prepared for this briefing. People testifying were determined to the best ability of the transcriber and may not be correct.

SENATOR PEARCE:

I'll call the briefing to order. For the record, we're going to record this. It is not an official meeting of any committee, instead it is a briefing that the Attorney General agreed to provide to us about status of ongoing litigation that the state is taking part in. I will, for the record, name those legislators who are here at the moment, myself, Senator Pearce, Speaker Phillips, and then going around the room, at the table we have Representative Kay Brown, Representative John Davies, Senator Randy Phillips, Representative Brian Porter, Representative Bettye Davis, Representative Cynthia Toohey, Representative Irene Nicholai, Representative Beverly Masek, Representative Jeannette James, Representative Scott Ogan. Pete, I almost called you a representative. Representative Carl Moses, Senator Rick Halford, Senator Mike Miller, Senator Steve Rieger, Senator Bert Sharp, Senator Taylor, Senator Tergerson, Representative Ivan, Senator Leman, Representative Austerback. Most everybody, Senator Hoffman, Representative Grussendorf, Senator Green, Representative Navarre, Senator Lincoln, Senator Adams and Representative Williams, Representative Kohring, and others probably. We would like, Mr. Attorney General -- we do very much appreciate your offering to do this for us and we understand that what we're going to be receiving is a briefing on those cases so that have a feel for where we're at. If we'll go and whatever format you're prepared for and works best for you within the cases. What I'd would like to be able to do is let Bruce go through his portion and then questions, and Bruce, if a question is asked for which an appropriate answer should be in executive session, if you will just tell us, then we'll set that question aside. Continue with whatever public questions there can be and then at the end, if necessary, go into executive session, because it certainly make sense to go in and out. I think everybody is prepared. Thank you and I believe that everybody has a copy of the briefing materials that you had sent us, along with your letter.

BRUCE BOTELHO:

Thank you, Madam President and Madam Speaker. First, for the opportunity to make this report to you and also your sensitivity about trying to do as much of this as we can in open session and to

the extent that we do touch on questions that are best left to closed session to operate in the manner you suggested, that is to allow me to suggest that the question be held. With your permission, Madam President, I'd like to invite two assistant attorneys general to join me at the counsel table. First Ms. Joanne Grace who leads our federal/state subsection in our Natural Resources Section in Anchorage. And section -- and second, Mr. Marty Weinstein who has done -- his primary work in the Endangered Species Act cases that are ongoing. I also, Madam President, have prepared a two page summary of the cases dealing with federal/state relations that are encompassed by work done in Joanne Grace's section so that rather than having to go through the entire sheaf of papers you have, something you can write little notes on, and with your permission, I will circulate.

SENATOR PEARCE:

Do you think you have enough or should we have...

BRUCE BOTELHO:

I think we have sixty copies on the assumption that there would be a fairly good turnout today, and I appear not to be wrong on that assumption.

Senator Taylor, I've had the opportunity to appear in front of others since the legislature has convened. I think it's important to point out that we have litigation ongoing with the federal government in several of our sections and they run the gamut of activities from challenges to funding by the U.S. Department of Education example, you won't find listed here, the Beaufort Sea litigation we have challenging federal government's assumptions about what constitutes the territorial waters of Alaska. Those are important federal cases that we have that are not being handled specifically by the sections we have -- working on specific federal challenges. With that, I am going to ask Joanne Grace to begin running you through the cases that are listed on the two page sheet that I passed out. We'll make a brief summary on the assumption that several of you had the chance to read through the more detailed status reports and we'll take questions after that. Joanne, if you would join me and Marty if you (indisc.).

JOANNE GRACE:

I'll try to speak loudly so everyone can hear me. Probably the most -- the best known case that the federal relations group handles is what we call the compact case. This is the case that we filed in 1993, against the United States claiming a breach of the statehood compact. One of the major objections of statehood for Alaska was that Alaska was economically immature and wouldn't be able to afford statehood. So to compensate for this, Congress put some provisions in the Statehood Act to give us the resources to

fund state government. One, of which is what we call the 90/10 provision, the grant to the state of 90 percent of revenues from oil and gas development on federal land. The state's position is that the Statehood Act constitutes a compact because the people of Alaska relied on these provisions in the Statehood Act in agreeing to accept the social and financial and political responsibilities of statehood, and the Statehood Act provided that it would not become effective unless the people of Alaska ratified it with a vote. So upon ratification, the Statehood Act became a compact where the United States could not unilaterally amend essential provisions of that compact without state permission. So the state filed suit alleging breach of compact of the 90/10 provision for breach of the covenant of good faith and fair dealing, fraudulent inducement and a taking without compensation. The state has filed a motion for summary judgement in that case, which is before the Court of Federal Claims. The United States is slated to its brief in opposition, in April, and we expect briefing to be complete on this by the end of the summer, I think it's July, I believe.

The Federal Relations Section also handles the oil export ban litigation. In 1992, the state filed two lawsuits against the United States challenging the oil export ban. We filed one in Federal District Court in Anchorage alleging that the export ban violated the Tenth Amendment and the court preference clause of the constitution. The District Court ruled against us on that issue about a year ago, in March of 1994. We have appealed that to the Ninth Circuit Court of Appeals. Briefing is complete in that case, but we haven't argued it yet. I would expect that we'll probably argue it in August, and get decision sometime thereafter.

The second case was filed in the Court of Federal Claims alleging a taking. That case was stayed for a couple of years for procedural reasons, but recently the court granted a United States motion to dismiss in that case -- dismissing the case because, based on the statute of limitations, the court ruled that the state's cause of action accrued in 1979 when Congress passed the Export Administration Act, and the statute of limitations for cases of this kind is six years. We have until April to appeal that decision to the Court of Federal -- the Federal Court of Appeals.

We have a couple of submerged lands case. We filed suit in 1987, to quiet title to the submerged lands in Northern Alaska. When the state enters the Union, title to all the submerged lands underlying navigable waters passes to the state automatically as a matter of constitutional grace. But the United States claimed that title to the submerged lands in this 48 million acre area of land 'n Northern Alaska did not pass to the state because it was reserved at statehood. Public Land Order 82, which in 1943 reserved 48 million acres of land to preserve oil and gas in prosecution of World War II, and that reservation was revoked in 1960. But the United State's position is that because it was reserved at statehood, we didn't take title to all the submerged land. And

about 25 percent of the state was reserved.

[A SIGNIFICANT GAP IN JOANNE'S TESTIMONY AND THE FIRST PART OF THE QUESTION AND ANSWER PERIOD OCCURS AT THIS POINT. THE GAP IS ON THE ORIGINAL TAPE. AT THIS POINT THE TAPE SKIPS TO THE MIDDLE OF THE QUESTION PERIOD FOLLOWING DEPARTURE OF THE HOUSE MEMBERS]

SENATOR HALFORD:

...we've got a problem. If you'd give us a report back on those two cases, and do it now, I'd like to know what -- you know what they mean in terms of federal law.

BRUCE BOTELHO:

Madam Chair. We'd be delighted to do that. I think it's also very important to recognize the same conundrum exists, obviously, in the state court system as well, and virtually every court system. There are plethoric -- plethoric of decisions. The way to be given depend on the circumstances and also the level of the courts. To the extent we're talking about district court decisions that have not been appealed. Judge Singleton is not obligated to follow a Judge Holland in Alaska. What it does mean is the - the possibility and, in fact, the likelihood in any given general area that you will have inconsistent decisions, hence the ability to take appeal or the decision not to in certain cases. That will leave the law ambiguous. And Senator Halford has certainly pointed out precisely that kind of conundrum we have here

SENATOR PEARCE:

Are there further questions? Representative... Oh, I'm sorry, Senator Halford did you have a follow up?

SENATOR HALFORD:

No.

SENATOR PEARCE:

O.K., Representative James.

REPRESENTATIVE JAMES:

Yes, a number of western states have filed amicus briefs in support of the state's position on preemption on state navigable waters. What will the impact of an adverse ruling on the definition of "public lands" as it affects the established interpretations of navigational servitude and reserve water rights in the west.

JOANNE GRACE:

It's not very clear what the affects would be on other western states because the argument that was made in this case, was made as an interpretation of ANILCA that only applies to Alaska. But, just as a general proposition, it's alarming to western states to think that the existence of small right in navigable waters renders those waters public land subject to sweeping regulations or statutes. Also, the western states felt that Judge Holland's decision violated the clear statement doctrine which says that if Congress intends to exercise its commerce -- that authority to its fullest, it makes that intent clear. The court will not assume that Congress intended to infringe on traditional state areas unless Congress makes that plight clear in this legislation.

SENATOR PEARCE:

Further questions? Senator Halford.

SENATOR HALFORD:

Thank you, Madam Chair. You were the attorney that was assigned to the Babbitt case. When the Governor made the decision to drop the appeal for the Babbitt case, what was the discussion with regard to whether it be dropped with prejudice or (indisc.) not argued. You know that's first part of the question (indisc.).

JOANNE GRACE:

We dropped the with prejudice only to that issue, in that case, because the United States was concerned that this was in a lockatory(ph), meaning it is not a final judgement. The United States was concerned that we would go back down to the district court, litigate the rest of the case, and then appeal that issue again. So we did -- we withdrew only as to that issue in that case.

SENATOR HALFORD:

You say, "that issue" in the McDowell case. You're saying the issue of who does the federal (indisc.), it's done by a federal management system versus by a federal court system.

JOANNE GRACE:

Right.

SENATOR HALFORD:

What about the other portions of Babbitt that were incorporated in one court room, were they argued on February 8th.

JOANNE GRACE:

No, they haven't been decided before the district court. They're still alive before the district court.

SENATOR HALFORD:

So all the provisions that were in the Babbitt case, with the exception of the provision that allows federal management, are still there. It's hard to understand how things are consolidated. Take a series of cases that are consolidated and then you drop one issue of one case, which is a consolidated product of these four or five others.

JOANNE GRACE:

It's extremely complicated. Only that issue was dismissed.

SENATOR HALFORD:

So what remains of the Babbitt case?

JOANNE GRACE:

There were three counts in the Babbitt case. The other count relates to the United States assertion of authority over navigable waters. When we filed that case, the federal subsistence regulations said, "These do not apply to navigable waters, they only apply to non-navigable waters on federal lands. In other words, waters where the United States owns the submerged lands in any navigable waters where they (indisc.) submerged lands. But yet the regulations were lifted straight from the state regulations. It seemed to cover waters that we consider navigable. So the other two counts in Babbitt essentially say, "Wait a minute. You say these regulations apply when it's non-navigable waters. Well where is that. Which waters are navigable, which ones are not navigable? Where does regulations apply? How is the public supposed to know where the federal apply and where the state regulations apply?" That issues has not been litigated and whether it will be depends somewhat on what the Ninth Circuit said.

SENATOR PEARCE:

Senator Leman and then Senator Hoffman.

SENATOR LEMAN:

Just on that point, if that's the case, you haven't dropped the entire case, why isn't it listed on this list. Why (indisc.). I'm 18 I guess.

JOANNE GRACE:

(Indisc.)

SENATOR HOFFMAN:

Yes, on the Katie John versus the United States case, (indisc.) hearing the decision here shortly, I guess. The question I have is that I assume your party is going to appeal that the United States Supreme Court, and I wonder how many cases are appealed, historically, and how many are heard? What's the time frame that you might predict that a decision would be made by the Supreme Court on whether or not they would hear.

JOANNE GRACE:

(Indisc.) the Ninth Circuit agreed to expedite the case. Whether that means that it will come out with a decision soon, I don't know. I understand the Exxon case (indisc.) granted expedite (indisc.). Once the Ninth Circuit issues its decision, my guess is that whoever loses will petition the Supreme Court to take the case. The Supreme Court, my understanding is accept about 1 percent of the petitions that it gets.

SENATOR HOFFMAN:

And how many petitions do they get?

JOANNE GRACE:

That I don't know.

BRUCE BOTELHO:

It actually less than 1 percent. It's ranged most recently - three or four thousand a year. They accept somewhere between a hundred... It's been less in the last two or three (indisc.)

SENATOR HOFFMAN:

Even the scope of this case, the (indisc.).

BRUCE BOTELHO:

My own sense is that it's not highly likely, mainly because it is an issue limited to one state - only to the extent that there is some... Well, of course it's going to depend on the decision itself, to the extent that there are implications for other states that probably enhances the possibility that that certainly be accepted, but to the extent it focuses on one state. The Supreme Court has generally chosen not to take - to take up those cases. They generally look and accept cases where there have been conflicts of law between the various circuits, whether it's dealing with abortion rights or other topics where there has been conflicting decisions. Of its nature not one that another circuit would have dealt with. So, my judgement is that it is more likely

than not that a petition for cert would probably not be granted.

REPRESENTATIVE HOFFMAN:

So on the time frame, there's a possibility of having the Ninth Circuit make a decision in a year from now and then when an appeal takes place, what's the time frame do you think the Supreme Court would make its decision?

BRUCE BOTELHO, ATTORNEY GENERAL, DEPARTMENT OF LAW:

The parties would be required to -- a party would be required to file a petition within 60 days. Generally speaking, there is first a brief round on whether petitions should be granted. If it is granted, it would probably be placed on -- if we're lucky enough, the calendar for next year. I think it would be highly unlikely a decision would be rendered, assuming we have an opinion by the Ninth Circuit tomorrow, before mid 1996, and more likely 1997. Joanne you'd have a better guess than I do.

SENATOR HOFFMAN:

Would it be fair to say that it is possible that the deadlock that we see here in this state that no human take in the near future that a lot of the petitions is going to result with this case.

BRUCE BOTELHO:

Senator, if you could try that again on me.

SENATOR HOFFMAN:

It seems to me that the impasse on the constitutional amendment, which I proposed, and at present -- it seems to me that many of the people I represent are liking more and more the federal decision that is coming down and there is the possibility that they'll be asking me not to support a constitutional amendment. And I would be siding with the present leadership then to retain federal management. The question I have, I guess, is that if this -- you know it seems that the longer we wait, the lines are being drawn tighter and tighter and the question I have is, 'Do you see any deadlock breaking on either side until this case is resolved?'

BRUCE BOTELHO:

Madam Chairman, I'm not sure whether one could say its goodlock or deadlock would be broken before except to the extent of the people feel increasing tension about it. I would assume that if the decision rendered by the Ninth Circuit would be to find that the federal authority extended into navigable waters would be a very strong interest, particularly among commercial fishing. In sports fish try and narrow or eliminate that kind of federal oversight.

On the other hand, the decision essentially affirms to state's view that the federal oversight is limited to public lands, that the consequence will be little interest by commercial and sports fishers to try and resolve the matter, and perhaps we would also find among those who have traditionally advocated the constitutional amendment, the decision that federal management on federal lands is the way to go, and forget about state management. It's all speculation, but I would say that there's no key that this decision is going to have, to really unlock the riddle. If people are holding out that that's going to give us the solution, I'm not sure that lawsuits are the way to set public policy. It's obviously your...

SENATOR HOFFMAN:

Then I guess I would agree, you know, with you and that's why I think we need to try to work on it, because if it comes out in Katie John, that my constituents are going to want to continue to retain their own management.

SENATOR PEARCE:

If you want to go back to Senator Taylor and Senator Halford, are there others who have not asked any questions who wish to do so?

SENATOR TAYLOR:

Thank you. Will your client appeal Katie John if he loses?

BRUCE BOTELHO:

Yes.

SENATOR TAYLOR:

If Judge Holland imposed a stay on enforcement of the regs proposed by Mr. Babbitt, was that stay lifted when the case was dismissed?

JOANNE GRACE:

Judge Holland's decision in the Babbitt case simply maintains status quo. If he'd have ruled in favor of the state, then he would have invalidated the authority of the Federal Subsistence Board to regulate, and the Secretaries of Agriculture and Interior to manage fish and wildlife anywhere on public lands in Alaska. But because he ruled against the state, there was no need to stay that decision to maintain the status quo.

SENATOR TAYLOR:

Have they, in fact, stayed it themselves during the pendency of that appeal?

JOANNE GRACE:

The Federal Subsistence Board took over management of fish and wildlife on public lands a couple of years ago. So, they are already managing and Judge Holland's decision wouldn't change that because he essentially ruled they have the authority to regulate.

SENATOR TAYLOR:

The court dismissal of the appeal certainly precludes us -- the state from ever precluding them from regulating subsistence on federal land...

JOANNE GRACE:

Theoretically, I suppose we could bring...we withdrew with prejudice only as to that case. So theoretically, I suppose we could do it again.

SENATOR TAYLOR:

Can you sign or someone over there on that table, sign a stipulation dismissing that case with prejudice in front of that court. I mean, you could not in good conscience bring that case again before the same court...

BRUCE BOTELHO:

This Administration will not.

SENATOR TAYLOR:

Well, that's doesn't shock me.

SENATOR HALFORD:

Let me just...if there is an adverse ruling in the Katie John case, will the state of Alaska appeal that ruling to the United States Supreme Court?

BRUCE BOTELHO:

I'll affirm it again, yes.

SENATOR HALFORD:

Okay, that's...do you think we will get a stay? If there's an adverse ruling, do you think Judge Holland will extend his stay of implementation?

BRUCE BOTELHO:

That issue, Madam Chairman, I believe, was primarily going to be a question for the Ninth Circuit, not...

SENATOR HALFORD:

Okay, it wouldn't be done by Judge Holland, he stayed his to go to them, but then they have to stay it to go to the Supreme Court.

BRUCE BOTELHO:

If they rule against the state of Alaska...

SENATOR HALFORD:

Yes.

BRUCE BOTELHO:

Actually, I guess it depends on the posture of the case, where it might first go to Judge Holland, but I'm just trying to reflect right now whether it goes first to Holland or whether it's a question first presented to the Ninth Circuit. It depends on whether there's a remand back to the district court first. Let's assume that it goes back to Holland, would he extend the stay? I do not know.

SENATOR HALFORD:

Well, ya, I mean, what are the chances of an adverse ruling in the Ninth Circuit with essentially an immediate effective date? That's what we're ending up with in terms of management structure.

BRUCE BOTELHO:

Madam Chairman, my sense would be, given the nature of the case, that it's more likely than not, that there would not be a further stay once the Ninth Circuit has ruled, if it rules against the state

SENATOR PEARCE:

Speaker Phillips.

SPEAKER PHILLIPS:

Bruce, time and time again, we have been told that if Alaska comes into compliance with the federal law, that we will be guaranteed the right to manage our fish and game resources again, or at least manage them with the least amount of federal interference. However, you will recall that when the... the same promises were made to us when we reassumed management of the walrus under the Marine Mammal Protection Act. And once we had that, then the

management was forced... we were forced return walrus management to the federal government due to continued harassment by the federal government. Do we have any kind of guarantees whatsoever, that if we were to take action, whether it be to come into compliance as has been stated, or to reach some kind of compromise, or to come up with some kind of solution, do we have any guarantee whatsoever that the federal government will pull out and take us out from under this threat of their interfering with our management?

BRUCE BOTELHO:

Madam Chairman, it's a difficult question to answer. I don't think there is an absolute guarantee and I think that Senator Taylor is correct when he has identified one aspect, I think, very important, sometimes overlooked, which is that when we talk about a constitutional amendment and subsidiary laws bringing the state's laws consistent with ANILCA, it does mean, obviously, that -- maybe not so obviously -- that fish and game managers would be state managers, setting guidelines. But it does not eliminate federal court oversight. ANILCA, by its terms, provides for any aggrieved citizen or person -- not limited to citizen -- to seek recourse ultimately in U.S. District Court, and to the extent that there is not resolution, the federal district court retains the right to fashion relief. And that would occur, does occur now, and would occur also with a constitutional amendment. The effect of a constitutional amendment found to be consistent with ANILCA, simply means, and it's an important simple, that it would be state fish and game managers managing fish and wildlife resources within the boundaries of Alaska. But it does not mean there's no federal court oversight.

SPEAKER PHILLIPS:

So, just to clarify... could I just verify and clarify your response. We could take any kind of action we want in the state of Alaska. We could do anything we want to try to come into compliance ... to meet the federal compliance and that still does not guarantee us, that we would have the rights to manage our fish and game resources, regardless of what we do.

BRUCE BOTELHO:

If I've not been clear, Madam Chairman, we do have the right to manage. We are subject, however, to federal court oversight by ANILCA. Whatever changes we make that bring us into compliance, the actions of our state government would be subject to a person challenging our... the propriety of our management under the guidelines of ANILCA. That is, whether we have in fact satisfied the rural subsistence priority found in Title 8.

SPEAKER PHILLIPS:

What are we wasting time for, then?

REPRESENTATIVE BUNDE:

Well, I tend to oversimplify things, but to me that says that the state can manage, as long as they do it the way the federal government tells them to. In other words, the state managers do the talking, but the feds pull the strings.

SENATOR TAYLOR:

A puppet.

SPEAKER PHILLIPS:

Do you have a question Representative Bunde?

REPRESENTATIVE BUNDE:

I thought that was a question, but... (laughter).

BRUCE BOTELHO:

I would agree that you have a way of oversimplifying the problem.

SENATOR PEARCE:

O.K., Senator Hoffman.

SENATOR HOFFMAN:

So in effect, it's judicial management of our resources. In final review, then we have very limited control.

SENATOR PEARCE:

Senator Leman, are you on that same point or different... Never mind. Representative Porter.

REPRESENTATIVE PORTER:

Well, I guess let me take the next logical step. Is it a fair statement that the only way to do away with that subsequent federal oversight is to change ANILCA?

BRUCE BOTELHO:

Federal court oversight? The only answer is an amendment to ANILCA.

SENATOR LEMAN:

Bruce, have you had a chance to look at SJR 19 that was just introduced within last... I don't remember... two or three days? I'll just tell you what... it requested that Congress clarify in ANILCA, that use of public lands is limited to only federal lands and waters. Now would that solve the problem of the federal federal command chain over lands and waters or is something more required than that?

BRUCE BOTELHO:

I guess I'm not sure I quite understand the question. The resolution does what?

SENATOR LEMAN:

It asks Congress to clarify that federal lands... the definition of public lands is limited to only federal lands and water.

BRUCE BOTELHO:

It strikes me that one of the difficulties is that is somewhat...

SENATOR LEMAN:

Your resolution Drue? Isn't it your resolution? Who introduced this?

SENATOR PEARCE:

Senator Miller's...

SENATOR LEMAN:

Is that a correct characterization?

BRUCE BOTELHO:

It may be somewhat circular, however, when there is a dispute as to what constitutes federal waters. That really is really the essence of what Katie John is about.

SENATOR PEARCE:

Representative Davies.

REPRESENTATIVE DAVIES:

Mr. Attorney General, the question was asked a minute ago that, you know, then the only solution to this problem is to change Title 8 of ANILCA. But doesn't, in fact the root, I mean the base authority in this case go back two steps farther than that. Doesn't it go back in the first instance to the compact in our

state constitution where in that document we agreed to seed authority of Alaska Native affairs to the Congress. And doesn't that, in fact go back to the sovereign claims of the Alaska Natives prior to statehood? I mean, in other words, if we're looking to get out of any kind of federal oversight of fish and game issues that relates to Alaska Native claims, we would have to go clear back to the discussion between - the sovereign discussions between the Alaska Natives and the United States of America. Wouldn't we?

BRUCE BOTELHO:

I'm not sure that I will -- if I can maybe divert a little bit. To a certain extent, the question is not unlike that of Senator Taylor's, I think early on, in terms of whether if Congress, in essence, had authority to enact Title 8 of ANILCA of creating a preference. Its focus was on the compact itself and whether that, in some respect, that compact which should have priority over -- given the fact, at least in our view, that it is a contract between the people of Alaska, and the Congress would have precedence. And so, the second -- and that's been one line of argument. That's exactly the tack that has been taken in the McDowell Two Case, which was rejected by the Ninth Circuit, remanded back to the District Court on standing grounds. The second -- part of that attack was simply the question of whether ANILCA, Title 8, was unconstitutional itself. I have little doubt with that the federal government, Congress, has authority to enact something like ANILCA. Whether it's good policy or not, I think it is a different policy debate. But does it have the authority? I believe that it does and I think that's going to be the outcome. I think there are clearly arguments to be made about what extinguishment of rights to place under the ANCSA land settlement as well. That has been a major issue. To me, the primary concern is to allow to -- recognize in the federal government, in the federal law having supremacy, can establish that there be a priority. The state is concerned about trying to find a means that it has maximum control in managing the resources, especially those that cross the public land into state and private lands. I'm not offended parse, of court oversight. All government action is subject to court oversight. I think the difficulty is probably two fold, in this particular respect. First of all, it is unusual for federal court to be focusing on this kind of dispute. It's very unusual, defined under any other jurisdiction in the U.S. And I think the second extraordinary feature about it is the remedy which the court is able to fashion. Normally, when a court -- a state court or a federal court engages in oversight, is asked to look at the legality of an agency action, it'll make a finding and usually then remit back or remand back to the agency to act in accordance with the decision. In this particular circumstance, rather than remand back to the agency, you have the federal court able to fashion a remedy itself, and I think the concern, in some quarters is that it really permits the federal court to end up being a board of fish and game. And, again, without taking a stand about whether it's

good or bad, it is unique and, I'd say American juris prudence for that kind of remedy. But, at the same time, again, I don't think anyone should be offended by the idea that arbitrary government actions shouldn't be subject to court review.

SENATOR PEARCE:

Thank you. I have Senator Halford, then Speaker Phillips, then Representative James.

REPRESENTATIVE NAVARRE:

Madam Chair.

SENATOR PEARCE:

Oh, I'm sorry Mike, I didn't see her.

SENATOR HALFORD:

We're subject to the federal court's interpretation and operation and the only federal court interpretation we have on the scope of the preference are the Bobbie case, a successful defence for year rounds unlimited harvest before any other system or regulations. In the Southeast roe case which was, I think 15,000 individually and seventy-five thousand in the aggregate value if those two things are the extreme of the definition of the federal preference then should we amend our constitution and should that be the structure under which we operate? If -- you know if you assume there's no reversal or no change to ANILCA, and those unchallenged federal cases, are the definitions. And do you think we should amend our constitution and operate under that kind of a system of management?

BRUCE BOTELHO:

Madam Chairman, my view has been that the solution lies in a constitutional amendment that should be tied or with some simultaneous changes to ANILCA. Reflect that as my personal view, I'm not speaking for the Administration in that regard, which I don't believe has announced its view as to what the specific solution is. The Governor has clearly stated, and I support him in that statement, that the solution does include a constitutional amendment.

SENATOR HALFORD:

So a constitutional amendment, absent changes in ANILCA, is not a solution?

BRUCI BOTELHO:

I have not said that though I would believe my -- well, let me restate that is a correct assumption of my view. I think there are changes to ANILCA -- the solution lies in a combination of a constitutional amendment and certain changes to ANILCA.

SENATOR HALFORD:

Could the solution lie with changes to ANILCA without the constitutional amendment?

BRUCE BOTELHO:

I believe that there is no solution that can be found that rests solely on changes to ANILCA.

SENATOR HALFORD:

Politically or substantively?

BRUCE BOTELHO:

Politically.

SENATOR PEARCE:

Representative Navarre, we'll go ahead and take you out of order please.

REPRESENTATIVE NAVARRE:

My question goes back to the simplistic view that the feds are going to run things no matter what. And whether it's state law, state regulation, or federal law, federal regulations, the courts are going to have jurisdiction, right?

BRUCE BOTELHO:

Yes.

REPRESENTATIVE NAVARRE:

And the difference is that if we end up or if litigation ends up going to the courts on whether or not the regulations that the federal government may implement don't go far enough in the definition of customary and traditional or trade and barter, or whatever that means, then we're going to have the federal courts interpreting what Congress meant and the state really would have.... I guess, what would the state's position be in trying to argue that that's not what they meant.

BRUCE BOTELHO:

I don't know. I'm feeling fairly slow tonight. I missed something and if you'd try it again, the first portion of it again.

REPRESENTATIVE NAVARRE:

What I'm getting at is is -- at least if we attempt to change the constitution, allow the people of this state to determine whether we change the constitution to a public vote -- maybe tie it to ANILCA with some changes, that gives us some protection whereas now, if the federal government assumes management and the federal regulations are then challenged as not going far enough, what -- I guess what is the state's position or what avenues does the state have to defend against federal courts interpreting what Congress meant. We can, I guess, offer arguments but do we have standing a case like that?

BRUCE BOTELHO:

Again, Madam Chairman, I think its going to -- it will depend on the circumstances of any given case but, if I understand the direction of your question which is which regime offers the better or greater degree of control of fish and game resources and clearly one which rests us with the ability -- us as a state with the ability to make the initial management decisions, and to the extent that one also assumes that courts generally will defer, and I believe that they do though there are clearly exceptions, to agencies that use their expertise properly that the state is better off in a regime that allows us to be making the decisions over all the lands and waters of the state than a federal system which really creates truly dual management by dual managers. And ultimately, -- in both systems being subject, ultimately, to one final tribunal.

JOANNE GRACE:

Just to correct one point there, I think that the federal courts have decided that they do not defer to the state agencies.

SENATOR TAYLOR:

(Indisc.) Maybe you could say that again, I don't think everybody heard.

JOANNE GRACE:

The name of the case is escaping me, maybe somebody knows, but there was a federal court decision that said that the court will not defer to the state agencies.

BRUCE BOTELHO:

Well ya, and I think that's in the legal sense but I don't think

that that is reflective of the actual -- agent... state courts have said that as well. In fact, they do.

SENATOR PEARCE:

I have two other House members. The House is going back on the floor, so I'll take the House members first then we'll come back, Senator Salo, to you and Senator Hoffman. Speaker Phillips.

SPEAKER PHILLIPS:

I'll pass.

SENATOR PEARCE:

O.K., Representative James.

REPRESENTATIVE JAMES:

Thank you, Madam President, see if I can get this question and this is based on the question that was asked by Representative Davis earlier, and that is an assumption on my part, I believe, that in the passing of ANILCA, the language in there that gives a rural preference as opposed to a Native preference -- because it indicates that the rural preference is there to protect native uses of the land. It seems to me like if if and -- probably we can't challenge that as being unconstitutional, which I -- from the U.S. under the U.S. Constitution, I believe it would be, but I assume that we probably have the same problem as the statute of limitations because we didn't make that claim shortly after the ANILCA was passed. But, the question that I have is say for instance we go down this road and say we just accept that without any -- without any kind of -- accept that that is the way it is and we do a constitutional amendment...

BRUCE BOTELHO:

That is a rural preference....

REPRESENTATIVE JAMES:

That the rural preference is such as it is. It appears to me that down the road some place, because we would then be giving rural preference not Native preference, but rural preference that we would be setting up someone to be aggrieved under the U.S. Constitution as not being -- having equal protection under the law regardless as to whether they were Native or non Native. And I guess the bottom line of my question is that I believe that the ANILCA Act is a violation of the U.S. Constitution of equal protection under the law. I would have thought had it set a Native preference, then the historical use that John referred to as to why there might have been protected. I think the language now doesn't

protect that.

BRUCE BOTELHO:

In some respects, Madam Chairman, I'm at a loss to respond. I think I understand the argument, that is to say that Congress would have no question under its Indian commerce clause, enact legislation which provides for a Native preference or an Indian preference, but doing it on the basis of geography takes it outside that particular constitutional clause and, therefore, would be unconstitutional. I don't believe that Congress, under the commerce clause and other clauses, can still distinguish between rural and urban. It does, in a variety of ways in terms of what gets funded, what doesn't get funded, it makes the distinctions between rich and poor. It's a classification, it's a rational classification, that I think would be upheld. And, as John points out to me, that was one of the issues raised in McDowell Two, again, decided by the District Court in upholding Title 8 of ANILCA. Again, it was appealed to the Ninth Circuit which concluded that there wasn't standing in the first place and, therefore, rejected the appeal being taken. It was basically -- had the consequence of erasing the initial decision -- vacating the initial decision.

UNIDENTIFIED SPEAKER:

(Indisc.)

BRUCE BOTELHO:

Probably.

REPRESENTATIVE JAMES:

A quick follow up before I have to leave here is that -- and I understand that we've had rural preferences in other states and that sort of thing and there is division between supposedly those people in urban areas and those in rural areas. But in Alaska, certainly the establishment of need is not necessarily instituted by the rural preference, if that's what I see down the road as a conflict between the population of what could happen if that's the route we went.

BRUCE BOTELHO:

And the argument would be that it's both over inclusive and under inclusive. That is it will cover people who have no need and leave out others who do.

REPRESENTATIVE JAMES:

That was my point.

BRUCE BOTELHO:

Generally speaking, the courts would find, I think in this circumstance, that as long there is a rough proximity, Congress isn't required to finely tune it - take care of those disparities. It would if there were a vital interest or a unprotected affected group using and equal protection analysis.

SENATOR PEARCE:

Representative Porter has a follow up. Then we're going to take a short break while the House members leave.

REPRESENTATIVE PORTER:

Assuming that a constitutional issue could be found and developed in ANILCA, we would not be precluded by a statute of limitations pursuing a constitutional challenge, would we?

BRUCE BOTELHO:

I can't envision one, can you Joanne?

JOANNE GRACE:

No, I think it -- if it -- an unconstitutional law is in operation, then it (indisc.).

REPRESENTATIVE PORTER:

Thank you.

SENATOR PEARCE:

Thank you. Lets take a short break and come back at 6:15. A people who want to ask questions, Hoffman, Salo, Taylor, Halford and maybe if we could -- all senators just come to this table since the House members have left. We'll come back at 6:15.

[THE START OF THE QUESTION AND ANSWER PERIOD FOLLOWING THE DEPARTURE OF THE HOUSE MEMBERS FROM THE BRIEFING IS NOT ON THE ORIGINAL TAPE. THE TAPE BEGINS AT THIS POINT IN THE MIDDLE OF THE RESPONSE FROM BRUCE BOTELHO]

BRUCE BOTELHO:

...One government agency that is out there is the federal courts don't take that away from us. And you have the other side, those who are very much concerned about state sovereignty interests saying, "Look, why should Alaska of all states, unique among the states, have a system where it can't manage on a day to day basis its fish and game management without having, in essence, federal

court oversight. And I think it's partly theoretical because it's not as if the federal court is devoting full time to managing fish and game, but the whole principle that a federal court can make final fish and game decisions when a case is presented to it without looking at the overall picture of the state without consideration about sustained yield and other concerns. That's the dichotomy and so it seems to me -- most difficult part of the problem is reconciling what appear to be two fairly irreconcilable interests, and I don't know whether there is a satisfactory solution or compromise. It may well be that one simply convinces one side or another to give up on the issue or one tries to find a compromise by limiting the extent of the federal court jurisdiction or expands it -- or expands the state court roll so that you either limit access to the federal courts or you limit the power the federal courts to fashion a remedy or some combination. So, my long winded answer cut down is I think there are three or four areas that aren't directly addressed by simply a constitutional amendment. Though a couple that might be dealt with by state statute and implementing the constitutional amendment, the one area that I think is most difficult to resolve is federal court oversight, and I don't have an answer for.

SENATOR PEARCE:

Go ahead Senator Salo.

SENATOR SALO:

Just a quick follow up. The definition of "rural," I mean if -- if Alaska passed a constitutional amendment giving a rural preference, would we in state statute control the definition of "rural?"

UNIDENTIFIED SPEAKER:

I don't think we could say that we could control it, though I think setting up a regime that you have the secretaries of Interior and Agriculture making certification that there has been compliance or any laws consistent. But there is a fair degree of chance that a federal court would accept that.

SENATOR PEARCE:

Senator Hoffman, you were next.

SENATOR HOFFMAN:

A couple of points, we were talking about equal access but it seems to me that we discriminate all the time as a state, and the federal government does as a nation. One of the most recent ones that I recall is that we went a head and asked the voters to change -- discriminate on access to our commercial fisheries. You know, we went a head and the voters approved an amendment to our

constitution and they get a preference on access to salmon that they are allowed to go and harvest and catch. Isn't that correct?

BRUCE BOTELHO:

It is correct. That is correct, Sir.

SENATOR HOFFMAN:

I think that that argument does not make too much sense so we can go ahead and do this and give a special access to rural residents and the arguments would be the same for the people in rural areas to act as fish and game the same way we gave a special preference to the fishermen. I would like to follow up a little bit more on some of the comments that Mike Navarre were stating in that state and federal management, under either scenario, I think that subsistence is proceeding in this state with or without a constitutional amendment. But the problem, I guess, in that is that under federal management the rest of the Alaskans fall into a category with the rest of the nation. And when were put into a pool with the rest of the nation, I think that the rest of Alaskans are limited in access, but if we had state management we could give preference to the citizens of the state. And we're not doing that because we're fighting over, you know, this subsistence issue. I think that if we don't resolve it, we're going to divide the state. I think that more and more it's going to get divided. Right now, many of the Native people are willing to support a constitutional amendment, but I feel that that is going to be short lived.

SENATOR PEARCE:

Did you have a question Senator Hoffman.

SENATOR HOFFMAN:

No.

SENATOR PEARCE:

Senator Taylor.

SENATOR TAYLOR:

I want to resolve this thing for once and for all if we can just at this table. Its been so many years of hearing that same rhetoric. Our constitutional amendment to provide for a special category of fishermen was something the people of Alaska chose to do within our confines and our courts will litigate it. We don't litigate it in federal court. What some people have chosen to do is to have Congress intervene, allegedly on their behalf, to instruct us on what we should do. And I'd like the Attorney General to please tell you what law, including our constitution, that we can change -

- if you would, please, tell him -- what law and then Lyman and I will work hard to go change that law. Tell us what law we can change in Alaska, including our constitution, that will change one iota of ANILCA and take that federal oversight and management away from us. Just tell us that, please.

BRUCE BOTELHO:

I trust this a rhetorical question because all of us knows that answer is that there is none.

SENATOR TAYLOR:

If the answer is none, then voting for a constitutional amendment does not change one single thing and maybe some people in here don't appreciate what the word oversight means by the federal government. But I guarantee ya, the slaves on the plantations before the Civil War knew who the overseer was. The overseer is still the same guy and I don't care if it's Bruce who is carrying the whip on behalf of the federal government, or it's you, or it's the Tanana Chiefs who have got a contract to carry it, which they've applied for by the way, to carry the whip to come down and instruct all of us on how to pit (indisc.) or how to go steel herring roe off of kelp so that we can sell it to the Japanese. I don't care who it is, they still are just another federal overseer. So, if we can't change it in Alaska, Lyman, please quit using the terms and the words, "Oh, lets all go out and lets just change it together." Hell, we can all hold hands and leap around the May pole. They won't care in Washington, D.C.

SENATOR HOFFMAN:

Well, Robin, the problem for the oversight is there because of many of the comments that the Attorney General had stated -- the Native people of the state have not been given fair treatment by the Administration, by the board, and by others and why else would the Native people be winning in court.

SENATOR TAYLOR:

Some of swore to uphold this constitution. There is a big difference at this table.

SENATOR PEARCE:

Senator Halford, do you have a question?

SENATOR HALFORD:

I think, you know, that if we're ever going to get to some solutions, we need to come back away from all the positions of the last eighteen years that I have been involved in this issue.

Number one, what did the Supreme Court say in the McDowell case? Number two, what does our constitution allow us to do? And we ought to try craft some kind of a solution, and when we get a solution, we ought to go forward with it if we can. You know, I am opposed to amending the constitution, but I think you can do a heck of a lot with out amending the constitution. The constitution says specifically "subject to preferences among beneficial uses." In 1978, when the state passed the law, it chose the wrong method. It chose discrimination between users instead of uses. The federal government picked that up, its been carried forward all the way to now. Everything that's done in Title 8 of ANILCA can be done in the term of users and not -- I mean in the term of uses and not in the term of users, and it works. The Supreme Court in McDowell didn't say that you can't discriminate based on any matrix of things. It just said that you can't use local residency as the only reason for an absolute bar. Local residency probably can be part of something. Certainly, need has been used to discriminate from top to bottom in every governmental entity in the world. There is lots of things we can do, but we all have to sit at the table to do it, and we haven't been able to get over that hurdle so it doesn't matter what we say.

SENATOR PEARCE:

Was that a question?

SENATOR HALFORD:

My question is can't you do everything in ANILCA by changing "user" to "uses" and be constitutional?

BRUCE BOTELHO:

The Title 8 of ANILCA talks about a rural preference.

SENATOR HALFORD:

Preference for rural use versus preference for rural users.

BRUCE BOTELHO:

Well I think there is the great -- or at least a great debate.

SENATOR HALFORD:

I mean as far as I'm concerned, until we decide that we're going to come up to a conclusion instate, we're not going to get a solution and....

SENATOR PEARCE:

This all being very theoretical in this point in time, is the

language in ANILCA "use" or "users." Which is it? Senator Halford just said "use." You just said that that is the debate.

JOANNE GRACE:

Rural residents have a priority for taking of fish and wildlife on public lands for subsistence uses. Subsistence uses includes customary and traditional trade.

BRUCE BOTEIHO:

Focuses on rural residents in terms of a "who."

JOANNE GRACE:

All rural residents have the priority.

BRUCE BOTELHO:

Now if we want to talk about the "what" when we talk about subsistence uses...

SENATOR HALFORD:

And the Supreme Court ruled that the thing that was unconstitutional was the exclusion of urban residents, not anything to do with the rural residents. And, as we remember, one of the judges said, "This isn't just a common use violation, this is a violation of equal protection." Because the determination of rural residency is such a crude tool that it doesn't really say and it doesn't really relate to the purpose of the discrimination.

BRUCE BOTELHO:

The difficulty, however, is that one will never escape that dichotomy in terms of the constitutional analysis because it is quite clear we really have a two tier system, one is you satisfy subsistence uses over all other uses. But then if the resource is limited, then you are also required to make, under federal law, the protection of -- for rural residents -- priority over other residents. Your scheme, which focuses on an all Alaska solution, will not satisfy ANILCA.

SENATOR HOFFMAN:

I have a question of Rick.

SENATOR PEARCE:

Senator Hoffman

SENATOR HOFFMAN:

Are you as adamant as Representative Taylor on eliminating federal oversight?

SENATOR HALFORD:

I don't believe that you can totally eliminate federal oversight of anything. You can't you know avoid somebody challenging something in court -- going to the federal court or the state court. I think -- I don't really want to pay a bunch of state money to run a management system that's dictated by the federal government. If somebody said if all the strings are in Washington, then we shouldn't pay the bill for the puppets. I guess the questions that we ought to be asking each other are if the congressional delegation said that they would deal with ANILCA, if the state came up with some kind of unified position, we should ask them, "What degree of consensus do you want," because we will never get the extremes in some groups, from either side, to ever come to the table. And if the consensus position of our congressional delegation is they won't look unless it's 95 percent, then there is nothing we can do about it. If they'll look at 60 percent, if they'll look at 70 percent, then we have to go back and say, "Lyman, do you think your constituents would go along with some kind of a definition that says the priority provides for a reasonable opportunity to harvest, but it doesn't mean that it's the only harvest in any limitation any time of the year has to be only after all commercial uses of the same fisheries are over with." And I think the reasonable people, from your prospective, go along with that. I don't think the groups that supported the subsistence preference in initial law wanted to see major cash sales. So that has to get fixed

BRUCE BOTELHO:

I agree.

SENATOR HALFORD:

You know if you go back and fix those provisions, and then you adjust the thing so that it really works and you can -- I mean it will work under the state constitution if it's based on uses and it will achieve the same -- on uses -- and it will achieve the same goal. If you're going to base it on users, then I believe that classification will always get you in trouble and you can amend the constitution, but I think it will again get challenged. If we've done it well enough, it may survive. But I don't know.

SENATOR PEARCE:

Senator Lincoln do you have a question?

SENATOR LINCOLN:

Well, Madam Chair, I'm sitting here listening to all of the questions, statements, comments, and I've heard several things here tonight. One is that if we don't do anything, we could be sitting here in 1997 still talking about this. The constitutional amendment window shut and whether in all of the statements that we heard from our congressional delegation that we have to fix this in state - that we have to come to some kind of consensus in state. But what I heard in this room, I don't see how we can come to a consensus unless we come in here with an open mind to listen to one another and not snicker if somebody is saying something contrary to what the other one is saying. I see some folks sitting around here with questions already prepared by I guess Mr. Somerville who was paid for by the state, but I don't have -- ask to comment that the majority has on what he's seeing is some of the solutions to subsistence. I don't think that's going to bring us to any kind of consensus. I would ask this, that again and again, and I hear it more and more and more as well as in my district and outside of my district that (indisc.--coughing) let the feds come in. We're going to be more satisfied with the feds, we're tired of this bickering, we're not going to even participate in this session anymore. Let the feds come in and have the oversight. I would like to see that the state has control over our fish and game. I've always felt that, but in the Subsistence Council - I guess they are a council - the Federal Subsistence Council -- was supposed to have made a report back to the Secretary of Interior and I think, I'm not sure if it went to another secretary, but Secretary of Interior in August. I don't know if that report has been finalized, distributed. I would like to know if it is and if it - if it has been distributed and to whom. The Secretary of Interior, as the congressional delegation said, is going to go -- it has already started going forward on the take over. From the state's perspective, and I guess Mr. Somerville is also an advisor to the group here or to a portion of the group, I would ask has the Secretary of Interior -- is he moving toward that end? I asked that of I think Senator Stevens, what is the time frame for the take over? If we sit around here and mash our teeth and not do anything about coming to some kind of consensus, what is that time frame?

BRUCE BOTELHO:

Madam Chairman, I wish I knew the answer. It is clear to me that there is increasing pressure on the secretary to act decisively, somewhat self created because I believe that -- at least in my discussions with federal officials -- that he feels he has an obligation that he is.... I would say that he has -- it is called a conflict. He wants to see the state of Alaska quickly and fairly address the issue, and has expressed some loathing of the idea that the federal government should insert itself in the management regime. But also a sense that patience is wearing out, that he has another hat that he wears as a federal trustee, in essence, for Alaska Natives and that they believe that he is not carrying out

his trustee role. How that is going to manifest itself in the coming months is not clear to me, but my sense is that there is a day of reckoning coming soon. Soon, it could be within the next couple of years.

SENATOR HALFORD:

Madam Chair.

SENATOR PEARCE:

Senator Halford.

SENATOR HALFORD:

Isn't that kind of an insidious thing though? I mean it starts out with subsistence management and that's all that's provided for in the federal law, but as you manage for subsistence, then you manage the other conflict. So, it's not something I think that happens all at once even if you -- you know I think it happens insidiously and it grows as it goes, because the federal law doesn't provide for management of fish and game, it provides for management of subsistence, but in order to manage the subsistence harvest, you have to cut off and deal with other harvests in conflict. So eventually you get further and further into the management of every other use, and maybe even some non use areas - maybe some development areas as well.

BRUCE BOTELHO:

Both that in terms of the expansion through the species, but also expansion geographically, whatever the outcome in Katie John in terms of navigable waters, we have a separate related question in terms of management of species which passed between public and non public lands and the ability to regulate off public lands to make sure that the species are available to satisfy subsistence needs on public lands.

SENATOR LINCOLN:

Madam Chair, the second part of my question I think was not answered and that is, with the approval of the chair, I'd like to hear from Mr. Somerville since we paying him back there and in D.C. to do something on subsistence. I'd like to hear his comments on it.

SENATOR PEARCE:

In fact I know because I signed the agreement that he is not being paid to do anything on subsistence.

SENATOR LINCOLN:

Is here just a private individual then?

SENATOR PEARCE:

Everybody is here, I guess, as private individuals. It's not a....

SENATOR LINCOLN:

Then I might be wrong. I apologize - you did not make up a list of questions for both (indisc.) to ask.

SENATOR PEACE:

Senator Halford.

SENATOR HALFORD:

Madam Chair, I think -- you know it's easy to personalize our disagreements whether its mention of Tanana Chiefs or Ron Somerville or anybody else, it doesn't do us any good. I think everybody has people working on these issues and we all know it.

SENATOR PEARCE:

What was your question?

SENATOR HALFORD:

That's my comment. My question goes back to Katie John and the probable out come. It seems that the -- you know we have lots of other states that are on our side on navigational servitude. We have lots of arguments and lots of history to win that portion of the case, but what about federal reserve water rights. Isn't that the place where we can lose in part and be variable based on a whole bunch of further determinations down the road?

JOANNE GRACE:

Yes, I think -- I think it's going to be harder for the court to base its decision on that because what the court would essentially be saying is if the United States has any interest, no matter how small in the water, that that converts the entire waterway into public lands. It's an absurd result because essentially we'll convert all lands and waters in Alaska into public lands. For example, we are just before the Ninth Circuit that it would -- we argued this in the context of an absurd result. All lands in Alaska patented after the year 1890 are conveyed subject to (indisc.) and easements (indisc.). That is an interest that the United States holds in all lands they've patented after 1890 (indisc.). So we argued that (indisc.) tend to any tiny interest of the United States to convert back areas of land and water into public lands. So I think that it's going to pretty difficult for

the court to base its decision on federal reserve water rights, but if the court does, then we're looking at a water way by water way determination or maybe a reservation system by reservation system of determination of whether the United States has the waterway.

SENATOR HALFORD:

But don't you think that's -- I mean do you think they'll go back to navigational servitude or you think there is any chance that they will? I mean that one seems to go even further back into the....

JOANNE GRACE:

There's never been a decision that said a navigational servitude is a property interest and I think the Supreme Court has been -- in power of the federal government (indisc.). So it would be -- it would surprise me if the Ninth Circuit would rule that way just because the concept is so odd. But (indisc.), I guess don't feel really comfortable predicting what they'll do.

BRUCE BOTELHO:

That might be something to elaborate on very briefly and that is to say that in virtually every case presented to the Ninth Circuit, the Ninth Circuit has favored the subsistence use over the adverse interest, frequently the state of Alaska.

SENATOR PEARCE:

Are there questions? Mr. Attorney General, thank you very much, I appreciate it and if we have more questions, then we'll call.



Knowles drops subsistence suit

Governor criticized at luncheon

By IAN CARROLL
Staff Writer

Things got a little hot for Gov. Tony Knowles Monday at the Alaska Outdoor Council luncheon—and not just because it was almost 100 degrees in the Castle's jam-packed restaurant banquet room.

Before an audience of mostly urban hunters, Knowles said he was dropping the *Hickel vs. Babbitt* lawsuit of 1992, which challenges a rural subsistence preference. However, Knowles said the case of *Katie John vs. the United States* would not be affected. That case challenges federal regulations regarding navigable waters. The two cases had been consolidated into one.

Knowles' announcement, which riled the audience, was the fulfillment of a promise he made during his gubernatorial campaign.

The council maintains that federal subsistence regulations, which give a rural preference for subsistence, amount to discrimination against urban Alaskans.

"I feel that is very poor strategy," outdoor council executive director Dick Bishop told the governor. "Given the absolute critical importance of those lawsuits, to not pursue them is ill-advised."

Knowles' action lifts a legal challenge to the authority of the Federal Subsistence Board, which sets seasons and bag limits for subsistence hunters on about 60 percent of the state. The board hears recommendations of regional representatives, many of whom are Native subsistence hunters.

Knowles met with Native leaders from the Tanana Chiefs Conference and Doyon Ltd. following the luncheon.

"It sends a very clear message that the law of the land is recognized by the new administration, and I applaud them for that—that they recognize the validity of the subsistence lifestyle, that has existed and is still practiced in rural Alaska," said Doyon president and CEO Morris Thompson. "Congress certainly has a very clear authority to legislate on federal lands."

He said he was surprised the governor chose to make the announcement in front of the outdoor council, which would be hostile to the news.

"I applaud the governor for meeting with the outdoor council and announcing that in person. You have to admire that. No governor likes to carry unpopular messages," said Thompson.

The state will continue its appeal in the Katie John vs. United States case, named after the Athabaskan elder who originally filed it. Native plaintiffs say the federal government should manage subsistence fisheries on all navigable waters, while the state government says it should do so only on waters in federal parks.

A federal judge has ruled against the state in the *Katie John* and *Babbitt* cases.

Federal management of subsistence in Alaska is rooted in a discrepancy between state and federal subsistence law.

Federal law grants a subsistence preference to people in rural Alaska, giving rural Alaskans first crack at fish and game. But the Alaska Supreme Court has ruled that all Alaskans should have equal access to subsistence resources. After that ruling, the U.S. government took over subsistence management on federal land in the state.



Sam Harris News-Miner

s, along with his special assis-
Burns speaks at a luncheon.

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Background

Bomb attack may
hurt path to peace

The Boston Globe

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Editorial Page Editor

Subsistence suit gone

Gov. Knowles' decision to drop the state's lawsuit over federal fish and game management in Alaska is unfortunate for two reasons. First, everyone deserves to have this issue clarified by the highest court possible. Second, the governor's decision potentially takes the heat off Congress to make meaningful changes to the source of much of this trouble—the Alaska National Interest Lands Conservation Act of 1980.

The question is whether ANILCA authorizes the federal government to create its own fish and wildlife management system—a method of establishing seasons, bag limits, etc.—in Alaska. A careful reading shows the law does not authorize any such thing. Instead, it calls only for federal court oversight if the state fails to implement a hunting and fishing priority for rural people.

U.S. District Court Judge Russel Holland of Anchorage, in a March 31 ruling, said Congress must have made a mistake when it wrote the law. He said Congress intended to authorize federal management but just didn't quite get it right. So he ruled against the state.

Many people think Congress did get it right and that Holland is engaging in some judicial activism. But we won't get a chance to find out, at least not any time soon, if the state doesn't pursue this appeal. There will always be this cloud hanging over any proposed solution to the subsistence debate.

If the state wins the suit, it would focus the debate where it belongs, in Congress. That's because a state victory on this issue would create a clear conflict. It would leave intact the federal requirement for a rural hunting and fishing priority and affirm that federal courts are in charge of deciding whether the state has carried it out. But the Alaska Constitution, according to the Alaska Supreme Court, does not allow a priority based simply upon one's address. So how can a federal court order any state agency to contradict the state's own Constitution? It can't, so it won't happen.

That sends the issue back to Congress. It could take the unprecedented and unpopular step of expressly authorizing the federal takeover of fish and wildlife management on federal lands in Alaska. Or it could change the subsistence priority in ANILCA so it is compatible with the Alaska Constitution.

Of course, the other option is for Alaskans to change their Constitution. To date, the Legislature has decided not to pursue that solution, for good reason. Alaskans should not divide themselves into classes based simply on where they live. Such a solution enfranchises conflict and misunderstanding at the expense of fair and equal treatment.

Johnnie Cochr
smarmy little
trying to steal
spotlight!



MIKE LUCKENICH
ATLANTA CONSTITUTION

Scholar in the I

They came. They play stayed.

Of the 300 or so who have on the University of Alaska basketball team since started in 1959, about one-third came from Alaska, primarily from Anchorage, North Pole and with some from Nenana, T Junction, Northway, Fort Haines, and Tanana.

Another one-third came from California, especially from the extensive system of community junior colleges (a talent ground for many in football, baseball, swimming, and tennis) as well as basketball, a primary area for scores of college universities countrywide.

The other one-third came from everywhere—from all over the world and from 22 other states, plus Canada and New Zealand.

West Coast states, California, Washington, and Oregon have been primary sources of athletes for Alaska, followed by Ohio and Illinois of the Midwest, then Arizona and Texas of the Southwest.

From the Atlantic Coast states—Connecticut, Maryland, New Jersey, New York, Pennsylvania, and Florida, only a few players have come from the north.

The Anchorage Times

Publisher: BILL J. ALLEN

"Believing in Alaska, putting Alaska first"

Editor: DENNIS FRADLEY. PAUL JENNINGS. WILLIAM J. TORSEN

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Subsistence heat

BY CHOOSING the Alaska Outdoor Council in Fairbanks as the location to launch the long-overdue, statewide debate on subsistence, Gov. Tony Knowles demonstrated he is willing to take the heat that comes with this highly divisive issue.

A number of his predecessors have tried to guide the state to a resolution of the subsistence question. So have members of the Alaska congressional delegation, certain state legislators and other state community leaders.

Various proposals have been put forward. None has succeeded.

The subsistence problem has only grown worse as Alaskans divide one against the other, and the federal government assumes greater management of wildlife resources in Alaska.

Gov. Knowles' subsistence message Monday to the organization representing sport hunters and fishermen was not surprising.

The state would drop its lawsuit challenging the Secretary of Interior's authority to take over management of fish and game for subsistence purposes, he said, just as he had during the campaign. The suit, Alaska vs. Babbitt, was initiated during the Hickel administration and is under appeal — having been turned down last year in federal district court.

However, the state would continue its legal challenge of the extent of federal subsistence authority by continuing the appeal of the so-called Katie John decision, Knowles said.

In Katie John, the federal court ruled that as long as the state is not in compliance with federal law, the federal government should extend its management to include protection of subsistence fisheries on navigable waters within Alaska — including offshore.

Gov. Knowles is taking what appears to be a realistic and pragmatic position on the state's subsistence legal challenges.

On one hand, he recognizes the federal government is not about to abandon a trust responsibility, and that the state's legal challenge of federal authority to fulfill that trust is unlikely to succeed.

On the other hand, he knows that if federal management authority in Alaska extends to navigable waters and eventually to all commercial and sport fisheries, Alaska will lose an essential right of statehood that will have far-reaching consequences for the state's economy and lifestyles.

Overshadowing the significance of these two lawsuits, however, remains the basic question of whether Alaskans wish to amend the state constitution. Do Alaskans want to provide state fish and game managers the authority to give a preference for subsistence use of fish and game to rural residents in times of shortages as required by federal law? If a majority answer that question yes, the federal takeover threat and lawsuits become moot.

Gov. Knowles' challenge is to get that simple question before the voters.

Legislators aim to keep delicate 'balance of federal, state power'

Resolutions urge Knowles to keep subsistence suit

By KATE RIPLEY
Staff Writer

JUNEAU — House and Senate leaders Thursday marched forward in their attempt to stop Gov. Tony Knowles from dropping a lawsuit over fish and game management.

Critics, however, called the move improper and likely to fail.

Both legislative chambers passed resolutions Thursday urging the governor

to continue a lawsuit filed three years ago by then Gov. Walter J. Hickel that challenged the federal government's authority to manage fish and game in Alaska.

The Senate resolution passed 12-7 and the House resolution passed 24-14.

It also indirectly opens an old wound of who should get first crack at fish and game in the state—rural residents or everyone equally.

During his campaign Knowles prom-

ised to drop the lawsuit, calling it "anti-subsistence."

The Democrat made good on that promise Monday by instructing Attorney General Bruce Botelho to withdraw the state from the case, now before the 9th Circuit Court of Appeals. The state has filed paperwork to withdraw from the case, but it has not been received at the appeals court.

That touched off a stormy reaction in
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SUIT

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the Republican-led Legislature. Leaders say if Knowles won't pursue the lawsuit—Hickel vs. Babbitt—they will.

"Just because there was a campaign promise doesn't make it the right thing to do," said Sen. Mike Miller, R-North Pole.

The governor, however, scoffed at the Legislature's attempt to wedge itself into the case.

"It's really a rabbit trail," Knowles said. "I don't think it will help in the long run."

Republican leaders are calling the lawsuit a state's rights issue, with ramifications far beyond subsistence. They hired a Washington, D.C.-based law firm that sometimes consults with Robert Bork—President Reagan's unsuccessful 1987 nominee to the U.S. Supreme Court—to fight their case.

The firm was to file an "emergency motion" with the 9th Circuit today asking the court to halt the Knowles administration's withdrawal and let the Legislature intervene.

"This issue . . . is not moot by virtue of the new administration's lack of interest in pursuing it," says the motion, obtained by the News-Miner on Thursday. "Resolution of this issue is in the interests of the Legislature and the people of Alaska, and is necessary to preserve the delicate balance of federal and state power agreed upon in the Alaska Statehood Compact."

While Hickel vs. Babbitt does not directly challenge a rural subsistence preference, it questions the federal government's authority to set seasons and bag limits for subsistence hunting and fishing.

According to federal law, rural residents have a priority in subsistence hunting and fishing. That conflicts with the state Constitution, which says all residents have equal access.

Alaska law for a while mirrored federal law. But in 1989, the Alaska Supreme Court ruled the state law conflicted with the state Constitution. Subsistence, and who has authority over it, has been mired in lawsuits ever since.

The appeals court is due to hear oral arguments on Hickel's lawsuit Feb. 8. It's unclear when, or if, the court will rule on the legislative majority's plea to become a party in the case. Some predict the Republicans won't find a sympathetic ear in the appeals court.

"A separate legislative lawsuit is likely to embarrass the Legislature," said Sen. Al Adams, D-Kotzebue. "Any judge is going to look skeptically at such a suit after the state's chief legal officer has already decided that the case didn't have sufficient merit to pursue . . . Judges don't think much of political protests."

It's the duty of the executive branch to pursue such court cases, not the Legislature, Adams said.

Those outside Juneau question the majority's ability to gain a foothold in the case as well.

Former Attorney General John Havelock, who served during the Egan administration in the early 1970s, said lawmakers likely won't be recognized as a valid party to the case by the appeals court.

"By the time something is appealed, the parties have been established," said Havelock, now in private practice in Anchorage.

"Anybody can file a piece of paper in court. Whether anyone pays any attention is if the court recognizes they have standing," he said. "It's highly improbable the 9th Circuit would do that. They (the legislative majority) can spend some money on lawyers and court fees, but it might not get them anywhere."

Legislative leaders say they're willing to spend \$20,000 on a retainer for the Washington law firm. As of Thursday, no money on the case had been spent out of the leadership's discretionary fund, which totals about \$1.6 million for the Senate and \$1.7 million for the House.

House Majority Leader Al Vezey, R-North Pole, agrees the Legislature will have a tough time taking over the case, but said they have to try.

"There's no question we're fighting an uphill battle," Vezey said. "But I would not be surprised if (the court) stays the oral arguments and take briefs on our case."

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OUTDOORS

Knowles misses the boat

ANILCA won't solve subsistence issue

More than 30,000 Alaska Natives — the one out of every three Natives living in urban



**CRAIG
MEDRED**

areas of the state — are today denied subsistence by the federal government.

As a practical matter, this presents no immediate crisis. Opportunities to hunt and fish still exist for every Alaskan with or without a subsistence priority.

As an emotional matter, the division of the Native community on the basis of rural and urban residency may be problematic, but that is not a matter for some middle-class white guy to be mucking around in.

What does bear some thought, however, is the changing demographics of Alaska and how this is going to affect us all. Three trends long under way threaten to make subsistence a nightmare for everyone.

First among these trends, as documented by the Alaska Natives Commission, is the rural population boom. Second is the steady migration from rural areas to urban areas that has helped turn Anchorage into the state's largest Native community. And third is the ever-widening ideological chasm between rural and urban residents of the state.

Anyone who thinks any of these things are going to be changed, let alone made better, by ceding the subsistence issue to the federal government as Gov.

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Tony Knowles has now done is:

A) A misguided politician thinking there is more to gain in the imaginary of action than in the substance of solution.

B) A self-involved, albeit potentially well-meaning, lawyer for one of the litigating parties in the on-going subsistence debacle.

C) A naive fool.

All Knowles has done with his decision to drop the state lawsuit challenging the federal government's authority to mandate subsistence hunting and fishing is ensure continuing and escalating unrest.

Why?

Simple mathematics.

Alaska's population today stands at about 600,000 people. That population has been growing steadily since the 1950s, and all projections are that it will continue to grow.

Fish and wildlife populations, at the same time, are at or near peaks and given the constraints under which fish and wildlife managers now operate (i.e. no manipulation of predator populations and a policy of significant fire suppression), about the only place those populations can go is down.

This means there will be more and more people competing for fewer and fewer fish and wildlife. When that happens, the federal rules incorporated in the Alaska National Interest Lands Conservation Act (ANILCA) — the rules Knowles bought into by dropping the lawsuit challenging the act — turn onerous.

The rural priority, which already gives rural hunters and fishermen longer seasons and bigger bag limits, becomes a rural-only privilege. Urban residents, including more than 30,000 Alaska Natives living in Anchorage and other centers of commerce, will be

barred from hunting and fishing in larger and larger areas of the state.

Tourism businesses dependent on activities as seemingly benign as catch-and-release rainbow trout fishing will go out of business in favor of subsistence gillnet fisheries for rainbows.

Were these the only divisive subsistence problems facing Alaska, it would be reason enough to rethink what the governor has done, but there is more.

ANILCA clearly provides for the taking of fish and wildlife by rural residents for barter and "customary trade." The courts are still trying to sort out exactly what that means, but one federal district court has ruled that a \$10,000 sale in Seattle of subsistence-caught herring roe from Southeast Alaska was legal.

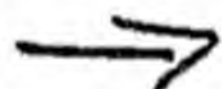
And why shouldn't people in economically depressed rural Alaska be allowed to make a buck where and when possible?

Some rural subsistence leaders like the idea of subsistence fisheries for cash, although you have to wonder if they have thoroughly considered the social disruption this sort of economic reordering of the status quo would cause in some villages.

Such fisheries would be the death of the limited entry program that made Alaska's commercial fisheries profitable. Once every rural fisherman gained the authority to net a catch of salmon equal to \$10,000, there might not be enough salmon left to support viable commercial fisheries in many areas.

Thus, the state would be back to where we were before voters approved a constitutional amendment OKing limited entry. We would have a lot of poor fishermen instead of a few, economically viable ones.

As for the effects of a similar change on hunting,



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it is only possible to guess. Federal officials admit they've been lucky this issue hasn't come to a head yet, recognizing that federal subsistence regulations concede that "customary trade means cash sales of fish and wildlife ... to support personal and family needs. ..."

There seems today no reason why rural hunters couldn't offer wild game of various types to an Anchorage chef in trade for, say, outboard motors, snowmachines, boats, fuel or any of the other items that have come to be considered the modern-day necessities for the subsistence lifestyle, or even for cash.

Low in fat, high in protein, wild game is a hot item on menus in upscale restaurants all over the country. It would, no doubt, sell well here.

And if it's OK to sell \$10,000 worth of herring roe, what's wrong with selling \$10,000 worth of caribou, moose, Dall sheep, musk ox or deer?

Should this spawn the resumption of market hunting in Alaska, however, there soon won't be any surplus wildlife to support hunting by urban residents anywhere.

Demand already exceeds supply in some areas, the most notable being in the hunt for Nelchina caribou. To get a permit to hunt there now, you have to move to Glennallen or be able to claim about 25 years of Alaska residency.

And that's under the state subsistence system, which is structured so as to allow a few urban residents to hunt so as to meet the equal protection standards of the state constitution.

It only gets worse if the feds take over, and that is where the situation seems headed.

Gov. Knowles has decreed that Alaska will either be led deeper into the subsistence quagmire by

federal land managers, or it will pass a constitutional amendment bringing Alaska's constitution in line with ANILCA and wait for the courts to direct the state to where the federal land managers were headed.

The problem, after all, isn't with the people administering the law. The problem is the law. The problem is ANILCA.

One attorney for rural interests, who neither hunts nor fishes himself and thus displays little understanding of the cultural and emotional ties involved in this issue, once observed that ANILCA was always intended to sacrifice the desires of urban hunters and fishermen to protect the rural lifestyle.

It's only a matter of time before urban residents are banned from hunting and fishing, he said; they'll just have to accept it. It's no big deal.

Maybe not for him, but what about for the tens of thousands of urban Natives who will be cut off from their culture involvement with the land, or the hundreds of thousands of others of all colors and ethnic backgrounds who've long engaged in a similar communion with fish and wildlife?

I don't know how you restructure the system to provide them all adequate opportunities to pursue these activities, but I do know the answer isn't found in the governor's simplistic idea that he can simply drop the state lawsuit against ANILCA and watch the problems inherent in the federal subsistence law disappear.

That dog don't hunt, and this problem ain't going away.

Craig Medred is the Daily News outdoors editor. His opinion column appears on Wednesday during the winter.

Natives will lose when feds take over subsistence

I am very disappointed that the Alaska Federation of Natives could not work out a compromise with the state over subsistence management. If a solution is not found, the economic well being of thousands of Natives who depend on the fishing industry will be in jeopardy. I fear for the livelihoods of the Native people in towns like Sand Point, Togiak and Emmonak. There will be profound changes if federal subsistence management takes over fisheries in Alaska.

As ANILCA is currently written, the feds are required to give subsistence priority to all rural users. What this will produce is a scenario as follows: When a subsistence fisherman in Fort Yukon has finally put up his last summer chum salmon in September, he will inform the feds that his subsistence needs are satisfied and the feds would then open False Pass and other lower Yukon areas to commercial use. Obviously by that time all the fish will have passed upriver and will not be available.

If that subsistence fisherman wants to sell his salmon or roe, the current federal court rulings would allow up to \$10,000 worth of sales as traditional. It would not take too many court challenges to up that limit. This means that every subsistence

fisherman could sell fish and that limited entry would be a thing of the past, and those holding limited-entry permits would see the bottom drop out of the market. There would be no controls over how many people could fish or when, and over-fishing of the limited resource will follow.

Why does this deeply concern and trouble me? According to the Commercial Fisheries Entry Commission, in 1992 41 percent of all permits were held by Alaska rural locals. The commission does not have information on the race of the permit holders after 1983, when 38 percent were Alaska Native, but the vast majority of those permits being held by Alaska rural locals are held by Natives. As you know, in the rural areas there is almost no economy aside from commercial fishing, and any federal takeover that would jeopardize the fishing industry could spell disaster for numerous Native communities that depend on fishing.

Unless a compromise is worked out, anarchy will overtake the fisheries of Alaska, and in the end it will be the Native subsistence users who will lose out when the fishery resource is depleted.

Sidney Huntington
Galena

COMPLIMENTS OF THE
ALASKA STATE LIBRARY

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SPONSOR STATEMENT

SJR 19

(By Senators Mike Miller and Drue Pearce)

SJR 19 -- "REQUESTING THE CONGRESS TO AMEND THE ALASKA NATIONAL INTEREST LANDS CONSERVATION ACT TO CLARIFY THAT THE TERM "PUBLIC LANDS" MEANS ONLY FEDERAL LAND AND WATER AND THAT ANY EXTENSION OF FEDERAL JURISDICTION ONTO ADJACENT LAND AND WATER IS EXPRESSLY PROHIBITED."

In drafting the Alaska National Interest Lands Conservation Act ("ANILCA"), Congress attempted to balance the needs of rural resource users with those of other Alaskans. The result was a narrowly drawn preference for rural residents. A preference, or priority, limited to "public lands," is a term that is clearly defined in ANILCA as lands, waters, and interests therein owned by the federal government. The preference was not intended to affect the State's authority to manage fish and wildlife on other lands in Alaska.

Throughout Title VIII of ANILCA, Congress used only the term "public lands" in discussing the rural preference and other regulations. In so doing, Congress was clearly recognizing traditional State management of fish and wildlife and indicating that the preference did not apply on State or other non-public lands. In fact, Congress expressly acknowledged that it was limiting its regulatory reach when it required the federal land agencies managing fishing and hunting activities on public lands to cooperate with -- not preempt -- adjacent land owners, including the State. This requirement indicates that the management scheme was to be premised on cooperation, not takeover and preemption of non-federal lands.

SPONSOR STATEMENT

SJR 19 (Request Congress Amend ANILCA)

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The State takeover provisions of ANILCA further demonstrate the fact that Congress wanted to establish a limited federal role in the resource management. These takeover provisions allow the State to "supersede" federal management on public lands if State laws are consistent with the federal rural preference. ANILCA in no way diminishes the authority of the State to regulate fish and game pursuant to the grant of that authority in the Statehood Act.

Congress clearly intended to severely limit the federal government's intrusion on State rights regarding management of fish and wildlife. However, the federal courts have failed to acknowledge the statutory limitations on the scope of federal agency authority, and recent rulings from the courts would allow federal agencies to reach beyond federal "public lands" onto non-public lands (State lands, Native lands and other private lands) to enforce the rural preference. Such rulings are directly contrary to the language and spirit of ANILCA, and they constitute a violation of our Statehood Compact. It is for these reasons that Senator Pearce and I introduced SJR 19.

SJR 19 is not a challenge to the federal subsistence priority. SJR 19 is simply a resolution requesting that Congress recommit to the obligations made to the State in the Statehood Compact, and confirm that ANILCA is not intended to preempt State management of fish and game resources. Additionally, SJR 19 requests that Congress affirm its original intent and amend ANILCA to clarify that the definition of "public lands" means only federal public land and water, and that any extension of federal jurisdiction onto adjacent land and water is expressly prohibited unless specifically authorized by the Congress and the State.

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The effect of conflicting court opinions and federal agency mandates have created a crisis with regard to the management of our fish and game resources. The federal government is now proposing to unilaterally preempt our entire fisheries in navigable waters unless the State concedes to federal demands. We are also faced with a bad decision from a federal district court judge which sets in motion preemptive authority for the federal agencies; and the prospects for relief from the Ninth Circuit Court of Appeals are bleak in light of its history of ruling against the State on these types of issues. To make matters worse, the Attorney General recently acknowledged that if the State's appeal to the Ninth Circuit fails, it is unlikely that the United States Supreme Court would hear the State's case.

This disarray, this uncertainty, has left all of our fisheries and wildlife programs at risk. The State is about to lose all its management authority. That was never the intent of ANILCA; and if this federal preemption is allowed to occur, it will be a clear violation of our Statehood Compact. Therefore, I believe the people of Alaska are entitled to and deserve a clarification of ANILCA and a reaffirmation of the grants given us in our Statehood Compact. Such clarification and reaffirmation are crucial to creating any long-term, workable fish and wildlife management solution.

What Senator Pearce and I have proposed is totally consistent with the position taken by Governor Knowles to protect State management of fish and wildlife on State and private lands and navigable waters by continuing the Katie John appeal. Moreover, this resolution is an important first step in reaching the consensus position our Congressional Delegation has sought.

Senator Pearce and I urge your support for this important resolution.

SJR 19 HEARING - FAIRBANKS

MARCH 29, 1995

INTRODUCTORY REMARKS

ALASKA STATE SENATE PRESIDENT DRUE PEARCE

MR. CHAIRMAN MY INTRODUCTORY COMMENTS WILL BE BRIEF BUT THERE ARE A COUPLE OF POINTS I WOULD LIKE TO MAKE TO PUT THE IMPORTANCE OF THIS HEARING INTO PERSPECTIVE.

I AM A SPONSOR OF THIS RESOLUTION BECAUSE I AM CONVINCED THAT THE STATE IS FACING A MAJOR CRISIS IN JUST 36 SHORT YEARS AFTER ACHIEVING STATEHOOD ALASKA IS FACED WITH LOSING ONE OF THE MAJOR "RIGHTS" "PRIVILEGES" "BENEFITS" AND/OR "RESPONSIBILITIES" OF STATEHOOD--THE MANAGEMENT OF OUR FISH AND WILDLIFE RESOURCES.

IT IS HARD TO BELIEVE BUT THE COMPROMISE LEGISLATIVE PACKAGE PASSED BY CONGRESS IN 1980 CALLED THE ALASKA NATIONAL INTEREST LANDS CONSERVATION ACT OR ANILCA HAS CREATED THIS PROBLEM. ANILCA HAD A PROVISION WHICH CREATED A PRIORITY FOR SUBSISTENCE TAKING OF FISH AND WILDLIFE AMONG OTHER THINGS. BY RURAL ALASKAN RESIDENTS ON FEDERAL PUBLIC LANDS THERE IS NOTHING IN THE LAW

WHICH SAYS THAT THE SECRETARIES OF INTERIOR, AGRICULTURE OR COMMERCE CAN PREEMPT ALL STATE MANAGEMENT IN ALASKA IF THE STATE IS NOT IN COMPLIANCE WITH THE PROVISIONS FOR FEDERAL LANDS. THE LAW DID NOT SAY THAT RESERVED WATER RIGHTS OR NAVIGATIONAL SERVITUDE DOCTRINES COULD BE USED BY THE COURTS TO EXTEND FEDERAL JURISDICTION THROUGHOUT ALL STATE AND PRIVATE LANDS AND WATERS IN OUR STATE

CLEARLY THE ALASKA DELEGATION AND THE REST OF CONGRESS ANTICIPATED THAT ALASKA WOULD ASSUME MANAGEMENT ON ALL LANDS IN ALASKA BY MEETING THE REQUIREMENTS OF ANILCA'S TITLE VIII. IT WAS NOT ANTICIPATED THAT THE FEDERAL GOVERNMENT, OTHER THAN THROUGH FEDERAL COURT OVERSIGHT WOULD HAVE TO DIRECTLY MANAGE THE FISH AND WILDLIFE RESOURCES

WE NOW HAVE, HOWEVER, A STATE SUPREME COURT RULING WHICH ESSENTIALLY PUTS ALASKA OUT OF COMPLIANCE WITH THE FEDERAL LAW. WE HAVE A DISTRICT COURT JUDGES RULING WHICH STATES THAT THE FEDERAL GOVERNMENT IS AUTHORIZED TO PREEMPT STATE MANAGEMENT IN NAVIGABLE WATERS UNDER THE AUTHORITY OF THE NAVIGATIONAL SERVITUDE DOCTRINE. WE HAVE A REVERSAL BY THE FEDERAL GOVERNMENT WHICH INITIALLY AGREED THAT PUBLIC LANDS IN ANILCA WAS

LIMITED TO FEDERAL LANDS AND WATERS. THEY NOW ARGUE THAT THE RESERVED WATER RIGHTS AUTHORITIES OF THE FEDERAL AGENCIES GIVE THEM THE POWERS TO PREEMPT STATE MANAGEMENT ON NAVIGABLE WATERS.

WE ARE EMBROILED IN CONTINUOUS DEBATE OVER WHETHER A STATE CONSTITUTIONAL AMENDMENT PUTTING ALASKA IN COMPLIANCE WITH THE FEDERAL LAW WILL IN FACT RETURN MANAGEMENT TO ALASKA. ALASKA IS BECOMING PAINFULLY AWARE OF THE FACT THAT THERE ARE MAJOR FLAWS WITH TITLE VIII OF ANILCA. EVEN THE ATTORNEY GENERAL ADMITS THAT CORRECTIONS IN THIS TITLE ARE ABSOLUTELY ESSENTIAL.

ALL OF THE ABOVE OPTIONS ARE COMPLICATED AND IT IS CLEAR THAT THERE WILL BE NO CONSENSUS IMMEDIATELY ON THE ULTIMATE SOLUTION TO THIS ISSUE FOR ALL STATE AND FEDERAL LANDS. HOWEVER, I AM A SPONSOR ON THIS RESOLUTION BECAUSE I BELIEVE IT IS ONE AREA WHERE WE CAN GET AS CLOSE TO A CONSENSUS AS WE ARE GOING TO GET RIGHT NOW. THIS RESOLUTION DOES NOT CHALLENGE THE SUBSISTENCE PRIORITY ON FEDERAL LANDS AND WATERS. IT DOES, HOWEVER, ASK CONGRESS TO RECONFIRM STATE JURISDICTION ON STATE AND PRIVATE LANDS AND WATERS. I DO NOT BELIEVE THAT OUR DELEGATION NOR CONGRESS WOULD HAVE ALLOWED THE PASSAGE OF LEGISLATION SETTING IN MOTION THE

INEVITABLE PREEMPTION OF ALL STATE FISH AND WILDLIFE MANAGEMENT IN ALASKA -- REGARDLESS OF THEIR PRIORITIES FOR FEDERAL CONSERVATION UNITS.

WE ARE ASKING OUR DELEGATION AND CONGRESS TO RESTATE THE ORIGINAL INTENTION OF ANILCA AND SAVE OUR FISHERIES AND WILDLIFE PROGRAMS ON STATE LANDS AND WATERS FROM FEDERAL PREEMPTION.

THE ALTERNATIVE IS TO ALLOW THE FEDERAL COURTS TO CONTINUE THEIR COURSE OF SELECTIVELY REVISING THE INTENT OF CONGRESS. IT IS CLEARLY POSSIBLE THAT THE STATE COULD LOSE THIS CASE IN THE UNPREDICTABLE NINTH CIRCUIT COURT OF APPEALS. THE ATTORNEY GENERAL SAID THAT THE SUPREME COURT WOULD LIKELY NOT HEAR THE CASE IF APPEALED

WE ARE LOOKING SQUARELY AT A BAD DECISION BY A FEDERAL DISTRICT COURT JUDGE AND A POTENTIAL BAD DECISION BY A NINTH CIRCUIT COURT OF APPEALS WHICH MAY NOT BE APPEALABLE TO THE SUPREME COURT.

ALASKANS NEED AND DESERVE A CLARIFICATION OF THE INTENT OF THE STATEHOOD COMPACT AND ANILCA. WE ARE DIRECTING OUR IMMEDIATE ATTENTION TO CONGRESS TO HELP US OUT OF THIS CRISIS.

I AM HOPEFUL THAT MOST ALASKANS, THE STATE ADMINISTRATION AND
EVENTUALLY OUR ENTIRE DELEGATION CAN SUPPORT THIS EFFORT.