HCR

2

Alaska State Legislature

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Representative John Coghill

Date: May 4, 1999

To: Representative Scott Ogan

From: Representative John Coghill JBC

Re: HCR 2 Sovereignty

I am requesting that HCR 2 be heard in House Resources Committee as soon as possible. This Resolution calls for the resolve of the fish and game management issue by the U.S. Supreme Court and should be passed by the Legislature before we adjourn.

I have enclosed the resolution, sponsor statement and backup infomration. Thank you for your consideration.

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Room 416

Representative John Coghill

HCR 2 - Sovereignty of the State of Alaska
Sponsor Statement - March 8, 1999

The recent debate over subsistence has become one fueled with a lot of emotion but must focus on the doctrines of law. To understand Alaska's dilemma, we must look at the history of the Congressional actions that brought us to this point and scrutinize the actions of Congress and the Department of Interior.

The Department of Interior, Clinton Administration, Congress, and the Knowles Administration insist on dividing Alaskans on equality and wildlife consumption issues. The real issue before us is one of State sovereignty and the federal governments continued denial of the State's basic constitutional standing, equal footing and public trust. ANILCA did not preempt nor diminish the State of Alaska's sovereign authorities over its own lands, water and resources. ANILCA did not specifically preempt state management nor grant specific authority to the secretaries of Agriculture and Interior to preempt state management of navigable waters, submerged lands, nor the resources therein.

Does two wrongs make a right? The answer is no.

The McDowell ruling concluded that "statutes granting preference to rural residents to take fish and game for subsistence purposes violates Alaska constitutional provisions prohibiting exclusive or special privileges in the taking of fish and wildlife." Because of that decision the Department of Interior and Congress want the Alaskan people to change their constitution to allow inequality (division by race) in the management and use of Alaska's fish and wildlife resources.

Putting an equal protection to a vote on the ballot would set a precedence of allowing fundamental rights to become vulnerable to politics and rhetoric. If the legislature passed a referendum for the ballot and the voters of Alaska approved a rural preference, it would be swiftly met with legal challenges because such a change to our Constitution would be unconstitutional under Article XIV of the U.S. Constitution.

HCR 2 restates the historical events that gave the State of Alaska the responsibility for the management of Alaska's fish and wildlife resources. It also challenges the Department of Interior to agree to allow the United States Supreme Court decide who will manage Alaska's resources.

Representative_John_Coghill@LEGIS.state.ak.us

HCR 2 - Short History

Public Law 85-508 - Alaska Statehood Act (July, 1958):

Section 1: Upon proclamation by the President as provided in Section 8(c) of Act Alaska is **admitted into the Union on an equal footing with the other States in all respects whatsoever.**

Section 6 (e): once the Secretary of Interior has certified to Congress that the State of Alaska can administer, manage, and conserve fish and wildlife resources in Alaska, the U.S. government **transfers and conveys to State of Alaska all real and personal property of the United States situated in the Territory which is used for the sole purpose and protection of the fisheries and wildlife in Alaska**

Section 7(m): provides that **the Submerged Lands Act of 1953 shall be applicable to the State of Alaska and the said State shall have the same rights as do existing States.**

Section 8 (c): provides that by proclamation of the President, **Alaska shall be admitted on an equal footing** as provided in Section 1.

On January 3, 1959, President Eisenhower signed the proclamation, Presidential Proclamation No. 3269 with the following language: admission **of the State of Alaska into the Union on an equal footing with the other States of the Union is now accomplished.**

Public Law 86-70 - The Alaska Omnibus Act (June 25, 1959)

Section 45(a) Allows the President, at his discretion, to **transfer** and convey to the State of Alaska, without reimbursement, **any property or interest in property, real or personal, situated in Alaska** which is **owned or held by the United States for a function that has been terminated by the federal government and assumed by the State of Alaska.**

- Alaska adopted a comprehensive fish and game code on April 17, 1959;
- The Secretary of Interior certified to Congress on April 27, 1959 that the Alaska State Legislature has made adequate provisions for the administration, management, and conservation of such resources in the broad national interest.

- President signed Executive Order No. 10857 terminating federal management of fish and wildlife in Alaska and transferring ownership of that function to the state of Alaska.

1953 Submerged Lands Act - Section 1311, Rights of States

This Act is a **quitclaim** title transfer under, of federal authority and ownership to the States of:

- Lands beneath navigable waters within the boundaries of the respective States and the natural resources within such lands and waters;

  Note: **Alaska owns its navigable waters, submerged lands and the fish that swim in those waters.**

- The right and power to manage, administer, lease, develop, and use the said lands and natural resources in accordance with State law

  Note: **Management of those resources is subject to State (not Federal) law.**

Equal Footing Doctrine -

The Equal Footing Doctrine brought the 37 new States, including Alaska, into the Union as equals with the original 13 states. The federal government explicitly specified this is both the Alaska Statehood Act and Presidential Proclamation No. 3269.

In 1997, in U.S. v. Alaska, 521 U.S. 1 (1997), also known as (**Dinkhum Sands**), the Court ruled that title to public assets passed from the federal government to Alaska throughout the equal footing doctrine is an essential element of sovereignty.

Dinkhum was upheld by the Supreme Court in **Printz v. U.S.**, 117 S.Ct. 2365 (1997). In **Printz** the Court held that State legislatures are not subject to federal direction.

Note: **Ownership of submerged land - which caries with it the power to control navigation, fishing, and other public uses of water - is essential property of [State] sovereignty.**

Dual sovereignty - Tenth Amendment

In New York v. U.S., 505 U.S. 144 (1992), the Supreme Court held that the Tenth Amendment to the U.S. Constitution provides that powers not specifically delegated to the U.S. by the Constitution are reserved tot he states respectively.

The Court further addressed **dual sovereignty** by holding that "the framers explicitly chose a constitution that confers upon Congress the power to regulate individuals, not state."

Property Clause - reads:

"The Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States; and nothing in this Constitution shall be so construed as to prejudice any claims of the United States, or of any particular state."

The federal government claims this clause gives Congress limited power over the administration of public lands. This is **the argument the federal government is using** to allow Congress to Grant the Secretary of Interior the power to **allocate wildlife harvest** on Federal lands and to **allocate fish harvest in certain (if not all) of Alaska's navigable waters** simply by passing an act authorizing those actions.

In Kansas v. Colorado, 206 U.S. 46 (1907), the U.S. Government claimed that the Property Clause gave Congress power beyond those powers in Article I, Section 8 of the Constitution when it came to federal lands. The Court held **that the 10th Amendment constrains Congress, even when Congress acts under the Property Clause** and that **Congress can not act outside the enumerated powers granted by Article 1, Section 8** of the U.S. Constitution.

In **Kleppe v. New Mexico,** 426 U.S. 529 (1976), the Court held that:

> "Unquestionably, the States have broad trustee and police powers over wild animals within their jurisdictions...No doubt it is true that as between a State and its inhabitants the State may regulate the killing... of [wildlife].

Public Trust Doctrine -

This doctrine provides that:

- **Public trust lands, waters, and living resources** in a State **are held by the State in trust** for the benefit of all people;

- The **public** has **a right to fully enjoy public trust lands, waters and living resources for a wide variety of uses.**

- **Has been used and upheld by the U.S. Supreme Court, the lower Federal Courts and State Courts since the earliest days of this Nation.**

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Representative John Coghill

WHEREAS ANALYSIS OF HCR 2

WHEREAS #1: Alaska has equal footing with all other states:

1. **Section 1** of **The Alaska Statehood Act** *(Public Law 85-508 -July 7, 1958.) provides that Alaska was admitted into the Union on an equal footing with and with all the same rights and responsibilities as the other States. It says:

   "[U]pon issuance of the proclamation required by section 8(c) of this Act, the State of Alaska is hereby declared - admitted into the Union on an equal footing with the other States in all respects whatever,..."

2. **Section 8(c)** of **The Alaska Statehood Act** provides that Alaska enters the Union with all the same rights as the original 13 States -as soon as the President issues his proclamation to that effect. It provides:

   "Upon the issuance of said proclamation by the President, the State of Alaska shall be deemed admitted into the Union as provided in section 1 of this Act." (i.e. equal footing with the other States in all respects whatever).

3. **Presidential Proclamation No. 3269: President Eisenhower**, January 3, 1959
   This Proclamation declared Alaska admitted into the United States as an equal with the other States of the Union. It says, in part:

   "ADMISSION OF THE STATE OF ALASKA INTO THE UNION."

   "I, DWIGHT D. EISENHOWER, President of the United States of America, do hereby declare and proclaim that the procedural requirements imposed by the Congress on the State of Alaska to entitle that State to admission into the Union have been completed with in all respects and **that admission into the Union on an equal footing with the other States of the Union is now accomplished."**

WHEREAS #2:

a. The Alaska statehood compact guarantees that Alaska has exclusive authority to manage its fish and wildlife resources.

1. **Alaska Statehood Act** (July 7, 1958) Public Law 85-508:

Section 6 (e): "once the Secretary of Interior has certified to Congress that the State of Alaska can administer, manage, and conserve fish and wildlife resources in Alaska, the U.S. government **transfers and conveys to State of Alaska all real and personal property of the United States situated in the Territory which is used for the sole purpose and protection of the fisheries and wildlife in Alaska"**

2. **The Alaska Omnibus Act** (June 25, 1959) - Public Law 86-70:

Section 45(a) Allows the President, at his discretion, to **transfer** and convey to the State of Alaska, without reimbursement, **any property or interest in property, real or personal, situated in Alaska** which is **owned or held by the United States for a function that has been terminated by the federal government and assumed by the State of Alaska.**

- Alaska adopted a comprehensive fish and game code on April 17, 1959;
- The Secretary of Interior certified to Congress on April 27, 1959 that the Alaska State Legislature has made adequate provisions for the administration, management, and conservation of such resources in the broad national interest.
- President signed Executive Order No. 10857 terminating federal management of fish and wildlife in Alaska and transferring ownership of that function to the state of Alaska.

3. **Executive Order No. 10857**, signed by President Eisenhower, effective December 29, 1959.

This Executive Order **terminated Federal management of fish and wildlife** and in effect quitclaimed any interest owned or held by the Federal Government in fish and wildlife in Alaska effective December 31, 1959. It reads, in part:

"TERMINATION OF FEDERAL FUNCTIONS IN ALASKA AND TRANSFER OF PROPERTY HELD BY UNITED STATES."

WHEREAS section 6(e) of the act of July 7, 1958 as **amended provides that the administration and management of the fish and wildlife resources of Alaska shall be transferred to the State of Alaska** on the first day of the

first calendar year following expiration of ninety calendar **days after the Secretary of the Interior certifies to the Congress that the Alaska State Legislature has made adequate provision for the administration, management, and conservation of such resources in the broad national interest;** and

WHEREAS the **Secretary of the Interior made such certification to the Congress** on April 27, 1959; and

WHEREAS section 45(a) of the Alaska Omnibus Act provides that if the President determines that any function performed by the Federal Government has been terminated by the Federal Government and that performance of such function or substantially the same function has been or will be assumed by the State of Alaska, the President may transfer and convey to the State of Alaska, without reimbursement, any property or interest in property, real or personal, situated in Alaska which is owned or held by the United States in connection with such function; and

WHEREAS it appears that it would be in the public interest to delegate to the Secretary of the Interior, to the extent hereunder indicated, the authority vested in the President by section 45(a) of the Alaska Omnibus Act:

NOW THEREFORE, by virtue of the authority vested in me by section 45(a) of the Alaska Omnibus Act - and section 301 of title 3 of the United States Code, as the President of the United States, it is ordered as follows:

Section 1. It is hereby determined that the functions performed by the United States in Alaska pursuant to the **Alaska game law of July 1, 1943 the act of June 26, 1906 and act of June 6, 1924 and the acts amending or supplementing such acts, will terminate on December 31, 1959**, and that the same functions or substantially the same functions will be assumed by the State of Alaska.

Section 2. There is hereby delegated to the Secretary of the Interior, effective January 1, 1960, the authority vested in the President by section 45(a) of the Alaska Omnibus Act to **transfer and convey to the State of Alaska, without reimbursement, any property or interest in property, real or personal, situated in Alaska which is owned or held by the United States in connection with the functions described in section 1 hereof.**

4. The U.S. Supreme Court recognized this in ***Metlakatla Indians v. Egan***, 369 U.S. 45, (1962):

"On April 17, 1959, Alaska adopted a comprehensive fish and game code and "received full control over her resources soon afterward." (Federal

control was terminated and full control was transferred to Alaska by Presidential Executive Order No. 10857.)

b. Alaska Statehood Compact guarantees that all submerged lands and fish are exclusive property of the State of Alaska.

1. **Section 7(m)** of the **Alaska Statehood Act** includes Alaska as a beneficiary to the Submerged Lands Act of 1953 -with identical rights as all other States. It provides:

"The Submerged Lands Act of 1953 - shall be applicable to the State of Alaska and the said State shall have the same rights as do existing States thereunder."

2. The Submerged Lands Act is a quitclaim of Federal authority or ownership and provides that, like all other States, Alaska owns its navigable waters, submerged lands and the fish that swim in those waters. It also provides that management of those resources is subject to State (not Federal) law. It says:

§ 1311. Rights of States (a) Confirmation and establishment of title and ownership of lands and resources; management, administration, leasing, development, and use. It is determined and declared to be in the public interest that (1) title to and ownership of the lands beneath navigable waters within the boundaries of the respective States, and the natural resources within such lands and waters, and (2) the right and power to manage, administer, lease, develop, and use the said lands and natural resources all in accordance with applicable State law be, and they are, subject to the provisions hereof, recognized, confirmed, established, and vested in and assigned to the respective States in which the land is located .

Executive Order 10857

DETERMINING THE TERMINATION OF CERTAIN FEDERAL FUNCTIONS IN ALASKA AND DELEGATING TO THE SECRETARY OF THE INTERIOR THE AUTHORITY OF THE PRESIDENT TO TRANSFER TO ALASKA PROPERTY OWNED OR HELD BY THE UNITED STATES IN CONNECTION WITH SUCH FUNCTIONS

WHEREAS section 6(c) of the act of July 7, 1958, 72 Stat. 339, as amended, provides that the administration and management of the fish and wildlife resources of Alaska shall be transferred to the State of Alaska on the first day of the first calendar year following the expiration of ninety calendar days after the Secretary of the Interior certifies to the Congress that the Alaska State Legislature has made adequate provision for the administration, management, and conservation of such resources in the broad national interest; and

WHEREAS the Secretary of the Interior made such certification to the Congress on April 27, 1959; and

WHEREAS section 45(a) of the Alaska Omnibus Act (73 Stat. 152) provides that if the President determines that any function performed by the Federal Government in Alaska has been terminated by the Federal Government and that performance of such function or substantially the same function has been or will be assumed by the State of Alaska, the President may, until July 1, 1964, in his discretion, transfer and convey to the State of Alaska, without reimbursement, any property or interest in property, real or personal, situated in Alaska which is owned or held by the United States in connection with such function; and

WHEREAS it appears that it would be in the public interest to delegate to the Secretary of the Interior, to the extent hereinafter indicated, the authority vested in the President by section 45(a) of the Alaska Omnibus Act;

NOW, THEREFORE, by virtue of the authority vested in me by section 45(a) of the Alaska Omnibus Act (73 Stat. 152) and section 301 of title 3 of the United States Code, and as President of the United States, it is ordered as follows:

SECTION 1. It is hereby determined that the functions performed by the United States in Alaska pursuant to the Alaska game law of July 1, 1943, 57 Stat. 301, the act of June 26, 1906, 34 Stat. 478, the act of June 6, 1924, 43 Stat. 465, and the acts amending or supplementing such acts, will terminate on December 31, 1959, and that the same functions or substantially the same functions will be assumed by the State of Alaska.

SEC. 2. There is hereby delegated to the Secretary of the Interior, effective January 1, 1960, the authority vested in the President by section 45(a) of the Alaska Omnibus Act to transfer and convey to the State of Alaska, without reimbursement, any property or interest in property, real or personal, situated in Alaska which is owned or held by the United States in connection with the functions described in section 1 hereof.

SEC. 3. The Secretary of the Interior is hereby authorized to redelegate to (1) the Assistant Secretary for Fish and Wildlife, (2) the Commissioner of Fish and Wildlife, (3) the Directors of the Bureaus of Commercial Fisheries and

Sport Fisheries and Wildlife, and (4) the Regional Directors, Alaska Region, of the Bureaus of Commercial Fisheries and Sport Fisheries and Wildlife all or any part of the authority delegated to the Secretary of the Interior by section 2 hereof.

SEC. 4. All transfers and conveyances made under or pursuant to this order shall be made in accordance with such policies, conditions, and procedures as may be prescribed by the Secretary of the Interior.

DWIGHT D. EISENHOWER

THE WHITE HOUSE,
December 29, 1959.

Tony Knowles
Governor
P.O. Box 110001
Juneau, Alaska
99811-0001
NEWS RELEASE

State of Alaska
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FOR IMMEDIATE RELEASE: March 4, 1999 99-042

STATE TO SUE INTERIOR DEPT. OVER GLACIER BAY FISHING

Knowles Asserts Claim to Submerged Lands within Park

Seeking to protect the rights of Alaska commercial and subsistence fishermen, the State of Alaska will file suit against the federal government to establish its ownership of the submerged lands underlying the marine waters of Glacier Bay National Park, Gov. Tony Knowles announced today.

"For years, Alaskans have worked hard to find a compromise solution to the Glacier Bay fishing issue," Knowles said. "Unfortunately, that good work did not resolve all the jurisdictional conflicts regarding ownership of these submerged lands and tidelands in Glacier Bay. Over the years, the Park Service has proposed and issued regulations restricting access and activities on these state-owned waters and recently demonstrated their intent to enforce these regulations affecting commercial fishermen. The state must now take this important step to resolve this disagreement between the state and the federal government."

Established by Presidential Proclamation in 1925, Glacier Bay National Monument was expanded in 1939 and expanded again and designated a national park in 1980. Since the original withdrawal that created the monument did not include submerged lands underlying navigable waters or tidelands, the state believes these lands were passed on to Alaska at statehood.

Regulatory conflicts between the state and the Park Service have increased in recent years, placing Alaska users in a difficult situation. The Park Service has refused to recognize state-authorized subsistence activities and has engaged in repeated attempts to restrict or eliminate commercial fisheries. These comparatively small-scale fisheries have taken place for 100 years and are managed conservatively and compatibly with the purposes and values of the park.

"I strongly support protection of the natural values of this magnificent National Park," Knowles said. "In fact, the record shows that State-managed fisheries have been, and continue to be, compatible with Park values. These fisheries are also important for the commercial and subsistence users of the region and the communities in which they live. We are not seeking increased activity in the Bay, but to protect the limited activity of Alaska families that work there. The recent boarding of commercial crab vessels in Glacier Bay demonstrates the seriousness of federal sanctions. The State's decision to sue is intended to bring a final and stable

resolution to the ongoing questions over ownership and management jurisdiction in Glacier Bay."

As required by federal law, the state today notified the Interior Department of its intent to sue over Glacier Bay and must wait 180 days, or until early fall, to file its lawsuit in federal court.

-30-

Broadcasters note: Video of today's news conference will be available at 3:30 pm on the Governor's window. Radio actualities are available by calling 1-800-478-5669 or (907) 465-5213.

Cases in 9th Circuit Court of Appeals

These seven cases have been stayed until October 1, 1999. The Department of Law lists each of these cases in their Natural Resources litigation.

In the brief description of the case, it is noted that each is *"one of the jointly-managed ANILCA subsistence cases. Theses cases have been stayed until October 1, 1999, the date the federal subsistence fisheries regulations will take effect unless the Alaska legislature places a subsistence amendment on the ballot."*

1. ***State of Alaska v. Babbit*** plaintiffs allege that ANILCA requires the federal government to manage fisheries in navigable waters of Alaska.

2. ***Stevens Village v. McVee and Rosier*** plaintiffs filed suit against Federal Subsistence Board and ADF&G alleging they are being denied their federal subsistence priority within Game Management Unit 25(d) West. **Holland expressed no opinion on the question of whether the Secretaries of Interior or Agriculture themselves have the authority to regulate subsistence, but indicated that he would entertain further briefing on the issue.**

   The parties agreed to stay the case while the Secretaries consider the petition.

3. ***Native Village of Quinhagak v. United States*** Plaintiffs seek declaratory and injunctive relief allowing the harvest of rainbow trout from the Kanetok and Goodnews Rivers for subsistence.

   The parties agreed to stay proceedings pending final action on the proposed regulations extending federal subsistence program to navigable waters.

4. ***Peratrovich v. United States*** Plaintiffs contend that (1) federal government owns submerged lands within Tongass National Forest as a result of prestatehood withdrawal and (2) that the waters in question are "public lands"within the meaning of ANILCA, on a reserved water rights theory.

   In 1997, the state intervened with a counterclaim that the state owns the lands beneath the marine waters of the Tongass. **The United States' motion for judgment on the pleadings was under advisement when the case was stayed.**

5. ***Fish & Game Fund v. Alaska and United States*** Commercial fishermen in Yukon and Kuskokwim Rivers challenge the False Pass fishery citing the Magnuson Act and ANILCA and seek to have Sec of Commerce or Interior take over management of commercial and subsistence fisheries in several management areas of the state. **Judge Holland had a motions to dismiss under advisement that was filed by the state and the feds when the case was stayed.**

6. ***Kluti Kaah v. Alaska*** Plaintiffs challenged state and federal regulations governing subsistence hunting of caribou in the Copper River. Case has been consolidated with ***Arctic Reginal Council v. United States*** and stayed until October 1, 1999.

7. ***Arctic Reginal Council v. United States*** challenged several federal regulations adopted by Federal Subsistence Board including failure of fed regs to extend to navigable waters and territorial seas.

alaska department of law / natural resources

Updated February 3, 1999

Significant Natural Resources Cases

The following is a summary of many of the active subsistence, statehood defense, and other significant lawsuits being handled by the Natural Resources Section of the Alaska Department of Law.

FEDERAL COURT CASES

1. State of Alaska v. Babbitt
2. Stevens Village v. McVee and Rosier
3. Native Village of Quinhagak v. United States
4. Peratrovich v. United States
5. Fish and Game Fund v. Alaska and United States
6. Kluti Kaah v. Alaska
7. Arctic Regional Council v. United States

Jointly managed ANILCA cases that have been stayed until October 1, 1999.

8. State v. Harrison
9. Alaska v. United States
10. Confederated Tribes & Bands of the Yakama Indians, et al. v. Malcolm Baldrige
11. U.S. v. Washington
12. American Rivers, et al. v. Nat'l Marine Fisheries Service
13. State of Alaska v. United States - expansion of submerged waters Act
14. Seldovia v. CIRI, United States, and Alaska
15. Alaska v. United States and Bruce Babbitt
16. Hyak Mining Co. v. U.S.
17. British Columbia v. United States, Washington and Alaska
18. Harold Kalve v. Frank Rue

STATE COURT CASES

1. Rutter v. Alaska Board of Fisheries
2. Native Village of Elim v. State
3. Kenaitze Indian Tribe v. State
4. Brady v. State
5. Wilhelmsen v. Walsh
6. Interior Airboat Ass'n v. State
7. Beluga Mining Co. v. State
8. O'Callaghan and Sweat v. State
9. Ellingstad v. State and University
10. Triem v. State, Dep't of Natural Resources
11. Aloha Lumber Company v. University of Alaska, Board of Regents, and the Statewide Office of Land Management, Wasser & Winter, Inc., and the State of Alaska

12. Kachemak Bay Conservation Society, et al. v. State, DNR
13. Kashwitna Farms, Inc., Harry and Consuelo Wassink v. State
14. Fish and Wildlife Enforcement Actions
15. State of Alaska v. Lanman

ADMINISTRATIVE PROCEEDINGS

1. In Re: Native Allotment Application of Donna Huff
2. In Re: Native Allotment Application of May J. Colberg
3. In re: Native Allotment Application of Alfred Bayou
4. In the Matter of: Alaska DNR and Carpenter Contracting, Inc.
5. FPA Enforcement Actions

FEDERAL COURT CASES

1. ***State of Alaska v. Babbitt*** (known as the *Katie John* case; United States District Court No. A90-484-CV (HRH) (Judge Holland); Ninth Cir. No. 94-35481; U.S. Supreme Court No. 95-1084; our file no. 223-91-0275; state's attorneys: Joanne Grace and Henry Wilson; plaintiffs' attorney: Heather Kendall of NARF; U.S.' attorneys: Dean Dunsmore and Elizabeth Ann Peterson). This is one of the jointly-managed ANILCA subsistence cases. These cases have been stayed until October 1, 1999, the date that federal subsistence fisheries regulations will take effect unless the Alaska legislature places a subsistence amendment on the ballot. The plaintiffs alleged that ANILCA requires the federal government to manage fisheries in navigable waters of Alaska, and accordingly, that the Federal Subsistence Board should take over management of the Copper River and authorize a subsistence fishery at Bazulnetas.

Both the District Court and the Ninth Circuit Court of Appeals agreed in part and held that the term "public lands" includes navigable waters in which the United States has reserved water rights. (Under the reserved water rights doctrine, when the United States withdraws land and reserves it for a federal purpose -- for example, a national park or wildlife refuge -- it also reserves by implication water rights necessary to fulfill the purposes of the reservation). The court remanded the case to the Departments of Interior and Agriculture to identify those waters. The state's petition to the U.S. Supreme Court asking it to review the Ninth Circuit decision was denied in 1996.

In January 1999, the departments of Interior and Agriculture published final regulations to assume management of subsistence fisheries. The regulations cover subsistence activities on all waters within or adjacent to the exterior boundaries of 34 identified federal areas, including national parks, refuges, preserves, monuments, wild and scenic rivers, and national forests (excluding the marine waters of the Tongass and Chugach National Forests). They also will extend the Federal Subsistence Board's management to some federal lands selected under the Alaska Native Claims Settlement Act or the Alaska Statehood Act until conveyed. In addition, the rules purport to confirm the Secretaries' authority to restrict or eliminate hunting, fishing, and trapping on state and private lands when these activities interfere with the subsistence priority on the public lands.

Congress included a plan to phase in the federal subsistence fisheries regulations in the

FY 99 Omnibus Appropriations Bill. A total of $11 million has been appropriated to implement and enforce the federal fisheries regulations, but a moratorium has been placed on the expenditure of the funds, to give the Alaska legislature a further opportunity to amend the state constitution. If the legislature fails to place a subsistence amendment on the ballot by June 1, 1999, Interior will receive $1 million to begin data gathering and implementation planning. If the legislature fails to place a subsistence amendment on the ballot by September 30, 1999, Interior and Agriculture will receive the balance of the $11 million and the federal regulations will be implemented. However, if the legislature does place a subsistence amendment on the ballot, the federal regulations will not be implemented, and the state will receive the $11 million for management. The plan also eliminates amendments to ANILCA which would have taken effect if the legislature had amended the state constitution under the moratorium provision in last year's budget bill.

Back to top of page

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2. ***Stevens Village v. McVee and Rosier*** (United States District Court No. A92-567-CV (HRH) (Judge Holland); our file no. 221-93-0123; state's attorneys: Joanne Grace and Henry Wilson; plaintiffs' attorney: Carol Daniel; U.S.' attorneys: Bruce Landon and Dean Dunsmore). This is one of the jointly managed ANILCA cases that have been stayed until October 1, 1999, the date that federal subsistence fisheries regulations will take effect unless the Alaska legislature places a subsistence amendment on the ballot.

In 1992, plaintiffs filed suit against the Federal Subsistence Board (FSB) and ADF&G, alleging they are being denied their federal subsistence priority within Game Management Unit 25(D) West. Following denial of a TRO, the federal defendants moved for a voluntary remand to the FSB. On remand, the FSB changed its regulations to accommodate plaintiffs' requests for: an extension of the season; provisions allowing a permittee to designate another person to hunt on his or her behalf; and closing federal public lands in GMU 25D West to hunting by non-local residents. The parties filed cross-motions for summary judgment on the only remaining issue: whether the FSB has authority to regulate hunting on state-managed lands adjacent to federal lands in GMU 25D West to protect subsistence uses on "public lands" in GMU 25D West. Judge Holland has characterized this as the "where II" issue.

Judge Holland tentatively indicated in the stay order that the FSB lacks authority off "public lands" because the Secretaries of Interior and Agriculture did not grant such authority in the regulations establishing the FSB. Judge Holland expressed no opinion on the question of whether the Secretaries themselves have that authority, but indicated that he would entertain further briefing on the issue. Meanwhile, the Stevens Village plaintiffs and others submitted a rulemaking petition to the Secretaries of Agriculture and Interior, requesting that they extend the FSB's authority to state and private lands. The parties agreed to stay the case while the Secretaries considered the petition.

In January 1999, the Departments of Interior and Agriculture published final regulations that purport to confirm the Secretaries' authority to restrict or eliminate hunting, fishing, and trapping on state and private lands when these activities interfere with the subsistence priority on the public lands.

Congress included a plan to phase in the federal subsistence fisheries regulations in the FY 99 Omnibus Appropriations Bill. A total of $11 million has been appropriated to implement and enforce the federal fisheries regulations, but a moratorium has been placed on the expenditure of the funds, to give the Alaska legislature a further opportunity to amend the state constitution. If the legislature fails to place a subsistence amendment on the ballot by June 1, 1999, Interior will receive $1 million to begin data gathering and implementation planning. If the legislature fails to place a subsistence amendment on the ballot by September 30, 1999, Interior and Agriculture will receive the balance of the $11 million and the federal regulations will be implemented. However, if the legislature does place a subsistence amendment on the ballot, the federal regulations will not be implemented, and the state will receive the $11 million for management. The plan also eliminates amendments to ANILCA which would have taken effect if the legislature had amended the state constitution under the moratorium provision in last year's budget bill.

Back to top of page

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3. ***Native Village of Quinhagak v. United States*** (United States District Court No. A93-023-CV (HRH) (Judge Holland); Ninth Cir. No. 93-35496; our file no. 221-93-0041; state's attorneys: Henry Wilson and Joanne Grace; plaintiffs' attorneys: Carol Daniel, John Starkey (AVCP); U.S.' Attorney: Dean Dunsmore). This is one of the jointly managed ANILCA cases that have been stayed until October 1, 1999, the date that federal subsistence fisheries regulations will take effect unless the Alaska legislature places a subsistence amendment on the ballot.

The plaintiffs (the villages of Quinhagak and Goodnews Bay, the AVCP, and individual Yup'ik Natives) seek declaratory and injunctive relief allowing the harvest of rainbow trout from the Kanektok and Goodnews Rivers for subsistence. The plaintiffs claim that navigable rivers are "public lands" for purposes of ANILCA, that the state has no subsistence jurisdiction over the waters of the Kanektok and Goodnews River systems, and that the federal government has the authority to regulate non-public lands and waters owned by the state when necessary to provide for subsistence uses. In September of 1994, the Ninth Circuit reversed Judge Holland's order denying the plaintiffs' motion for preliminary injunction. On remand, the court entered an order prohibiting the state and federal defendants from enforcing regulatory prohibitions on the subsistence harvest of rainbow trout while the case is pending. The plaintiffs were awarded partial attorneys fees incurred in connection with the motion for preliminary injunction and appeal.

The parties agreed to stay proceedings on the merits of the case pending final action on the proposed rulemaking that would extend the federal subsistence program to navigable waters in which the United States has a reserved water right.

Back to top of page

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4. ***Peratrovich v. United States*** (United States District Court No. A92-734-CV (HRH) (Judge Holland); our file no. 221-93-0340; state's attorneys: Henry Wilson and Joanne Grace; plaintiffs' attorneys: Thomas Luebben and Richard Young of Albuquerque, New Mexico; U.S.' attorney: Dean Dunsmore). This is one of the jointly managed ANILCA cases. The case has been stayed pending further order of the court.

In an amended complaint filed on October 24, 1996, plaintiffs seek declaratory and injunctive relief requiring the Federal Subsistence Board (FSB) to issue a collective permit allowing the harvest of up to 366,000 pounds of herring roe on kelp (1000 pounds per individual for 366 applicants) from the marine waters of southeast Alaska as "customary trade." (The state "customary trade" regulation allows sale of up to 32 pounds of herring roe on kelp by an individual, and up to 158 pounds per household.) The FSB has taken the position that it lacks jurisdiction over the navigable waters where the harvest would occur.

Plaintiffs contend primarily that (1) the United States owns the submerged lands within the Tongass National Forest as a result of a prestatehood withdrawal, and (2) that the waters in question are "public lands" within the meaning of ANILCA, on a reserved water rights theory. On December 18, 1996, the United States moved for judgment on the pleadings, arguing that the case should be dismissed for failure to join the state as an indispensable party, and also on the grounds that the plaintiffs have not exhausted administrative remedies, and that the plaintiffs' remaining claims have been rejected by the Ninth Circuit in the Katie John decision.

In 1997, the state's motion to intervene and file a proposed counterclaim and answer to plaintiffs' amended complaint was granted. The state's counterclaim seeks, among other things, a declaration that the state owns the lands beneath the marine waters of the Tongass. The United States' motion for judgment on the pleadings was under advisement when the case was stayed.

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5. ***Fish and Game Fund v. Alaska and United States*** (United States District Court No. A92-0443-CV (HRH) (Judge Holland); our file no. 221-92-0832; state's attorneys: Joanne Grace and Henry Wilson; plaintiff's attorneys: Edgar Paul Boyko; U.S.' Attorney: Dean Dunsmore; intervenor attorneys: Mike Stanley and Marc Slonim). This is one of the jointly managed ANILCA cases that have been stayed until October 1, 1999, the date that federal subsistence fisheries regulations will take effect unless the Alaska legislature places a subsistence amendment on the ballot.

A coalition of commercial salmon fishermen in the Yukon and Kuskokwim Rivers challenge the Area M (False Pass) fishery also addressed in the Elim state court case. Plaintiffs raise various constitutional and statutory grounds, including violation of the Magnuson Act and Title VIII of ANILCA, and seek to have the Secretary of Commerce or Interior take over management of commercial and subsistence fisheries in Area M and in the Y-K region. A coalition consisting of the Peninsula Marketing Association, Concerned Area M Fishermen, Aleutians East Borough, and various Area M Native groups have intervened. The state, federal defendants, and intervenors have filed motions to dismiss plaintiffs' second amended complaint. Judge Holland had the matter under advisement when the case was stayed.

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6. ***Kluti Kaah v. Alaska*** (United States District Court No. A90-004-CV (HRH) (Judge Holland); our file no. 221-90-0433; state's attorneys: Joanne Grace and Henry Wilson;

plaintiff's attorneys: Heather Kendall of the Native American Rights Fund (NARF) and Mike Walleri of Tanana Chiefs' Conference (TCC); U.S.' attorney: Dean Dunsmore). This is one of the jointly managed ANILCA cases that have been stayed until October 1, 1999, the date that federal subsistence fisheries regulations will take effect unless the Alaska legislature places a subsistence amendment on the ballot.

Plaintiffs and intervenors initially challenged state and federal regulations governing subsistence hunting of caribou in the Copper River basin. Plaintiffs claimed, among other things, that the federal regulations impermissibly fail to cover caribou located on state lands. This case has been consolidated with Arctic Regional Council v. United States. Kluti-Kaah filed an amended complaint which does not include any claims against the state. The court granted an unopposed motion by the federal government to dismiss TCC's claims against it and the court dismissed all of the claims against the state following an unopposed motion by the state.

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7. ***Arctic Regional Council v. United States*** (United States District Court No. A90-419-CV (HRH) (Judge Holland); our file no. 221-90-0433; (state not a party, but case is consolidated with Kluti Kaah v. Alaska -- Joanne Grace and Henry Wilson, state's attorneys)). This is one of the jointly managed ANILCA cases that have been stayed until October 1, 1999, the date that federal subsistence fisheries regulations will take effect unless the Alaska legislature places a subsistence amendment on the ballot.

Plaintiffs challenge several aspects of regulations adopted by the Federal Subsistence Board including the failure of federal regulations to extend to navigable waters and territorial seas.

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8. ***State v. Harrison*** (United States District Court No. A94-464-CV (HRH) (Judge Holland); our file no. 221-95-0270; state's attorneys: John Baker and Robert Nauheim; U.S.' attorneys: Ann Juliano and Bruce Landon; private defendants' attorney: none). This action involves the state's assertion of a right-of-way for the Chickaloon River Road across the Native allotment owned by members of the Harrison family, who claim that the allotment constitutes sovereign Indian country. The Harrisons have relied on Chickaloon's inclusion on the 1993 BIA list of tribes to claim immunity from Alaska law, including charges of obstructing lawful public use of the Chickaloon River Road. The United States moved to dismiss the state's original complaint, initially arguing that the Quiet Title Act, 28 U.S.C. § 2409a, forbids any judicial inquiry into the validity of the state's right-of-way to the extent that "trust or restricted Indian land" is implicated. We amended our complaint to seek a title adjudication under 25 U.S.C. § 357, the federal condemnation statute. The United States moved to dismiss a number of cross-claims brought by the Harrisons against it alleging that the United States breached its trust obligation to the Harrisons as Natives by not defending the Harrisons' alleged ownership of the road.

In February 1997, Judge Holland dismissed the Harrisons' cross-claims against the United States and in May 1998, the court dismissed the Harrisons' counterclaims against the state. In October 1998, Judge Holland issued an order granting the state

partial summary judgment on the state's claim of title to the road. Still to be addressed is the extent, if any, to which the current alignment of the road deviates from the original right-of-way. On January 25, 1999, the court issued an order allowing the Harrisons' most recent attorney, Santiago Juarez, to withdraw due to a conflict. Judge Holland also stayed the case through March 23, 1999, and set a deadline of April 23, 1999, by which the state is to file a motion for summary judgment on the remaining issues, regardless of whether the Harrisons have obtained substitute counsel.

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9. ***Alaska v. United States*** [Kandik/Nation and Black Rivers] (United States District Court No. A93-437-CV (JKS) (Judge Singleton); Ninth Cir. No. 94-36176; our file no. 221-97-0298; state's attorney: Joanne Grace; U.S.' attorney: Dean Dunsmore; Doyon's attorney: Nathan Bergerbest). The state filed suit in November 1993, to quiet title to the beds of three rivers in northeast Alaska. The United States previously had determined that all three rivers were navigable at statehood, but claims it is not bound by these navigability determinations.

The United States moved to dismiss the case, arguing that the district court did not have jurisdiction because Alaska could not show that the United States actively claimed an interest in the submerged lands. The court agreed with the state that the mere possibility that the United States might own the riverbeds constituted a cloud on the state's title sufficient to trigger the waiver of sovereign immunity in the Quiet Title Act and denied the United States' motion. The United States appealed. The Ninth Circuit held that the United States did not have a right to appeal until the decision before the district court is final.

The district court directed the United States to answer the state's complaint. After the United States answered the complaint, the state moved for judgment on the pleadings based on the United States' failure to admit or deny the state's factual allegations of navigability. The district court granted the state's motion, and entered final judgment. The United States appealed to the Ninth Circuit, again raising the jurisdictional argument, among others. The case has been briefed and argued, and the court has the matter under consideration.

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10. ***Confederated Tribes & Bands of the Yakama Indian Nation, et. al v. Malcolm Baldrige*** (U.S. District Court for the District of Washington; state's attorneys: Mike Stanley and Myles Conway). This case has been resolved by a long term agreement in the PacificSalmon Treaty. However, the court retains jurisdiction over the controversy. For details, see this report dated April 8, 1997.

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11. ***U.S. v. Washington*** (U.S. District Court for the Western District of Washington; state's attorney: Myles Conway). In *U.S. v. Washington*, 384 F. Supp. 312 (W.D. Wash. 1974), aff'd, 520 F.2d 676 (9th Cir. 1975), Judge Boldt held that certain northwest Indian Tribes have a treaty fishing right to harvest 50 percent of the harvestable fish passing through recognized tribal fishing grounds. Under the continuing jurisdiction of

the federal court, the northwest tribes now seek a ruling that their treaty rights include salmon caught in southeast Alaska that would otherwise return to tribal fishing grounds.

In response to motions for summary judgment filed by the States of Alaska, Washington and Oregon, Judge Barbara Rothstein ruled that the tribes must first show changed circumstances under Fed. R. Civ. P. 60(b) before the court will revisit the treaty/non-treaty fish allocation created by District Court Judge Boldt in 1974. Only if the tribes can show a change in the equities since Judge Boldt's ruling will the court adjudicate whether portions of the southeast Alaska salmon catch should be included in the non-treaty share for purposes of the treaty/non-treaty allocation in the Pacific Northwest. Judge Rothstein reserved ruling on Alaska's legal arguments that the treaties cannot, as a matter of law, be interpreted to encompass the Alaska catch.

The parties conducted extensive discovery on the existence of changed circumstances in preparation for trial in 1997. Shortly before trial, the parties negotiated an Agreed Order to Stay the Proceedings, which Judge Rothstein signed. The Agreed Order originally stayed proceedings until December 14, 1998, to facilitate a new round of negotiations in the Pacific Salmon Treaty, which may provide a basis for settlement of this case. The stay has now been extended until December 14, 2000, and treaty negotiations continue.

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12. ***American Rivers, et al. v. Nat'l Marine Fisheries Service*** (U.S. District Court, Portland, Oregon, case no. 96-384-MA; Ninth Cir. No. 97-36159, our file no. 221-96-0761; state's attorney: Henry Wilson). A coalition of environmental groups and commercial and sportfishing organizations challenged actions of the National Marine Fisheries Service, the United States Army Corps of Engineers, and the United States Bureau of Reclamation relating to the operation of the Federal Columbia River Power System (FCRPS) under the Endangered Species Act (ESA). Alaska was granted leave to participate as amicus curiae on the side of the plaintiffs. Alaska has an interest in the case because Columbia River salmon stocks, including threatened Snake River fall chinook, spend a portion of their lives in the marine waters off the coast of southeast Alaska, where they are incidentally harvested in commercial and sport fisheries. Hydropower operations that adversely affect Snake River salmon stocks adversely affect Alaska's interest in the use of salmon harvested in its waters as well.

Judge Marsh denied the plaintiffs' motions for summary judgment and entered final judgment in favor of the federal defendants. The plaintiffs appealed to the Ninth Circuit. Briefing is complete and oral argument was held in January 1999.

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13. ***State of Alaska v. United States*** [PLO 82] (United States District Court, A87-450-CV (HRH); Ninth Circuit No. 98-80132; our file no. 221-98-0382; state's attorney: Joanne Grace; U.S.' attorney: Bruce Landon; Intervenor Arctic Slope Regional Corp. attorney: David Crosby). Following administrative proceedings, the state brought this action in 1987 to quiet title to the lands underlying inland navigable waters in an area withdrawn in 1943 by Public Land Order 82 (PLO 82). The U.S. Supreme Court

has held that title to submerged lands passes to new states at statehood as a matter of constitutional grace under the equal footing doctrine. At stake in this case is title to the lands underlying the navigable waters on 48 million acres. The United States maintains that the submerged lands within PLO 82 did not pass to the state because the area was reserved at statehood (the reservation was revoked in 1960). The state argues that the United States has not overcome the strong presumption against finding that Congress intended both to reserve the submerged lands and to defeat state title to them. Arctic Slope Regional Corporation intervened in the case because it claims an interest in the submerged lands as well.

On March 29, 1996, Judge Holland granted the state's motion for partial summary judgment, holding that the prestatehood withdrawal did not defeat the state's title to the submerged lands, which passed to the state under the equal footing doctrine. The United States has appealed the decision. Briefing has been completed, and oral argument was held on January 5, 1999.

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14. ***Seldovia v. CIRI, United States, and Alaska*** (United States District Court No. A91-076 (Judge Singleton); our file no. 221-92-0067; state's attorney: Elizabeth Barry; Seldovia's attorney: R. Collin Middleton; CIRI's attorney: Mark Rindner; U.S.' attorney: Bruce Landon). Seldovia filed this suit seeking to overturn a portion of the 1976 Cook Inlet land exchange, known as the Terms and Conditions for Land Consolidation and Management in the Cook Inlet Area (T & C). Seldovia seeks land it selected under § 12(b) of ANCSA that was promised to the state in the T&C. The Interior Board of Land Appeals denied Seldovia's appeal of a decision to issue conveyance to the state and the district court upheld that denial. The district court also ruled against Seldovia on most of its breach of trust claims against CIRI. Seldovia moved to file a fourth amended complaint to clarify its remaining claims which could affect state interests. Seldovia, CIRI, and the other Cook Inlet Region villages also filed new suits against the U.S. challenging a related but distinct aspect of the T & C. In December 1998, the parties agreed to a settlement in which Seldovia dismissed all of its claims with prejudice.

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15. ***Alaska v. United States and Bruce Babbitt***, [RS 2477] (U.S. District Court No. F97-0009-CV (Judge Singleton); our file no. 221-97-0574; state's attorneys: Myles Conway, Rob Nauheim and Laura Bottger; U.S.' attorney: Bruce Landon). On March 26, 1997, the state filed a quiet title action in federal court seeking to adjudicate an R.S. 2477 route on the Harrison Creek-Portage Creek Trail. The state has obtained entry of default against the mining claimants with claims located on the trail. The state is moving forward with discovery against the federal defendants and is preparing for trial.

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16. ***Hyak Mining Co. v. U.S.***, [RS 2477] (U.S. District Ct. No. A96-0478-CV (HRH); our file no. 221-97-0707; state's attorney: Elizabeth Barry; plaintiff's attorney: Mary Nordale; U.S.' attorney: Bruce Landon). Hyak Mining Co. sued the United States to quiet title to the Jualin Mine Road in Berner's Bay in southeast Alaska. The state is not

TESTIMONY ON HCR NO. 2

Joanne Grace, Assistant Attorney General

April 26, 1999

My name is Joanne Grace. I am an Assistant Attorney General in the Natural Resources Section in Anchorage. Thank you for the opportunity to testify on HCR No. 2.

Presumably the committee understands that the Governor will not follow the resolution's suggestion to file an original action in the United States Supreme Court challenging the constitutionality of title VIII of ANILCA. The Governor has consistently stated since he took office that he does not believe litigation is the answer to Alaska's subsistence dilemma. Even in the unlikely event he were to change his mind, such a case would face insurmountable jurisdictional problems such as res judicata and the running of the statute of limitations. If the Legislature wishes to pass the resolution anyway, it might want to reconsider some of the resolution's supporting language.

Scott v. Sanford

I strongly urge this committee to eliminate the resolution's reference to *Scott v. Sanford*, for two reasons. First, the case does not support the resolution, as I will explain

in a minute, but more importantly, the drafters of this resolution have chosen a most inappropriate case for the Legislature to cite for any reason, presumably unintentionally. *Scott v. Sanford* is better known as the "Dred Scott case," a pre-Civil War action brought by a slave for his freedom. The case is widely considered to mark one of the low points in Supreme Court history, because the Court held that a slave is not a "person" or a "citizen" under the Constitution, and that Congress did not have authority to abolish slavery. The case was overruled by the Thirteenth Amendment in 1865. Aside from the fact that the case has no application today, its premise that the plaintiff was property rather than a citizen and its language about the unfairness to slave owners both are highly offensive in today's world. Again, I know that the drafters did not intend any offense and will want to take out this reference.

In any event, the case does not support the resolution. In making the statement cited by the resolution, the Court was considering whether Congress had authority to enact "the Missouri compromise," which prohibited slavery in the territories. The plaintiff argued that Congress had authority under the Property Clause of the Constitution, which states that "Congress shall have power to dispose of and to make all needful rules and regulations respecting the territory and other property belonging to the United States." The Court disagreed, holding that the Property Clause only gives Congress authority to dispose of federal land and property, not property that belongs to

citizens, the property in question being slaves. It was in this context that the Court made the gratuitous statement cited in the resolution, that Congress could not use the Property Clause to destroy or impair the civil rights of the citizens of the United States, or to establish inequalities amongst those citizens by creating privileges in one class and disenfranchisement of other classes, meaning that Congress could not use the Property Clause to prohibit some citizens to own slaves while permitting others to do so.

Therefore, the "holding"of *Scott* that the resolution references, is simply that the Property Clause does not give Congress authority to dispose of the property of citizens. This may have been noteworthy in 1856, but in 1999 nothing could be more obvious. It adds nothing to the resolution to include this case, but certainly will be considered objectionable by many people because of its subject matter.

United States v. New York & Printz v. United States

The resolution quotes language from the *New York* and *Printz* cases without explanation of how they might relate to title VIII of ANILCA. Both cases hold that the federal government may not compel the states to implement federal law. At issue in *New York* were the provisions of the Low-Level Radioactive Waste Policy Amendments Act of 1985, which required states either to enact legislation providing for the disposal of

radioactive waste generated within their borders, or to take title to, and possession of the waste--effectively requiring the states either to legislate pursuant to Congress's directions, or to implement an administrative solution. The Court concluded that Congress could not constitutionally require the states to do either. At the same time, the Court noted that it did not violate the Tenth Amendment for Congress to offer states the choice of regulating an activity according to federal standards or having state law pre-empted by federal regulation, and it cited title VIII of ANILCA as an example of such a law. Therefore, *New York* does not support the resolution's suggestion that title VIII is unconstitutional, but expressly finds it to be valid. *Printz* has a similar holding; in *Printz*, a county sheriff brought an action to declare the Brady Act unconstitutional as violative of the Tenth Amendment. The Supreme Court held that the Act's requirement that state officials conduct background checks on prospective handgun purchasers imposed an unconstitutional obligation on state officers to execute federal laws. The basis of both cases is that the federal government cannot compel states to implement federal law. The Department of Interior has not interpreted title VIII of ANILCA to require state implementation, however; it interprets title VIII to require federal implementation if state law does not grant the subsistence priority to rural residents. For this reason, the state does not have a Tenth Amendment claim.

United States v. Alaska

While the resolution is correct that the Supreme Court stated in *United States v. Alaska* that the Alaska Statehood Act expressly provides that the Submerged Lands Act applies to Alaska, that fact is self-evident. The fact that the Supreme Court took note of this is irrelevant to its application. The resolution would be clearer simply to state that the Alaska Statehood Act expressly incorporates the Submerged Lands Act. It is unclear, however, why the resolution links title to submerged lands to a constitutional challenge to title VIII of ANILCA. I am aware of no court precedent holding that the power to control fishing is an essential attribute of state sovereignty.

In summary, the cases the resolution cites do not support a constitutional challenge to title VIII of ANILCA. I particularly recommend that this committee eliminate the paragraph referring to the Dred Scott case, as I am sure the Legislature does not intend the offense that this citation will cause the public.

I am happy to answer any questions. Thank you.