

SB

171

Alaska State Legislature

Senate

Official Business

**RICK
HALFORD**

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600 E. Railroad Avenue
Wasilla, Alaska 99654
Phone (907) 376-4958

MEMORANDUM

TO: Representative Scott Ogan, Chairman
House Resources Committee

FROM: Senator Rick Halford *Rick*

DATE: May 12, 1999

SUBJECT: Request to Schedule SB 171
Fishery Data; McNeil River Refuge

I request that you schedule SB 171 for a hearing in the House Resources Committee at the earliest possible date. The Senate passed SB 171 by a vote of 20-0. Please do not hesitate to contact me, or my staff, if you have any questions.



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Sponsor Statement

Senate Bill 171

Senate Bill 171 was introduced at the request of the Alaska Department of Fish and Game (ADF&G). SB 171 amends AS 16.05.815 to allow the ADF&G to share records documenting commercial fishery landings, fish buying and processing activities within Alaska. These amendments allow transfer of this information to the Commercial Fisheries Entry Commission (CFEC), Alaska Fisheries Information Network (AKFIN), National Marine Fisheries Service (NMFS) and National Oceanic and Atmospheric Administration (NOAA).

In addition, provisions included in the bill would ensure that state selected land within the McNeil River Wildlife refuge be free of encumbrance or unauthorized use at time of transfer.

FISCAL NOTE

STATE OF ALASKA
1999 LEGISLATIVE SESSION

BILL NO. SB171

Revision Date: _____ Dept Affected: Natural Resources
 Title: Fishery Data; McNeil River Refuge BRU: Land Development
 Component: Land Development
 Sponsor: Sen. Halford
 Requestor: (S) RES Component Serial No. #431

Expenditures/Revenues (Inflation not included unless otherwise noted below) (Thousands of Dollars)

	FY2000	FY2001	FY2002	FY2003	FY2004	FY2005
OPERATING EXPENDITURES						
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
CHANGE IN REVENUES (fund code)	0.0	0.0	0.0	0.0	0.0	0.0

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY99) cost: \$ none

POSITIONS

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

ANALYSIS: (Attach a separate page if necessary)

No fiscal impact associated with implementation of this legislation.

Prepared by: Jane Angvik, Director *Jane Angvik* Phone: 269-8501
 Division: Land Date: 10-May-99
 Approved by Commissioner: John Shively *John Shively* Date: 5-10-99
 Agency: Natural Resources

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FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO. SB 171

Revision Date: _____ Dept. Affected: Fish and Game
 Title: Relating to the release of certain records and reports r BRU: Commercial Fisheries (Limited) Entry Commission
ADF&G; transfer of land within McNeil River State Gam Component: Limited Entry Program Administration
 Sponsor: Senator Halford
 Requester: Senate Resources COMPONENT SERIAL NO. 0471

Expenditures/Revenues

(Thousands of Dollars)

OPERATING EXPENDITURES	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
----------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
------------------------	--	--	--	--	--	--

FUND SOURCE

(Thousands of Dollars)

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

Estimate of any current year (FY96) cost: \$ 0.0

POSITIONS

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)

No fiscal impact.

Prepared By: Roger Kolden Phone: 790-6950
 Agency: Commercial Fisheries (Limited) Entry Commission Date: 05/07/99

Approved by Commissioner: Mary McDowell Date: 5/8/99
 Agency: Commercial Fisheries (Limited) Entry Commission

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FISCAL NOTE

STATE OF ALASKA
1999 LEGISLATIVE SESSION

BILL NO. SB 171

Revision Date/Time (Note if correction)		Dept. Affected	Fish and Game
Title	<u>FISHERY DATA; MCNEIL RIVER REFUGE</u>	BRU	Commercial Fisheries
Sponsor	<u>Senator Halford</u>	Component	<u>Headquarters Fisheries Management</u>
Requester	<u>Senate Resources</u>	Component Serial No.	<u>2171</u>

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005
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	0.0	0.0	0.0	0.0	0.0	0.0
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CHANGE IN REVENUES ()	0.0	0.0	0.0	0.0	0.0	0.0
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY99) cost: 0.0

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: *(Attach a separate page if necessary)*

Prepared by <u>Doug Mecum, Director</u>	Phone <u>465-4210</u>
Division <u>Division of Commercial Fisheries</u>	Date/Time <u>05/10/99</u>
Approved by Commissioner <u>Frank Rue</u> <i>Frank Rue</i>	Date <u>5/10/99</u>
Agency <u>Alaska Department of Fish and Game</u>	

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NEED FOR AND PURPOSE OF AMENDMENTS TO AS 16.05.815
Alaska Department of Fish and Game
May 4, 1999

The Department of Fish and Game (ADF&G) has been advised by the Department of Law (DOL) to amend *AS 16.05.815, Confidential nature of certain records*. The records subject to these amendments are individual records documenting commercial fishery landings (fish tickets) and records documenting fish buying and processing activities within Alaska.

The amendments accomplish four purposes.

- First, they clarify the authority of the ADF&G to release confidential fish data to the Commercial Fisheries Entry Commission (CFEC.)
- Secondly, the amendments clarify that the CFEC may also release confidential data to entities listed in this statute.
- Thirdly, the Alaska Fisheries Information Network (AKFIN) is added to the list of entities with which the ADF&G and the CFEC may share confidential fish ticket and fish purchasing data.
- Fourthly, the amendments authorize CFEC and ADF&G to release confidential data to the National Marine Fisheries Service (NMFS) and the National Oceanic and Atmospheric Administration (NOAA) for use in the enforcement of state and federal fisheries laws.

It has been assumed until the recent advice from DOL that the individual records referred to earlier could be provided to AKFIN, NMFS and NOAA. Subsequent to receipt of the opinion from DOL, ADF&G and CFEC have stopped providing data to these agencies pending a resolution of the confusion.

The NMFS is currently required to seek court orders to release confidential data into the court record. NMFS is now requesting authorization by statute to use confidential data in court cases regarding fisheries violations without the administrative burden of securing a court order for the use of the data.

COMMERCIAL FISHERIES ENTRY COMMISSION:

CFEC is the biggest user of ADF&G's fish ticket information collected under AS 16.05.815. However, CFEC is not named in the statute as an organization authorized to receive the confidential records.

CFEC takes the ADF&G computerized fish ticket data and adds several enhancements for their needs. These include a gross earnings estimate for each item on the fish ticket file and the vital information on the permit holder who recorded the landing (name, address, residency, etc.). They can also add information on the vessel and vessel owner

from their vessel license files when needed for particular analyses or reports. In addition, CFEC takes fish ticket information on the halibut fishery that are processed by the International Pacific Halibut Commission, converts these data to a common format, and merges the data into ADF&G's fish ticket data, adding other enhancements.

CFEC's enhanced fish ticket files are sometimes called "gross earnings" files. These enhanced files allow the commission to produce a wide range of reports on the participants in a fishery, the vessels used, and the earnings of participants. The data can also be used to estimate the number of participants and the commercial fishing gross earnings of persons from different Alaska communities. Such reports (in non-confidential formats) are requested by communities and are used for economic assessments of different fishery projects. Examples of such reports can be viewed by visiting the CFEC Internet site at www.cfec.state.ak.us.

In the past, CFEC has provided confidential data to the North Pacific Fishery Management Council and its staff, and the extended jurisdiction section of ADF&G. ADF&G have also used CFEC's data files for analyses of commercial fishing histories and dependencies of persons fishing in Glacier Bay National Park. CFEC has also provided data to the Alaska Department of Public Safety and the Alaska Department of Revenue so that they can perform their auditing and enforcement duties.

CFEC also uses other ADF&G confidential data collected under AS 16.05.815 such as the Commercial Operators Annual Reports. CFEC is not aware of providing such data to any authorized users under AS 16.05.815.

ALASKA FISHERIES INFORMATION NETWORK:

AKFIN is the Alaska region fisheries data collection arm of the Pacific States Marine Fisheries Commission (PSMFC). The PSMFC is an interstate commission authorized by Congress in 1947. It does not have regulatory or management authority, but serves as a forum for discussion on fisheries issues that affect its member states. These include Alaska, Idaho, Washington, California, and Oregon. PSMFC also provides data collection and processing and other contractual services to its member states.

The governing body of PSMFC is composed of three voting representatives from each member state. Alaska's three seats have traditionally been held by a member of the Alaska Legislature, a representative of the commercial fishing industry, and a representative of ADF&G. Presently the individuals holding these respective seats are Senator Georgianna Lincoln, Dale Kelley from the Alaska Trollers Association, and David Benton, Deputy Commissioner of ADF&G. Senator Loren Leman has also been an Alaskan representative on the PSMFC.

The National Marine Fisheries Services provides funding for AKFIN. AKFIN in turn contracts with the ADF&G to collect and provide data to AKFIN. The AKFIN contract with ADF&G is approximately \$1.3 million annually. This funding supports the

following activities: analysis of information on the bycatch in groundfish fisheries of prohibited species such as salmon; management of the fish ticket database for state harvests of groundfish and crab; dock sampling of state groundfish catches; modernization of old databases of groundfish and crab catch data; and dock sampling of Bering Sea crab fishery. In order for ADF&G to share the information collected under the terms of its contract with AKFIN, statutory authority to share fish ticket data with AKFIN is needed.

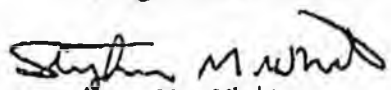
NMFS LAW ENFORCEMENT:

Marine fisheries law enforcement personnel in Alaska are vastly overextended. To alleviate this problem, state and federal law enforcement personnel are cross-deputized enabling them to enforce each other's regulations. This increases the state's ability to manage its resources while incurring no additional costs. While state officers have easy and complete access to confidential federal fisheries information for enforcing fisheries law, federal officers are not extended that same privilege. Whenever federal officers need to present confidential state fish ticket information in court in order to make a case; they must first get a court order approving the release into the public domain of confidential data. This requires excessive staff time and drains agency resources. Authorizing NMFS law enforcement personnel access to use of this data helps prevent criminals from illegally harvesting Alaskan resources.

MEMORANDUM**State of Alaska**
Department of Law

TO: Earl Krygier
Alaska Department of Fish and Game
Division of Commercial Fisheries Management and Development

DATE: May 6, 1999
FILE NO.: 663-90-0126
TELEPHONE NO.: 465-3600

FROM: 
Stephen M. White
Assistant Attorney General
Natural Resources Section
Department of Law

SUBJECT: Release of
confidential info
for federal
enforcement actions

You have asked us to review the advice given by Assistant Attorney General Larri Spengler concerning the Department of Fish and Game's release of confidential information to the National Marine Fisheries Service ("NMFS") or to staff of the North Pacific Fishery Management Council ("NPFMC"). You stated that Ms. Spengler's advice appears to restrict those federal agencies and employees from using that information in enforcement actions.

In a 1989 memorandum, Ms. Spengler advised that fish ticket data, and other information that is made confidential by AS 16.05.815, may be released to NMFS and NPFMC professional staff if they agree to maintain the confidentiality of that information. She stated, however, that if those federal agencies or staff members wish to use confidential information in a public enforcement action, they would need to obtain the information through a court order.

After reviewing Ms. Spengler's advice, we conclude that it is correct.

Earl Krygier
Alaska Department of Fish & Game

May 6, 1999
Page 2

There are two ways that NMFS and NPFMC professional staff may obtain fish ticket and other information made confidential by AS 16.05.815. First, under subsection (a) (1) of AS 16.05.815, they may be given the information if it is required for preparing and implementing NPFMC fishery management plans within the exclusive economic zone. However, before the information may be given under that subsection, the federal agencies must enter into an agreement with ADF&G under which the agencies agree to maintain the confidentiality of the information. AS 16.05.851(a).

Several months ago, we helped ADF&G draft a confidentiality agreement that would allow it to release fish ticket data to NMFS and NPFMC professional staff. It is my understanding that the federal agencies have not yet signed the agreement. In the meantime, any release of fish ticket data or other information made confidential by AS 16.05.815 to the federal agencies or their staff would be violation of law and would create potential liability for the state. The ADF&G employees who release the information would be violating the law, not the federal agencies or employees who receive it.

Even if the confidential information were given to the federal agencies under a signed confidentiality agreement, we do not believe that it could be used in a public enforcement action. We assume that, to use the information in that manner, the federal agencies would be introducing it as evidence in a criminal prosecution. The information would become a public record, and its

Earl Krygier
Alaska Department of Fish & Game

May 6, 1999
Page 3

confidentiality would be compromised. In other words, the federal agencies' use of the information in an enforcement action would violate the confidentiality agreement under which it was obtained.

The second way that the federal agencies or their staff may obtain confidential information is through the filing of a legal action that results in a court order directing ADF&G to release the information. We believe that a court would not issue such an order until persons who have an interest in keeping the information confidential are notified and given an opportunity to advocate that result.

Information gained through a court order would not be bound by a confidentiality agreement. That is because the subsection which allows for court orders - AS 16.05.815(a)(4) - is not one of the subsections that is covered by the requirement for a confidentiality agreement. See AS 16.05.815(a). Therefore, information gained in this manner could be introduced as evidence in a criminal enforcement action. Indeed, this is the only way that the federal agencies may obtain fish ticket or other information covered by AS 16.05.815 and, without violating a confidentiality agreement, use it for that purpose.

Please contact me if you have any questions about this advice.

SMW:prm

z:\whitea\memos\krygier-confidentiality

CHENIK RIVER INHOLDING - MCNEIL RIVER STATE GAME REFUGE

SENATE RESOURCES COMMITTEE SUMMARY

- On November 10, 1998 the Department of Natural Resources (DNR) issued a notice finding and decision, ADL 225906, regarding the issuance of concurrence to the US Bureau of Land Management (BLM) for a lease of state selected lands at Chenik Head within the boundaries of the McNeil State Game Refuge.
- The Senate Resources Committee received numerous copies of letters sent to DNR objecting to the proposed issuance of a lease for a commercial enterprise within the Refuge.
- The Senate Resources Committee held two hearings concerning this issue on February 17 and March 3, 1999.
- The Committee was advised that BLM will not issue a lease unless the State agrees and the decision to approve the lease issued by DNR has not been finalized.
- The Alaska Department of Fish and Game (ADF&G) has, in the past, consistently opposed the issuance of a lease for this commercial facility within the Refuge. ADF&G has not conducted the assessment and findings required by the existing Management Plan for the refuge which is required before any commercial facility can be approved within the Refuge.
- On March 11, 1999 Committee Chair Senator Halford wrote a letter to DNR and ADF&G expressing concern about the proposed approval of the lease and the potential bad precedent set by this action which would essential reward an illegal trespasser.
- On April 14, 1999 Senator Halford received a letter from ADF&G Commissioner Rue stating that the Department was going to initiate a needs assessment for a commercial facility within the refuge.
- On April 26, 1999 BLM sent a letter to Michael McBride and an official Notice to Cease and Desist and advised him that he was continuing an unauthorized use of public lands in violation of the law and that he should immediately cease commercial recreational use of the land.
- The Committee also received a copy of an April 23, 1999 internal BLM memo which outlines their indicated course of action regarding the lease. This memo indicated that no final action would be taken until the state declared its position.

- The Committee also received a copy of a BLM briefing memo for the Alaska Congressional delegation dated April 21, 1999.
- The Senate Resources Committee is advised that DNR is waiting for a final recommendation from ADF&G after which time a final decision will be made concerning the state's position regarding the proposed lease.
- Public concerns have been expressed that this lease will eventually be issued once the legislature adjourns despite clear opposition from the field staff within the Alaska Department of Fish and Game.



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March 11, 1999

Commissioner Frank Rue
Alaska Department of Fish and Game
P.O. Box 25526
Juneau, Alaska 99802-5526

Commissioner John Shively
Alaska Department of Natural Resources
400 Willoughby Avenue
Juneau, Alaska 99801-1724

Dear Commissioners,

This letter is in follow up to the Senate Resources Committee review of the proposed Bureau of Land Management (BLM) lease of state selected land within the McNeil State Game Refuge. After thorough examination of the history of the long-term unauthorized use of the land in question and complete review of the substantial documentation provided by both of your agencies, I find no reason or procedural allowance on which to base a best interest finding for the required 906k concurrence.

The following is a summary of the facts presented to the Resources Committee:

- Mr. McBride has been in trespass on the land since 1978.
- During that time there was no permission granted for the use of the land.
- Mr. McBride improved the facilities on the land over time, including the building of multiple permanent structures.
- Mr. McBride used the land for a commercial enterprise and derived substantial personal gain without compensating any state or federal agency for its use.
- The BLM classified Mr. McBride's use of the land as unauthorized.
- ADF&G staff repeatedly advised against the creation of a private in-holding within the refuge.
- DNR previously denied a 906k concurrence requested by the BLM.

- DNR departmental orders #134 and 137 advise against the acceptance of any land transfer with an outstanding unauthorized use.
- BLM has specific remedies to deal with unauthorized use as outlined in 43 CFR, Chapter 2.

While I appreciate your departments' participation and candor in the hearings we conducted, I am greatly discomforted that this issue was allowed to progress as far as it had. The circumstances surrounding this issue seem to warrant your examination of the motives and methods employed and how they can be justified within your departmental policy and procedures.

I have enclosed the minutes from the Senate Resources Committee hearings conducted on February 17 and March 3, 1999, for your review. It was apparent in the committee discussion that final issuance of the DNR, Division of Land Finding and Decision ADL 225906 would be in violation of the regulations governing the management of the refuge, the statutory obligations for competitive bid and the Constitutional obligation to equal access.

The facts point out only one fair and responsible remedy to this glaring unauthorized use of state selected land. I urge you to deny the requested 906k lease concurrence, formally request that BLM remove the facility in trespass and then accept transfer of the land to the state free of encumbrance.

As the McNeil State Game Refuge is a legislatively designated area, I am formally requesting that you keep me informed of any further action or decisions regarding this matter; including any consideration of a change in the management plan or of a finding pertaining to commercial facilities. Seeing the issue through to a fair and responsible conclusion remains a priority of the Senate Resources Committee.

Sincerely,



RICK HALFORD

RH:bwh

cc Senate Resource Committee members
Pat Pourchot, Legislative Director
Bruce Botelho, Attorney General

enclosures

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STATE OF ALASKA

(907) 465-3808
FAX (907) 465-2029
Mail Stop 3101

130 Seward Street, Suite 400
Juneau, Alaska 99801-2105

Copies of minutes listed below were originally included in this file. The minutes are available on the legislative computer database. In order to save space copies of minutes have not been left in the files.

Mary Pagenkopf

SRES	2/17/99	3:07 p.m.
SRES	3/3/99	3:15 p.m.

STATE OF ALASKA

TONY KNOWLES, GOVERNOR

APR 20 1999

DEPARTMENT OF FISH AND GAME

OFFICE OF THE COMMISSIONER

P.O. BOX 25526
JUNEAU, ALASKA 99802-5526
PHONE: (907) 465-4100
FACSIMILE: (907) 465-2332

April 14, 1999

The Honorable Rick Halford
Chairman, Senate Resources Committee
Alaska State Legislature
State Capitol, Room 121
Juneau, AK 99801-1182

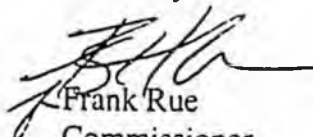
Dear Senator Halford:

In response to your March 11 letter concerning the proposed Bureau of Land Management lease of state selected land within the McNeil River State Game Refuge, I am providing the following information. Prior to making a final recommendation to the Department of Natural Resources, the Alaska Department of Fish and Game plans to conduct a needs assessment for a commercial facility in the refuge. In accordance with the Refuge Management Plan, the assessment will determine (1) whether a need exists for a permanent commercial facility in the refuge to facilitate the department's brown bear viewing program, and (2) whether the refuge and sanctuary management goals are better served with a commercial facility than without.

The needs assessment will be conducted with ample opportunity for the public to participate. In addition to the questions listed above, other topics to be addressed during the process will include siting and operational criteria for any type of commercial facility in the refuge. If our assessment determines that there is ample justification for the brown bear viewing program to be supplemented by a commercial facility, I will issue the required finding of fact and the department will develop appropriate terms and conditions for a commercial facility. At that point the Department of Natural Resources would develop and implement a competitive process to select a vendor.

I share your concern about legalizing unauthorized use of state selected lands with after-the-fact approvals. I will keep you informed of our progress.

Sincerely,


Frank Rue
Commissioner

STATE OF ALASKA

DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

APR 23 1999

TONY KNOWLES, GOVERNOR

400 WILLOUGHBY AVENUE
JUNEAU, ALASKA 99801-1796
PHONE: (907) 465-2400
FAX: (907) 465-3886

3601 C STREET, SUITE 1210
ANCHORAGE, ALASKA 99503-5921
PHONE: (907) 269-8431
FAX: (907) 269-8918

April 21, 1999

The Honorable Rick Halford
Alaska State Legislature
State Capitol, Room 121
Juneau, Alaska 99801-1182

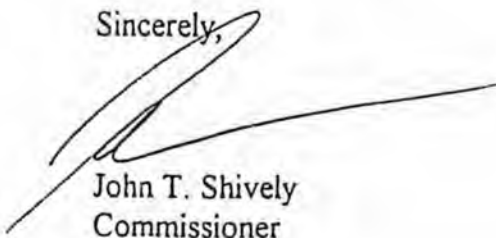
Re: Chenik Institute

Dear Senator Halford:

Thank you for providing me a copy of the meeting notes from the two committee hearings regarding the Chenik Institute. I appreciate your taking the time to provide me with your thoughts and recommendations on the proposed letter of concurrence for this use of state selected land. At the present time my staff is reviewing public comments on this topic and working with personnel in the Department of Fish and Game to coordinate our response to the Federal Bureau of Land Management.

I believe Commissioner Rue has written you regarding the process we are using to reach a decision. I will provide you with a copy of this decision as soon as it is available. Please feel free to contact me if you wish to discuss this matter further in the interim.

Sincerely,



John T. Shively
Commissioner

cc: Frank Rue, Commissioner, ADF&G
Jane Angvik, Director, Division of Land
Rick Thompson, Division of Land

CTS# A99031701LA

"Develop, Conserve and Enhance Natural Resources for Present and Future Alaskans"



United States Department of the Interior

BUREAU OF LAND MANAGEMENT
ANCHORAGE FIELD OFFICE
6881 Abbott Loop Road
ANCHORAGE, ALASKA 99507

AA-74592 (2920)
(041) ks

NOTICE TO CEASE AND DESIST

APR 26 1999

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Michael P. McBride
Kachemak Bay Wilderness Lodge
P. O. Box 956
Homer, AK 99603

Dear Mr. McBride:

The Bureau of Land Management has investigated and concluded that you are using the public lands located in Seward Meridian, T. 11 S., R. 29 W., Secs. 22 and 23 without authorization. You have constructed permanent structures and have been using the public lands for commercial purposes. This is in violation of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.), and the Alaska National Interest Land Conservation Act (58 USC note prec. 21). In addition, you are in violation of the following regulations: Title 43 CFR §2920.1-2 and §9262.1 (copies attached). You will be advised of future action as a consequence of these acts. If the allegations are correct, you must immediately and permanently cease and desist from the violations charged.

Failure to comply with this notice may result in trespass penalties and citation for your appearance before a designated United States magistrate who may impose a fine of not more than \$1,000 or imprisonment of not more than 12 months, or both, under Title 43 CFR §9262.1.


Nick Douglas
Field Manager

cc: State of Alaska
Southcentral Region Office
3601 C Street, Suite 1080
Anchorage, Alaska 99503-5947

United States Department of the Interior



BUREAU OF LAND MANAGEMENT
ANCHORAGE DISTRICT OFFICE
6881 Abbott Loop Road
ANCHORAGE, ALASKA 99507

8372(AK-040)

APR 26 1999

**CERTIFIED MAIL
RETURN RECEIPT REQUESTED**

Michael McBride
Kachemak Bay Wilderness Lodge
P.O. Box 956
Homer, Alaska 99603

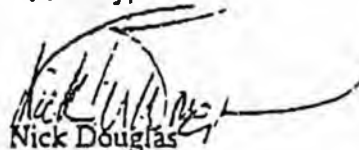
Dear Mr. McBride,

We are aware that you have been conducting recreational use on Public Lands near Chenik Head in T.11S., R.29 W., Seward Meridian. These lands are selected by the State of Alaska and BLM is required to receive concurrence from the State before authorizing recreation activities. The State of Alaska has not given their concurrence to your recreation use. Therefore, we are not able to consider issuing you a Special Recreation Permit for your operations at Chenik Head.

Your continued unauthorized use of the said public lands is in violation of the Code of Federal Regulation (CFR) 43 8372.0-7 (a) (1). You must immediately stop all commercial recreation use of this area. Continued commercial recreation use may result in penalties described under 43 CFR 8372.0-7 (b) and 9268.3 (e) (1).

Please contact Clint Hanson at (907) 267-1206 if you have questions or comments regarding this issue.

Sincerely,


Nick Douglas
Field Manager

CC. Richard Thompson
Alaska Department of Natural Resources
Division of Land
3601 C Street, Suite 1080
Anchorage, Alaska 99503-5947



United States Department of the Interior

BUREAU OF LAND MANAGEMENT
ANCHORAGE FIELD OFFICE
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ANCHORAGE, ALASKA 99507-2599
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AA-74592 (2920)

April 23, 1999

Memorandum

To: Field Manager (040)
From: Group Manager REM (041)
Subject: McBride - Recommended Course of Action

Clinton Hanson, Jake Schlapfer, Kathy Stubbs, Dave Stimpson, and David Dorris developed and recommend the following actions on the McBride case.

Conditions or Givens

Two processes must be followed; those dealing with Special Recreation Permits and those for leasing. Final actions should not be taken until the State has declared its position.

Action Recommended

Table with 2 columns: Special Recreation Use Permit and Lease. Rows detail actions such as 'Letter - stop commercial use', 'Monitor compliance', and 'McBride fails to comply'.

Handwritten signature of J. Paul King

DATE: April 21, 1999

BRIEFING FOR THE CONGRESSIONAL DELEGATION

PREPARED BY: Anchorage Field Office

FROM: State Director, Alaska

SUBJECT: Michael McBride Occupancy at Chenik Head near McNeil River

PURPOSE OF THE BRIEFING DOCUMENT:

Provide information about McBride's extensive unauthorized use of the public land on Chenik Head.

ISSUES:

- Unauthorized construction of permanent structures (9)
- Unauthorized use of public lands for commercial recreation purposes
- Operating a hunting and bear viewing/photography and guiding service without an SRP (Special Recreation Permit)

BACKGROUND:

McBride has operated a hunting, bear viewing/photography and guiding service on Chenik Head near McNeil River on the west side of Cook Inlet since the mid-1970's. He has developed the site to accommodate clients whose main goals are to observe and photograph brown bears and other wildlife. McBride's development has grown to include a lodge, sauna, three guest cabins - with outhouses, a shower/storage shed, and two tent platforms.

In February 1979, the State of Alaska filed a selection application for the lands in the area, including those occupied by McBride's business.

McBride contends that applications for an SRP were submitted several times over the years. BLM has no record of applications received in the 1970s as 1970's-era permit documents, by regulation, were destroyed 3 years after termination. An SRP application submitted in 1989 was returned to McBride because the lands had been tentatively approved for conveyance to the State.

On May 30, 1991, McBride submitted an application to lease lands where he conducted his operation. Because the lands had been selected by the State, approval of the application was subject to State concurrence under Sec. 906(k) of ANILCA. On February 25, 1994, the State notified BLM that it could not approve the proposal since the land would become part of the McNeil River Game Refuge upon conveyance to the State. According to DNR (Department of Natural Resources) "...

this activity is not in the best interest of the State. . ." and ". . . is in conflict with the use planned for the area. . . ." ✓

To the best of our knowledge, McBride has not held a legal authorization to use the lands for any purpose.

BUREAU PERSPECTIVE:

AFO Field Manager and staff members met with DNR managers and staff on February 12, 1999, to explore ways to address the situation that would make conveyance of the land acceptable to the State. All available options were discussed and sent to the State in writing. The options provide a platform for BLM and the State to work together to resolve the issue and permit the State to take conveyance. As of this date, the State has not responded or indicated that any option is agreeable. In the meantime, BLM can not continue to ignore this ongoing unauthorized use.

POSITIONS OF INTERESTED PARTIES:

The State is determined to resolve the matter in a way that does not create a property interest for McBride or an in-holding that conflicts with management goals of the McNeil River Wildlife Refuge. State policy requires that trespass cases be resolved before title will be accepted. Current controversy over McBride's operation, newspaper articles, letters to the editor and other correspondence, has indicated some public opposition to McBride's use. Senator Rick Halford of the Alaska State Senate held a public hearing on the matter. BLM has received two letters of objection.

CONTACT:

Nick Douglas, Field Manager (040) 907-267-1246.