

300

HRES

HB

728

-

Hb

769

150

Nels A. Anderson, Jr.
Representative

Page Two
April 1, 1976

states may not create regulatory schemes which place an unreasonable burden on interstate commerce. Bibb v. Navajo Freight Lines, 359 U.S. 520 (1959); Southern Pacific Co. v. Arizona 325 U.S. 761 (1945). This is true even when the purpose of the state regulatory scheme is to preserve for the use of its own citizens a natural resource produced within the state. State statutes designed to keep natural gas within the boundaries of a producing state frequently have been declared unconstitutional. Pennsylvania v. West Virginia 262 U.S. 553 (1923) is illustrative of this point. In that case, West Virginia, which had a shortage of gas for intrastate uses, passed a law which required all natural gas pipeline companies doing business within the State to sell gas to customers in West Virginia if a demand existed before making sales to out-of-state customers. The Supreme Court summarized the issue in the case as follows:

[T]he principal issue [is] whether a state wherein natural gas is produced and is a recognized subject of commercial dealings may require that in its sale and disposal, consumers in that state shall be accorded a preferred right of purchase over consumers in other states, when the requirement necessarily

Nels A. Anderson
Representative

Page Three
April 1, 1976

will operate to withdraw a large volume of gas from an established interstate current, whereby it is supplied in other states to consumers there. 262 U.S. at 595.

West Virginia argued that the local needs of her citizens justified the state statute. The Court responded that under the Commerce Clause the "welfare of all the states" transcended that of any particular state, 262 U.S. at 599, and concluded the West Virginia statute impermissibly burdened interstate commerce. See also, West v. Kansas Natural Gas Co., 221 U.S. 229 (1911); Haskell v. Cowhan 187 Fed. 403 (8th Cir. 1911).

If HB 728 simply prohibited the sale of gas before local needs were satisfied, it would clearly violate the Commerce Clause. But the bill does not go that far. It only applies to sales by lessees of the State, and premises the sale restrictions on conditions in a lease agreed to by the lessee when the lease was signed. The issue, therefore, is whether a state may avoid federal constitutional limitations through the exercise of state contractual rights in turn derived from the ownership of leased land.

Proprietary Action

Courts have recognized a distinction between state action premised on a contractual or proprietary basis and regulatory action taken as a sovereign. Thus courts have upheld a variety of state classification schemes respecting sales of public property, despite the fact that such classification schemes would likely violate the Equal Protection Clause or Due Process Clause if the scheme had been implemented as part of an overall state regulatory program. South San Joaquin Irrig. Dist. v. Neumiller, 42 P.2d 64 (Cal. 1935) (holding that the legislature was free to dispose of tax deeded lands in any manner it deemed appropriate; public auction was not required). Cf. State ex rel. LaFollett v. Reuter, 153 N.W.2d 49 (Wis. 1967) (finding constitutional a statute which authorized the state highway commissioner to sell public rights-of-ways to a specified non-profit corporation).

The proprietary or ownership theory of state action has also been used in the analysis of state statutes alleged to impose a burden on interstate commerce. In American Yearbook Co. v. Askew, 339 F.Supp. 719 (M.D. Fla.) aff'd 409 U.S. 904 (1972), a three-judge federal court upheld the constitutionality

Nels A. Anderson
Representative

Page Five
April 1, 1976

of Florida statutes and regulations which required that all public printing for the State of Florida be done in Florida. The court began its analysis by noting that:

"Governments in the United States traditionally possess two kinds of power: one governmental or public, in the exercise of which it is a sovereign and governs its people; the other, proprietary or business, by means of which the government acts and contracts for the private advantage of its constituents and of the government itself.
339 F. Supp. at 721.

In Askew, plaintiff had argued that the Florida statute was subject to the Commerce Clause, but the court rejected this argument noting that in cases where the Commerce Clause did apply, the state statute "regulated private industry." The Court went on to state that "[t]rade regulations are clearly subject to the Commerce Clause restrictions, but statutes that merely specify the conditions of state purchases are not." 339 F. Supp. at 725. Accord, People ex rel. Holland v. Bleigh Const. Co., 335 N.E.2d 469 (Ill. 1975) (upholding the Illinois "Preference to Citizens on Public Works Projects" statute from a challenge that it imposed

AGO 935648

Nels A. Anderson
Representative

Page Six
April 1, 1976

an undue burden on commerce); City of Phoenix v. Superior Court, 514 P.2d 454 (Ariz. 1973) (upholding an Arizona statute awarding a 5% preference on public works contracts to those who had paid state and local taxes for at least two years).

The doctrine of proprietary, non-sovereign state action, however, is not without limitations. For instance, a state could not decide to contract with individuals on the basis of their race, religion or political affiliation, whatever the theory used to justify such action. Cf. Burton v. Wilmington Parking Authority, 365 U.S. 715 (1961); Robinson v. Florida, 378 U.S. 153 (1964); American Civil Liberties Union v. Board of Education; 55 Cal. 2d 167, 359 P.2d 45 (1961). While discrimination of this nature might be distinguished as a "special case," the theory has been employed in other cases that have concluded that state action, even though premised on the State's proprietary interest, nevertheless imposed an undue burden on interstate commerce. For it is generally recognized that a State "owns" wild game within its borders. Geer v. Connecticut, 161 U.S. 519 (1896). Nonetheless, the Supreme Court has concluded that if a state does not "exercise its full power" to prohibit all interstate shipments of wild game, but instead "permit[s] shipments to other states, it could not at the same time condition such shipments so as to burden interstate commerce." Toomer v. Witsell, 334 U.S. 385, 404 (1947); Foster Packing Co. v. Haydel, 278 U.S. 1 (1928).

AGO 935649

Nels A. Anderson
Representative

Page Seven
April 1, 1976

Other cases have reached similar conclusions. In a case contrary to the Askew decision previously discussed, a New York court found unconstitutional a state statute which required that all public works contracts contain a clause that stone used on the project be worked, dressed and carved within the state. People v. Coler, 59 N.E. 776 (N.Y. 1901); but see American Institute for Imported Steel v. City of Erie, 297 N.Y.S. 2d 692 (Sup. Ct. 1968). (suggesting that Coler was no longer the law in New York). In Haskell v. Cowhan, 187 Fed. 403 (8th Cir. 1911), a federal court held unconstitutional a state statute which prohibited interstate natural gas pipelines from crossing state highways, expressly rejecting the theory that a state's proprietary interest in its highways might provide a basis for the validity of the statute. Accord, West v. Kansas Natural Gas Co., 221 U.S. 229 (1911); State v. Stanolind Pipe Line Co., 249 N.W. 366 (Iowa 1933).

Application of the principles enunciated in the above-cited cases to HB 728 is by no means clear. As one court has recently observed: "The line between propriety and governmental functions is by no means a precise one." Alexandria Scrap Corp. v. Hughes, 391 F. Supp. 46, 55 (D. Md. 1975). Moreover, the test of constitutionality will often require an imprecise balance of local interests against the national interest in interstate

commerce. The Supreme Court reaffirmed this test very recently in Great Atlantic & Pacific Tea Co. v. Cottrell, ____ U.S. ____ (1976), 44 U.S.L.W. 4240 (Feb. 26, 1976), when it stated:

Although the criteria for determining the validity of state statutes affecting interstate commerce have been variously stated, the general rule that emerges can be phrased as follows: Where the statute regulates evenhandedly to effectuate a legitimate local public interest, and its effects on interstate commerce are only incidental it will be upheld unless the burden imposed on such commerce is clearly excessive in relation to the putative local benefits. Huron Cement Co. v. Detroit, 362 U.S. 440, 443. If a legitimate local purpose is found, then the question becomes one of degree. And the extent of the burden that will be tolerated will of course depend on the nature of the local interest involved, and on whether it could be promoted as well with a lesser impact on interstate activities. Pike v. Bruce Church Inc., 397 U.S. 137, 142 (1970)." 44 U.S.L.W. at 4241.

Nels A. Anderson
Representative

Page Nine
April 1, 1976

Cottrell in discussing the basic test, also emphasizes the importance of the availability of alternative state action. When a state could have achieved the same basic goal by choosing an alternative less burdensome on interstate commerce, it is likely the courts will find the State's more burdensome method unconstitutional.

CONCLUSION

We are unable to render an unqualified opinion either that HB 728 is constitutional or that it is unconstitutional. We can state, however, that we believe there is a better than even chance that the bill is constitutional. In our opinion, this bill if enacted into law would be similar to the Florida statute approved in the Askew decision discussed, supra. HB 728 is distinguishable from cases such as Haskell, supra on the ground that it uses the state's proprietary right to restrict the flow into interstate commerce of natural gas found only on state land whereas in Haskell Oklahoma attempted to use State proprietary interests to restrict the flows of all gas discovered within the state. HB 728 is distinguishable from Pennsylvania v. West Virginia on several grounds. First, the West Virginia statute would have required gas pipeline companies to discontinue sales to established interstate customers. HB 728 on the other hand, will require no withdrawal of gas from established customers

Nels A. Anderson
Representative

Page Ten
April 1, 1976

Second, the West Virginia statute applied to all private gas pipeline companies in the state. HB 728 will apply only to producers who choose to purchase state leases. Gas discovered on federal lands or private lands is not subject to restrictions. Finally, the West Virginia statute essentially "changed the rules of the game" after interstate commerce had already been established. HB 728 by comparison lays the ground rules on which the State's lands may be leased and oil and gas discovered thereon eventually placed in interstate commerce.

On the other hand, HB 728 contains certain regulatory features, in that a hearing and findings by the Pipeline Commission are prescribed prior to permitting out of state sales. That procedure certainly indicates the exercise of regulatory (i.e. sovereign) power. A court might conclude that given the grey area between proprietary and sovereign state actions, for HB 728 as a whole the sovereign action predominates. Such a conclusion would probably lead to the invalidation of the statute.

We believe any modifications to HB 728 which would diminish the regulatory aspect of the bill would increase the probability of a court's finding it constitutional, and take the liberty of offering two suggestions. We believe a better way to accomplish the objective of HB 728 might be to authorize inclusion


Nels A. Anderson
Representative

Page Eleven
April 1, 1976

in the State lease of a term which gives the State the option to buy all (or a portion) of the 7/8ths of the producers' gas. ^{2/} We believe this option would guarantee the availability of gas for in-state use with far less "regulation," and that there would be less question regarding its constitutionality. Cf. Honolulu Rapid Transit Co. v. Dolim, 459 F.2d 551 (9th Cir. 1972) (finding constitutional a provision in a franchise contract which gave the City of Honolulu the right to purchase the Honolulu Rapid Transit System, the purchase price not to exceed actual cost).

Should the committee find the alternative undesirable, we recommend that the authority to grant approvals for sales outside of the State be vested in the Commissioner of Natural Resources, rather than the Alaska Pipeline Commission, since the latter agency is a strictly regulatory body while the commissioner is responsible in both a sovereign and proprietary sense for state resources.

Yours very truly,


Avrum M. Gross
Attorney General

AMG:db

^{2/} This approach was adopted in New Mexico in 1972 by a regulation of the Mineral Leasing Board rather than by statute. Discussions with New Mexico officials indicate that as yet New Mexico has not exercised any of the options to buy.

AGO 935654

Portion of letter from Richard W. Schmude to
Frank L. Heard dated February 9, 1976

S.B. 525--which provides that the State may not issue oil and gas leases after the effective date of the legislation unless such leases contain provisions prohibiting the sale, e. c., of oil or gas produced from the "mineral estates" subject to such leases for ultimate use outside of Alaska unless the Alaska Pipeline Commission, after notice and hearing, determines that such oil or gas is not needed to meet existing needs for fuel or raw materials per categories specified--if enacted, would present a constitutional problem, namely, that the legislation would be an unconstitutional interference with interstate commerce, in violation of the Commerce Clause (Art. I, §8, Cl. 3) of the U.S. Constitution. See West v. Kansas Nat. Gas Co., 31 S. Ct. 564 (1911); Commonwealth of Penna. v. State of West Virginia, 43 Sup. Ct. 648 (1923); Constitution of the United States of America, S. Doc. No. 39, 88th Cong. 1st Sess., pp. 279-282. The fact that the bill is to apply only to leases issued after the effective date of the legislation, and that the Alaska Pipeline Commission may grant exceptions thereto per specified standards, is of no particular moment here (although most important to 14th Amendment due process requirements).

In West v. Kansas Nat. Gas Co., supra, the Supreme Court held that a 1907 Oklahoma statute--which prohibited gas pipeline construction and transportation except by domestic corporations, whose charters were to provide that the gas was to be transported only to points within Oklahoma and not to anyone engaged in transporting or delivering gas outside of Oklahoma, and granting to such domestic corporations the exclusive right of eminent domain and use of Oklahoma highways--was an unconstitutional interference with interstate commerce. What the Court there said is most revealing and apt to the instant situation (31 S. Ct. at p. 571):

* * * It [the Oklahoma statute] does not alone regulate the right of the reduction to possession of the gas, but, when the right is exercised, when the gas becomes property, takes from it the attributes of property,--the right to dispose of it; indeed, selects its market, to reserve it for future purchasers

and use within the state, on the ground that the welfare of the state will thereby be subserved. The results of the contention repel its acceptance. Gas, when reduced to possession, is a commodity: it belongs to the owner of the land; and, when reduced to possession, is his individual property, subject to sale by him, and may be a subject of intrastate commerce and interstate commerce. The statute of Oklahoma recognizes it to be a subject of intrastate commerce, but seeks to prohibit it from being the subject of interstate commerce, and this is the purpose of its conservation. In other words, the purpose of its conservation is in a sense commercial,--the business welfare of the state, as coal might be, or timber. Both of those products may be limited in amount, and the same consideration of the public welfare which would confine gas to the use of the inhabitants of a state would confine them to the inhabitants of the state. If the states have such power, a singular situation might result. Pennsylvania might keep its coal, the Northwest its timber, the mining states their minerals. And why may not the products of the field be brought within the principle? Thus enlarged, or without the enlargement, its influence on interstate commerce need not be pointed out. To what consequences does such power tend? If one state has it, all states have it; embargo may be retaliated by embargo, and commerce will be halted at state lines. And yet we have said that "in matters of foreign and interstate commerce there are no state lines." In such commerce, instead of the states, a new power appears and a new welfare,--a welfare which transcends that of any state. But rather let us say it is constituted of the welfare of all of the states, and that of each state is made the greater by a division of its resources, natural and created, with every other state, and those of every other state with it. This was the purpose, as it is the result, of the interstate commerce clause of the Constitution of the United States. If there is to be a

EXXON COMPANY, U.S.A.
POST OFFICE BOX 440 ANCHORAGE, ALASKA 99511

Fa 728 file

WESTERN DIVISION
PUBLIC AFFAIRS

March 11, 1976

NINTH LEGISLATURE -- SECOND SESSION

Honorable Fred Brown
Alaska State Representative
Pouch V
Juneau, Alaska 99811

Dear Representative Brown:

Attached is a legal analysis supporting our position on HB 728 (companion to SB 525) as requested by you on March 8, 1976. One other case of interest is Frost vs. RRC State of California, 46 S. Ct. 605 (1926).

Sincerely,

Monte Taylor

Monte Taylor

MT/ce
Attachment

cc: Nels Anderson
With Attachments

ALASKA
STATE LEGISLATURE /

MEMORANDUM

March 19, 1976

TO: Senator John Huber

FROM: Franklin D. Fleeks
Tax Counsel

SUBJECT: Legal Analysis in Support of SB 525 and HB 728
"An Act relating to state oil and gas leases."

Introduction

Many of the large oil and gas producing states have found themselves in a quandry. Because the oil and gas resource found on their state lands have previously been contracted for, in this time of shortage, the states cannot divert their oil and gas to the needs of their citizens. In order to avert this situation, SB 525 and HB 728 added new subsections to AS 38.05.180. (Copies of the bills are attached). The new subsections also give the Alaska Pipeline Commission the authority to determine, after notice and hearing, that the oil or natural gas is not required for intrastate use.

Industry's Position

The oil and gas industry does not agree with the new subsections. If the bills are passed, the industries' protest will probably be in the

nature of a court case. The principal argument would be " . . . that the legislation would be an unconstitutional interference with interstate commerce, in violation of the Commerce Clause (Art. I, Sec. 8, clause 3) of the United States Constitution . . ." (see copy of letter attached) Two of the principal cases relied upon would be: (a) West v. Kansas Natural Gas Co., 221 US 229, 55 L.ed. 716, 31 S.Ct. 564, (1911) and (b) Commonwealth of Pennsylvania v. State of West Virginia, 262 U.S. 553, 67 L.Ed. 1117, 43 S.Ct. 658 (1923).

In West, a 1907 Oklahoma statute attempted to prohibit gas pipeline construction and transportation to only domestic corporations whose charters provided that the gas was only to be transferred to points within Oklahoma. The statute was held unconstitutional as interference with interstate commerce. The second case, Commonwealth of Pennsylvania, also involved natural gas. West Virginia passed a statute limiting the sales of natural gas from its wells to neighboring states. The case stated:

" . . . Natural gas is a lawful article of commerce, and its transmission from one state to another for sale and consumption in the latter is interstate commerce. A state law, whether of the state where the gas is produced or that where it is to be sold, which by its necessary operation prevents, obstructs, or burdens such transmission, is a regulation of interstate commerce - a prohibited transaction. . . "

If we stopped at those cases, then industries' position would be unassailable. However, the two cases mentioned above are not determinative.

Analysis in Support of SB 525 and HB 728

The new subsections are valid as an exercise of the state's police powers. The exercise of police power by a state is aimed at the conduct, activities and operations of people within the state in the interest of the health, welfare, and safety of the people of the state in general. The point was succinctly stated in Huron Portland Cement Co. v. City of Detroit, 362 U.S. 440, 4 L.Ed. 2d 852, 80 S.Ct. 813 (1960):

" . . . In determining whether the state has imposed an undue burden on interstate commerce, it must be borne in mind that the Constitution when 'conferring' upon Congress the regulation of commerce . . . never intended to cut the states off from legislating on all subjects relating to the health, life, and safety of their citizens, though the legislation might indirectly affect the commerce of the country. Legislation, in a great variety of ways, may affect commerce and persons engaged in it without constituting a regulation of it, within the meaning of the Constitution . . ."

Later in the case the Supreme Court stated: " . . . State regulation based on the police power, which does not discriminate against interstate commerce or operate to disrupt its required uniformity, may constitutionally stand . . ."

To help interpret the impact of state regulations on interstate commerce the Supreme Court has formulated two tests. The tests are:

(a) Subject matter test -- If the subject matter of the state regulation does not require a single uniform rule, but rather is of local concern and permits diverse regulation, then the state regulation is generally valid.

(b) Balancing test -- (most frequently used) In each particular case, the Supreme Court will determine the extent of the burden on

interstate commerce imposed by the state regulation in terms of difficulty, cost of compliance and the inefficiency involved. It will weigh this against the strength and merit of the state interest in the regulations.

The balancing test was used in Cities Service Gas Co. v. Peerless Oil and Gas Co., 340 U.S. 179, 95 L.Ed. 190, 71 S.Ct. 215 (1950). The case involved the state fixing a rate for transportation of gas. Ninety percent of the gas was consumed outside of the state. The Supreme Court held the following:

" . . . It is now well settled that a state may regulate matters of local concern over which federal authority has not been exercise, even though the regulation has some impact on interstate commerce . . . The only requirement consistently recognized has been that the regulation not discriminate against or place an embargo on interstate commerce, that it safeguard an obvious state interest, and that the local interest at stake outweigh whatever national interest there might be in the prevention of state restrictions. Nor should we translate the quiescence of federal power into an affirmation that the national interest lies in complete freedom from regulation. . ."

Review of new subsection (t) of the bills reveals that the categories set out are "aimed at the conduct, activities and operations of people within the state in the interest of the health, welfare, and safety of the people of the state in general." supra. There is an obvious state interest in providing for its citizens' needs from oil and gas from state lands before shipment in interstate commerce and that interest outweighs the national interest.

In Commonwealth of Pennsylvania, supra, which the industry cites, Justice Holmes wrote a vigorous dissent. That dissent is pertinent for

Alaska's case. The bills regulate oil and gas before it enters the stream of commerce. The Dissent states:

" . . . The statute seeks to reach natural gas before it has begun to move in commerce of any kind. It addresses itself to gas hereafter to be collected and states to what uses it first must be applied. The gas is collected under and subject to the law, if valid, and at that moment it is not yet matter of commerce among the states. I think that the products of a state, until they are actually started to a point outside it, may be regulated by the state notwithstanding the commerce clause . . . (emphasis added) However, for the decision in the case referred to goes, it cannot outweigh the consensus of the other decisions to which I have referred and that seem to me to confirm what I should think plain without them, that the Constitution does not prohibit a state from securing a reasonable preference for its own inhabitants in the enjoyment of its products even when the effect of its law is to keep property within its boundaries that otherwise would have passed outside . . ." (emphasis added).

Conclusion

From the discussion above, the bills are constitutional. Any court case brought by the oil and gas industry can be contested with a more than even chance of winning. In this endeavor, Alaska is not alone. The second largest state, Texas, has a similar law. (See copies attached.)

Attachments

I. SB 525

II. HB 728

III. Letter to Rep. Brown from Monte Taylor, Exxon Lobbyist

IV. Texas statute Art. 5382f.

Look at language involved in establishing
critical Habitat Areas.

Bradner

3-8-76

HB 728 - Sign-off procedure in the leasing process.
Recognition of the states needs.
modeled ~~by~~ after Texas legislation - suggested by
Witherspoon.

adding the words "or future needs" ~~is~~ No objection
from Bradner Would ~~strengthen~~ strengthen the bill.

Smith-

Moody report - in permissible section (be careful of)

Brown what about (sec v)

Take function completely away from Pipeline Commission
Why pipeline Commission vs Royalty Oil + Gas Board

Responsible Person for leases is the Commissioner of
Commerce.

Important decision is who is going to make the
decision of existing and/or future needs.

Gene Wilde

Bids will be lower if this provision is added.
* "if the commission finds that there is a need within the
state for existing ^{require} then it is put in the lease.

Do not ~~put~~ blanket coverage.



If the bill is continued in committee get the A.G.
Opinion of Legislative Affairs Lawyer.

Monte Taylor

EEAON - No official ~~opinion~~ opinion - But lawyers
feel that it would not survive Constitutional
question.

West vs. Nature 315 CT 1911
W. Virginia vs Penn. 43 Superior Court 648-

Moody analysis: Louisiana had provision which was thrown
out - and subsequently changed. AGO 935664 †

HB

768

COMMITTEE REPORT

2/13/76

HOUSE

FINANCE

Mr. Speaker:

Date _____

The Committee on RESOURCES has had HD 768

under consideration. A Majority of the members of the Committee

() recommends it DO PASS

() recommends it DO NOT PASS

() recommends it DO PASS WITH ATTACHED AMENDMENT(S)

recommends it BE REPLACED WITH CS FOR HB 768 AND THAT ^{individual} ~~CS~~
CS FOR HB 768 ~~DO PASS~~ ^{be reported out with} ~~recommendations~~

() "and" recommends it BE REFERRED TO THE _____
COMMITTEE

() reports it back WITHOUT RECOMMENDATION

() "other"

Members signing the Majority report:

<u>Melvin B. Anderson</u>	<u>DO PASS</u>	_____
<u>Frank L. Swanson</u>	<u>DO PASS</u>	_____
<u>Clayton C. Stovall</u>	<u>DO PASS</u>	_____
_____	_____	_____

Members NOT concurring in the Majority report:

_____ recommends:

_____ recommends:

Walter H. Hershberger recommends: Do Not Pass

_____ recommends: W. Rec.

_____ recommends:

Melvin B. Anderson Chairman

June 30, 1976

* Sec. 3. This Act takes effect July 1, 1976.

Members serving on the board of Fisheries on the effective date of this act shall continue to serve until their term expires. Upon the expiration of their term, a new member shall be appointed from a geographical area specified in Sec 1 of this act ~~according~~ ^{geographical} so that equal representation

2	76	Carrouette	as implemented in a continuing manner,
July 1 st		Zabo	and in no case may unequal representation
77		Dementoff	7BX exist after July 1
		Kropp	1978
78		Schroeder	BB
		Beaton	Jensen
		Jensen	Petersburg -

THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465 3800

MEMORANDUM

February 11, 1976

SUBJECT: Fish and Game Boards (W.O. #1910)

TO: The Honorable Alvin Osterback

FROM: James Owers^{JO} Joel Bennet
Research Analyst Staff Attorney

Several bills were introduced last session relating to the composition of the Board of Fish and Game. The Bill numbers and their status are as follows:

HB 117 - Would create two seven member boards, one for fish and one for game. The Bill is presently in House Resources.

SB 131 - Would create two seven member boards, one for fish and one for game. This is essentially the same as HB 117 with a few changes. The Bill was passed and became law in 1975. (206 SLA 75)

HB 470 - Would increase the membership of Board of Fish and Game from 12 to 13 members. This Bill is presently in House Finance.

SB 193 - Would provide for a "section 26" board similar to the board of education. The seven member Board would be responsible for hiring and firing the Commissioner of Fish and Game and would take a more active administrative role. The Bill is in Senate Resources.

Under the present law members of either the Board of Fisheries or Board of Game "shall be residents of the State and shall be appointed without regard to political affiliation or geographical location of residence."

It is doubtful whether it would be legal to elect the members of the board of fisheries or game. This conclusion is based on the following facts:

- (1) The Alaska Constitution provides that "each principle department shall be under the supervision of the governor."

(Section 24, Article III, Alaska State Constitution). Thus, even though Section 26 does not apply to the present Board of Fisheries or Game, it is clear that the constitution intended the executive power of government to be vested in the governor.

- (2) From an examination of the proceedings of the Alaska constitutional convention it would appear that the idea of an elected rule making board within the executive branch was never considered. Nevertheless, it is very clear that the majority of delegates to the constitutional convention wanted only two elected officials in the executive branch of State government. There were repeated amendments to create more elected offices. All were defeated.
- (3) Of the 88 commissions, advisory councils, Boards and public corporations in the executive branch, only one rule making board provides for an electoral procedure in selecting members. This is the Public Employees Retirement Board. Three members are appointed by the governor and two members are elected by members of the retirement system.

Nevertheless, while it does not appear feasible to elect members to the Board of Fisheries or Board of Game from electoral districts, there is ample precedent for requiring the governor to make selections to the Boards from either certain occupational groups or geographical areas.

The attached Draft Bill would require that members to the Boards of Fisheries or Game be selected according to major hunting and fishing areas.

JO:cw

ATTACHMENT

THE LEGISLATURE OF THE STATE OF ALASKA
FISCAL NOTE

Second Session - Ninth Legislature

I. REQUEST

Bill No. House Bill 768
 Title: An Act Relating to the Boards of Fisheries and Game
 Requested by: Jiin Rhode Date: 2/18/76
 Return Date Requested: 2/25/76
 Agency: Fish and Game Program: NRMEC

II. FISCAL DETAIL

Budget Request Unit(s) Affected: Administration and Support

A. EXPENDITURES: (Thousands of dollars)

OBJECT	FY 76	FY 77	FY 78	FY 79	FY 80	FY 81
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

B. FUNDING: (Thousands of dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						

C. POSITIONS:

PERMANENT/TEMPORARY	/	/	/	/	/	/
MAN MONTHS (P./T.)	/	/	/	/	/	/

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

Assumes no significant increase or decrease in costs as a result of board members being selected from designated areas.

IV. ATTACHMENTS

V. DATE: 2/19/76 PREPARED BY: Dean Paddock *Dean Paddock*

Original: Legislative Finance
 cc: Budget and Management
 Prime Sponsor (First Legislator Named)

MEMORANDUM

State of Alaska

Mr. Morrison
Fish & Game

1100

DATE:

17 Feb 76

FROM:

Jim Rhode
AA to Rep. Malone, Chairman
House Finance Committee

SUBJECT:

Fiscal Note Requests

This is to request fiscal notes for the following bills (with one copy for us and, where applicable, one copy for the prime sponsor).

HB 768

FEB 17 1976

RECEIVED

HB

769

COMMITTEE REPORT

2/13/76

HOUSE

FINANCE

Mr. Speaker:

Date 3-18-76

The Committee on RESOURCES has had HB 769

under consideration. A Majority of the members of the Committee

recommends it DO PASS

recommends it DO NOT PASS

recommends it DO PASS WITH ATTACHED AMENDMENT(S)

recommends it BE REPLACED WITH CS FOR HB 769 AND THAT

CS FOR HB 769 DO PASS

"and" recommends it BE REFERRED TO THE _____

COMMITTEE

reports it back WITHOUT RECOMMENDATION

"other"

Members signing the Majority report:

Members NOT concurring in the Majority report:

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

Walter Anderson Chairman

UNITED STATES DEPARTMENT OF AGRICULTURE
FOREST SERVICE
P.O. Box 1628, Juneau, Alaska 99802

February 25, 1976

1560
2440



Honorable Mike Miller
Alaska House of Representatives
Pouch V
Juneau, Alaska 99811

Dear Mr. *Mike* Miller:

In response to your request to Frank Price, we have reviewed your proposed bill, "An Act relating to log brands; and providing for an effective date." In general, this bill will eliminate the problems that we and the State have encountered in establishing a cooperative program for the disposal and utilization of drift logs along Alaska's beaches. As such, we support its passage.

While the bill would accomplish the intended purpose, there are several suggestions we have that you may want to consider. These are:

1. Branding of logs on barges should also be required; there have been several instances where logs being barged have ended up in coastal waters. Section 1 (a), line 12, would read, "purpose of rafting or transporting by floating, barging, or towing shall display. . . ."

2. Section 45.50.237 recognizes that some extension of the recovery period may be justified. This might be included in section 1 (a) (3) so that it reads, ". . . 30 days from the date of reporting required under section 232 of this chapter or from the date of expiration of any extended recovery period under section 237 of this chapter"

3. If the intent of section 234 is simply to notify the public of the State's intent to claim abandoned property, we feel the wording in section 1 (a) (3), ". . . 30 days after the time public notice has expired as provided under section 234 of this chapter" can be deleted. The abandonment has already been established and the extra waiting time is not needed.

4. Section 45.50.232 required an "immediate" report of log loss. This may not be possible under certain conditions during towing or log storage periods. Some time period, say 15 days, for reporting would be more reasonable.

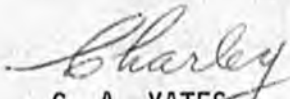
5. Section 45.50.232, line 15, provides that the property is considered abandoned 30 days after reporting. An extension of time under section 237 should be recognized here. We suggest it read, "After 30 days from the date of reporting or upon the expiration of any extension granted under section 237 of this chapter, the timber property . . ."

6. When the published notices, required in section 45.50.234, are to be published, should be clarified. Perhaps "once a week for three consecutive weeks" could replace "at least three times" in the second sentence. It also is not clear when the 30-day requirement starts. We presume it starts with the first advertisement.

7. If the State is claiming abandoned logs, some authorization may be needed to sell the property. We are not sure if there is a blanket sale authority or not, but thought it should be mentioned.

I appreciate the opportunity to help you in solving the problems associated with lost logs. It is a progressive and positive step.

Sincerely,


C. A. YATES
Regional Forester

STATE OF ALASKA
DEPARTMENT OF NATURAL RESOURCES

DIVISION OF LANDS

323 E. 4TH AVENUE-ANCHORAGE 99501

February 10, 1975

Price 6-1721

Representative Terry Gardiner
House of Representatives
Pouch V
Juneau, Alaska 99811

Dear Mr. Gardiner:

Mike Smith asked me to reply to your letter concerning a log salvage program.

Since inception, our log salvage program has been frustrating and unsatisfactory to us for a number of reasons:

1. Under existing statutes (AS 45.50.235) the State only claims title to the unbranded log. Since we only have legal jurisdiction from seaward to mean high tide, unless we own the uplands, we do not have many logs to sell. The enclosed aerial photos illustrate this problem. The green line on the photos represents mean high tide. As you can see, most of the logs are above this line. In Southeastern Alaska this means that most of the beach logs are on National Forest land.
2. Since November 1973 when we started making timber sales for salvage of beach logs, 25 contracts have been awarded. To date, logs have been salvaged under only five of these contracts for a total volume of 360 thousand board feet. The State has earned about \$1600 in revenue. Most of the revenue resulted from forfeiture of deposits due to contracts expiring without any action by the purchasers. The salaries and travel costs for personnel working on these sales would wipe this out. One could hardly say its a paying proposition.

The idea behind the proposed cooperative agreement is to allow the State and the Forest Service to make joint sales covering both lands above mean high tide and seaward of mean high tide. Under federal law, the Forest Service can claim after proper notice the logs branded, abandoned, or unbranded above mean high tide and without regard to the two year period during which owners of branded logs retain possession under AS 45.50.230. The joint sale concept would permit the Forest Service and the State to sell all the beach logs in a given area thus a more attractive package could be offered to anyone interested in salvaging the material.

OF THE BRAND], it is not in [HAS ESCAPED FROM] the possession and con-

The question will come up in reference to the proposed agreement as to whether the State should claim unbranded logs above mean high tide on National Forest or other uplands. Before executing the agreement the State plans to ask the Attorney General for a review of the agreement and a decision on the ownership of unbranded logs and other questions.

We are not locked in on this agreement idea. At the present, however, it seems to offer some solutions--not only to the jurisdiction over logs above mean high tide, but also to our shortage of personnel and funds. With more than 80 percent of the logs on National Forest land, maybe the Forest Service should be doing most of the work.

There are a number of things which I believe could be considered that would help the log salvage program.

1. Amend the Log Brand Act, AS 45.50 to:
 - a) do away with the date stamping requirement.
 - b) provide for log owners reporting any spills or lost logs and allowing 30 to 90 days to recover the logs.
 - c) provide that any spilled or lost logs not reported or after the elapse of any approved period to recover that the logs are abandoned logs.
 - d) provide that abandoned as well as unbranded logs are the property of the State.
2. Undertake to reach agreement with the Forest Service authorizing the State to remove beach logs stranded on National Forest uplands.
3. Amend AS 38.05, Article 4, Disposal of Timber and Materials to provide statutory authority for the Department of Natural Resources to adopt regulations covering the salvage and sale of abandoned logs.
4. Appropriate the necessary funds to the department so that a salvage program could be properly administered.

If we had the above, the basic program we've attempted by trying to sell a few unbranded logs could be developed into a workable log salvage program.

The next time either George Hollott, State Forester, or myself are in Juneau we will contact you to discuss those and any other possibilities you wish. Mike Smith will support and aid any workable solutions that we can come up with.

Sincerely,


L. A. Dutton
Management Forester

shall consist of abandoned logs

publish 30 days
Notice to remove possible for late

+ permit to extend if det. approp. by

insurance on logs now not as to future

logs branded provision to effective date is Act - Kavalat to

OF THE BRAND], it is not in this

control of the owner and is

26 26
27 27

STATE
of ALASKA

MEMORANDUM

Legislation
M-LOG BRANDSTO: Roger Lewis
Legislative Liaison
Department of Nat. Res.

DATE : February 10, 1976

FROM: L. A. Dutton
Management Forester
State Forester's OfficeSUBJECT: Amendments to AS 45.50
by Representative Miller

The following are comments on the attached bill entitled: "An Act relating to log brands and providing for an effective date."

This legislation will eliminate or reduce problems being encountered in the present log salvage program. Under the program the State is attempting to provide for the salvage and utilization of unbranded and abandoned or lost logs. Alaska Statute 45.50.230 provides that timber property displaying the registered brand of the owner of the timber is the sole property of the person in whose name the brand is registered for two calendar years following the year in which branded and "abandoned property" after that. This requirement is detrimental to the salvage of the abandoned logs as they tend to become widely scattered and damaged, sometimes severely, during the two year period. Shortening the time period in which a lost or escaped log becomes "abandoned property" will greatly facilitate the salvage and enhance the utilization of these logs.

For the State to come into possession of the abandoned logs and to provide for their salvage through sale may, however, not be the best approach to the matter of salvage. Other states notably Washington, Oregon, and the province of British Columbia have log salvage programs where persons or concerns engage in the business of salvaging "lost" or "escaped" logs. The laws of these states do not provide for State ownership of lost or escaped logs, but recognize the continued vested interest of the private owner of these logs subject to a lien for salvage. On at least two previous occasions in 1970 and 1973, legislation, similar to the laws in these other states, has been introduced in Alaska, but not enacted.

One of the above was HB No. 384 introduced during the first session of the Eighth Legislature, but not enacted. Were such a bill adopted we question the practicality of the State claiming abandoned logs. This could be interpreted to mean that the State would then be responsible for these logs. Do we want or need them? It would seem that simply providing that the logs are abandoned and subject to salvage would suffice. Significant improvement may result in any log salvage legislation for Alaska, however, by providing that "lost" or "escaped" logs are "abandoned," thus divesting the owner of any interest. This would increase the value of the logs to salvagers and provide a greater incentive for utilizing this material that would otherwise be wasted.

A further problem which complicates any form of salvage program in Alaska is that, in areas where lost or escaped logs tend to accumulate on the beaches, the lands immediately above mean high tide are federal, viz., National Forest. It is estimated at present that 80 percent or more of such logs are so situated and therefore, these logs may be outside of state jurisdiction were the state to attempt to sell these logs. These proposed amendments to the Log Brand Act do not include specific provisions to eliminate this problem. Some type of agreement between the Forest Service and the State will be necessary to allow for either the sale of these logs or the salvage of the logs by licensed salvagers.

Following are comments on specific sections of the act.

Section 1. AS 45.50.230(a)(3):

The words [30 days after the time public notice has expired as provided under sec. 234 of this chapter or] should be deleted. The intent of sec. 234 is to notify interested persons of the departments intent to claim abandoned timber property and thus the use of this notification to establish the condition of abandonment is conflicting. As written, you can't have one without the other and thus they cancel out each other.

In addition, consideration is not allowed for any extension of the initial 30 day recovery period. This section should be reworded in part:

"to be 'abandoned property' if, 30 days from the date of reporting required under sec. 232 of this chapter or ~~from upon~~ the date of expiration of any extended recovery period under sec. 237 of this chapter [AFTER THE ELAPSE - - -]"

Section 2. Adding Sec. 45.50.232:

The word "immediately" (line 9) implies that the action of reporting the loss of timber property should be done at once, without delay, or instantly. The nature of log rafting, storage of log rafts, and towing rafts precludes this type of action. A specific time limit for the action rather than immediate action is needed. The word [immediately] should be deleted and in its place the words "as provide by regulation" should be inserted.

The sentence beginning on line 15 provides that the timber property is considered to be abandoned 30 days from the date of reporting without consideration of any extension of the initial 30 day recovery period under sec. 237. This may be confusing by raising a question of ownership during any extended recovery period. The sentence should be worded:

"After 30 days from the date of reporting or upon the expiration of any extension granted under sec. 237 of this chapter, the timber property is considered to be abandoned- -."

Leaving out the words indicated above could also result in this section being interpreted to imply that the State must publish notice under sec. 234 to claim any logs abandoned after the expiration of any extended recovery period under sec. 237. The addition of these words should make it clear that any timber property included in a loss reported under

sec. 232 becomes the property of the state without publication of notice of intent to claim such property regardless of any extension of the period to recover the logs.

Section 3. Adding sec. 45.50.234:

We cannot see the reason for this section except possibly constitutional. If the statutes clearly provide: (1) that lost logs must be reported, (2) that any lost logs not recovered by the end of the 30 day period following the reporting date or any extended recovery period are abandoned, (3) that any lost logs the loss of which is not reported and which meet the definition of "abandoned property" under sec. 230 are abandoned, (4) that abandoned logs are the property of the State; then it would seem that there should be no need to publish notice of intent to claim.

This section as written is ambiguous in that it is not clear when the notice should be published on when the 30 day publishing period begins or ends in respect to the times when the notice is to be published. Also, it seems redundant to require both 30 days of publishing and 30 more days after the period of notice has expired (sec. 235) before the State's ownership of the abandoned property is effected.

In the first sentence the ending words [not less than 30 days] should be deleted. The second sentence should read:

"Notice shall be published once a week for three consecutive weeks in a newspaper of general circulation
- - -etc."

Section 4. AS 45.50.235:

If sec. 234 is omitted in the final bill there is no reason to change this section.

If sec. 234 is not omitted in the final bill then, in the last sentence of this section beginning on line 10, the words [period of notice has expired] should be deleted and instead, the words, "the date of final publication," should be inserted.

If abandoned logs are claimed by the State, the following sentence should be added to sec. 235:

"Timber property which is presumed to be the property of the state under this chapter may be sold in accordance with the provisions of AS 38.05.110 through AS 38.05.120 and regulations adopted under those statutes."

If log salvage legislation were adopted and if abandoned logs were not claimed by the State, the last sentence of sec. 235 as proposed in the attached bill should be deleted and a new section added:

Sec. 45.50.236. SALVAGE OF UNBRANDED AND ABANDONED
TIMBER PROPERTY. Timber property which is abandoned
property as defined in sec. 230(a)(3) of this chapter
or which is the property of the state under sec. 235
of this chapter may be salvaged in accordance with
AS 41.15.450 through AS 41.15.660.

We see no problems with the remaining sections.

Hutton



Alaska State Legislature

House

March 17, 1976

JUNEAU ALASKA

MEMO TO: Nels Anderson, Chairman House Resources Committee

FROM: Terry Gardiner *T.G.*

RE: Log Salvage HB 769

There are two major problems that were brought out in the testimony on the log salvage bill. The first problem concerned the reporting provisions by the owner of the logs when they were lost. I think that this problem could be solved in an unbureaucratic way. The bill should be amended to provide that the owner of the logs may at his own discretion report the loss of the logs. If he does not report the loss of the logs then he would obviously not have the right to ask the State to zone off an area for him to salvage the logs. If he did report the loss of the logs then he would be able to apply to the State to have an area zoned off to salvage his logs. This removes the mandatory requirement that the log owner report all losses of logs and leaves it up to his discretion.

The second problem concerns the amount of time that is allotted to a log owner to salvage his logs off a given area. I think no matter what time period one picks, be it three months or two years it is going to be an arbitrary figure and will not apply to all log salvage situations. I think that we should give the Department of Natural Resources the discretion to allow the necessary time for the owner of the logs to retrieve his logs as long as he is making a good faith effort to retrieve them. It must be remembered that the main purpose of the log salvage law is to retrieve the logs from the beach. As long as the log owner is making a good faith effort, I think we should allot him whatever time is reasonably necessary to salvage the logs even if it is a year or more. Any amendment drafted to this effect should give the Department some broad authority and provide some kind of legal standard for the log owner to comply with if he wants the State to allot him a specific amount of time to retrieve his logs.

STATE OF ALASKA
Inter-Department Route Slip

TO:
MAIL STATION NUMBER _____

DEPARTMENT HOUSE RESOURCES COMM

ATTENTION RUTH

- | | |
|--|--|
| <input type="checkbox"/> Approval | <input type="checkbox"/> Note & Return |
| <input type="checkbox"/> Signature | <input type="checkbox"/> Initial & Return |
| <input type="checkbox"/> Comment | <input type="checkbox"/> Return As Requested |
| <input type="checkbox"/> Contact Me | <input type="checkbox"/> Return For Approval |
| <input type="checkbox"/> Prepare Reply | <input type="checkbox"/> Necessary Action |
| <input type="checkbox"/> For Your File | <input type="checkbox"/> Your Information |

Remarks:

Rm 118

FROM:
MAIL STATION NUMBER 1000

DEPARTMENT NR

BY WAZ DATE 3/5/76

02-002 (REV.10/73)

THE LEGISLATURE OF THE STATE OF ALASKA
FISCAL NOTE

Second Session -- Ninth Legislature

I. REQUEST

Bill No. House Bill No. 769
 Title: "An act relating to log brands and providing for an effective date"
 Requested by: _____ Date: _____
 Return Date Requested: _____
 Agency: Natural Resources Program: Lands

II. FISCAL DETAIL

Budget Request Unit(s) Affected: Land Management (Southeastern District)

A. EXPENDITURES: (Thousands of dollars)

OBJECT	FY 76	FY 77	FY 78	FY 79	FY 80	FY 81
100 PERSONAL SERVICES		24				
200 TRAVEL		2				
300 CONTRACTUAL		6				
400 COMMODITIES		0.2				
500 EQUIPMENT		0.5				
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL		33				

B. FUNDING: (Thousands of dollars)

GENERAL FUND		33				
FEDERAL FUNDS						
OTHER						

C. POSITIONS:

PERMANENT/TEMPORARY	/	1 /--	/	/	/	/
MAN MONTHS (P./T.)	/	12 /--	/	/	/	/

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

One Forester II is needed in Ketchikan to inspect log spills, verify requests for extended recovery periods, and assist in conducting sales of state logs. Work will call for considerable local travel including use of charter aircraft and boats, hence contractual money. This may appear as unreasonably low fiscal impact, however, it is anticipated that most work will be conducted by U.S. Forest Service through cooperative agreement as most beached logs (more than 80%) are on National Forest land (above mean high tide).

Public interest in beach log salvage within the Ketchikan-Sitka-Petersburg area persists such that there is never fewer than a dozen active contracts in force with others in the making. This continuing activity has generated a host of problems, including conflicts between salvagers and conventional operators and conflicts among salvagers themselves, which demands a greater degree of surveillance and inspection than the Southeast District
(con't on attached page)

IV. ATTACHMENTS

V. DATE: 3/3/76 PREPARED BY: *L.A. Dutton*

Original: Legislative Finance
 cc: Budget and Management
 Prime Sponsor (First Legislator Named)

L.A. Dutton
 State Forester's Office
 Alaska Division of Lands

H/S 50

*No program expansion in subsequent fiscal years is anticipated. Only additional funds that may be required would result from inflationary or collective bargaining

Office has man-hour capacity to provide. A serious rash of trespass incidents has proliferated in the same area notably on tidelands. A Forester I based at Ketchikan is the proper remedy and the only one likely to be effective.

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF NATURAL RESOURCES

DIVISION OF LANDS / 323 E. 4TH AVENUE - ANCHORAGE 99501

March 9, 1976

The Honorable Nels A. Anderson, Jr.
Chairman, House Resources Committee
Pouch B, State Capitol
Juneau, Alaska 99811

Dear Representative Anderson:

You asked for a letter stating the problems with log salvage and the reasons why House Bill No. 769 is needed.

The problems basically are:

1. The volume of logs and other materials that are accumulating on Alaska's beaches, particularly in Southeastern. Twenty-five percent or more is probably useable for marketable forest products.
2. The salvage of a significant portion of the useable material is frustrated by the two--three year ownership provision in present law (AS 45.50.230)(a)(1).
3. There are no provisions in existing law requiring the log owner to report log losses from broken log rafts or spills from log rafts or barges so that the time and location of these losses or spills will be known.
4. Most logs stranded on the beaches are above mean high tide and unless the State owns the uplands, the logs are outside of the State's jurisdiction. In most cases, the logs (80 percent or more) are on National Forest land which is under the jurisdiction of the U. S. Forest Service.
5. A statutory or regulatory mechanism, in lieu of the two year ownership period (No. 2 above), is needed to allow log owners an opportunity to recover their lost logs, but allowing the salvage by other persons of these logs within a reasonable time if the log owner does not attempt salvage or abandons salvage and of those logs not recovered by the owner.
6. There are a number of persons or concerns that are engaged in or interested in becoming engaged in log salvage operations. These persons are limited under existing law in developing effective and profitable salvage operations.
7. The State, viz., Department of Natural Resources, is limited by existing law in developing a more effective log salvage program.

The crux of the matter is No. 2 above which not only is a problem in itself, but underlies several of the other enumerated problems as well. Specifically, the flat two-year ownership period prevents the salvage of lost or escaped logs for upwards of three years from the date on the logs whether or not the owner of the logs attempts salvage himself during that period. Logs not soon recovered after a log raft break-up or spill have upwards of three years to become widely scattered, rolled around and pounded on the beaches by storms and tidal action breaking them up and imbedding them with gravel, or filled with worm holes from marine borers. All of which greatly reduces the value of the logs and makes any salvage attempt difficult and of questionable feasibility. After two or three, and sometimes even one year, such logs are worthless. This problem is frustrating attempts by the State to sell, directly or in cooperation with the Forest Service, beach or floating logs to a salvager; because most of the useable logs in any area cannot be included in the sale and must be passed over by a salvager having a State or Forest Service contract.

One reason why House Bill No. 769 should be passed is the amount of consideration that the Legislature and other interested parties have given to the question of log salvage during recent years without any positive results. We are sure this is as frustrating to you as it is to us. In the following paragraphs we have summarized the events and conditions related to log salvage and occurring in Alaska over most of the past 10 years.

Interest

In log salvage as documented by correspondence received by this department and the Department of Commerce and Economic Development goes back to early Statehood. This interest prompted then Commissioner of Economic Development, Frank Murkowsky, to hold a hearing on log salvage in Ketchikan in 1969. This hearing was well attended and much testimony was recorded.

One of the results of that hearing was the introduction of Senate Bill No. 374 in January of 1970. This bill contained legislation providing for a log salvage program based on the licensing of log salvagers and was patterned after log salvage laws in the states of Washington and Oregon and the Province of British Columbia. Due to a lack of support by the timber industry in Alaska, the bill died in the House Resources Committee.

As a result of testimony on S.B. 374 (1970), however, amendments to the Log Brand Act, AS 45.50., were introduced in the House. These amendments resulted in three significant changes in the Log Brand Act; (1) that a brand on a log include the last digit of the calendar year in which branded and that for two calendar years following the year of the brand the timber thus branded is the sole property of the person in whose name the brand is registered; (2) that after the lapse of two full calendar years following the year of the brand the timber is abandoned property if it had escaped from the possession and control of the owner and is adrift in the waters of the State; stranded on the beaches, marshes, tide, or shorelands or waters of the State; or partially or

wholly submerged in the waters of the State; and (3) that timber property which is unbranded or on which a brand is not distinguishable ~~located in a coastal water, lake, river, creek, or other waterway of the State or on State-owned coastline~~ and which is located in a coastal water, lake, river, creek, or other waterway of the State or on State-owned coastline is presumed to be the property of the State.

With the passage of these amendments, the State embarked on an exploratory program of selling unbranded logs. Although this was an attempt at developing a log salvage program, full-scale log salvage was stymied by those problems stated at the beginning of this letter.

In 1973, the House Resources Committee introduced House Bill No. 384 relating to log salvage which was similar to Senate Bill No. 374 (1970). H.B. 384 never got out of that committee and finally died in 1974 again due to a lack of support from the timber industry.

In the meantime, the State and the Forest Service began working on a cooperative agreement in an attempt to resolve problems encountered with those logs above mean high tide and on National Forest land. The one major roadblock to finalizing this agreement is the two-year ownership provision in existing law.

In 1975, the Log Brand Act was again amended. One of the amendments of significance to log salvage provided that abandoned property, as defined in the Act, is presumed to be the property of the State. This allowed the State to include abandoned logs with unbranded logs in their sales of salvaged timber, but still, under the existing law, branded and dated logs are not abandoned until two years have elapsed following the year date stamped on the log.

As a result of the second failure of a log salvage bill, persons concerned with log salvage began to look for another alternative. One possibility was the sale of salvageable logs mentioned earlier, although at the time of inception this was considered a temporary measure until such time as log salvage legislation, along the lines of that proposed in S.B. 374 (1970) and H.B. 384 (1973), would be enacted. Representative Terry Gardiner had been doing a lot of work on log salvage legislation and was instrumental in having H.B. 384 (1973) introduced. He knew of our limited log salvage sale program and had learned of the cooperative agreement for log salvage sales that the State and the U. S. Forest Service was working on. He inquired about this proposal. In our reply of February 10, 1975 (copy enclosed) to Mr. Gardiner, we explained the proposed agreement and made suggestions that would enhance a log salvage program based on the sale of unbranded and abandoned floating or beached logs.

Finally in 1976 Representative Mike Miller, who had become interested in log salvage, together with Representatives Gardiner and Smith introduced H.B. 769. This bill proposed amendments to the Log Brand Act, AS 45.50.210 through AS 45.50.325, that incorporates several suggestions made in our

letter to Mr. Gardner. These amendments would remove the roadblocks to the proposed State-Forest Service agreement, and would pave the way for a greatly improved log salvage program based on the sale of salvageable logs.

In summary, H.B. 769 answers the problem set forth at the beginning of this letter by providing:

1. that losses of logs from rafts be reported so that the location and time of a loss will be known,
2. the owner of lost logs has an opportunity to recover his logs before they become abandoned and subject to salvage by others,
3. that abandoned logs are the property of the State and thus may be salvaged under a contract of sale for the logs.

In the six years since S.B. 374 was introduced in 1970, I have attended nearly every resource committee hearing, both House and Senate, on bills related to log salvage. My observation has been that industry testimony at these hearings has been decidedly negative as was the case last Friday, March 5, 1976, in testimony before your committee.

Other than the dozen or so individuals or small firms presently engaged in log salvage, the timber industry, for the most part, is not interested in legislation that will benefit log salvage. Under the present provision allowing two--three years for ownership of lost logs, industry enjoys ample time to recover their lost or escaped logs. Any legislation that will enhance opportunities for the independent salvager to salvage those logs not recovered by log owners, to be effective, must eliminate the two-year ownership period and provide for the reporting of log losses and for controls regulating the time allowed the log owner to recover his escaped logs. Industry, in general, is not going to support legislation that will result in more regulation of their operations. On the other hand, if we are to have an effective log salvage program, the State must have certain necessary controls over lost or escaped logs. House Bill No. 769 provides the authority for the necessary control by regulation.

Passage of this bill will make it possible for the State to develop a better log salvage program than presently exists by eliminating the two to three-year lag in salvaging most recently lost logs and through cooperative sales with the U. S. Forest Service. The results should be increased volumes of timber salvaged, cleaner beaches, reduced navigation hazards, and more employment in log salvage. House Bill No. 769 is needed. We urge that this bill be passed out of your committee with a do pass recommendation and that finally it be passed by the current legislature.

Sincerely,



L. A. Dutton
Management Forester
State Forester's Office

cc: Representative Terry Gardner
Representative Mike Miller
Representative Ted Smith
Guy Martin
Frank Price

UNITED STATES DEPARTMENT OF AGRICULTURE
FOREST SERVICE
P.O. Box 1628, Juneau, Alaska 99802

February 25, 1976

1560
2440



Honorable Mike Miller
Alaska House of Representatives
Pouch V
Juneau, Alaska 99811

Dear Mr. Miller:

In response to your request to Frank Price, we have reviewed your proposed bill, "An Act relating to log brands; and providing for an effective date." In general, this bill will eliminate the problems that we and the State have encountered in establishing a cooperative program for the disposal and utilization of drift logs along Alaska's beaches. As such, we support its passage.

While the bill would accomplish the intended purpose, there are several suggestions we have that you may want to consider. These are:

1. Branding of logs on barges should also be required; there have been several instances where logs being barged have ended up in coastal waters. Section 1 (a), line 12, would read, "purpose of rafting or transporting by floating, barging, or towing shall display. . ."

2. Section 45.50.237 recognizes that some extension of the recovery period may be justified. This might be included in section 1 (a) (3) so that it reads, ". . . 30 days from the date of reporting required under section 232 of this chapter or from the date of expiration of any extended recovery period under section 237 of this chapter . . ."

3. If the intent of section 234 is simply to notify the public of the State's intent to claim abandoned property, we feel the wording in section 1 (a) (3), ". . . 30 days after the time public notice has expired as provided under section 234 of this chapter . . .," can be deleted. The abandonment has already been established and the extra waiting time is not needed.

4. Section 45.50.232 required an "immediate" report of log loss. This may not be possible under certain conditions during towing or log storage periods. Some time period, say 15 days, for reporting would be more reasonable.

5. Section 45.50.232, line 15, provides that the property is considered abandoned 30 days after reporting. An extension of time under section 237 should be recognized here. We suggest it read, "After 30 days from the date of reporting or upon the expiration of any extension granted under section 237 of this chapter, the timber property . . ."

6. When the published notices, required in section 45.50.234, are to be published, should be clarified. Perhaps "once a week for three consecutive weeks" could replace "at least three times" in the second sentence. It also is not clear when the 30-day requirement starts. We presume it starts with the first advertisement.

7. If the State is claiming abandoned logs, some authorization may be needed to sell the property. We are not sure if there is a blanket sale authority or not, but thought it should be mentioned.

I appreciate the opportunity to help you in solving the problems associated with lost logs. It is a progressive and positive step.

Sincerely,


C. A. YATES
Regional Forester

DEPARTMENT OF NATURAL RESOURCES

DIVISION OF LANDS

323 E. 4TH AVENUE—ANCHORAGE 99501

February 10, 1975

Price 6-1721

Representative Terry Gardiner
House of Representatives
Pouch V
Juneau, Alaska 99811

Dear Mr. Gardiner:

Mike Smith asked me to reply to your letter concerning a log salvage program.

Since inception, our log salvage program has been frustrating and unsatisfactory to us for a number of reasons:

1. Under existing statutes (AS 45.50.235) the State only claims title to the unbranded log. Since we only have legal jurisdiction from seaward to mean high tide, unless we own the uplands, we do not have many logs to sell. The enclosed aerial photos illustrate this problem. The green line on the photos represents mean high tide. As you can see, most of the logs are above this line. In Southeastern Alaska this means that most of the beach logs are on National Forest land.
2. Since November 1973 when we started making timber sales for salvage of beach logs, 25 contracts have been awarded. To date, logs have been salvaged under only five of these contracts for a total volume of 360 thousand board feet. The State has earned about \$1600 in revenue. Most of the revenue resulted from forfeiture of deposits due to contracts expiring without any action by the purchasers. The salaries and travel costs for personnel working on these sales would wipe this out. One could hardly say its a paying proposition.

The idea behind the proposed cooperative agreement is to allow the State and the Forest Service to make joint sales covering both lands above mean high tide and seaward of mean high tide. Under federal law, the Forest Service can claim after proper notice the logs branded, abandoned, or unbranded above mean high tide and without regard to the two year period during which owners of branded logs retain possession under AS 45.50.230. The joint sale concept would permit the Forest Service and the State to sell all the beach logs in a given area thus a more attractive package could be offered to anyone interested in salvaging the material.

OF THE BRAND], it is not in [HAS ESCAPED FROM] the possession and con-

The question will come up in reference to the proposed agreement as to whether the State should claim unbranded logs above mean high tide on National Forest or other uplands. Before executing the agreement the State plans to ask the Attorney General for a review of the agreement and a decision on the ownership of unbranded logs and other questions.

We are not locked in on this agreement idea. At the present, however, it seems to offer some solutions--not only to the jurisdiction over logs above mean high tide, but also to our shortage of personnel and funds. With more than 80 percent of the logs on National Forest land, maybe the Forest Service should be doing most of the work.

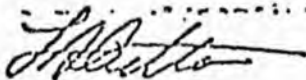
There are a number of things which I believe could be considered that would help the log salvage program.

1. Amend the Log Brand Act, AS 43.50 to:
 - a) do away with the date stamping requirement.
 - b) provide for log owners reporting any spills or lost logs and allowing 30 to 90 days to recover the logs.
 - c) provide that any spilled or lost logs not reported or after the elapse of any approved period to recover that the logs are abandoned logs.
 - d) provide that abandoned as well as unbranded logs are the property of the State.
2. Undertake to reach agreement with the Forest Service authorizing the State to remove beach logs stranded on National Forest uplands.
3. Amend AS 38.05, Article 4, Disposal of Timber and Materials to provide statutory authority for the Department of Natural Resources to adopt regulations covering the salvage and sale of abandoned logs.
4. Appropriate the necessary funds to the department so that a salvage program could be properly administered.

If we had the above, the basic program we've attempted by trying to sell a few unbranded logs could be developed into a workable log salvage program.

The next time either George Hollott, State Forester, or myself are in Juneau we will contact you to discuss those and any other possibilities you wish. Mike Smith will support and aid any workable solutions that we can come up with.

Sincerely,


L. A. Dutton
Management Forester

publish
30 days

Notice to remove possible for later

+ permit to extend if set approp by

insurance to logs now not as to future

logs brand previous to effective date by this Act - Referral to

shall consist abandoned logs

Handwritten checkmarks and lines next to items a, b, and c.

STATE
of ALASKA

MEMORANDUM

Legislation
M-LOG BRANDS

TO: Roger Lewis
Legislative Liaison
Department of Nat. Res.

DATE : February 10, 1976

FROM: L. A. Dutton
Management Forester
State Forester's Office

SUBJECT: Amendments to AS 45.50
by Representative Miller

The following are comments on the attached bill entitled: "An Act relating to log brands and providing for an effective date."

This legislation will eliminate or reduce problems being encountered in the present log salvage program. Under the program the State is attempting to provide for the salvage and utilization of unbranded and abandoned or lost logs. Alaska Statute 45.50.230 provides that timber property displaying the registered brand of the owner of the timber is the sole property of the person in whose name the brand is registered for two calendar years following the year in which branded and "abandoned property" after that. This requirement is detrimental to the salvage of the abandoned logs as they tend to become widely scattered and damaged, sometimes severely, during the two year period. Shortening the time period in which a lost or escaped log becomes "abandoned property" will greatly facilitate the salvage and enhance the utilization of these logs.

For the State to come into possession of the abandoned logs and to provide for their salvage through sale may, however, not be the best approach to the matter of salvage. Other states notably Washington, Oregon, and the province of British Columbia have log salvage programs where persons or concerns engage in the business of salvaging "lost" or "escaped" logs. The laws of these states do not provide for State ownership of lost or escaped logs, but recognize the continued vested interest of the private owner of these logs subject to a lien for salvage. On at least two previous occasions in 1970 and 1973, legislation, similar to the laws in these other states, has been introduced in Alaska, but not enacted.

One of the above was HB No. 384 introduced during the first session of the Eighth Legislature, but not enacted. Were such a bill adopted we question the practicality of the State claiming abandoned logs. This could be interpreted to mean that the State would then be responsible for these logs. Do we want or need them? It would seem that simply providing that the logs are abandoned and subject to salvage would suffice. Significant improvement may result in any log salvage legislation for Alaska, however, by providing that "lost" or "escaped" logs are "abandoned," thus divesting the owner of any interest. This would increase the value of the logs to salvagers and provide a greater incentive for utilizing this material that would otherwise be wasted.

A further problem which complicates any form of salvage program in Alaska is that, in areas where lost or escaped logs tend to accumulate on the beaches, the lands immediately above mean high tide are federal, viz., National Forest. It is estimated at present that 80 percent or more of such logs are so situated and therefore, these logs may be outside of state jurisdiction were the state to attempt to sell these logs. These proposed amendments to the Log Brand Act do not include specific provisions to eliminate this problem. Some type of agreement between the Forest Service and the State will be necessary to allow for either the sale of these logs or the salvage of the logs by licensed salvagers.

Following are comments on specific sections of the act.

Section 1. AS 45.50.230(a)(3):

The words [30 days after the time public notice has expired as provided under sec. 234 of this chapter or] should be deleted. The intent of sec. 234 is to notify interested persons of the department's intent to claim abandoned timber property and thus the use of this notification to establish the condition of abandonment is conflicting. As written, you can't have one without the other and thus they cancel out each other.

In addition, consideration is not allowed for any extension of the initial 30 day recovery period. This section should be reworded in part:

"to be 'abandoned property' if, 30 days from the date of reporting required under sec. 232 of this chapter or from upon the date of expiration of any extended recovery period under sec. 237 of this chapter [AFTER THE ELAPSE - - -]"

Section 2. Adding Sec. 45.50.232:

The word "immediately" (line 9) implies that the action of reporting the loss of timber property should be done at once, without delay, or instantly. The nature of log rafting, storage of log rafts, and towing rafts precludes this type of action. A specific time limit for the action rather than immediate action is needed. The word [immediately] should be deleted and in its place the words "as provide by regulation" should be inserted.

The sentence beginning on line 15 provides that the timber property is considered to be abandoned 30 days from the date of reporting without consideration of any extension of the initial 30 day recovery period under sec. 237. This may be confusing by raising a question of ownership during any extended recovery period. The sentence should be reworded:

"After 30 days from the date of reporting or upon the expiration of any extension granted under sec. 237 of this chapter, the timber property is considered to be abandoned- -."

Leaving out the words indicated above could also result in this section being interpreted to imply that the State must publish notice under sec. 234 to claim any logs abandoned after the expiration of any extended recovery period under sec. 237. The addition of these words should make it clear that any timber property included in a loss reported under

sec. 232 becomes the property of the state without publication of notice of intent to claim such property regardless of any extension of the period to recover the logs.

Section 3. Adding sec. 45.50.234:

We cannot see the reason for this section except possibly constitutional. If the statutes clearly provide: (1) that lost logs must be reported, (2) that any lost logs not recovered by the end of the 30 day period following the reporting date or any extended recovery period are abandoned, (3) that any lost logs the loss of which is not reported and which meet the definition of "abandoned property" under sec. 230 are abandoned, (4) that abandoned logs are the property of the State; then it would seem that there should be no need to publish notice of intent to claim.

This section as written is ambiguous in that it is not clear when the notice should be published on when the 30 day publishing period begins or ends in respect to the times when the notice is to be published. Also, it seems redundant to require both 30 days of publishing and 30 more days after the period of notice has expired (sec. 235) before the State's ownership of the abandoned property is effected.

In the first sentence the ending words [not less than 30 days] should be deleted. The second sentence should read:

"Notice shall be published once a week for three consecutive weeks in a newspaper of general circulation
- - -etc."

Section 4. AS 45.50.235:

If sec. 234 is omitted in the final bill there is no reason to change this section.

If sec. 234 is not omitted in the final bill then, in the last sentence of this section beginning on line 10, the words [period of notice has expired] should be deleted and instead, the words, "the date of final publication," should be inserted.

If abandoned logs are claimed by the State, the following sentence should be added to sec. 235:

"Timber property which is presumed to be the property of the state under this chapter may be sold in accordance with the provisions of AS 38.05.110 through AS 38.05.120 and regulations adopted under those statutes."

If log salvage legislation were adopted and if abandoned logs were not claimed by the State, the last sentence of sec. 235 as proposed in the attached bill should be deleted and a new section added:

Sec. 45.50.236. SALVAGE OF UNBRANDED AND ABANDONED
TIMBER PROPERTY. Timber property which is abandoned
property as defined in sec. 230(a)(3) of this chapter
or which is the property of the state under sec. 235
of this chapter may be salvaged in accordance with
AS 41.15.450 through AS 41.15.660.

We see no problems with the remaining sections.

Heston



ALASKA LUMBER & PULP CO., INC.

Sitka Office: P.O. BOX 1050 • SITKA, ALASKA 99835 • TELEPHONE 747-0255

March 5, 1976

The Honorable Nels Anderson
Alaska State House of Representatives
Pouch "V" State Capitol Building
Juneau, Alaska 99811

Dear Representative Anderson:

RE: Testimony of James A. Rynearson before the
House Natural Resources Committee on HB 769

INTRODUCTION

ALP understands the concern of this Committee with the subject matter addressed by HB 769, but believes that care must be taken to insure that a legal and bureaucratic tangle is not created by the bill's construction. The thirty-day time limit written into the bill (Section 2) is totally unrealistic due to the physical difficulties of beach-salvage operations, (which are totally dependent on tide, topography, and weather conditions) and the burdensome administrative delays which plague efforts to obtain the necessary State and Federal permits to conduct salvage operations. Accordingly, the time limit represents a windfall to the State and constitutes a taking of property, (our insurance company's in the short term and the increase to ALP in insurance premiums which is bound to result from this law) without due process law. Hopefully, the information which will be provided the Committee will compel its conclusion that far more than the 30 days provided in Section 2 is needed.

March 5, 1976

One further point is needed by way of introduction -- ALP has just learned that much of the momentum for passage of this bill in its present form is a consequence of negotiations between the State Forester's office and the U.S. Forest Service. ALP would have welcomed the opportunity to have participated in these discussions as it is certain that it could have added constructively to the discussions by raising with the other parties the concerns I will address here today. In addition, insurance companies involved should have an opportunity to discuss these problems with you.

In sum, ALP is simply asking that the 30 day period granted in Section 2 be substantially increased and that the bill be groomed so that it can be sensibly construed. We support this Committee's obvious concern with the red tape which has slowed down beach salvage operations and believe as you do, that action should be taken to clear away impediments. Further, we stand ready to hire Alaskan salvors to retrieve logs with ALP's brand on it within the period in which possessing rights to the logs remains in the Company.

II. BEACH SALVAGE OPERATIONS

It is misleading to believe that the logs seen when flying over Southeastern Alaska are a result of logging operations here. Much of the debris on the beaches is not a result of logging at all. Many of the logs drift into Southeastern Alaska from Canada -- thus accounting for a greater concentration of logs in the Southern Tongass than the North. All of this is seen in the 1951 Aerial Photo

March 5, 1976

you have been shown. I will supplement this written report in my oral presentation and a further letter to you.

III. PERMIT PROCESS

In order to conduct salvage operations the salvor will need certain permits. He will need an easement to cross State land below mean high tide and a permit or easement to operate on Federal or private lands above mean high tide. Since most of the logs on the beach above mean high tide belong to the Forest Service, he will have to coordinate his activities with the Forest Service, and/04, arrange for a sale of the logs to be made to him. Where the salvor intends to take logs below mean high tide a similar process will have to be gone through with the State. These delays are controlled by the administrative requirements of the agencies involved and will necessarily take more than the thirty days allowed by Section 2. All these problems are compounded when beach ownership is in private hands as it soon will be as a result of land distributions under the Alaska Native Claims Settlement Act.

Far more time consuming will be the next step: obtaining a State tideland lease and Corps of Engineer's permit for a rafting area. ALP is presently seeking State tideland leases for log storage areas. Applications therefore were submitted for these areas over a year ago and none has yet been received. To obtain a Corps of Engineer's permit, one must go through the notice procedure which follows filing which procedure can take up to 120 days. Following the notice procedure, the request is forwarded to interested State and Federal agencies in accordance with the procedure outlined

March 5, 1976

in OMB Circular A-95. The time required for this process is open-ended and depends on the speed with which these agencies take up the application and what, if any, concerns are expressed by these agencies about the proposal.

Accordingly, the salvor is at the mercy of the physical difficulties of salvage logging and the administrative delays of obtaining the necessary permits. It is impossible to do all this in thirty days. Since the administrative process, the speed of which is controlled by State and Federal agencies, not the salvor or ALP, will clearly take more than thirty days, the time limit imposed by Section 2 clearly constitutes a taking of property without due process of law. We would be glad to comply with your objective here, if you would grant us a reasonable time to do it.

IV. LEGAL PROBLEMS

A. Title to the logs.

Paragraph 2(a) of ALP's long term contract with the Forest Service provides in pertinent part:

All right, title, and interest in or to any timber included in this contract shall remain in the United States until it has been paid for, cut and scaled;"

- - -

Accordingly, even though this same contract assigns the risk of loss during tow to ALP and sets up a formula for payment for lost logs, the logs belong to the Forest Service at the point in time they are lost during tow (since scaling

occurs at the mill). Since ALP is insured, ALP's insurer pays the Forest Service for the lost logs and thereupon becomes their owner by virtue of the insurer's right of subrogation. Thus, the "owner" who must report losses under Section 2 is the Forest Service and it is the Forest Service which the State would prosecute for failure to report such loss. Such a prosecution would of course violate the Supremacy clause of the Federal Constitution. This problem can obviously be solved by more careful draftsmanship.

B. Vagueness. The owner is required to report "immediately". If criminal sanctions for failure to report are to attach, as they do under Section 6, then the time within which reporting must be accomplished should be precise. However, circumstances will dictate the time within which reporting could be accomplished. Accordingly, a far less onerous solution would be to drop the criminal sanction and merely require that reports be submitted within a reasonable time.

C. Administrative Burden. If the duty of reporting is shifted from the Forest Service, where it now rests, to others, they should be given an idea of the administrative burden they are taking on. The whole process is left open due to the words "and any other information which the department requires" in Section 2. All pertinent information seems to be provided for by the preceding three requirements.

March 5, 1976

Additionally, it is entirely possible that bundles may break open during the night or other events may occur which could allow logs to be lost without the knowledge of the tugboat skipper. This eventuality should be considered. The capacity of DNR to process and make sensible use of the information given should also be assessed.

D. Problems with Section 3. It is unclear when the DNR can publish notice under Section 3, thus triggering the State's rights of ownership. Will this be done at the time of reporting lost logs under Section 2 or will it occur 30 days after the Section 2 reports are filed?

Will the State claim possession during the time title to the logs is still held by the Forest Service (i.e. before ALP pays for the logs which have been lost)? As worded, this eventuality is entirely possible and would violate the Supremacy Clause of the Federal Constitution. The problem can be avoided by granting more time for recovery of the logs since the Forest Service would be paid for the logs in the interim and ownership would be shifted. Payment to the Forest Service for lost logs is rarely made within 30 days of the loss.

Since the owner of the lost property would presumably be known by virtue of his reporting the loss under Section 2, how does posting notice and publishing at a point near the loss rather than by direct notice to the company, satisfy

March 5, 1976

the due process requirements of the State and Federal Constitutions?

E. Timber Property. As written, timber property is any property upon which a brand has been affixed. How extensive will this term be defined?

More important the bill deletes the former requirement that the last digit of the calendar year of branding be affixed to the log. This makes it far more difficult for all concerned to identify the logs which are the subject of the loss.

CONCLUSION

Since the physical difficulties of salvage and administrative delays created by State and Federal procedure will make it impossible, in most instances, to recover lost logs within thirty days, the time limit of Section 2 must be substantially increased. ALP would support this legislation if the time is increased to a reasonable amount and the drafting problems referred to above are eliminated.

Thank you for your consideration.

Respectfully submitted:

James A. Rynearson, Vice President
Woods Division
Alaska Lumber & Pulp Company

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF NATURAL RESOURCES

DIVISION OF LANDS

323 E. 4TH AVENUE — ANCHORAGE 99501

March 10, 1976

The Honorable Nels A. Anderson, Jr.
Chairman, House Resources Committee
Pouch V, State Capitol
Juneau, Alaska 99811

Dear Representative Anderson:

Here is the copy of the letter to Representative Gardiner which was inadvertently left behind when my letter to you of March 9 went out.

Please forgive the poor typing and composition in that March 9 letter. We did it in a hurry.

Sincerely,



L. A. Dutton
Management Forester
State Forester's Office

Log Salvage
M-LEGISLATION

See also file
Log Salvage Sales
M-TIMBER SALES

February 10, 1975

Representative Terry Gardiner
House of Representatives
Pouch V
Juneau, Alaska 99811

Dear Mr. Gardiner:

Mike Smith asked me to reply to your letter concerning a log salvage program.

Since inception, our log salvage program has been frustrating and unsatisfactory to us for a number of reasons:

1. Under existing statutes (AS 45.50.235) the State only claims title to the unbranded log. Since we only have legal jurisdiction from seaward to mean high tide, unless we own the uplands, we do not have many logs to sell. The enclosed aerial photos illustrate this problem. The green line on the photos represents mean high tide. As you can see, most of the logs are above this line. In Southeastern Alaska this means that most of the beach logs are on National Forest land.
2. Since November 1973 when we started making timber sales for salvage of beach logs, 25 contracts have been awarded. To date, logs have been salvaged under only five of these contracts for a total volume of 360 thousand board feet. The State has earned about \$1600 in revenue. Most of the revenue resulted from forfeiture of deposits due to contracts expiring without any action by the purchasers. The salaries and travel costs for personnel working on these sales would wipe this out. One could hardly say its a paying proposition.

The idea behind the proposed cooperative agreement is to allow the State and the Forest Service to make joint sales covering both lands above mean high tide and seaward of mean high tide. Under federal law, the Forest Service can claim after proper notice the logs branded, abandoned, or unbranded above mean high tide and without regard to the two year period during which owners of branded logs retain possession under AS 45.50.230. The joint sale concept would permit the Forest Service and the State to sell all the beach logs in a given area thus a more attractive package could be offered to anyone interested in salvaging the material.

The photos you received on 3/5/76 from the U.S. Forest Service are the same as the ones mentioned here.

February 10, 1975

The question will come up in reference to the proposed agreement as to whether the State should claim unbranded logs above mean high tide on National Forest or other uplands. Before executing the agreement the State plans to ask the Attorney General for a review of the agreement and a decision on the ownership of unbranded logs and other questions.

We are not locked in on this agreement idea. At the present, however, it seems to offer some solutions--not only to the jurisdiction over logs above mean high tide, but also to our shortage of personnel and funds. With more than 80 percent of the logs on National Forest land, maybe the Forest Service should be doing most of the work.

There are a number of things which I believe could be considered that would help the log salvage program.

1. Amend the Log Brand Act, AS 45.50 to:

- ✓ a) do away with the date stamping requirement.
- ✓ b) provide for log owners reporting any spills or lost logs and allowing 30 to 90 days to recover the logs.
- ✓ c) provide that any spilled or lost logs not reported or after the elapse of any approved period to recover that the logs are abandoned logs.
- ✓ d) provide that abandoned as well as unbranded logs are the property of the State.

2. Undertake to reach agreement with the Forest Service authorizing the State to remove beach logs stranded on National Forest uplands.

3. Amend AS 38.05, Article 4, Disposal of Timber and Materials to provide statutory authority for the Department of Natural Resources to adopt regulations covering the salvage and sale of abandoned logs.

4. Appropriate the necessary funds to the department so that a salvage program could be properly administered.

If we had the above, the basic program we've attempted by trying to sell a few unbranded logs could be developed into a workable log salvage program.

The next time either George Hollett, State Forester, or myself are in Juneau we will contact you to discuss these and any other possibilities you wish. Mike Smith will support and aid any workable solutions that we can come up with.

Sincerely,

L. A. Dutton

L. A. Dutton
Management Forester
cc Henry Lee Hall

ASD
cc: *Ted Smith*

*Include this
provisions
in HB 769
rather than
amend AS 38.05*

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF NATURAL RESOURCES

DIVISION OF LANDS

323 E. 4TH AVENUE - ANCHORAGE 99501

March 9, 1976

The Honorable Nels A. Anderson, Jr.
Chairman, House Resources Committee
Pouch B, State Capitol
Juneau, Alaska 99811

Dear Representative Anderson:

You asked for a letter stating the problems with log salvage and the reasons why House Bill No. 769 is needed.

The problems basically are:

1. The volume of logs and other materials that are accumulating on Alaska's beaches, particularly in Southeastern. Twenty-five percent or more is probably useable for marketable forest products.

2. The salvage of a significant portion of the useable material is frustrated by the two--three year ownership provision in present law (AS 45.50.230)(a)(1).

3. There are no provisions in existing law requiring the log owner to report log losses from broken log rafts or spills from log rafts or barges so that the time and location of these losses or spills will be known.

4. Most logs stranded on the beaches are above mean high tide and unless the State owns the uplands, the logs are outside of the State's jurisdiction. In most cases, the logs (80 percent or more) are on National Forest land which is under the jurisdiction of the U. S. Forest Service.

5. A statutory or regulatory mechanism, in lieu of the two year ownership period (No. 2 above), is needed to allow log owners an opportunity to recover their lost logs, but allowing the salvage by other persons of these logs within a reasonable time if the log owner does not attempt salvage or abandons salvage and of those logs not recovered by the owner.

6. There are a number of persons or concerns that are engaged in or interested in becoming engaged in log salvage operations. These persons are limited under existing law in developing effective and profitable salvage operations.

7. The State, viz., Department of Natural Resources, is limited by existing law in developing a more effective log salvage program.

File

UNITED STATES DEPARTMENT OF AGRICULTURE
FOREST SERVICE
P. O. Box 1628, Juneau, Alaska 99802

MAR 17 1976

2440
1560



Honorable Nels Anderson
Chairman
House Resource Committee
Alaska House of Representatives
Pouch V
Juneau, Alaska 99811

Dear Mr. Anderson:

During our testimony on HB 769, House Resource Committee members asked two questions which required some research before answers could be provided. These questions were:

1. Why had not the Forest Service solved the log salvage problem in the last 20 years?
2. Can the Forest Service charge a fee for the "storage" of branded logs that have been lost from rafts and then deposited on National Forest land?

A bit of history may be helpful in answering the first question.

The problem of log salvage was with us long before the increase in log production that resulted from the establishment of the pulp mills in southeast Alaska. However, as these mills went into production, the amount of logs lost during towing operations increased and became of more concern.

At the time, we felt Government's interests were properly protected under our adjustment procedures for lost logs. Since the Federal Government had received payment and the adjustment constituted a scaling of the logs, any branded logs were property of the brand owner. In addition, the State and the Forest Service felt that few, if any, beached logs would be above mean high tide and, therefore, we had little or no interest.

The situation remained relatively static through the 1960's. There were some actions by the State toward a resolution of the problem, such as Commissioner Murkowski's 1969 log salvage hearing in Ketchikan, but no results were forthcoming. Forest Service testimony supported the State's efforts during the period.

We believe you are generally familiar with recent developments, such as the increased interest in log salvage, the studies which showed that more of the salvage volume was above mean high tide than previously estimated, and our proposed cooperative agreement with the State for joint salvage sales.

As you can see, the primary reason for our lack of action was a belief that, since the Federal Government's interests were already protected, the salvage of logs was under the State's jurisdiction, and our role should be one of support for reasonable State programs. We feel this is still our basic role, but with a large proportion of salvage volume now on National Forest land, we intend to be an active partner with the State in a salvage program.

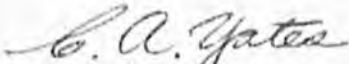
The second question deals primarily with trespass and impoundment actions. Our regulations provide for the impoundment of personal property, in this case logs, that is located on National Forest lands. If the owner is known, we are required to notify him of the trespass and give a reasonable time, at least 5 days, for removal. If the owner is unknown, we must publish a notice of intent to impound and allow at least 15 days from the date of publication before impounding the property.

The owner may redeem his property upon furnishing proof of ownership and paying certain costs, including a fee for the use of the site. If the property is not redeemed, we can sell it 90 days after impoundment. In this case no fees can be collected even though the owner may be known.

In the case of logs, these procedures must be used realistically and only after the brand owner has a reasonable chance to retrieve the logs. Initiating impoundment procedures for each log as it is deposited on National Forest land would be an impossible and undesirable situation.

We hope this answers the Committee's questions. If we can be of further assistance, feel free to contact me or Frank Price, Director of Timber Management, at any time.

Sincerely,



C. A. YATES
Regional Forester



ALASKA LUMBER & PULP CO., INC.

Sitka Office: P.O. BOX 1050 • SITKA, ALASKA 99835 • TELEPHONE 747-0265

March 5, 1976

The Honorable Nels Anderson
Alaska State House of Representatives
Pouch "V" State Capitol Building
Juneau, Alaska 99811

Dear Representative Anderson:

RE: Testimony of James A. Rynearson before the
House Natural Resources Committee on HB 769

INTRODUCTION

ALP understands the concern of this Committee with the subject matter addressed by HB 769, but believes that care must be taken to insure that a legal and bureaucratic tangle is not created by the bill's construction. The thirty-day time limit written into the bill (Section 2) is totally unrealistic due to the physical difficulties of beach-salvage operations, (which are totally dependent on tide, topography, and weather conditions) and the burdensome administrative delays which plague efforts to obtain the necessary State and Federal permits to conduct salvage operations. Accordingly, the time limit represents a windfall to the State and constitutes a taking of property, (our insurance company's in the short term and the increase to ALP in insurance premiums which is bound to result from this law) without due process law. Hopefully, the information which will be provided the Committee will compel its conclusion that far more than the 30 days provided in Section 2 is needed.

One further point is needed by way of introduction -- ALP has just learned that much of the momentum for passage of this bill in its present form is a consequence of negotiations between the State Forester's office and the U.S. Forest Service. ALP would have welcomed the opportunity to have participated in these discussions as it is certain that it could have added constructively to the discussions by raising with the other parties the concerns I will address here today. In addition, insurance companies involved should have an opportunity to discuss these problems with you.

In sum, ALP is simply asking that the 30 day period granted in Section 2 be substantially increased and that the bill be groomed so that it can be sensibly construed. We support this Committee's obvious concern with the red tape which has slowed down beach salvage operations and believe as you do, that action should be taken to clear away impediments. Further, we stand ready to hire Alaskan salvors to retrieve logs with ALP's brand on it within the period in which possessing rights to the logs remains in the Company.

II. BEACH SALVAGE OPERATIONS

It is misleading to believe that the logs seen when flying over Southeastern Alaska are a result of logging operations here. Much of the debris on the beaches is not a result of logging at all. Many of the logs drift into Southeastern Alaska from Canada -- thus accounting for a greater concentration of logs in the Southern Tongass than the North. All of this is seen in the 1951 Aerial Photo

you have been shown. I will supplement this written report in my oral presentation and a further letter to you.

III. PERMIT PROCESS

In order to conduct salvage operations the salvor will need certain permits. He will need an easement to cross State land below mean high tide and a permit or easement to operate on Federal or private lands above mean high tide. Since most of the logs on the beach above mean high tide belong to the Forest Service, he will have to coordinate his activities with the Forest Service, and/04, arrange for a sale of the logs to be made to him. Where the salvor intends to take logs below mean high tide a similar process will have to be gone through with the State. These delays are controlled by the administrative requirements of the agencies involved and will necessarily take more than the thirty days allowed by Section 2. All these problems are compounded when beach ownership is in private hands as it soon will be as a result of land distributions under the Alaska Native Claims Settlement Act.

Far more time consuming will be the next step: obtaining a State tideland lease and Corps of Engineer's permit for a lifting area. ALP is presently seeking State tideland leases for log storage areas. Applications therefore were submitted for these areas over a year ago and none has yet been received. To obtain a Corps of Engineer's permit, one must go through the notice procedure which follows filing which procedure can take up to 120 days. Following the notice procedure, the request is forwarded to interested State and Federal agencies in accordance with the procedure outlined

March 5, 1976

in OMB Circular A-95. The time required for this process is open-ended and depends on the speed with which these agencies take up the application and what, if any, concerns are expressed by these agencies about the proposal.

Accordingly, the salvor is at the mercy of the physical difficulties of salvage logging and the administrative delays of obtaining the necessary permits. It is impossible to do all this in thirty days. Since the administrative process, the speed of which is controlled by State and Federal agencies, not the salvor or ALP, will clearly take more than thirty days, the time limit imposed by Section 2 clearly constitutes a taking of property without due process of law. We would be glad to comply with your objective here, if you would grant us a reasonable time to do it.

IV. LEGAL PROBLEMS

A. Title to the logs.

Paragraph 2(a) of ALP's long term contract with the Forest Service provides in pertinent part:

All right, title, and interest in or to any timber included in this contract shall remain in the United States until it has been paid for, cut and scaled;"

- - -

Accordingly, even though this same contract assigns the risk of loss during tow to ALP and sets up a formula for payment for lost logs, the logs belong to the Forest Service at the point in time they are lost during tow (since scaling

occurs at the mill). Since ALP is insured, ALP's insurer pays the Forest Service for the lost logs and thereupon becomes their owner by virtue of the insurer's right of subrogation. Thus, the "owner" who must report losses under Section 2 is the Forest Service and it is the Forest Service which the State would prosecute for failure to report such loss. Such a prosecution would of course violate the Supremacy clause of the Federal Constitution. This problem can obviously be solved by more careful draftsmanship.

B. Vagueness. The owner is required to report "immediately". If criminal sanctions for failure to report are to attach, as they do under Section 6, then the time within which reporting must be accomplished should be precise. However, circumstances will dictate the time within which reporting could be accomplished. Accordingly, a far less onerous solution would be to drop the criminal sanction and merely require that reports be submitted within a reasonable time.

C. Administrative Burden. If the duty of reporting is shifted from the Forest Service, where it now rests, to others, they should be given an idea of the administrative burden they are taking on. The whole process is left open due to the words "and any other information which the department requires" in Section 2. All pertinent information seems to be provided for by the preceding three requirements.

Additionally, it is entirely possible that bundles may break open during the night or other events may occur which could allow logs to be lost without the knowledge of the tugboat skipper. This eventuality should be considered. The capacity of DNR to process and make sensible use of the information given should also be assessed.

D. Problems with Section 3. It is unclear when the DNR can publish notice under Section 3, thus triggering the State's rights of ownership. Will this be done at the time of reporting lost logs under Section 2 or will it occur 30 days after the Section 2 reports are filed?

Will the State claim possession during the time title to the logs is still held by the Forest Service (i.e. before ALP pays for the logs which have been lost)? As worded, this eventuality is entirely possible and would violate the Supremacy Clause of the Federal Constitution. The problem can be avoided by granting more time for recovery of the logs since the Forest Service would be paid for the logs in the interim and ownership would be shifted. Payment to the Forest Service for lost logs is rarely made within 30 days of the loss.

Since the owner of the lost property would presumably be known by virtue of his reporting the loss under Section 2, how does posting notice and publishing at a point near the loss rather than by direct notice to the company, satisfy

March 5, 1976

the due process requirements of the State and Federal Constitutions?

E. Timber Property. As written, timber property is any property upon which a brand has been affixed. How extensive will this term be defined?

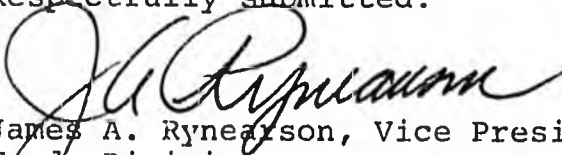
More important the bill deletes the former requirement that the last digit of the calendar year of branding be affixed to the log. This makes it far more difficult for all concerned to identify the logs which are the subject of the loss.

CONCLUSION

Since the physical difficulties of salvage and administrative delays created by State and Federal procedure will make it impossible, in most instances, to recover lost logs within thirty days, the time limit of Section 2 must be substantially increased. ALP would support this legislation if the time is increased to a reasonable amount and the drafting problems referred to above are eliminated.

Thank you for your consideration.

Respectfully submitted:


James A. Ryneason, Vice President
Woods Division
Alaska Lumber & Pulp Company

MARCH 4, 1976

IT B 769

Gardiner: Relating Brands. Log.

Would allow better salvaging for smaller people.
No magic in the time period. If the industry
wants ~~later~~^{longer} date OK w/ Gardiner. (time frame)
Dept of N.R. does not have any regulation for selling
salvaged logs.
System ~~is~~ if state did not approve, it would later
all become automatically salvagable.

Proposed Fed-state agreement on log salvage

Cumbersome process at the present time.

Simple System - Protect Industry but allow Salvage -

Mike Miller: Tremendous amount of abandoned logs. Hazard to
fishermen. U.S. Forest Service says 2-yr waiting
period is the reason that the salvage plan is not
working.

Jim Clark: AK Lumber + Pulp. - Fri morning wood division
For Joel OK when does title to logs pass from Fed to Pt.?
No one has ever made money as a beach logger.
2yr. is not the problem but finding a beach logger.

Smith: (1) Amend 38.05 — to permit more flexibility in salvage operations
(2) Establish permit

Larry Dutton

~~Jim Clark~~: STATE Forester's Fee takes care of administrative costs.

Smith: Washington - Oregon - check with their Statutes
Log Patrol.

Problem w/ 2 or more parties applying for salvage rights in
the same area

Problem with parties not stating how much will be invested

. " " Mean High Tide

Legislation would help solve some problems allow for joint

Federal State Management + Cooperation.

Towing season April - September - Insurance -

Industry says 90 day is enough time -

30 days initial period adequate, can be expanded 60 days more. If industry is going recover 30 days is enough, if they even attempt recovery time can be expanded.

Smith: State Log patrol

Find ~~Original~~ bill on creating Log Patrol 1970

John Raynor Forrester with U.S. Forest - one agency would sell the logs - concerned with use of uplands - Equip Concept of Cooperative agreement has been developed but no implementation until 2yr. period has been changed.

Scrub Sale - Title passes when Scraming is completed. This is the way its usually done in South Eastern Alaska.

Raft is made up. amount is reported - When raft arrives at mill they are then counted and reported. Inspection of Raft - Payment is made on the amount shipped

When logs go on beach U.S. Forest Service can condemn the logs ~~at~~ after 90 days after advertising.

If the bill passes the Federal Govt. would be willing to enter a joint agreement to issue permits from one source for salvaging logs both above (Federal) and below (state) mean high tide.

HB 3842 Administration was going to introduce

If the present bill passes and

LA
Get Copy

" timber property which is presumed to be sold by the State

CLARK :

Insurance company will own any logs that they have paid to the company because of loss—

Insurance Companies - Who covers the Logging cos

→ Lands - status plats check

Henry Hall S.E.

HB 580 ←

Smith - Do PASS

Brown - No Rec

HB 769 - 2:00 - Log Brands.

Walt Pergako Ketchikan pulp.

In favor of using the wood on the beaches
permits required for anything put in the water.
Against time constraints - Lawyers retirement bill.

Who owns the logs

When does the Forest Service own the logs.

Ownership problems is one reason why Salvage
is not profitable.

Huntingbong: How long would you need? Ans 1 one year after
receiving permits.

Smith: Most concerned with not wasting a valuable resource.
Is there a better way?

Title stays with the Forest Service until Sealing
but insurance goes with the logs

What is the annual loss to the companies -

2 million feet of logs annually lost in the last 3 yrs.
approximately \$300,000 per year.

Dutton: Does not feel that one year is too long if the salvage
operation is monitored.

What period of time would the industry require
before reporting missing logs.

Go up to a year

M. Miller: How far up do the Canadian logs go

U.S. Forest Service - Report to Committee by next wk
20-25% of these pictures (Forest Service 4 1/2% had)
recognizable Brands) are logs.

700,000 Board' of 300 - 10% Doug Fir 20% cedar
Monthly cuttimed. 80% above High tide of these
25% are marketable -

95 days after the logs are

Log Brands Continued

What is preventing the state-fed agreement now.

The two year provision - Be able to salvage while the logs are still good, Talking about Fed-State log sale

Dutton : Lawyers - AT the time the forest service determines how many board feet are lost, title changes from Federal Government to put ownership.

Al. Anderson : Companies do care if they loose logs especially because of insurance claims.

What do the companies do with the logs after the insurance company pays them off
Sometimes the insurance companies pick up the logs. 1.4 million - 900,000

Allington & Seccombe : Differences between what state-fed can do - Put parties can do
How you handle logs on put property

Tentative Date for further hearings March 19, 1976