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INFORMATION REQUEST RE: WATERWAY MANAGEMENT ISSUES

Dear Sirs,

Thank you very much for participating in the January 30th and February 4th Senate Resources Committee hearings on waterway management issues. I believe those hearings were very productive and brought to light some important areas of concern in a very complex set of issues. As I stated at the conclusion of our hearings, the issues of public access, navigability and public trust/public trust doctrine will continue to be a priority of the Senate Resources Committee.

During the hearings, and in discussion with our auditors, several issues were raised that could potentially benefit from legislative action. I appreciate the scope and difficulty of managing these complex issues and am very interested in working with you to develop a strategy to better address them in the future. To that end, I request you provide me with a thorough response to the following questions at your earliest possible convenience.

- 1) What is the status of 17(b) easements reserved on lands conveyed to corporations subject to the 1976 agreements? (i.e., in order to allow BLM to continue to convey land, the corporations agreed to replace any easements found to be improper or unlawful with donated "replacement" easements following the decision on the lawsuit) In those cases where conveyance is completed, but the easements have not been donated, what are your specific intentions to acquire the donated easements per the terms of the agreement? Actions by which agency and under what timelines?
- 2) Please provide a list of those airports that are leased, but not owned, by the state, including those planned to be moved and their status. What specific measures are you currently employing, or would you suggest be employed, to assure easements are retained and marked from airports to public lands and waters?
- 3) Please provide an analysis of the consistency with ANCSA of the federal regulations which terminate ANCSA 17(b) easements by a specified year or if they are not used, and include viable options to challenge those regulations or the terminations. In addition, please provide a similar analysis of options for administrative resolution. Please include reasonable timeframes and likelihood for success.
- 4) Please provide an analysis of possible administrative and/or legislative options which could be considered to assure public easements across private lands are appropriately marked and that officials providing marking or maintenance of markers will have access to those lands. Include options such as right of refusal to prosecute trespass, providing incentive for private landowners to mark or contract for marking and any other criteria that could be used to provide benefits to private landowners.
- 5) Please identify all procedures which are currently used to review federal and state land conveyances, including verifying final survey notices, to assure accurate reflection of legal access [17(b) and RS 2477] and navigable waters in final surveys and conveyances.
- 6) Please provide draft statutory language and administrative options to effect state title to navigable waterways such that landowners who have been inappropriately conveyed title to submerged lands, which should have passed to the state with statehood, are officially notified of state ownership. This should include specific steps and timelines to address pre-Gulkana conveyances and/or to encourage corporations to request BLM (and/or ways to require BLM) to correct conveyances that inappropriately conveyed state submerged lands. One such option could include proposed language to statutorily assert ownership and navigability using the standards currently in effect as defined by the Gulkana and subsequent decisions. In addition, please

provide a legal analysis of how this could affect navigability disputes with the federal government.

7) Please provide suggested statutory language which would protect and define the public trust rights to engage in activities in navigable waterways. I would also be interested in your opinion on whether the incorporation of the preamble in 85 SLA chapter 82 in AS 38.05.127 or 38.05.128 in part clarifies these rights. The public trust rights I refer to include anchoring, wading, portaging, moving boats across gravel, use of gravel bars and stream banks below ordinary high water and other activities necessarily related to fishing, hunting, boating, navigation, and other public activities that do not alter the course and subsurface of the waterway.

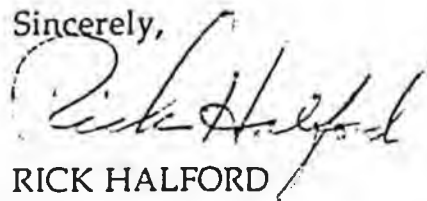
8) What are the possible processes or legal steps that the state would employ in defending a public user of state lands or water rights in the case of legal conflict?

9) What possible alternative do you see to make the easement atlases more available to the public? Could they be distributed at cost through some organization? Do you have other publications that utilize other distribution options that may work for the atlases?

I understand that these are detailed questions and that some of the answers could be sensitive to future litigation. In that regard, please feel free to provide confidential analysis where appropriate.

Thank you for your attention to this request. I look forward to working with you to craft legislation that will assist you in managing these important issues. Please don't hesitate to contact me, or my staff, if you are in need of additional clarification.

Sincerely,



RICK HALFORD

RH:bwh

cc: Jane Angvik, Director, Division of Lands
Tina Cunning, ANILCA Program Manager, ADF&G
Joanne Grace, Assistant Attorney General